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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Brooks P. Goldsmith, Circuit Court Judge

WAYNE WELLS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000887

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) COURT OF GENERAL SESSIONS

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4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 WAYNE WELLS,)
8 DEFENDANT.)
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TRANSCRIPT
OF
RECORD
2010-GS-43-00377

November 8th and 9th, 2010
Sumter, South Carolina

B E F O R E:

THE HONORABLE WILLIAM J. YOUNG, Judge, and a jury.

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

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ASSISTANT SOLICITOR
Attorney for the State

CALVIN HASTIE
ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

PRISCILLA NAY
Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
S-1	Green Towel	95	96
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Ladies and gentlemen, the fact that the defendant was charged, arrested, and indicted in this case is not evidence that he actually committed the crime. The indictment is mere -- he is presumed to be innocent and the State must prove his guilt beyond a reasonable doubt. Again, the

1 indictment is merely the charging paper that brings him into
2 Court and is no, no way indicative that the defendant
3 actually committed the crime as charged.

4 Ladies and gentlemen, before we select the jury, there
5 are several questions that I'll need to ask you. I'll
6 remind you that you are already under oath and, ladies and
7 gentlemen, one of the reasons that you're under oath is
8 because this is such an important stage of the trial. Just
9 like any building must have a firm foundation to be strong
10 and protect those who live in it, a jury must be strong as
11 the basis of a fair and impartial trial to those who
12 participate. Solicitor, for the people, and the defendant
13 who is on trial.

14 The answers to your questions make that foundation and
15 the attorneys relying on your truthful answers to help them
16 strike an unbiased jury who will diligently listen to the
17 facts and deliver a just verdict. Again, thank you in
18 advance for answering these questions completely and
19 honestly.

20 Ladies and gentlemen, the first question is has anyone
21 ever been represented by blood or marriage or had a
22 professional or personal relationship with the defendant,
23 Wayne Wells, if so, please stand.

24 (No response.)

25 THE COURT: No one's standing.

1 The victim, alleged victim in this case is Minor

2 [REDACTED]
3 Please stand.

4 Minor [REDACTED] complies.)

5 THE COURT: Is there anyone in the jury pool who is
6 related by blood or marriage or has a personal or social
7 relationship with the alleged victim, please stand at this
8 time.

9 (No response.)

10 THE COURT: Thank you. No one is standing.

11 Ladies and gentlemen, this is a list of the potential
12 witnesses who may be called in this case. Listen carefully
13 as I go through this list. I'm going to ask a question
14 about your relationship in just a moment.

15 Detective Irene Kulickj, investigating officer of
16 Sumter Police Department.

17 Corporal Heath Gardner is the responding officer of the
18 Sumter Police Department.

19 James Brosnick of the Sumter Police Department.

20 Michael Green of Bishopville, South Carolina.

21 Lauren Bianca Smith.

22 George Mayo of Bishopville, South Carolina.

23 Brenetta O. [REDACTED] of Sumter, South Carolina.

24 And Lelia Green of Sumter, South Carolina.

25 Tammy Shay Miller.

1 Dwayne Wells.

2 If anyone knows any of these witnesses or has a close
3 personal relationship with any of these people or related by
4 blood or marriage, I ask you now stand.

5 (Juror responds.)

6 THE COURT: Thank you.

7 State your juror number, name and juror number.

8 JUROR: Sheila McCray, 92.

9 THE COURT: Ms. McCray.

10 JUROR: I know Ms. Kulickj.

11 THE COURT: Would the fact that you know Ms. Kulickj
12 make it so you can't give the State and the defendant a fair
13 trial?

14 JUROR: The fact that I know her?

15 THE COURT: Yes.

16 JUROR: No.

17 THE COURT: You could be fair and impartial?

18 JUROR: Yes.

19 THE COURT: Okay. Thank you, ma'am.

20 The attorneys who are involved in this case will be
21 Mr. Marvin Spratlin for the Solicitor's Office, and
22 Mr. Calvin K. Hastie for the defendant.

23 Has anyone been represented, related by blood or
24 marriage, or have a close personal or business relationship
25 with either of the attorneys that are involved or their law

1 firm, if so, please stand.

2 JUROR: Judge, he is like my old friend. He worked in
3 my office for a year or so.

4 THE COURT: Would the fact that Mr. Hastie is that
5 close personal friend make it so you can't be fair to the
6 State and the defense?

7 JUROR: No, sir, it would not.

8 THE COURT: Has any member of the jury panel formed or
9 expressed an opinion about any issue or matter involved in
10 this case, if so, please stand.

11 (No response.)

12 THE COURT: Thank you. No one is standing.

13 Is there any member of the jury panel who is aware of
14 any bias towards either the State or the defendant in this
15 case, if so, please stand.

16 (No response.)

17 THE COURT: Thank you. No one is standing.

18 Is there any member of the jury panel who is a member
19 of the Grand Jury that issued the indictment in this case,
20 if so, please stand.

21 (No response.)

22 THE COURT: Thank you. No one is standing.

23 Is there any member of the jury panel who is a member
24 of or contributor to any group which has as its primary
25 concern the promotion of law enforcement or victim's rights?

1 These groups would include Mothers Against Drunk
2 Drivers, Students Against Drunk Drivers, or Citizens Against
3 Violent Crime, if so, please stand.

4 (No response.)

5 THE COURT: Thank you. No one is standing.

6 Does any member of the jury panel know of any reason
7 whatsoever why he or she should not serve as a juror in this
8 case with particular emphasis being placed on your ability
9 to be fair and impartial to both the State and the
10 defendant, if so, please stand.

11 (Juror responds.)

12 THE COURT: Yes, ma'am, state your name and juror
13 number.

14 JUROR: My name is Rose Martin, and my Juror Number is
15 90. If I could please talk to you up there.

16 THE COURT: Yes, ma'am.

17 (WHEREUPON, the following takes place outside the
18 hearing of the remaining jurors.)

19 JUROR: I feel like I'm not qualified to help take
20 anyone because of my religious beliefs. I'm not qualified
21 with all common sense and taking the oath this morning. I'm
22 not qualified because my Bible tells me in Matthew 7:1 judge
23 ye not less that I may be judged.

24 THE COURT: I see where you're coming from, but I'm
25 going to leave you out here. I'm not going to take you off

1 the jury.

2 JUROR: You're going to leave me on?

3 THE COURT: Yes, ma'am.

4 JUROR: So that will be up to the, to the -- that's
5 not---

6 MR. HASTIE: What is her number?

7 THE COURT: Okay.

8 SOLICITOR SPRATLIN: Sometimes we transfer them to
9 civil court. She's telling you she's not going to follow
10 your instructions. So, sometimes they're just not, but they
11 stay there all week so they can't use that as an excuse for
12 getting out of jury duty.

13 THE COURT: Here's what I'm going to do for this case.
14 I'm going to transfer you.

15 When is the next term of Common Pleas, Civil Court?

16 CLERK: Civil?

17 THE COURT: Yes, ma'am.

18 CLERK: I've got it right here, judge.

19 THE COURT: I'm going to transfer you to the 29th.
20 You can see maybe a week or something like that and you
21 should be able to do that. I'll be the judge and we'll see
22 you here on the second of November, yes, ma'am. Thank you.

23 (WHEREUPON, the following takes place within the
24 hearing of the jury.)

25 THE COURT: This juror will be transferred to the

1 29th of November.

2 Does the State have any additional questions they would
3 like for me to ask?

4 SOLICITOR SPRATLIN: No, sir, Your Honor.

5 THE COURT: Does the defense have any additional
6 questions you would like for me to ask?

7 MR. HASTIE: None, Your Honor.

8 THE COURT: Ladies and gentlemen, the clerk is going to
9 do a computer list and they will call out your name. When
10 your name is called, if you'll please come to the center in
11 front of the bar and turn around. The State will then
12 decide whether or not they want you to serve as a juror and
13 then the defense will also have an opportunity to do the
14 same, and we'll continue that process until we have 12
15 primary jurors and two alternate jurors.

16 Now, ladies and gentlemen, if the State or the defense
17 strikes you from being a jury, on the jury, please don't
18 take it personally. These attorneys have some idea for the
19 jury they're looking for. So, if you don't get picked on
20 this jury, Judge James will be coming in shortly to pick his
21 jury and you may have an opportunity to get selected on that
22 jury.

23 All right. Ready to proceed?

24 SOLICITOR SPRATLIN: State is prepared, Your Honor.

25 THE COURT: Defense ready?

1 MR. HASTIE: Yes, sir, Your Honor.

2 THE COURT: All right. As I said, they can strike you
3 for any reason or no reason, but they can't strike you
4 because of your race, your gender.

5 (WHEREUPON, a jury was selected at this time.)

6 THE COURT: Thank you.

7 Ladies and gentlemen, you-all have been selected as the
8 jury for this case. I'm going to dismiss you to the jury
9 room for a few minutes. Then we may strike another jury
10 with another judge, and then we'll start the trial a little
11 bit later. I'm going to put you on hold for right now, and
12 I, I'll ask that you go to the jury room at this time.

13 Thank you.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Any objection from the State to the jury
17 that has been selected or the defense from the jury or the
18 manner in which it has been selected, Mr. Spratlin?

19 SOLICITOR SPRATLIN: No objection.

20 THE COURT: Mr. Hastie?

21 MR. HASTIE: None.

22 THE COURT: Let me see the attorneys up here.

23 (WHEREUPON, a bench conference was held at this time.)

24 (Whereupon, the following takes place within the
25 presence of the jury.)

1 THE COURT: All the jurors are present.
2 We have a couple of issues we need to take up before
3 the trial of this case. So, I'm going to excuse you for
4 an -- it will be a long lunch. I was going to say be here
5 at 1:30, but we'll say be here at quarter till 2:00, and at
6 that time we'll be ready to start this case, and I'll make a
7 foreperson of the jury. Like I said, we have some other
8 issues we may need to take up, but y'all are excused until
9 2:00 because you're going to have to wait because Judge
10 James will come in and strike another jury.

11 (WHEREUPON, Court was in recess.)

12 THE COURT: State ready?

13 SOLICITOR SPRATLIN: State's ready.

14 THE COURT: Defense ready?

15 MR. HASTIE: Yes, Your Honor.

16 THE COURT: Bring our jury in.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE COURT: Ladies and gentlemen, we're getting ready
20 to start this trial. I apologize for the delay. We had
21 some pretrial matters we had to take up.

22 Mr. Bradley, if you'll please swear the jury.

23 (WHEREUPON, the jury was placed under oath at this
24 time.)

25 THE COURT: Thank you.

1 Ladies and gentlemen, Mr. Back, I'm appointing you to
2 be the foreperson of this jury. You will always sit in that
3 seat.

4 The alternate will always sit where you're sitting now.

5 The rest of you can play musical chairs all you want to
6 during this trial.

7 I'm glad to see all of you went home and got some
8 jackets and sweaters. Of course, I went home for lunch and
9 forgot to bring my sweater back. So, that will actually
10 keep us from going too long. My hands will be turning blue
11 before it's over.

12 Ladies and gentlemen, before we begin this trial I will
13 tell you this trial will be different from what you might
14 expect. Many people do not have the opportunity to actually
15 sit in on a Court case like you're actually doing now, and
16 they think, from reading books, watching movies, or watching
17 TV, that trials are always full of high drama, intense
18 action, and rivetting circumstances.

19 Now, while all of those may be true at times, this
20 trial is not for entertainment. This is a real trial which
21 is a fundamental part of our democracy. This is a search
22 for the truth in an effort to make sure that justice is
23 done.

24 Searching for the truth and ensuring that justice is
25 done is often slow, deliberate, and repetitive. The

1 opposite of what you may have seen on television, in movies
2 or read in books.

3 Ladies and gentlemen, this courtroom is a place of
4 honor that is dedicated to the protection and the
5 preservation of citizens' rights through what has been
6 called, and I truly believe, the greatest justice system
7 ever created. The attorneys who are appearing before you
8 are advocates for the parties they represent, but, first and
9 foremost, they are officers of this Court who are sworn to
10 uphold the integrity and the fairness of our judicial
11 system, and to help you in your search for the truth. You
12 should expect them to be professional, competent, and
13 ethical in the reputation of their clients' interest and
14 remember, ladies and gentlemen, you just took an oath to
15 listen to the evidence in this case and reach a fair and
16 just verdict. You're expected to be professional,
17 reasonable, and ethical as well and, again, let me thank you
18 for accepting this important responsibility of jury service
19 and for your contribution to our justice system.

20 What I will say to you now is intended to serve as an
21 introduction to the trial of this case. These remarks are
22 not a charge on the law in this case. I will charge you the
23 law at the conclusion of all the evidence and after the
24 attorneys have made their closing arguments. This is merely
25 an explanation of the procedures that we will follow in this

1 trial so you may better understand what is happening.

2 Let me say up front, ladies and gentlemen, you will not
3 be allowed to take notes. Therefore, it is very important
4 that you listen closely throughout this trial. The
5 defendant is charged, by indictment filed in this Court,
6 with the crime of criminal sexual conduct with a minor in
7 the second degree. The specific indictment will be
8 explained to you later. The indictment charging the
9 defendant is simply the document by which the case is
10 brought into Court and is not, in any sense, evidence of any
11 of the allegations contained therein.

12 The defendant has pled not guilty to the charge in the
13 indictment. So, the State, therefore, has the burden of
14 proving all the elements of the crime beyond a reasonable
15 doubt, and it will be your duty, ladies and gentlemen, to
16 decide whether the State has met that burden.

17 Your purpose is to determine the facts of this case,
18 and you are to determine the facts from the testimony you
19 hear, and the other evidence that may be introduced during
20 Court. It is up to you to determine the inferences which
21 you feel may be properly drawn from the evidence. It is
22 especially important that you perform your duty diligently
23 and conscientiously because ordinarily there is no way to
24 correct an erroneous determination of facts by a jury.

25 Obviously, and with equal emphasis, the same law that

1 makes you the judges of the facts makes me the judge of the
2 law. The law, as given to you by me, and is the only law
3 that you may consider. You must accept it as I give it to
4 you and follow it even though you may disagree. I can not
5 tell you what the facts are, and you can not disagree with
6 me about what the law is or what you think the law should
7 be. Your job is to take the law as I give it to you and
8 apply it to the facts as you find them from the testimony of
9 the witnesses and any of the evidence that is introduced,
10 and after hearing the evidence, you will deliberate and
11 render a true and just verdict under the solemn oath that
12 you just took as jurors.

13 Until I advise you to begin your deliberations at the
14 conclusion of this case, you must not discuss this case with
15 others including your felony jurors except when told to do
16 so by me. You may not use a computer, cellular phone, or
17 other electronic devices with communication capabilities
18 while in attendance at the trial or during your
19 deliberations. These devices may be used during lunch
20 breaks or when we'll break for the evening, but they must
21 not be used to obtain or disclose information about the case
22 when you're not in Court. Information about the case would
23 include, but is not limited to, information about a party, a
24 witness, anyone, or Court officer, any news accounts of this
25 case, any information collected through juror research on

1 any topics raised or on any testimony offered by any witness
2 or information collected through juror research or any other
3 topics which you might think would be helpful in deciding
4 the case.

5 After the case is submitted to you, you must discuss it
6 only in the jury room with your fellow jurors. The
7 attorneys and parties in this case are advised that they are
8 not to talk to you at all. So, if you see one of them in
9 the hallway or around the courthouse and they don't even
10 speak and say hello, well, they're not being unfriendly.
11 They're just following my instructions.

12 Ladies and gentlemen, it is very important that you
13 keep an open mind and not decide any issue in this case
14 until all of the evidence has been presented, the attorneys
15 have made their closing arguments, and I have instructed you
16 on the law in this case. It is your solemn responsibility
17 to determine the guilt or the innocence of the defendant and
18 your verdict must be based solely on the evidence that is
19 presented to you in this trial and on the law as I instruct
20 it to you.

21 Now, in just a moment the solicitor will make what is
22 known as an opening statement in which he will explain to
23 you what he believes the issues are in this case. The
24 attorney for the defendant may also make an opening
25 statement although he is not required to do so. What the

1 attorneys tell you during their opening statements is not
2 evidence of this case. It is only their contention as to
3 what they believe the issues are in this case.

4 From time to time, during the trial, you may hear one
5 of the lawyers say something like Your Honor, I believe we
6 have a question of law or a matter of law to discuss with
7 you or Your Honor, may we approach the bench or sometimes I
8 might find it necessary to excuse you from the courtroom for
9 a short period so the attorneys and I can discuss a matter
10 of law.

11 Now, the reason that I'm going to excuse you is
12 because, as I've said, I'm the judge of the law and you're
13 the judge of the facts, and sometimes, when we're discussing
14 matters of law with the attorneys, it may be necessary for
15 me to make some comment as to the facts in connection with
16 making that ruling on whether a particular law applies. As
17 I have said, I'm not suppose to tell you what the facts are.
18 So, I will excuse you from the courtroom so that anything
19 that I say or do would not influence your decision
20 concerning the facts.

21 Also, during the trial, one of the attorneys may make
22 an objection to certain evidence which is about to be
23 presented. Now, whether or not I sustain, it will be to
24 grant the objection, or overrule the objection, to deny the
25 objection, should not be construed that I favor one side

1 over the other. I do not. Nor should you, should you infer
2 that the objecting party is trying to hide something from
3 me.

4 In this case, as in all situations in life, there are
5 specific rules that must be followed. The attorneys, as
6 officers of this Court, are merely trying to follow the
7 rules of evidence in this Court in making their objections,
8 and I'm only ruling based upon what I believe the law of
9 this state is concerning the evidence being presented.

10 Now, in determining what the true facts are in this
11 case, you must decide whether or not the testimony of the
12 witness is believable. It will be my responsibility to rule
13 as a matter of law as to whether certain testimony is
14 admissible, but once the testimony is admitted, whether or
15 not you decide to believe it is solely for you, the jurors,
16 to determine.

17 In deciding whether to believe a witness, you have the
18 right to consider the interest of any witness, the bias of
19 any witness, the prejudice of any witness, the opportunity
20 for the witness to have observed the manners and things
21 about which the witness may testify, and the way the witness
22 answers on the witness stand. You have a right to consider
23 anything that is in the record that will help you evaluate
24 the testimony of that witness.

25 That means, ladies and gentlemen, it is your duty to

1 pay close attention to these witnesses, to observe the
2 witnesses, to listen to the witnesses, and to pay close
3 attention to the attorneys and to the Court. Don't let your
4 thoughts wonder, but give strict attention to the testimony
5 in this case so, at the end of all the testimony, after the
6 arguments of counsel and charge on the law by me, you will
7 then be in a position to determine what the true facts are
8 and apply the law to those facts and thus render a true and
9 just verdict.

10 Mr. Foreman, in addition, it is your duty to preside in
11 the jury room and to be the jury spokesperson here in Court.
12 It will also be your duty to write the verdict on the
13 verdict form which will be provided to you at the end of the
14 trial, but I'll give you further instructions on that at the
15 conclusion of the case.

16 Now, I want to preserve everyone's rights. I'll give
17 the parties an opportunity to object to anything that I have
18 said.

19 Does the State have any objections to my pretrial
20 charge?

21 SOLICITOR SPRATLIN: No, sir, Your Honor.

22 THE COURT: Does the defense have any objection to my
23 pretrial charge?

24 MR. HASTIE: None at all, Your Honor.

25 THE COURT: Thank you.

1 Ladies and gentlemen, we will now begin the trial of
2 this case.

3 Mr. Spratlin.

4 SOLICITOR SPRATLIN: Thank you, Your Honor.

5 Good afternoon, ladies and gentlemen.

6 Just as the judge said, I'm Marvin Spratlin. I'll
7 stand up briefly and tell you a little about the case. I
8 work at the Solicitor's Office. I'm assistant solicitor.
9 The solicitor basically in South Carolina is what brings the
10 case. You see them on TV, Law & Order. You hear them
11 referred to as a district attorney. Solicitor, district
12 attorney, same thing. The solicitor is a district attorney
13 in South Carolina.

14 As the judge said, this is what's called opening
15 statements. But nothing I say is evidence, and when Mr.
16 Hastie gets up here, nothing he says will be evidence. The
17 evidence will come from the witness stand and exhibits and
18 evidence that is entered in through various witnesses that
19 testify.

20 I just want to, again, reiterate nothing I say is
21 evidence and nothing Mr. Hastie says is evidence and
22 anything that comes from the testimony, listen to the
23 testimony. I make it a point to know the case as well as I
24 can. But there are people who know the case a whole lot
25 better than me.

1 I know a lot of you in school may have had what's
2 called word problems in math class where, you know, you know
3 a formula or you learn a new technique in math class, and
4 then you're given a fact pattern, and you're to kind of
5 apply that formula to that, the words and the fact pattern
6 that you were given.

7 The trial's kind of reverse. You get the facts first.
8 You get all the testimony. You get all the evidence. You
9 get to find out what happened before you know what the law
10 is. That's so you already, in your mind, know what happened
11 and then, at the end of the trial, you're given the law.
12 You have to apply the law to those facts and decide whether
13 or not the State has proven, beyond a reasonable doubt, that
14 the defendant, Wayne Wells, committed CSC with a minor
15 second degree.

16 To that end, let me tell you a little bit about what
17 the facts are going to be. I like to think of an opening
18 statement and me going over the facts of the case kind of
19 like you would think of a, a preview for a movie. It's not
20 the whole movie. It's not the whole case. It's the, just
21 kind of the high points and gives you an idea, if you watch
22 a preview for a movie, you know what's it's about, and the
23 story line and such, and I kind of like to think of an
24 opening statement like that, and that's kind of what I try
25 to do from my opening statement.

1 You're going to hear from several witnesses today.
2 [Minor], the victim in this case. You're going to hear from
3 her sister, Bianca. You're going to hear from Mr. Green,
4 who is her stepfather, Michael Green, and you're going to
5 hear from her mother, Mrs. Lelia Green. You're also going
6 to hear from a corporal with the Sumter County, Sumter City
7 Police Department, and Detective Irene Kulickj from the
8 Sumter City Police Department.

9 Basically, the evidence you're going to have is going
10 to show you that, back on August 6, 2009, here in Sumter
11 County, South Carolina, the defendant, Mr. Wayne Wells,
12 committed a sexual battery upon Miss [Minor]. The
13 judge will explain what a sexual battery is later on, but
14 for the purposes of opening statement, let me tell you that
15 a sexual battery -- with any sort of penetration of the
16 genitals would be a sexual battery.

17 The evidence we're going to show today, ladies and
18 gentlemen, is going to show that Mr. Wells had sexual
19 intercourse with [Minor] that day. She's going to
20 take the stand and she's going to testify and tell you about
21 that. I want you, as the judge said, you're the judge of --
22 as the judge said, you get to judge the credibility. You
23 get to listen to the witnesses testify and you get to decide
24 who's telling the truth.

25 I want you to listen very carefully to [Minor]

1 When she's on that stand. She'll tell you the truth.

2 Some of her testimony will, you know, be corroborated
3 because half way during this sex, sex act, guess who came
4 home?

5 Her stepfather.

6 He was at work. He came home and found his half naked
7 stepdaughter in the room with the defendant. Michael
8 Green's going to take the stand and testify and tell you
9 that when he came to the door -- he got a call from work,
10 was at work, a security guard over at Tuomey Hospital. He's
11 going to tell you he got a call at work. He got a call from
12 Minor sister, Bianca, who's older than Minor, and she
13 basically called Mr. Green because she had had a friend tell
14 her that something was going on at the house. Mr. Green's
15 going to testify that he very calmly left Tuomey, drove
16 straight to his house to see what was going on.

17 When he arrived, he saw a car out front, a car he had
18 seen at the house numerous times before. He actually will
19 testify and tell you the person he thought drove that car
20 was a neighbor. He wasn't aware of who was driving that car
21 and had never actually met Mr. Wells before that day. That
22 when he came home, he came in the house and he noticed
23 several things were wrong, and several things that shouldn't
24 be, were, in fact. I think the dogs were actually put up.
25 The family had a couple of dogs. They're never put up.

1 They were put up that day implying, you know, that someone
2 else is in the house.

3 He's going to tell you he had actually gotten a
4 neighbor to look at the back-door and make sure nobody else
5 ran out of the house when he got there, and he actually went
6 upstairs to his stepdaughter's room and saw her walking
7 around in a tank top and without any kind of a bottom, and
8 he asked what was going on, and then he was looking around,
9 checking closets, and behind her door. Behind her door was
10 that man.

11 He did what any stepfather would do. He grabbed him,
12 swung him out of the room, had him sit down in a chair
13 downstairs while he called the law. Corporal Heath Gardner
14 with Sumter City Police Department was the responding
15 officer.

16 When he arrived on the scene he did what any officer
17 would do in that situation. He got the defendant, Mr. Wayne
18 Wells, away from Mr. Green, understood nothing would happen,
19 wouldn't be any kind of physical altercation or anything
20 like that, and he took Mr. Wells outside. He had read him
21 his Miranda rights outside the house, and once outside,
22 asked him some questions about what happened or what was
23 going on basically.

24 As you'll hear, Mr. Wells told him -- he told him that
25 he had -- he didn't, he didn't say that he had sex with her.

1 He didn't say that. He said that he had digitally
2 penetrated her, and, and in, in language that Corporal
3 Gardner is going to tell you, which is, in and of it, it's a
4 lot for -- as you'll find out later on, sexual battery
5 constitutes. CSC, we submit to you that there wasn't
6 sexual -- but you'll get to hear all that evidence and, and
7 the last person you're going to hear from, ladies and
8 gentlemen, is Detective Irene Kulickj.

9 Detective Kulickj is a very important person in this
10 case. She is the investigating officer. She won't have a
11 whole lot of personal information to share with you. But
12 she'll be able to talk to you a little bit about how the
13 investigation goes, how the procedures were, and what she
14 was able to discover during her investigation.

15 That's the case, ladies and gentlemen. That's an open
16 and shut case. Like I said, I hope you have a much better
17 idea than when you first sat down of what the case was going
18 to be about and the State's going to present all that to
19 you. And at the end of all of the evidence, I'm going to
20 ask you to get up here and find the defendant guilty because
21 I'm going to prove to you, beyond a reasonable doubt, that
22 he committed CSC with a minor.

23 Thank you.

24 THE COURT: Thank you, Mr. Spratlin.

25 Mr. Hastie.

1 MR. HASTIE: Thank you, Your Honor.

2 Good afternoon, ladies and gentlemen.

3 My name is Calvin Hastie. I'm a public defender here
4 in Sumter. I'm from Sumter. I grew up on the south side,
5 South Main Street. I went to South Carolina State College
6 in South Carolina. After that I was in the military for 20
7 years. I retired from the military, and probably one of the
8 biggest mistakes of my life, I decided I was going to go to
9 Law School. So, I went to Law School after that and decided
10 I'd move back to Sumter and work here in Sumter as a public
11 defender.

12 I want to thank you for your time today, and as the
13 judge already told you, jury duty is not as exciting as it
14 is on television. It is a lot of waiting around and a lot
15 of listening. But I just wanted to let you know that this
16 day is very important to my client. He was waiting for this
17 date to happen and now is his time.

18 Our Constitution of the State and this country talks
19 about the presumption of innocence. Innocence says we are
20 all presumed innocent when someone accuses us of a crime.
21 It says the presumption of innocence is like a robe of
22 righteousness that we all have on, and that places the
23 burden upon the State to remove that robe.

24 They can pull on it and present you evidence maybe this
25 happened this way, but the law says the burden is up here.

1 Beyond a reasonable doubt is what you must prove.

2 A -- my client, he doesn't even have to testify. He
3 wants to testify. I just want y'all to look, listen to the
4 evidence.

5 We are here today because a young lady decided to tell
6 a lie, and she's going to get on the stand and tell you that
7 she lied. She told this man that she was 18. You know
8 she's lying. You know she's lying. She told this grown man
9 she's 18 years old, and he didn't find out she was 18, never
10 found out from her, from others, and then he left her alone.

11 I'm just asking you to take a look at the evidence here
12 today and make your own decision. When someone could get on
13 the stand and look at you and tell you a lie, yet you're in
14 trouble and walk into court and want justice, but what if it
15 wasn't for the lie she initiated, none of y'all would be
16 here. She started this with a lie and now she comes in here
17 asking you for justice.

18 I ask that you consider my client's position and render
19 a verdict of not guilty.

20 Thank you.

21 THE COURT: Thank you, Mr. Hastie.

22 State may call its first witness.

23 SOLICITOR SPRATLIN: Thank you, Your Honor.

24 State would call Miss Minor [REDACTED] to the stand.

25 [REDACTED] Minor [REDACTED], having been first

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 duly sworn, testified as follows:
- 2 DIRECT EXAMINATION
- 3 BY SOLICITOR SPRATLIN:
- 4 Q Minor [REDACTED] let me just start by asking you, when
- 5 is your birthday?
- 6 A [REDACTED].
- 7 Q [REDACTED]?
- 8 A [REDACTED].
- 9 Q [REDACTED].
- 10 One day before Valentine's Day?
- 11 A Uh-huh. (Affirmative).
- 12 Q How old are you now?
- 13 A Sixteen.
- 14 Q Sixteen.
- 15 How old were you back on August 6th, 2009?
- 16 A Fifteen.
- 17 Q Okay. Are you currently in school?
- 18 A Uh-huh. (Affirmative).
- 19 Q Where are you in school?
- 20 A Lee Central School.
- 21 Q How long have you been going to Lee Central?
- 22 A Since January.
- 23 Q January of this year.
- 24 A Uh-huh. (Affirmative).
- 25 THE COURT: Ma'am, I need you to say yes or no.

Minor [REDACTED] - Direct examination
by solicitor Spratlin

- 1 WITNESS: Yes.
- 2 Q Where were you going before then?
- 3 A Sumter High.
- 4 Q How long had you been going to Sumter High School?
- 5 A Since ninth grade.
- 6 Q And how old were you in ninth grade?
- 7 A Fourteen.
- 8 Q Fourteen.
- 9 So, what school were you going back to August 6, 2009,
- 10 or what grade were you about to go in I guess?
- 11 A I don't remember.
- 12 Q What grade are you in now?
- 13 A I'm in the eleventh grade now.
- 14 Q And you would have been going into tenth grade?
- 15 A Uh-huh. (Affirmative).
- 16 Q Coming out?
- 17 A Yes, sir.
- 18 Q Now, Minor [REDACTED] where are you currently living?
- 19 The city. Not the actual street address.
- 20 A Bishopville, South Carolina.
- 21 Q How long have you been living in Bishopville?
- 22 A Since January.
- 23 Q January.
- 24 Who all lives with you in Bishopville?
- 25 A My mother and my step-daddy.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 Q Were -- where were you living prior to January of 2010?
- 2 A In Sumter, South Carolina.
- 3 Q And where were you living -- what, what street and
- 4 address were you living at in Sumter?
- 5 A [REDACTED].
- 6 Q I'm sorry?
- 7 A [REDACTED].
- 8 Q Okay. And who all was living with you when you were at
- 9 [REDACTED]?
- 10 A My sister, my mother, and my stepfather.
- 11 Q Your sister's name?
- 12 A Lauren Smith.
- 13 Q What does she normally go by?
- 14 A Bianca or Lauren.
- 15 Q Bianca or Lauren.
- 16 What is your mother's name?
- 17 A Lelia George Green.
- 18 Q Okay. What is your stepfather's name?
- 19 A Michael Green.
- 20 Q All right. Now, Minor [REDACTED] let me ask you about
- 21 the defendant, Wayne Wells.
- 22 Do you know Mr. Wells?
- 23 A Yes.
- 24 Q I know it's hard for you, but would you mind speaking
- 25 up a little bit?

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 A Yes, sir.

2 Q What name do you know the defendant by?

3 A Corey.

4 Q Do you know him by Corey and not Wayne Wells?

5 A (Witness nods affirmatively.)

6 Q Okay.

7 A Yes, sir.

8 Q And how do you -- how did you come to know him by
9 Corey?

10 A When I was with his sister, well, so called sister, I
11 guess that me that -- I don't know her last name. But she
12 was on the phone with him, and she told me, she asked me did
13 I want to talk to her brother, and I was like okay, and
14 before I got on the phone with him, she said tell him you're
15 18, and I was like why, and she was like just tell him. So,
16 so, then I told him and after that day I hadn't talked to
17 him at all.

18 Q Okay. Let me go back for a second.

19 Now, the name Corey, did he tell you his name was
20 Corey?

21 A I think his sister told me that, but I'm not for, in
22 fact, sure.

23 Q But are you certain that the man you referred to as
24 Corey is the same person sitting here in the courtroom?

25 A Yes, sir.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q Would you please point him out by pointing out a part
2 of the clothing?

3 A He's right here.

4 SOLICITOR SPRATLIN: Please let the record reflect she
5 identified the defendant, Mr. Wayne Wells.

6 Corey -- you said you knew his sister?

7 A Uh-huh. (Affirmative).

8 Tanisha.

9 Q Who?

10 A Tanisha.

11 Q How old was Tanisha again?

12 A I don't recall.

13 Q Was she in school with you?

14 A No, sir, she went to Lakewood.

15 Q Lakewood High School?

16 A Yes, sir.

17 Q How did you know her?

18 A She was raised friends with my friends and my friends
19 stayed right up the street. So, that's where I met her.

20 Q Okay. Now, you said -- how did you first come to meet
21 Mr. Corey?

22 How did you first come to meet Corey?

23 A To meet him or actually talk to him?

24 Q When is the first time you talked to him?

25 A The first time I talked to him was when I was with his

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 sister, Tanisha, outside of my friend's, Brenetta's house.

2 Q Brenetta?

3 A Yes, sir.

4 Q What is Brenetta's last name?

5 A Oliver.

6 Q Okay. And Brenetta, how old is she if you know?

7 A Brenetta is 16.

8 Q Sixteen now?

9 A Yes, sir.

10 Q Okay. So, how old would she have been back then?

11 A Fifteen.

12 Q Okay. So, now you said you were outside with your
13 friend, Brenetta's house, the first time you talked to
14 Corey?

15 A Uh-huh. (Affirmative).

16 Q And how did you come to talk to Corey again?

17 A Because his sister was on the phone with him.

18 Q How did you come to get on the phone with him?

19 A She asked me did I want to talk to her brother.

20 Q And when you first started talking to him, did you know
21 how old he was?

22 A Not at all.

23 Q What did, what did you tell him as far as your age goes
24 when you first talked to him?

25 A It was not a big conversation. He just asked me how

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 old I was, and I told him what Tanisha told me to tell him,
2 but -- which was later on cleared in the future since I
3 didn't talk to him, but my friend, Brenetta, told him
4 because she told me she talked to him later on that
5 afternoon.

6 Q So, again, how old, the first time when you talked to
7 Corey, did you tell him you were?

8 A Eighteen.

9 Q Eighteen.

10 Okay. Now, after that first conversation with Corey,
11 when is the next time you had any sort of interaction with
12 him?

13 A When I was with my other best friend. I was at her
14 house. His brother stayed right down the street from her.

15 Q What is his brother's name if you know?

16 A I don't know.

17 Q Okay. That's fine.

18 Now, so, you were at your friend's house and you -- did
19 you actually -- how did you have any kind of interaction
20 with Corey that day?

21 A Me and my best friend were walking down the road from
22 her house, and we saw him and his brother sitting outside.
23 She already knew his brother.

24 Q Okay.

25 A One second.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q What happened when you ran into his brother?

2 A When I saw him she told me that, that was -- she told
3 me that that was him, but I wasn't sure because I had never
4 seen him in person or anything and she said that that was
5 Corey. So, I was like that's the one that I talked to that
6 time. She was like yeah, that's him because I told her
7 about the story before too.

8 Q So, was Corey there?

9 A Uh-huh. (Affirmative).

10 Yes, sir.

11 Q Who was he with?

12 A His brother.

13 Q And now what -- did you talk to him at all that day?

14 A Yes, sir.

15 Q All right. What was the nature of that conversation?

16 A He told me that he remembered me from talking to me and
17 later on that night me and him and my best friend and his
18 brother got together.

19 Q Okay. How -- when was -- give me a rough estimate as
20 far as what time of year and when, what the date of this was
21 if you know.

22 I know you may not know the exact date, but if you can
23 give me a rough estimate.

24 A I really don't recall how long.

25 Q Do you know how many months or how many, how many

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 months was it before August of 2009?

2 A Probably like -- it was that summer. It was that
3 summer.

4 Q Earlier in the summer?

5 A Yes, sir.

6 Q Okay. During this conversation, did the topic of your
7 age come up?

8 A He told me that he knew how old I was because my
9 friend, Brenetta, told him.

10 MR. HASTIE: Objection.

11 THE COURT: Sustained.

12 Q Okay. What---

13 THE COURT: The jury will disregard her answer on that.
14 Thank you.

15 Q What did he tell you?

16 What was his statement to you in regard to your age?

17 A He told me -- the, the whole conversation was you
18 remember how old you told me when he first got -- I said
19 yeah, I said but that wasn't true, and that's why I didn't
20 call you after that, and he said well, I already knew that
21 because your friend told me.

22 Q Okay. And at one point did you tell him how old you
23 were?

24 A After he -- I -- after he told me that she told him I
25 asked him how old did she tell him. He said---

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 MR. HASTIE: Objection, Your Honor.

2 SOLICITOR SPRATLIN: Your Honor, it is the statement of
3 the defendant.

4 THE COURT: It is his statement she's talking about.
5 Overruled.

6 Q What did he say?

7 A He said he had already known how old I was. So, then I
8 asked him, I said, did she say I was 15 -- no, he told me he
9 told her that I was 15 because I wanted to be sure she told
10 him the right thing. So, he said yes, and I said that was
11 true because I was still 15 at that time.

12 Q So, he had asked you if you were 15?

13 A Yes, sir.

14 Q And what was your response to that?

15 A Yes.

16 Q And was this before August 6th of 2009?

17 A That was before, yes, sir.

18 Q Okay. Now, this was the second time you had met Corey
19 or had some kind of interaction with him?

20 A Yes, sir.

21 Q All right. What, what, if anything, more happened that
22 night?

23 A We did have sexual intercourse that night.

24 Q You did?

25 A Yes, sir.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q Was this before or after you had told him how old you
2 were?

3 A That was after.

4 Q How long after was that?

5 A About a couple of hours.

6 Q Okay. All right. So, this was the second time you had
7 met Corey?

8 A Yes, sir.

9 Q When was the next time after that night that you had
10 seen Corey?

11 A We stayed in touch after I left for my best friend's
12 house, and he came over to my house the next time that I saw
13 him.

14 Q When you say you stayed in touch, how did you stay in
15 touch?

16 A We had each other's number and we talked from time to
17 time.

18 Q Okay. You said the next time you saw him he came over
19 to your house?

20 A Yes, sir.

21 Q What time of day was it he came over to your house?

22 A Probably like one o'clock in the morning.

23 Q One o'clock in the morning?

24 A Yes, sir.

25 Q Okay. Who all was home when he came over?

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 A My sister, my mother, and my stepfather.
- 2 Q Okay. Did he get an opportunity to meet any of those
- 3 individuals when he came over?
- 4 A No, sir.
- 5 Q How did he get to the house?
- 6 A I would let him in.
- 7 Q And would you sneak around with him or how would you go
- 8 about getting -- where would y'all go in the house?
- 9 A My room.
- 10 Q And while your sister and your, your parents were home?
- 11 A Yes, sir.
- 12 Q Would y'all be worried about waking them up?
- 13 A Yes, sir.
- 14 Q What sort of things would you tell him about keeping
- 15 the noise down or anything like that?
- 16 A I really wouldn't say anything because we weren't
- 17 really that loud.
- 18 Q What sort of things were y'all doing at night?
- 19 A We would have sexual intercourse or we really would
- 20 watch TV like that or we would just talk.
- 21 Q And was this the -- you can tell me just an estimate
- 22 about how long before August 6th, 2009, was the first time
- 23 he came over to your house?
- 24 A I don't recall.
- 25 Q Do you remember if it was maybe more than two weeks?

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 A I think it was a lot more than two weeks, but I don't
2 even know.
- 3 Q More than a month?
- 4 A It was probably a month.
- 5 Q Okay. And, again, this contact happened after y'all
6 had the conversation about your age?
- 7 A Yes, sir.
- 8 Q Okay. After that first time Corey came over to your
9 house, when was the next time you saw him?
- 10 A Probably that next week.
- 11 Q And what was the circumstances surrounding you meeting
12 him that next week?
- 13 A I don't understand the question.
- 14 Q How did you go about meeting him the second week?
15 Was it at your house again or---
- 16 A It was at my house again.
- 17 Q What time of day would you guess that was?
- 18 A Nighttime. About one o'clock in the morning.
- 19 Q Was it kind of -- who all was home when he came over
20 that time?
- 21 A My mother, my sister, and my stepfather.
- 22 Q If you can, what sort of things did y'all do that
23 night?
- 24 A We mainly had sexual intercourse every time he came
25 over to my house. We probably did it like once.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q And if you could just estimate for me, not including
2 the date of August 6th, 2009, the last time he came over
3 to your house, how many times had he come over to your house
4 since you'd met him?

5 A It was definitely a lot because I called him every time
6 my mother and my sister and my stepfather had to work at the
7 same time.

8 Q So, every time they had to work at the same time you
9 kind of gave him a call?

10 A Yes, sir.

11 Q Now, at anytime during your relationship with Corey did
12 he meet your mother?

13 A Yes, sir.

14 Q At anytime did he meet your father, your stepfather?

15 A No, sir.

16 Q Did he meet your sister?

17 A Not that I know of.

18 Q Okay.

19 A Not that she told me.

20 Q Okay. But you were never present when you met her --
21 you were never present?

22 A If he met her, no, sir.

23 Q Okay. What about your family, did you ever talk to
24 them about Corey?

25 A No, sir.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 Q Why not?
- 2 A Because I knew if I talked to them about it they would
- 3 ask me how old he was, and I didn't want to really have to
- 4 lie about it. So---
- 5 Q How old was Corey at the time if you know?
- 6 A Twenty-five.
- 7 Q Twenty-five.
- 8 Again, how old were you?
- 9 A Fifteen.
- 10 Q Minor let me go ahead and just start talking about
- 11 what happened on August 6th, 2009.
- 12 What were you doing on that day?
- 13 A That was the day that my mother, my sister, and my
- 14 stepfather had to work, and I asked him to come over and it
- 15 wasn't at nighttime. It was daytime. He probably came over
- 16 like two or three o'clock in the afternoon.
- 17 Q Two or three o'clock in the afternoon?
- 18 A Yes, sir.
- 19 Q Okay.
- 20 A We sat down for a while and talked, and we did have
- 21 sexual intercourse, and after we stopped the first time --
- 22 can, can I say my, my sister's best friend came, and she was
- 23 knocking on the door, and I didn't answer and---
- 24 Q Okay.
- 25 A ---that's when her two sisters came, and her two

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 sisters knew about him because I told them because I was
2 very close to them. When they came, I let them in the house
3 and he was in my room, and I told the older sister, Marissa,
4 that he was there and after that she was like oh, okay. So,
5 then I told him to come out the room so she could meet him,
6 and that's when he did. And, so, he went back in the room
7 and that's when she left, and I guess that's when she told
8 her older sister that he was there.

9 Q Okay. What happened after they left?

10 A After they left I'm guessing that they told their older
11 sister, Brittany, which was very close to my older sister,
12 and she called my sister and told her that he was over there
13 because I think she knew him.

14 Q And then what happened next?

15 A After my sister knew, she said that she called the
16 house phone. But I really don't remember it ringing.

17 Q Okay.

18 A So, she called my stepfather and told him that he was
19 there and---

20 MR. HASTIE: Objection, Your Honor. She is stating
21 what her sister---

22 THE COURT: Sustained.

23 MR. HASTIE: Thank you, Your Honor.

24 THE COURT: Rephrase your question.

25 Q At what point did someone come home?

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 A My stepfather came home.

2 Q All right. What, what time did he come home if you
3 know in rough estimate?

4 A Probably like five o'clock.

5 Q Five o'clock.

6 All right. What happened when he came home?

7 A He came, went through the front door -- well, he opened
8 up the front door, and when I heard the door open, I thought
9 it was my sister's best friend coming through the door, but
10 I knew I locked it. So, I was kind of shocked by that and
11 that's when my stepfather -- I, I opened up my door and my
12 stepfather was right there. He was getting ready to open up
13 the door, and he asked me did I have somebody in his house,
14 and I said no, and that's, that's when he said are you sure
15 and I said yes.

16 So, then he walked off to look at my sister's room,
17 which was right by mine, and he saw the dogs in the room.
18 So, that's when I began to walk out of my room, and that's
19 when he walked in my room, and that's when he turned to the
20 right behind my door and saw Corey.

21 Q Okay. What were you wearing?

22 A A wife beater, gray, a wife beater.

23 Q To make sure everybody knows, what's a wife beater?

24 A It's a small shirt.

25 Q Okay. Does it have sleeves?

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 A No.

2 Q Okay. Were you wearing anything else?

3 A No, sir.

4 Q Okay. All right. So, when your step-dad came home
5 and -- you said that he went to your room?

6 A Yes, sir.

7 Q What happened when he went to your room?

8 A He saw Corey and he asked him what, what was he doing
9 in my house. I don't really remember what Corey said. I
10 just remember my step-dad kind of taking him out of my room.

11 Q And when your step-dad took him out of the room, what
12 did you do then?

13 A I moved out the way.

14 Q Okay. What happened then?

15 A That's when he, step-daddy, he pulled him into the
16 living room, and that's when Corey sat in the chair, and my
17 step-daddy called the police and told him that he better
18 hurry up and get him out of the house because he was in
19 there with his 15 year old daughter, and he said that he
20 knew that Corey was well over age just by the way he looked.

21 Q He knew he was over age by the way he looked?

22 A Yes.

23 Q Okay. Was Corey in the same room when your dad was
24 making this call to the police?

25 A Yes, sir.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q Did Corey seem surprised when your dad said 15 year old
2 daughter?

3 A No, sir.

4 Q Okay. Minor [REDACTED] I can't help but notice that when you
5 first took the stand your family left the room.

6 A Yes, sir.

7 Q Why was that?

8 A Because my family, they're already hurting about the
9 whole situation. Especially mother, and there's a lot of
10 stuff that I know she didn't hear, and I know she doesn't
11 really want to hear because it's been a year and she's still
12 hurting from it.

13 Q Okay. Is it easy for you to talk about this in front
14 of your family?

15 A No, sir.

16 Q Is it easy for you to talk about it in front of us?

17 A Easier than my family, yes.

18 Q Okay. Now, Minor [REDACTED] I'm going to ask you a question of
19 a personal nature.

20 Was there, was there anything special about this time
21 that you and Corey were having sex on August 6th, 2009?

22 A Besides my period being on, no.

23 Q Okay. So, you said you were on your period?

24 A Yes, sir.

25 Q What, if anything, did you do to, different this, this

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 time due to the fact that you were on your period?

2 A We put a towel on the bed so then the blood wouldn't
3 get on the bed.

4 Q Okay. Where was that towel when your step-dad came
5 home in?

6 A On the bed.

7 Q Minor the house you described, I think you said you
8 lived at 1160---

9 A Yes, sir.

10 Q ---Flamingo Drive, what county is that in?

11 A Sumter.

12 Q Sumter?

13 A Yes, sir.

14 SOLICITOR SPRATLIN: Beg the Court's indulgence one
15 second.

16 (Pause.)

17 Q Let me back track a little bit with you, Minor
18 When you and Corey were seeing each other during, I
19 guess, a roughly two month period, did he know you were in
20 school?

21 A Yes, sir.

22 Q How did he know you were in school?

23 A He knew I wasn't out of school because he knew my age.

24 Q Had he ever talked to you about school or anything like
25 that?

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 A Not that I know of. Not that I remember.
- 2 Q When your step-dad came home and came to the door, what
- 3 were you and Corey currently doing when he came in?
- 4 A We -- what were we doing?
- 5 I got up and walked over to the door and Corey got up
- 6 and walked behind my door because we heard the front door
- 7 open and I knew that I locked it.
- 8 Q And -- but what were y'all doing?
- 9 Were y'all just talking or doing something else?
- 10 A I don't recall.
- 11 Q Okay.
- 12 A I know we were done having sexual intercourse.
- 13 Q Okay. When your step-dad came home and you heard the
- 14 door turning, what, if anything, did Corey say to you?
- 15 A He didn't say anything. He just got up and walked out
- 16 the door.
- 17 Q Minor [REDACTED] one more time to make sure we're all clear, how
- 18 old were you back on August 6th, 2009?
- 19 A Fifteen.
- 20 Q How old was Corey?
- 21 A Twenty-five.
- 22 Q Did Corey know how old you were?
- 23 A Yes, sir.
- 24 Q How did he know how old you were?
- 25 A Because I and my friend told him.

Minor [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q And when you -- you've used the phrase sexual
2 intercourse a lot.

3 Just to perfect the record on this case, was there
4 penetration of your vagina?

5 A Yes, sir.

6 Q Thanks, Minor [REDACTED] I appreciate your time.

7 THE COURT: Mr. Hastie.

8 MR. HASTIE: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. HASTIE:

11 Q How are you doing?

12 A Fine.

13 Q How old are you now?

14 A Sixteen.

15 Q And what grade are you in?

16 A Eleventh.

17 Q And what is the name of that school again?

18 A The one that I attend now?

19 Q Yes.

20 A Lee Central High School.

21 Q And I just want to go back to the beginning of how you
22 and, and Corey met.

23 I think your testimony was that you met Corey by phone?

24 A Yes, sir.

25 Q When you were with his sister?

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 A Yes, sir.

2 Q And then I think your testimony was that his sister
3 told you to tell him that you were 18?

4 A Yes, sir.

5 Q Is that correct?

6 Now, at that time I assume you felt something was
7 wrong.

8 why did she tell you to do that when -- did she know
9 how old you were?

10 A She knew how old I was.

11 Q what were you thinking at that time when she told you
12 that?

13 A Knew she -- she knew that -- she knew that he probably
14 wouldn't talk to me because of how old I was, and that's why
15 I just didn't really call him after that because I knew it
16 was a bad situation.

17 Q So, you think that she knew he probably wouldn't talk
18 to you, that's your testimony?

19 A Yes, sir.

20 Q Because she knew that you were 15 at the time?

21 A Fifteen.

22 Q Fifteen.

23 So, you told him you were 18?

24 A Yes, sir, at the time.

25 Q Tell us about the conversation.

Minor [REDACTED]
by Mr. Hastie

-- Cross-examination

1 A At the time when we were outside in front of my friend,
2 Brenetta's house, Tanisha was on the phone with him and they
3 were talking about it, I really don't know, and then she
4 asked me did I want to talk to her brother, and I said sure,
5 and that's when I got on the phone with him and right before
6 she handed me the phone she said tell him you're 18, tell
7 him you're 18. I looked at her and I was like okay.

8 So, that's when I told him and that's when he gave me
9 his number and I wrote it down in a little notebook that I
10 had picked up that, that I had, I wrote down his number.

11 Q Okay. What month was that approximately?

12 A I don't recall. I know it was over the summer.

13 Q During the summertime?

14 A Yes, sir.

15 Q When did you meet with Corey?

16 When did you see him next?

17 A When I was at my best friend, Brenetta's, house.

18 Q How long ago was that from the summertime?

19 Couple of weeks, months?

20 A When I talked to him?

21 Q The second time.

22 A No, when I talked to him the first time when I was on
23 the phone with Tanisha, that wasn't over the summer.

24 Q Not over the summer?

25 A No.

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 Q When was that?

2 A That was probably a weekend, but it wasn't like during
3 Monday through Friday.

4 Q What time of year was it?

5 Not summer.

6 What time of year was it?

7 A I don't recall.

8 Q Okay. How long after that initial time that you can't
9 recall what time of year it was when you spoke with him the
10 second time?

11 A Can you say the question again?

12 Q After you spoke with him the first time, how long was
13 it after that first time that you speak with Corey the
14 second time?

15 A Probably a month and a half.

16 Q Okay. And where was that conversation?

17 A At my friend, Brenetta's, house.

18 Q How long after that time did you talk to Corey the next
19 time?

20 A I don't recall. I don't remember specifically because
21 I don't recall. It was no specific time period.

22 Q Are we talking about a week later, two months later,
23 ten months later?

24 A Probably a week later.

25 Q A week later?

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 A A week or two.

2 Q So, a week later, where was this conversation, the
3 third conversation?

4 A At my house.

5 Q At your house?

6 A Yes, sir.

7 Q Okay. How did he get to your house?

8 Did you call him?

9 A Yes, sir.

10 Q So, you called him and said what, come over to my
11 house?

12 A Yes, sir.

13 Q Okay. And why did you want him to come over to your
14 house?

15 A Because I knew that I hadn't seen him in a while and
16 from the time period I'm talking to him on the phone, I felt
17 like I, I did like him.

18 Q You did like him.

19 All right. So, he came over, this third time, y'all
20 had a conversation.

21 Did y'all have sex this time he came over to your home?

22 A The third time?

23 Q The first time.

24 A No. No, sir.

25 Q So, what do y'all do when he came over?

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 A We talked because I told him that most of the time I
2 told him that I wasn't really -- I didn't really want to.
3 So, we would talk or we would watch movies. We'd watch
4 movies before on my portable DVD player.

5 Q So, there were sometimes he came to your house and
6 y'all did not have sex?

7 A Yes, sir.

8 Q After the third time -- how did he get in the house?
9 Was---

10 A I let him in.

11 Q Was it at nighttime?

12 Your parents were at home?

13 A Yes, sir.

14 Q And you just let him come through the front door.
15 Where were your parents?

16 A My parents were in their room and my sister was in
17 hers.

18 Q Okay. So, he, he come to -- did he knock on the door,
19 ring the doorbell?

20 A He would come in through the door I had -- my room
21 window.

22 Q Oh?

23 A And he came through there.

24 Q That's what I was asking.

25 How did he get in?

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 I thought y'all let him in through the door, but---

2 A No, sir.

3 Q He came through the window?

4 A Yes, sir.

5 Q You knew something -- you were trying to hide the fact
6 that he was entering the home?

7 A Yes, sir.

8 Q And you said earlier you did, you did like Corey at the
9 time?

10 A I did like him.

11 Q Like him -- I---

12 A Yes, sir.

13 Q And you knew what you were doing was wrong, isn't that
14 right?

15 A By having a relationship with him, yes, sir.

16 Q Yeah.

17 Having a relationship and having sex with him, you knew
18 that was wrong?

19 A Yes, sir.

20 Q You said earlier that when he was there at times,
21 sometimes, he came at one o'clock in the morning?

22 A Yes, sir.

23 Q Is that correct?

24 At the time you said he came at three o'clock in the
25 morning?

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 A He never came at three o'clock in the morning.

2 Q I must have misspoke.

3 What other time did he come?

4 I thought I wrote down three o'clock in the morning.

5 A He came at one o'clock in the morning or he came at
6 three o'clock in the afternoon.

7 Q Okay. That's probably -- over this, over this period
8 of time, how many times did you and Corey have sex?

9 A I don't recall.

10 Q You don't recall?

11 Two?

12 A I'd say more.

13 Q Five?

14 A No.

15 Q More than five?

16 A Yes, sir.

17 Q Ten?

18 A I don't recall.

19 Q Any other young, young man came through your window or
20 through your door besides---

21 SOLICITOR SPRATLIN: Objection, Your Honor.

22 THE COURT: Sustained.

23 A No, sir.

24 Q You mentioned about the blood on the towel, did you
25 not?

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 A Yes, sir.

2 Q Were you a virgin when you met, had sex with Corey?

3 A Yes, sir.

4 Q Did you tell him that?

5 A No, sir.

6 Q Let's talk about the day your father came, your
7 stepfather came home.

8 He came in and you met him and he was upset evidently?

9 A Yes, sir.

10 Q You had no clothes on except a top, is that correct?

11 A Yes, sir.

12 Q The top came to about where, here?

13 A The top came about right here.

14 Q Below your -- waist wise?

15 A Yes, sir.

16 Q Right here?

17 A Yes, sir.

18 Q And what did your stepfather ask you?

19 A Did I have anybody at his house.

20 Q He didn't ask you what in the world are you doing
21 walking around with no clothes on?

22 A No, sir, because he already knew that I had somebody
23 there.

24 Q He didn't tell you to go put some clothes on before
25 he---

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 A No, sir, he was mad and he just really wanted to find
2 Corey and get him out of the house. So, I guess that was
3 his last---

4 Q Has he seen you like that in the past times?

5 A No, sir.

6 Q No clothes like that?

7 A No, sir.

8 Q At no time did he tell you to go put on some clothes?

9 A I put them on myself after he told Corey to go out in
10 the living room, and then I went out in the living room with
11 him, but then later on, after he talked to Corey, he told me
12 to go on home.

13 Q Did Corey have on his clothes?

14 A Yes, sir.

15 Q He was fully dressed, wasn't he?

16 A Yes, sir.

17 Q Did y'all have intercourse with, with Corey having all
18 of his clothes on?

19 A No, sir, he had his pants pulled down and we had
20 intercourse, but we were already done by the time my
21 stepfather came. So, his pants was already on.

22 Q You said your mom is still hurting from this incident?

23 A Yes, sir.

24 Q You got to admit that you, you brought this on?

25 SOLICITOR SPRATLIN: Objection, Your Honor.

Minor [REDACTED] - Cross-examination
by Mr. Hastie

- 1 THE COURT: Sustained.
- 2 Q Have you and your mother talked about this?
- 3 A Yes, sir.
- 4 Q And I can see this is difficult to talk about.
- 5 After this incident, did you see Corey?
- 6 Have you seen him anymore?
- 7 A No, sir.
- 8 Q But from the beginning -- you knew that you were not 18
- 9 when you told him you were 18?
- 10 A Yes, sir.
- 11 Q You knew he was an older person?
- 12 You had to assume that?
- 13 A Yes, sir.
- 14 Q And when you saw him, you confirmed that he was an
- 15 older person?
- 16 A Yes, sir.
- 17 Q You snuck him into your house because you knew your
- 18 parents would object to an older man being in their home?
- 19 A Yes, sir, I knew that my parents would object to any
- 20 man being in my home.
- 21 Q Even a young man your age?
- 22 A Yes, sir.
- 23 Q And on top of that, you said, at that time, you, you
- 24 cared for Corey?
- 25 A Yes, sir.

Minor [REDACTED] - Cross-examination
by Mr. Hastie

1 Q what about now?

2 A A little.

3 Q Pardon?

4 I didn't hear you.

5 A A little.

6 Q You still care for him a little?

7 I'm trying not to go too far. Maybe it is.

8 I think you already said that you were a virgin at the
9 time of this initial sex that you had?

10 A Yes, sir.

11 Q Was your first time -- maybe I've already asked you
12 this.

13 But when your step-dad came in, did he say anything
14 that he thought you were a different age than 15?

15 The step-dad grabbed him I guess?

16 A Corey?

17 Q Yes.

18 A I don't recall.

19 Q Did he tell him I thought she was 18?

20 A I don't recall.

21 Q You don't recall.

22 I have no further questions.

23 THE COURT: Any redirect?

24 SOLICITOR SPRATLIN: Just real briefly, Your Honor.

25 REDIRECT EXAMINATION

Minor [REDACTED] - Redirect examination
by Solicitor Spratlin

1 BY SOLICITOR SPRATLIN:

2 Q [REDACTED] prior to you having sex with Corey, did he know
3 how old you were?

4 A Yes, sir.

5 Q How old did he think you were?

6 A Fifteen.

7 Q That's all the questions I have.

8 THE COURT: Any further recross?

9 MR. HASTIE: No, Your Honor.

10 THE COURT: Thank you. You may step down.

11 All right. Ladies and gentlemen, this is an
12 appropriate time for us to take an afternoon break. We will
13 recess until quarter till 4:00. Please do not discuss the
14 case with each other or anyone else during this time.

15 Thank you.

16 Please remain seated until the jury leaves.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Now, Court is in recess until quarter till.

20 (WHEREUPON, a short recess was taken at this time.)

21 THE COURT: Let's bring our jury back in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: State ready to call your next witness?

25 SOLICITOR SPRATLIN: State's ready.

Brenetta O. [REDACTED] - Direct examination
by SOLICITOR Spratlin

1 State calls Brenetta O. [REDACTED] to the stand.

2 [REDACTED] Brenetta O. [REDACTED], having been first

3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR SPRATLIN:

6 Q Miss Oliver, how old are you?

7 A Seventeen.

8 Q Are you currently in school?

9 A Yes, sir.

10 Q Where do you go to school?

11 A Lakewood.

12 Q Where are you coming from today?

13 A School.

14 Q Where do you currently live?

15 A [REDACTED]

16 Q What city is that in?

17 A Wedgefield, South Carolina.

18 Q Wedgefield is -- how long have you lived there?

19 A I would say like two weeks.

20 Q Two weeks?

21 A Yes, sir.

22 Q Where did you live before there?

23 A [REDACTED].

24 Q What city is that in?

25 A Sumter.

Brenetta O. [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 Q Sumter.
- 2 Let me ask you this.
- 3 Do you know the victim in this case, Miss Minor [REDACTED]
- 4 A Yes, sir.
- 5 Q How do you know her?
- 6 A She is my friend.
- 7 Q How did y'all two meet?
- 8 A We met during school.
- 9 Q What school would that have been in?
- 10 A That was Chestnut Middle.
- 11 Q So, how long, if you could estimate, have you known
- 12 Jalesa?
- 13 A I would say I know her hopefully like five, six years.
- 14 Q Five or six years.
- 15 Okay. Now, Miss Oliver, do you know the defendant,
- 16 Wayne Wells, who goes by the name Corey?
- 17 A I know of him.
- 18 Q Okay. How do you know of him?
- 19 A He's my cousin's brother.
- 20 Q He's your cousin's brother?
- 21 A Yes, sir.
- 22 Q But he is not your cousin?
- 23 A No, sir.
- 24 Q Okay. Is he somewhat of a stepbrother?
- 25 A I think he's her stepbrother.

Brenetta O. [REDACTED] - Direct examination
by Solicitor Spratlin

- 1 Q Okay. Have you ever had an opportunity to talk to
2 Corey Wells?
- 3 A I talked to him once over the phone.
- 4 Q And what was the nature of that conversation?
5 what did y'all talk about?
- 6 A We just talked about her age.
- 7 Q Whose age?
- 8 A Minor [REDACTED].
- 9 Q Okay. What did you, what did you tell him about her
10 age?
- 11 A That she was only 14.
- 12 Q And how old was she at the time you told him this?
- 13 A She was only 14.
- 14 Q How did you come to talk to him on the phone?
- 15 A My cousin gave me his number so like she wanted someone
16 to talk to him. So, she like gave us his number.
- 17 Q So, your cousin gave you his number?
- 18 A Yes, sir.
- 19 Q All right. And the person you talked to, he identified
20 himself as Wayne Corey Wells?
- 21 A He identified himself as Corey.
- 22 Q And if you could, give me an estimate about what time
23 or when you actually had this phone conversation with Corey
24 Wells?
- 25 A I'm really not that sure.

Brenetta O. [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q Was it before August 6th, 2009?

2 A I'm not sure.

3 Q That would be a little over a year and a half ago?

4 A That would be -- I would say in 2009.

5 Q 2009?

6 A Uh-huh. (Affirmative).

7 Q Let me ask you about August 6th, 2009.

8 Do you know where [REDACTED] Minor lived?

9 A Yes, sir.

10 Q How far away was she from where you all lived?

11 A She was like right around the corner.

12 Q On August 6th, 2009, did you have a chance to go over
13 to her house?

14 A Yes, sir.

15 Q Had you had this conversation with Corey Wells prior to
16 you going over to her house that day?

17 A Yes, sir.

18 Q Are you certain of that?

19 A Yes, sir.

20 Q How long before that, from the time you went over to
21 her house, would you have had that conversation?

22 A I would say it was close to a year.

23 Q Close to a year before that?

24 A Uh-huh. (Affirmative).

25 Q So, you may have had that conversation with Corey Wells

Brenetta O. [REDACTED] - Direct examination
by Solicitor Spratlin

1 in 2008 actually?

2 A Probably.

3 Q But you're certain it was before August, before you
4 went over to her house on August 6th?

5 A Yes.

6 Q Okay. Now, Miss Oliver, when you went over to her
7 house on August 6th, what, if anything, did you observe?

8 A We walked in. Like she really like didn't have any
9 clothes on and---

10 Q How did you get in the house?

11 Excuse me.

12 A She opened the door.

13 Q And why did you go over to the house in the first
14 place?

15 A To pick something up for my sister.

16 Q Do you remember what it was?

17 A Flat iron.

18 Q Flowers?

19 A Flat iron.

20 Q Flat iron?

21 A Uh-huh. (Affirmative).

22 Q What is that?

23 A A hair tool to like straighten out the hair.

24 Q Basically like a hair straightener kind of thing?

25 A Uh-huh. (Affirmative).

Brenetta O. [REDACTED] - Direct examination
by Solicitor Spratlin

1 Q When you went over there to pick that up, what did you
2 observe?

3 A I observed that she was sitting in front with no
4 clothes on. The car was like there in the front yard by the
5 gate.

6 Q Whose car was that, if you know?

7 A It was Corey's car.

8 Q Okay. And now when you got in the house, what, if
9 anything, did you observe when you got to the house?

10 A That she really didn't have anything on.

11 Q Uh-huh. (Affirmative).

12 A Like he came out the room.

13 Q She came out of the room?

14 A He did.

15 Q He did?

16 A He did.

17 Q Who's he?

18 A Corey.

19 Q Let me go ahead and ask you to -- do you see in the
20 courtroom the man you know as Corey Wells?

21 A Yes, sir.

22 Q Would you please point him out and identify the
23 articles of clothing he's wearing?

24 A Right there. Black pants, plaid looking shirt.

25 SOLICITOR SPRATLIN: Please let the record reflect the

Brenetta O. [REDACTED] - Direct examination
by Solicitor Spratlin

1 witness has identified the defendant in this case.

2 THE COURT: The record would so reflect.

3 Q Miss Oliver, when Mr. Wells came out of the room, how
4 was [REDACTED] dressed?

5 A T-shirt and panties.

6 Q T-shirt and panties?

7 A Uh-huh. (Affirmative).

8 Q Do you remember what time of day this was?

9 A I would say about 5:00, 6:00.

10 Q Okay. Were you present when [REDACTED] first started
11 talking to Corey Wells?

12 A Yes, sir.

13 Q How did, how did they come -- how did they start
14 talking?

15 A She met him through my cousin. My cousin was just like
16 he wanted somebody to talk to. She just gave him the
17 number.

18 Q How old is your cousin?

19 A Right now, my cousin is like 17.

20 Q So, she's 17?

21 A Uh-huh. (Affirmative).

22 Q And how old is Corey?

23 Do you know?

24 A I was told he was 27.

25 Q Okay. But your cousin is 17?

Brenetta O. [REDACTED] - Direct examination
by Solicitor Spratlin

1 A Uh-huh. (Affirmative).

2 Q All right. And that's his sister?

3 A Yes, sir.

4 Q Now, are you absolutely certain that you talked to
5 Corey and told him how old [REDACTED] was prior to August 6,
6 2009?

7 A Yes, sir.

8 Q And how can you be so certain?

9 A Because I called him the same night that my cousin was
10 trying to look, that same night.

11 Q So, you called him the same day he had first talked to
12 Jalesa?

13 A Yes, sir.

14 Q Again, how old did you tell Mr. Wells that [REDACTED] was?

15 A Fourteen.

16 Q Thank you, Miss Oliver. Mr. Hastie may have some
17 questions for you.

18 THE COURT: Mr. Hastie, you may cross-examine the
19 witness.

20 CROSS-EXAMINATION

21 BY MR. HASTIE:

22 Q Good afternoon.

23 You say you called him the same, first day he talked to
24 [REDACTED]

25 A Yes.

Brenetta O. [REDACTED] - Cross-examination
by Mr. Hastie

- 1 Q What day was that?
- 2 A Not too sure.
- 3 Q Not too sure.
- 4 What time of year was it?
- 5 A It was basically cold outside. So --.
- 6 Q Cold outside?
- 7 A Uh-huh. (Affirmative).
- 8 Q It's November. It's cold outside now.
- 9 A I'm not too sure if it was like Fall or winter. I'm
- 10 not too sure about that.
- 11 Q You don't know if it was Fall?
- 12 Don't know if it was January or February?
- 13 A No, sir.
- 14 Q How did you get his number?
- 15 A Through my cousin.
- 16 Q Which cousin is this?
- 17 A Tanisha.
- 18 Q Tanisha who?
- 19 A Wells.
- 20 Q You mentioned something about your cousin's brother.
- 21 A Yes, sir.
- 22 Q Who is that?
- 23 A Corey.
- 24 Q Who?
- 25 A Corey Wells.

Brenetta O. [REDACTED] - Cross-examination
by Mr. Hastie

- 1 Q You live really -- live right around the corner from?
- 2 A It's like right around the corner.
- 3 Q Uh-huh. (Affirmative).
- 4 A If you go right around the corner, it's like right down
- 5 the road.
- 6 Q Right down the road.
- 7 How did you know of Corey?
- 8 A I knew of him through my cousin.
- 9 Q Which cousin again?
- 10 A Tanisha Wells.
- 11 Q And you decided to call Corey the same day?
- 12 A Yes, sir.
- 13 Q And what is your purpose?
- 14 A To tell him that [REDACTED] Minor was underage.
- 15 Q Okay. So, when you walk in [REDACTED] Minor house, you say she
- 16 didn't have any clothes on at first?
- 17 A Yes, sir.
- 18 Q But she did have on some clothes, didn't she?
- 19 A Okay. Like t-shirt and panties. I call that no
- 20 clothes.
- 21 Q You call it no clothes?
- 22 A Yes, sir.
- 23 Q But she did have on some panties, right?
- 24 A Yes, sir.
- 25 Q And what color top, t-shirt?

Brenetta O. [REDACTED] - Cross-examination
by Mr. Hastie

- 1 A I believe it was gray, gray t-shirt.
- 2 Q You know what a wife beater is?
- 3 A Yeah, I know what a wife beater is.
- 4 Q Was it a wife beater?
- 5 A Yes, sir.
- 6 Q It was a wife beater?
- 7 A Uh-huh. (Affirmative).
- 8 Q What color panties did she have on?
- 9 A I would say gray.
- 10 Q Say she had gray panties on?
- 11 A Uh-huh. (Affirmative).
- 12 Q You mentioned about a car in the front yard.
- 13 You said Corey's car was in the front yard?
- 14 A Yes, sir.
- 15 Q Have you even been in Corey's car?
- 16 A No, sir.
- 17 Q You had never met Corey before this time is your
- 18 testimony?
- 19 A Yes, sir.
- 20 Q You never met Corey, right?
- 21 A Uh-huh. (Affirmative).
- 22 Q How do you know that's Corey's car in the front yard if
- 23 you never met Corey?
- 24 A Because the -- like -- the police report would say that
- 25 it was his car.

Brenetta O. [REDACTED] - Cross-examination
by Mr. Hastie

1 Q Oh, the police report said it was Corey's car?

2 A Uh-huh. (Affirmative).

3 Q But you went in that house, you didn't know whose car
4 was in that yard, did you?

5 A No, sir.

6 Q You'd never met Corey to that day, right?

7 A Yes, sir.

8 Q You didn't know whether he had a car or what, or a
9 mule, right?

10 The only way you know that car was Corey's car was
11 because the police report said it was Corey's car?

12 A Yes, sir.

13 Q And to this day you're not sure that's Corey's car?

14 A Yes, sir.

15 Q So, you did talk to Corey, said Corey, my friend is how
16 old?

17 A Fourteen.

18 Q Fourteen.

19 And then you said Corey was how old?

20 A I'd say about 27.

21 Q About 27.

22 You're not sure how old Corey was, are you?

23 A No, sir.

24 Q Anybody tell you how old he was?

25 A Like people around that knows him?

Brenetta O. [REDACTED] - Cross-examination
by Mr. Hastie

1 Q People around.

2 A Say he was 27.

3 Q Oh, they say he was 27?

4 A Uh-huh. (Affirmative).

5 MR. HASTIE: Your Honor, I have no further questions.

6 THE COURT: Mr. Spratlin, redirect.

7 REDIRECT EXAMINATION

8 BY SOLICITOR SPRATLIN:

9 Q Real quick again, Miss Oliver, how far were you living
10 from [REDACTED] in August 2009?

11 A Walking distance.

12 Q Who was in that house with [REDACTED] that day?

13 A Corey was.

14 Q Would you please again point out Corey Wells for the
15 Court?

16 A (Witness points.)

17 Q That's all the questions I have.

18 THE COURT: Any recross?

19 MR. HASTIE: None, Your Honor.

20 THE COURT: Thank you. You may step down.

21 SOLICITOR SPRATLIN: Your Honor, permission to excuse
22 the witness?

23 THE COURT: Any objection to excusing this witness?

24 MR. HASTIE: None at all.

25 THE COURT: The witness is excused. Thank you.

Bianca Smith - Direct examination
by Solicitor Spratlin

1 SOLICITOR SPRATLIN: Thank you, Your Honor.

2 Your Honor, may the State call its next witness?

3 THE COURT: That's what I was waiting on.

4 SOLICITOR SPRATLIN: The State would call Miss Lauren
5 Bianca --.

6 DIRECT EXAMINATION

7 BY SOLICITOR SPRATLIN:

8 Q Ma'am, what name do you commonly go by?

9 A Bianca.

10 Q Bianca, how old are you?

11 A I'm 20.

12 Q Where do you currently live?

13 A I currently live in Columbia, South Carolina.

14 Q Okay. Where were you living back on August 6th,
15 2009?

16 A Out -- where I live now, 60 Flamingo Road.

17 Q Who all lived there with you?

18 A Me, my sister, my mother, and my stepfather.

19 Q Who is your sister?

20 A Minor [REDACTED].

21 Q Who is your mother?

22 A Lelia George Green.

23 Q And who is your stepfather?

24 A Michael Green.

25 Q If you remember, what were you doing back on August 6

Bianca Smith - Direct examination
by Solicitor Spratlin

1 of 2009?

2 A I was asleep and I went to work.

3 Q Okay. What time of day did you go to work if you
4 remember?

5 A I'm not exactly sure. My shift was scheduled for four
6 or five o'clock. I want to say five o'clock for the most
7 part.

8 Q Four or five o'clock when you went to work?

9 A Yes, sir.

10 Q Who all was home when you left the house for work that
11 day?

12 A Minor

13 Q Was anyone else home?

14 A (Witness nods negatively.)

15 THE COURT: You need to do it verbally.

16 WITNESS: No, sir.

17 Q So, when you left the house at four or five o'clock,

18 Minor was the only one at home?

19 A Yes, sir.

20 Q Where were you working at the time?

21 A I was working at Ruby Tuesday's on Broad Street.

22 Q What's the next thing that happened that day that you
23 remember?

24 A I got a text message from Brittany, who is Brenetta's
25 sister, her oldest sister, and she asked me if she could

Bianca Smith - Direct examination
by Solicitor Spratlin

1 borrow my flat iron and I told her yes, just go down to the
2 house and [Minor] will open the door and give you the flat
3 iron.

4 Q Again, I think Brenetta covered this, but what is a
5 flat iron?

6 A A flat iron is something that flattens my hair. It got
7 my hair looking like this today. Well, it's kind of rough
8 today. So, you know.

9 Q I don't have much to work with.

10 A Yeah.

11 Q So, one of your friends asked to borrow your flat iron,
12 and what's the next thing that happened that day that you
13 remember?

14 A I called [Minor] on the house phone because she didn't
15 have a cell phone at the time. So, I called her on the
16 house phone to let her get the flat iron ready out of the
17 bathroom or whatever and get it ready to hand to Brittany.

18 Q Did you have a chance to speak with [Minor] at that
19 time?

20 A I did not.

21 Q Did the phone ring and ring?

22 Did someone pick up or---

23 A It kept ringing and ringing. The answering machine
24 came on about twice, and the other times I called about
25 maybe seven or eight times. I hung up before the answering

Bianca Smith - Direct examination
by Solicitor Spratlin

1 machine picked up so I could make the phone keep ringing.

2 Q What did you do next?

3 A Then I was thinking oh, my goodness, I need to leave
4 work because I was worried.

5 Q Why were you worried?

6 A That's my baby sister. She wasn't answering the phone.

7 Q Is it unusual for her to not answer the phone?

8 A No, it's not unusual for her to be on the phone and she
9 answers on the first ring.

10 Q Okay. So, is -- so, what did you do after you began
11 getting worried?

12 A I told the manager that I would probably have to leave
13 work for a family emergency because she still wasn't
14 answering the phone. So, I tried to contact my mom because
15 she's been at her job a little longer than me. So, she
16 probably could leave and go see what was going on if
17 something was going on. So, I called her. I couldn't get a
18 hold of her.

19 So, I called the house phone again a couple of times
20 and then I was like oh, goodness, the last resort. So, I
21 called my stepfather and I told my stepfather, you know, I
22 can't get a hold of Minor. I called Brittany again, and I
23 said knock on the door some more because Brittany went down
24 there after Brenetta went down there. I said knock on the
25 door some more because if she's asleep she needs to wake up.

Bianca Smith - Direct examination
by Solicitor Spratlin

1 Q what did you tell your stepfather when you talked to
2 him?

3 A When I talked to my stepfather I told my stepfather
4 what Brittany told me, and Brittany told me there was a man
5 in my house, and I needed to go home.

6 MR. HASTIE: Objection.

7 THE COURT: Sustained.

8 The jury will disregard the last statement.

9 Q Without telling -- let's move on from that.
10 Once you talked to your stepfather, what did you do
11 then?

12 A When I talked to my stepfather, I told Brittany to wait
13 there until my stepfather got there.

14 Q Okay. And do you know roughly what time it was that
15 you talked to your stepfather?

16 A No, I don't know.

17 Q Okay. How -- do you remember how soon it was or how
18 long you had been at work when you talked to her?

19 A I know it was not there long enough to where I could
20 leave.

21 Q Okay.

22 A So, it had to have been I just got there. I wasn't
23 there for maybe an hour and a half, you know. Just couldn't
24 leave her.

25 Q What was your address in Sumter again?

Bianca Smith - Direct examination
by Solicitor Spratlin

1 A [REDACTED].

2 Q What county is that?

3 A In Sumter.

4 Q That's all the questions I have right now. Please
5 answer any questions---

6 THE COURT: Mr. Hastie.

7 MR. HASTIE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. HASTIE:

10 Q You said when she didn't pick up her phone you were
11 worried?

12 A Yes, sir.

13 Q And you were worried so that you, you were about to get
14 off from your job and go check on her?

15 A Yes, sir.

16 Q You were so worried?

17 You never called her before and she never picked up the
18 phone?

19 A No, I've never called my -- I'm usually with my sister,
20 but when she didn't answer the phone I got worried because
21 my sister is -- the phone -- my sister's always on the
22 phone.

23 Q Your sister's in school and you're working and you're
24 always with your sister?

25 A I'm always with my sister. If, if my sister is home to

Bianca Smith - Cross-examination
by Mr. Hastie

1 where I can call her because my sister didn't have a cell
2 phone. If I'm home, me and my sister are usually together.
3 Me and my sister are -- it's been not many times that we've
4 been apart for a certain amount of time except for when we
5 both were in school, and even sometimes then we were still
6 around each other because we were around the same people in
7 school.

8 MR. HASTIE: Thank you very much.

9 THE COURT: Redirect.

10 SOLICITOR SPRATLIN: Just one question.

11 REDIRECT EXAMINATION

12 BY SOLICITOR SPRATLIN:

13 Q Bianca, have you ever seen Corey Wells before, before
14 today?

15 A I did.

16 Q When?

17 A I saw him -- it might have been a year ago in a pool
18 hall. I saw him at a pool hall.

19 Q Prior to August 6, 2009, have you ever seen Corey Wells
20 before?

21 A No.

22 Q Thank you.

23 MR. HASTIE: Nothing.

24 THE COURT: Thank you. You may step down.

25 Mr. Spratlin.

Michael Green - Direct examination
by Solicitor Spratlin

1 SOLICITOR SPRATLIN: The State would next call
2 Mr. Michael Green to the stand.

3 MICHAEL GREEN, having been first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR SPRATLIN:

7 Q Mr. Green, where are you currently living?

8 A I'm currently residing in Bishopville.

9 Q Bishopville.

10 How long have you lived in Bishopville?

11 A Ten months now.

12 Q Ten months.

13 Where were you living before you moved to Bishopville?

14 A [REDACTED] in Sumter.

15 Q Now, Mr. Green, back when you were living at [REDACTED]

[REDACTED] in Sumter, where were you working?

17 A Tuomey Regional Medical Center.

18 Q What were you doing there?

19 A Security officer.

20 Q What were you doing before you went to work at Tuomey?

21 A I worked at the Department of Corrections for 12 years.

22 Q What was your job at the Department of Corrections?

23 A I was a correctional supervisor.

24 Q Let me go ahead and ask you, have you ever -- prior to
25 August 6, 2009, had you ever met Wayne or Corey Wells?

Michael Green - Direct examination
by Solicitor Spratlin

1 A Prior to August 6th, no.

2 Q Had you ever been introduced to him by your
3 stepdaughter?

4 A No.

5 Q Had you ever had a conversation?

6 A No.

7 Q Had you ever seen him in your home?

8 A No.

9 Q Let me ask you about August 6th, 2009.
10 What were you doing on that day?

11 A I was at work.

12 Q So, you were at work at Tuomey?

13 A Yes.

14 Q What is the first thing that stands out about that day
15 to you?

16 A I would of received a call from my oldest daughter, and
17 she was sounding kind of frantic, and she told me that

18 **Minor**, my youngest daughter, was in the house with some man
19 and wasn't answering the phone or the door.

20 Q Okay. And what did you do?

21 What is the first thing you did?

22 A Clocked out. It was time to go.

23 Q Was it time for you to leave or you had to leave work
24 early?

25 A No, I left work early.

Michael Green - Direct examination
by Solicitor Spratlin

1 Q where did you leave work early to go to?

2 A [REDACTED].

3 Q What is the first thing you noticed when you pull up
4 there?

5 A Brittany and Brenetta were standing at the door looking
6 through the glass in the door.

7 Q And what did you do then?

8 A I jumped out of the car and entered the house.

9 Q And let me ask you about when you were pulling up in
10 front of the house.

11 Did you notice anything unusual?

12 A There had been a silver colored Firebird that had, I
13 have seen a few times on my way going to work and it was
14 always parked in the same conspicuous spot.

15 Q How close was it parked to your house?

16 A Right outside the gate under a street lamp that was
17 right outside the fence of our yard.

18 Q Okay. When you'd seen it in the past, what was your
19 initial thought about the car?

20 A I had a suspicion about the car and a part of me told
21 me to turn back around and go and check the girl's rooms,
22 but regrettably I didn't.

23 Q When you were coming home on August 6th, 2009, did
24 you see that car again?

25 A Yes, I did.

Michael Green - Direct examination
by Solicitor Spratlin

1 Q Once you got to the house, what is the first thing you
2 did?

3 A I jumped out of the car and entered the house.

4 Q Okay. Where did you go first?

5 A As soon as you enter the house, you're in the living
6 room and I headed toward Minor room.

7 Q Was there anything out of the ordinary about the house
8 that you first noticed upon entering it?

9 A Oh, yeah, plenty.

10 Q What is the first thing you noticed?

11 A First Minor was standing in the doorway with no
12 clothes on. Well, except for a t-shirt.

13 Q What is the next thing you noticed that was unusual?

14 A We own two small dogs, a Jack Russell and a Chihuahua,
15 and those dogs were placed in Bianca's room with the door
16 closed.

17 Q Was that unusual?

18 A Oh, yeah.

19 Q Why was it unusual?

20 A It wouldn't have been unusual for the Chihuahua to be
21 in the room because that's Bianca's dog, but never the Jack
22 Russell.

23 Q Okay. And what did you do when you first got to the
24 house after you see Minor

25 A Well, I had already had a report that some man was in

Michael Green - Direct examination
by Solicitor Spratlin

1 my house, and when I get in the house my daughter's standing
2 there half naked. The, the investigation was on.

3 Q And when you say investigation, what do you mean?
4 What were you doing?

5 A Oh, I'm trying to find out where he's at because
6 something is wrong.

7 Q Where were you looking?

8 A I wanted to make sure that -- there was a hall closet
9 across the room, across the hall from her room, and if he
10 left her room and made a sharp right, there's a full
11 bathroom. So, I wanted to make sure that I didn't pass
12 those areas and he shot past me because whoever was in there
13 I was going to make sure they wasn't going to get past me.
14 I walked up toward **Minor** and I asked her who she had in the
15 house, and then I asked her why she didn't have -- no,
16 sorry. First I asked her why she didn't have any clothes
17 on. Then I asked her who she had in the house.

18 Q And what did you do then?

19 A I saw -- I checked the closet, the hallway closet, and
20 nothing was wrong with that. I checked the bathroom and
21 there was nothing wrong with that. By this time I was also
22 asking her why were the dogs in Bianca's room. At that -- I
23 mean while I'm doing that, I'm kind of looking around and
24 walking at the same time because I'm making my way to her
25 room, which eventually I got there.

Michael Green - Direct examination
by Solicitor Spratlin

1 Q What happened when you got to Minor room?

2 A I seen a strange man hiding behind the door looking up
3 at the ceiling like he was playing or something.

4 Q Did you see that same man in the room today?

5 A I do.

6 Q Would you please point him out by the article of
7 clothing that he's wearing?

8 A The guy with the plaid shirt and funny glasses.

9 SOLICITOR SPRATLIN: Please let the record reflect the
10 witness has identified the defendant.

11 THE COURT: The record would so reflect.

12 Q Mr. Green, when you first saw the defendant standing in
13 your daughter's room, what did you do?

14 A I walked up on him and I asked him what was he doing in
15 my house having sex with my daughter.

16 Q What, if anything, was his response?

17 A He looked at me and he said she told me she was 17, she
18 told me she was 17.

19 Q Are you sure he said 17?

20 A I'm pretty sure because -- if I remember correctly.

21 Q Okay. And what happened then?

22 A I got his behind out of that room.

23 Q How did you get him out of the room?

24 A I firmly escorted him.

25 Q And where did you escort him to?

Michael Green - Direct examination
by Solicitor Spratlin

- 1 A To the living room.
- 2 Q And what did you do with him once he was in the living
3 room?
- 4 A Started asking him on his age.
- 5 Q And what did he say?
- 6 A First he was -- I think he was 18.
- 7 Q So, at first he was saying he was 18?
- 8 A If I remember right.
- 9 Q Okay. And what did he say after that?
- 10 A I can't remember right offhand what he was saying. I
11 really wasn't too interested on what he had to say.
- 12 Q Gotcha.
- 13 What did you -- where, if anywhere, was the defendant
14 when you were in the living room and where were you?
- 15 A We had a computer table. If you left Minor room and
16 made a hard right and kept straight, that would take you
17 straight to the computer table, and I had him positioned at
18 the computer table and I was standing from the -- yeah.
- 19 Q And where was the defendant?
- 20 A We were in the living room.
- 21 Q Yes.
- 22 A He was in the chair at the computer table.
- 23 Q He was in the chair.
- 24 Okay. What, if anything, happened while he was in the
25 chair and you were standing up?

Michael Green - Direct examination
by Solicitor Spratlin

1 A I know at one point I called 9-1-1 to let them know
2 that I found him in there.

3 Q What, if anything, did the defendant do while you were
4 calling 9-1-1?

5 A I'm not sure at that point. I'm not sure right at that
6 point what he was doing when I was calling 9-1-1.

7 Q Okay.

8 A I was just trying to keep my eye on him, make sure he
9 wasn't going to go out that door or nothing like that.

10 Q After you got off the phone with 9-1-1, what happened
11 between you and the defendant, if anything?

12 A Oh, he -- apparently he had a cell phone and it started
13 ringing.

14 Q And what did he do?

15 A He had somebody on the other end of it. I guess he was
16 trying to call SOS trying to tell them to come get him off
17 the east side.

18 Q How long was it -- how long did this conversation with
19 whoever was on the phone last?

20 A Oh, not long.

21 Q How come?

22 A I took the phone from him.

23 Q All right. And how long after you had first called
24 9-1-1 did law enforcement respond?

25 A It wasn't long. It wasn't long.

Michael Green - Direct examination
by Solicitor Spratlin

1 Q Do you remember what officer arrived at the scene?

2 A I remember the corporal coming in. I -- it wasn't
3 long, somebody else come. I remember him.

4 Q Do you remember Corporal Heath Gardner?

5 A Right.

6 Q When you first went back into Minor room, what, if
7 anything, did you notice that was, that, that was kind, that
8 was evidence that there had been something going on?

9 A There was a -- there was him trying to hide. There was
10 a green towel placed carefully across the bed. There was
11 stains on that towel and---

12 Q What -- I'm sorry. What sort of stains?

13 A I'm sorry. They appeared to be blood stains.

14 SOLICITOR SPRATLIN: Your Honor, permission to mark
15 this State's Exhibit for ID.

16 (WHEREUPON, the green towel was marked as State's
17 Exhibit No. 1 for identification purposes only at this
18 time.)

19 SOLICITOR SPRATLIN: Your Honor, permission to approach
20 the witness.

21 Q I'm going to show you what's been marked as for
22 identification purposes as State's Exhibit 1.

23 Do you recognize the item I just handed you?

24 A Oh, yeah. This is the towel.

25 Q How are you certain this is the towel?

Michael Green - Direct examination
by Solicitor Spratlin

1 A Well, unlike a lot of men, I also help my wife do the
2 laundry. So, I know what linen we got and here are the
3 stains I was speaking of earlier.

4 Q What did you do in connection with that towel when you
5 saw it on the bed?

6 A I immediately bagged it, took it outside, gave it to
7 law enforcement.

8 SOLICITOR SPRATLIN: Your Honor, at this time I would
9 enter into evidence State's Exhibit 1.

10 THE COURT: Any objection?

11 MR. HASTIE: None, Your Honor.

12 THE COURT: Without objection, State's Exhibit No. 1 is
13 admitted into evidence.

14 (WHEREUPON, State's Exhibit No. 1 was received into
15 evidence at this time.)

16 Q Mr. Green, you said you gave that towel to corporal,
17 the corporal who was on the scene?

18 A Yes.

19 Q Corporal Gardner.

20 Now, sir, you said you lived at [REDACTED]?

21 A That's correct.

22 Q What county is that in?

23 A Sumter.

24 Q How old is your daughter or stepdaughter, [REDACTED] Minor

25 A At the time?

Michael Green - Direct examination
by Solicitor Sprätlin

1 Q Yes, sir, at the time.

2 A Fourteen.

3 Q She was fourteen at the time?

4 A Yes.

5 Q And are you certain she may not have been 15?

6 A I'm sorry?

7 Q Are you certain that -- could it be possible that she
8 was 15 at the time?

9 A I'm---

10 Q How old was she?

11 A I know my baby was born February 1994. I know when I
12 came home that day that grown man was in the room with my
13 baby.

14 Q Yes, sir. That's all the questions I have right now.
15 Thank you.

16 THE COURT: Mr. Hastie.

17 MR. HASTIE: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. HASTIE:

20 Q How are you doing this afternoon?

21 A I'm good.

22 Q You mentioned a silver colored Firebird was outside
23 your home and you seen that car and something about that car
24 looked, I can't think, looked conspicuous to you, in a
25 conspicuous spot.

Michael Green - Cross-examination
by Mr. Hastie

1 What about that car caused you pause?

2 A The way it was parked. It was parked in an empty yard.
3 Certainly not my yard. The lot that was directly behind us
4 was an empty lot. So, unless, unless whoever got television
5 in a tree, and then they had to have seen somebody else.

6 Q In a neighborhood like that, most of you already knew
7 everybody's car, and you knew that wasn't a car from the
8 neighborhood?

9 A I didn't think it was, no.

10 Q And you said you had -- when you got through that day,
11 you wanted to go immediately to check the girl's room, both
12 of the girl's rooms.

13 You said girls, right?

14 A I'm sorry. Repeat the question.

15 Q You said when you got there that day first thing was
16 you were going to go check the girl's rooms?

17 A No, I said on previous times when I went to work and I
18 saw that car I wanted to turn around and check the girl's
19 rooms. That day I knew it when I was going through that day
20 I was going to **Minor** room.

21 Q Why were you going to check the girl's rooms previous
22 times?

23 A I guess that's father's intuition or something.
24 Something kind of half way told me I should turn around and
25 check.

Michael Green - Cross-examination
by Mr. Hastie

- 1 Q When you got to the house, you asked her why don't you
2 have any clothes on?
- 3 A Right.
- 4 Q And what did she have on?
- 5 A She had on a gray t-shirt.
- 6 Q Anything else?
- 7 A Hu huh. (Negative).
8 No, sir.
- 9 Q No bottoms on at all?
- 10 A Nothing.
- 11 Q Did you tell her to go put some clothes on?
- 12 A I asked her who was in my house.
- 13 Q Did you tell her to go put some clothes on?
- 14 A At that point, no.
- 15 Q Then you said when you did find that man you asked why
16 are you having sex with your daughter?
- 17 A Yes.
- 18 Q Did you see him having sex?
- 19 A No.
- 20 Q No?
- 21 A No.
- 22 Q All you saw was your daughter with a top on and no
23 pants, right?
- 24 A Right.
- 25 Q Then you said the response was she told me that, she

Michael Green - Cross-examination
by Mr. Hastie

- 1 told me she was 17, is that correct?
- 2 A Yes, he said she told me she was 17, yes.
- 3 Q Then you noticed this towel on the bed with some stains
- 4 on it?
- 5 A That's correct.
- 6 Q Do you know whether or not your daughter had her period
- 7 during this particular time?
- 8 A I don't usually wake up in the morning and ask her
- 9 those things, no.
- 10 Q So, the answer is no?
- 11 A No.
- 12 Q And this is your stepdaughter, right?
- 13 A Correct.
- 14 Q I assume you met their mother at some point?
- 15 A That's correct.
- 16 Q How long ago?
- 17 A Three years this year.
- 18 Q So, y'all have been living together for about three
- 19 years?
- 20 A No, actually longer than that.
- 21 Q You married---
- 22 A Sorry?
- 23 Q You married her three years ago?
- 24 A Right.
- 25 Q How long have y'all been living as a family?

Michael Green - Cross-examination
by Mr. Hastie

1 A At least four.

2 Q Say that again.

3 A At least four.

4 Q Four.

5 Okay. Up until this point did any other -- she was 14

6 I think you said.

7 Did she date any boys up until this point to your
8 knowledge?

9 A There was one young man, but -- if I'm remembering the
10 right time.

11 Q She did have a boyfriend, one young man?

12 A I'm a father talking about a teenage daughter. I'm not
13 ready to say that she had a boyfriend---

14 Q Okay.

15 A ---at anytime. Now, yes, there was young men that she
16 would talk to on the phone and some maybe more regular than
17 others, but---

18 Q So, she talked to other men on the phone?

19 A I said young men.

20 Q Young men.

21 Did the young men come to the house at anytime?

22 A No.

23 SOLICITOR SPRATLIN: Your Honor, I would object to
24 these questions on the grounds of relevancy.

25 THE COURT: Sustained.

Michael Green - Cross-examination
by Mr. Hastie

1 MR. HASTIE: Court's indulgence, Your Honor.

2 (Pause.)

3 Q Let's go back to this silver Firebird.

4 You had some suspicions about that car because of the
5 spot that it was located there because it really made no
6 sense because someone in that car probably had to be at your
7 house because it was an empty lot unless -- there, there was
8 a tree and an empty lot, right?

9 A That's what I said.

10 Q Being a corrections officer, you did and think maybe I
11 ought to check this car out, check the tags, and see who it
12 belongs to?

13 A Being a corrections officer, that don't make me Dick
14 Tracy. I might be suspicious about a lot of things I don't
15 check out.

16 Q So, the answer is no?

17 A Right.

18 MR. HASTIE: Your Honor, I have no further questions.

19 THE COURT: Any redirect?

20 SOLICITOR SPRATLIN: One second, Your Honor.

21 REDIRECT EXAMINATION

22 BY SOLICITOR SPRATLIN:

23 Q To clarify, Mr. Green, had you ever, before August 6,
24 2009, laid eyes on that man?

25 A Never.

Michael Green - Redirect examination
by Solicitor Spratlin

1 Q [Minor] had never introduced you to him?

2 A No.

3 Q [Minor] had never told him you were anybody?

4 A No.

5 Q And the gray, I believe it is a Sunfire that was parked
6 in the yard or parked outside of your area, you said you had
7 seen that car before?

8 A At least three or four times before.

9 Q Okay. You were suspicious of it?

10 A Right.

11 Q All right. And now why -- just to make sure we're all
12 clear, why didn't you ever check out, check it out before?

13 Did you have any reason to check it out before?

14 A I was suspicious of it because of the way it parked
15 and, you know, we had no neighbors to the right of us.

16 Q Do you have any access to law enforcement data reports
17 or database?

18 A No.

19 Q Would you have had a way to run that DMV title if you
20 wanted to?

21 A Nope.

22 SOLICITOR SPRATLIN: Thank you.

23 THE COURT: Any recross?

24 MR. HASTIE: Yes, Your Honor.

25 RE CROSS EXAMINATION

Michael Green - Recross examination
by Mr. Hastie

1 BY MR. HASTIE:

2 Q You did say she talked to other young men at least on
3 the phone, is that correct?

4 A Right.

5 MR. HASTIE: Thank you.

6 THE COURT: You may step down.

7 SOLICITOR SPRATLIN: State would next call Mrs. Lelia
8 Green to the stand.

9 LELIA GREEN, having been first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR SPRATLIN:

13 Q Good afternoon, Mrs. Green.

14 where are you currently living?

15 what city?

16 A Bishopville, South Carolina.

17 Q How long have you lived in Bishopville?

18 A Since Super Bowl Sunday.

19 Q where, where were you living before then?

20 A [REDACTED] in Sumter.

21 Q who all -- we've gone through this numerous times.

22 who all was living there with you?

23 A My husband, Michael, and two of our kids, Bianca and
24 Minor [REDACTED].

25 Q And let me ask you about Minor [REDACTED] what is your -- you

Lelia Green - Direct examination
by Solicitor Spratlin

1 know, just to make sure we're all clear, what is your
2 relationship to Minor

3 A That's my daughter.

4 Q So, you're her mother?

5 A Yes.

6 Q When is her birthday?

7 A

8 Q

9 So, how old would she have been back in August of 2009?

10 A Fifteen.

11 Q Fifteen years of age.

12 And you know this because you are, in fact, her mother?

13 A Correct.

14 Q Okay. That's all the questions I have of you.

15 A Thank you.

16 THE COURT: Mr. Hastie.

17 MR. HASTIE: I have no questions.

18 THE COURT: You may step down.

19 SOLICITOR SPRATLIN: Your Honor, State would next call

20 Corporal Heath Gardner to the stand.

21 HEATH GARDNER, having been first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR SPRATLIN:

25 Q Mr. Gardner, where are you currently employed?

Heath Gardner - Direct examination
by Solicitor Spratlin

- 1 A Sumter City Police Department.
- 2 Q What is your title there?
- 3 A Corporal.
- 4 Q Okay. How long have you been employed by Sumter City
- 5 Police Department, Corporal Gardner?
- 6 A A little over four years.
- 7 Q Where were you working before you came to Sumter Police
- 8 Department?
- 9 A G&G Metal Fabrication.
- 10 Q You said you've been working at Sumter Police
- 11 Department for four years?
- 12 A I have.
- 13 Q So, were you working there back in August of 2009?
- 14 A I was.
- 15 Q What were your job duties at that time?
- 16 A Answer calls from service.
- 17 Q What would your title or position have been?
- 18 A Master patrolman at that time.
- 19 Q Okay. As a master patrolman, again, what were your job
- 20 duties?
- 21 A Answer calls from service.
- 22 Q How does that work?
- 23 How would you respond to a call?
- 24 A It depends on each call. Due to the, the severity of
- 25 it, what it is, are there any injuries.

Heath Gardner - Direct examination
by Solicitor Spratlin

1 Q How would you first become alerted about a call?

2 A Dispatch comes and tells you what you have and usually
3 tells, tells you who the victim is or the complainant and
4 all that information.

5 Q So, dispatch is or your patrol officer?

6 A They do.

7 Q Were you working back on August 6, 2009?

8 A I was.

9 Q Was that in the position of being a patrol officer?

10 A Yes, sir.

11 Q Did you have a chance to respond to a call at 1160
12 Flamingo Road?

13 A I did.

14 Q What was the nature of that call that you knew when you
15 were going to the scene?

16 A A complainant called in and stated that a male was
17 found with his daughter in her bedroom.

18 Q And what happened or what did you observe when you
19 first arrived at [REDACTED]?

20 A The father was at the doorway and wanted us to get
21 there. We walked up to the house and the suspect was found
22 in the living room sitting in a chair.

23 Q And what is the first thing you did when you got to the
24 house?

25 A Detained the -- well, first found out exactly what was

Heath Gardner - Direct examination
by Solicitor Spratlin

1 going on and then detained the suspect.

2 Q When you say detained them, what do you mean?

3 A Placed them in handcuffs and read him his Miranda
4 rights at that point.

5 Q You mentioned you read him his Miranda rights.

6 What exactly did you read him?

7 A Hang on one second.

8 (Pause.)

9 A Miranda warning. You have the right to remain silent.
10 Anything you say can and will be used against you in court.
11 You have the right to speak with an attorney and have an
12 attorney present during questioning. If you can not afford
13 an attorney, one will be provided to you before questioning
14 at no cost. Do you understand these rights. With these
15 rights in mind, do you wish to speak to me now.

16 Q What are you reading off of?

17 A Just a card that's my Miranda card that I keep with me.

18 Q Did you have that card with you back on August 6th,
19 2009?

20 A I did.

21 Q Was that pretty much the way you read the rights of the
22 defendant?

23 A It was.

24 Q Once you read him those rights, did he, at any time,
25 state that he didn't wish to talk to you?

Heath Gardner - Direct examination
by Solicitor Spratlin

1 A He did not.

2 Q Did he, at any time, state that he wished to speak with
3 an attorney?

4 A He did not.

5 Q Did he, at any time, indicate anything to you that he
6 didn't wish to further communicate with you?

7 A He did not.

8 Q Once you read him his Miranda rights, what is the next
9 thing you did?

10 A We walked outside to my police cruiser.

11 Q What was the purpose of leaving the home to go to the
12 police cruiser?

13 A His safety at that point.

14 Q What were you concerned about?

15 A The stepfather being too agitated or aggravated.

16 Q So, you actually removed him from the home for his own
17 safety?

18 A Yes, sir.

19 Q Where did you take the defendant after you removed him
20 from the home?

21 A To my police car, to the back seat.

22 Q Once you were in the police car, did the defendant
23 state he didn't wish to talk to you?

24 A He did not.

25 Q Did he, at any time, ask to speak with an attorney?

Heath Gardner - Direct examination
by Solicitor Spratlin

- 1 A He did not.
- 2 Q Did he, in any way, insinuate he did not wish to
3 further communicate with you?
- 4 A He did not.
- 5 Q When you were talking with the defendant, was it a back
6 and forth kind of conversation?
- 7 A Yes, sir.
- 8 Q Did the defendant appear to you to understand what you
9 were saying?
- 10 A Yes, sir.
- 11 Q Did it appear to you he understood the English
12 language?
- 13 A Yes, sir.
- 14 Q Did it appear to you he was responding to the questions
15 you were actually asking?
- 16 A Yes.
- 17 Q Was there anything about the defendant's appearance
18 that made you think that he was under the influence of any
19 kind of drugs or alcohol?
- 20 A There was not.
- 21 Q Did he appear to be very coherent?
- 22 A He did.
- 23 Q Was his speech slurred in any way?
- 24 A It was not.
- 25 Q Now, when you started talking to the defendant in the

Heath Gardner - Direct examination
by Solicitor Spratlin

1 back of the patrol car, what kind of things were you talking
2 to him about?

3 A What happened in the house.

4 Q What did he tell you?

5 A His comment to me was that the father walked in, but he
6 said that he had stuck his, a finger into Washington's
7 vagina until she told him that she was on her menstrual
8 cycle.

9 Q And then what else did he tell you?

10 A He gave me an incorrect name. He gave me Dwayne as his
11 first name. He also gave me an incorrect date of birth
12 which was 1/18/1997.

13 Q He gave you the name Dwayne Wells?

14 A Yes, sir.

15 Q Not Wayne Wells?

16 A Not Wayne Wells.

17 Q Are you certain about that?

18 A Yes, sir.

19 Q And what date of birth did he originally give you?

20 A 1/18/1987.

21 SOLICITOR SPRATLIN: Your Honor, permission to mark
22 this document as State's Exhibit 2 for ID.

23 THE COURT: Yes.

24 (Whereupon, the copy of the driver's license was marked
25 as Defendant's Exhibit No. 2 for identification purposes

Heath Gardner - Direct examination
by Solicitor Spratlin

1 only at this time.)

2 SOLICITOR SPRATLIN: Permission to approach the
3 witness?

4 THE COURT: Yes, sir.

5 Q Do you know what that document is I handed you?

6 A It is an official driver's license from the South
7 Carolina Department of Motor Vehicles copy.

8 Q Does it appear to be true and accurate?

9 A Yes, sir.

10 SOLICITOR SPRATLIN: I tender that into State's Exhibit
11 2 under the fact it is a state certified public document.

12 THE COURT: Any objection?

13 MR. HASTIE: No, Your Honor.

14 THE COURT: Without objection, State's No. 2 is
15 admitted into evidence.

16 (WHEREUPON, State's Exhibit No. 2 was received into
17 evidence at this time.)

18 Q Corporal Gardner, what date of birth is listed with the
19 DMV for the defendant?

20 A [REDACTED]

21 Q Is that the date of birth that he gave you?

22 A It is not.

23 Q Were you able to eventually determine what his actual
24 date of birth was?

25 A Yes, sir.

Heath Gardner - Direct examination
by Solicitor Spratlin

1 Q How were you able to determine that?

2 A He had an ID card in his wallet.

3 Q So, he -- had he not had that ID card on him, you would
4 have kept on believing he was Dwayne wells?

5 A Yes, sir.

6 Q With that date of birth?

7 A Yes, sir.

8 Q Once you were talking to Mr. wells in the back of the
9 patrol car, did you talk to him about anything else?

10 A I asked him about the car.

11 Q What did he say about the car?

12 A He told me that it was after his cousin got out of --
13 he drove it down there. He also had the keys to it in his
14 front left pocket.

15 Q He has the keys to that -- it was a gray Thunderbird?

16 A It was a gray Pontiac 2000 Sunfire.

17 Q So, a gray Pontiac Sunfire?

18 A Yes, sir.

19 Q He had the keys to that in his pocket?

20 A Yes, sir.

21 Q Okay. Corporal Gardner, prior to leaving the
22 residence, what -- let me go back.

23 What did you do -- what is the next thing you did after
24 you talked to the defendant?

25 A After finding out all that, I notified my superior

Heath Gardner - Direct examination
by Solicitor Spratlin

1 officer to let them know what the situation was.

2 Q What was the decision to do then?

3 A To make the arrest.

4 Q During the time that you were talking to the defendant,
5 did you or anyone in your presence promise him anything in
6 exchange for talking to you?

7 A No, sir.

8 Q Did you or anyone in your presence make any threats or
9 threaten any kind of harm to the defendant if he didn't
10 talk?

11 A No, sir.

12 Q Was the defendant given the slightest hope of exchange
13 for benefit if he didn't talk to you?

14 A No, sir.

15 Q Was he put in the immediate fear of injury?

16 A No, sir.

17 Q At anytime when you were talking to the defendant did
18 he say he didn't want to talk to you anymore?

19 A No, sir.

20 Q At anytime when you were talking to the defendant did
21 he ask to speak to an attorney?

22 A No.

23 Q At any time did the defendant do anything you construed
24 you did, he did not wish to continue the conversation with
25 you?

Heath Gardner - Direct examination
by Solicitor Spratlin

1 A No.

2 SOLICITOR SPRATLIN: Beg the Court's indulgence one
3 second.

4 (Pause.)

5 Q Corporal Gardner, last thing.

6 [REDACTED], what county is that in?

7 A In Sumter.

8 SOLICITOR SPRATLIN: That's all the questions I have.

9 THE COURT: Mr. Hastie.

10 MR. HASTIE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. HASTIE:

13 Q You been with the force about four years?

14 A Yes, sir.

15 Q Now, let's go back to this, this house that you, you
16 got a call about the disturbance or -- what was the exact
17 reason for that?

18 A It was basically -- I forget what the code is for.
19 Criminal sexual conduct.

20 Q Criminal sexual conduct?

21 A Yes, sir, that's how it came out coded as because we
22 have specific codes we go by.

23 Q You knew there was something like that going on before
24 you even got there?

25 A Yes, sir.

Heath Gardner - Cross-examination
by Mr. Hastie

1 Q When you got there, you saw the father, stepfather, and
2 the, and Mr. wells?

3 A Yes, sir.

4 Q And where was Mr. wells?

5 A He was sitting in a chair.

6 Q In a chair?

7 A In the living room.

8 Q What was your -- what's your procedure?

9 Did you arrest him immediately or did you question him?

10 A I asked him what was going on, and after we were told
11 what was going on, that was when I detained him and tried to
12 get him, got Mr. Green out of the way, move them apart where
13 I could secure Mr. wells---

14 Q After---

15 A ---and detained---

16 Q Say what now?

17 A Then he was detained and Mirandized before I asked him
18 any questions. I -- when I first got there I asked
19 Mr. Green what was going on.

20 Q So, that's what I was about to ask you.

21 You got the story from Mr. Green?

22 A Yes, sir.

23 Q What was going on?

24 A Yes, sir.

25 Q And then did you go over to Mr. wells, who was sitting

Heath Gardner - Cross-examination
by Mr. Hastie

- 1 in the chair, and say what's your side of the story?
- 2 A After he was Mirandized.
- 3 Q So, you went over there to Mirandize him first?
- 4 A Yes, sir.
- 5 Q And at that point did you ask him what's your side of
- 6 the story?
- 7 A Not without Mirandizing him, no, sir.
- 8 Q Pardon?
- 9 A Not without Mirandizing him.
- 10 Q After you Mirandized him, sir, after you Mirandized
- 11 him?
- 12 A I asked him what was his side of the story after.
- 13 Q After, after you took him out?
- 14 A Yes, sir.
- 15 Q You handcuffed him in the house?
- 16 A Yes, sir.
- 17 Q You took him out to your car?
- 18 A Yes, sir.
- 19 Q You Mirandized -- tell him what he was being arrested
- 20 for.
- 21 A He wasn't under arrest. At that point I wanted to talk
- 22 to him, but that's an officer safety issue there.
- 23 Q Y'all handcuffed him for your safety?
- 24 A Yes, sir.
- 25 Q Is that correct?

Heath Gardner - Cross-examination
by Mr. Hastie

- 1 A Yes, sir.
- 2 Q Then we take him out to the car and sit him in the car,
3 he's still not under arrest?
- 4 A Yes, sir.
- 5 Q He's still not under arrest, correct?
- 6 A Yes, sir.
- 7 Q Really you're just talking to him?
- 8 A Pretty much.
- 9 Q Could he leave at anytime he wanted to leave?
- 10 A He was in detention at that point. No, he could not.
- 11 Q He could not?
- 12 A Could not leave.
- 13 Q At anytime when he was sitting handcuffed in your car
14 did you ask him what are you doing at these people's house?
- 15 A Oh, yeah.
- 16 Q What did he say?
- 17 A That was when he, he gave me the claim that he was
18 there and he had stuck his finger in Minor
19 vagina until she told him she was on her menstrual cycle.
- 20 Q That's the whole story?
- 21 A I don't remember exactly why he told me he was there,
22 but that was the statement he made to me.
- 23 Q That's, that's in your report, isn't it?
- 24 A Yes, sir.
- 25 Q There's nothing in that report that he was invited

Heath Gardner - Cross-examination
by Mr. Hastie

1 there?

2 A No, sir.

3 Q That he knew her?

4 A No, sir.

5 Q She knew him?

6 A No, sir.

7 Q Kind of girlfriend and boyfriend, nothing in your
8 report, none of that stuff?

9 A No, sir, I do have on the subject's relationship the
10 subject, boyfriend/girlfriend.

11 Q You do have on there---

12 A Yes, sir.

13 Q So, you do have that they were boyfriend and
14 girlfriend?

15 A Yes, sir.

16 Q Let's talk about you, you had him not under arrest, but
17 detained, and I guess part of your procedure is also to
18 search what you have in your---

19 A No, sir, I asked if there was anything he had I needed
20 to know about it, and he said yes, it's in my front right
21 pocket at which point I found marijuana in his front right
22 pocket, 7.15 grams, 15 bags, individually wrapped 15 bags.
23 Fifteen.

24 Q To me that seems to be a lot.

25 A It was only 7.14 grams.

Heath Gardner - Cross-examination
by Mr. Hastie

- 1 Q That's not a lot?
- 2 A Lightly packed, yes.
- 3 Q Did he appear to be high?
- 4 A No, sir.
- 5 Q He appeared to be clear minded?
- 6 A Yes, sir, he did.
- 7 Q No slurring of speech, no stumbling, anything like
- 8 that?
- 9 A No, sir.
- 10 Q So, in your conversation with him, he knew -- he seemed
- 11 to know exactly what he was saying?
- 12 A Yes, sir.
- 13 Q He said we're boyfriend and girlfriend, that's in your
- 14 report?
- 15 A That's subject to, the subject to victim block.
- 16 Q The victim's log?
- 17 A When I put in the report relationship to subject is
- 18 boyfriend/girlfriend because of the relationship they had
- 19 together of knowing each other.
- 20 Q And you got that information from him?
- 21 A From him, talking to her, and talking to the father.
- 22 Q So --.
- 23 A I didn't get any of that from the father just in the
- 24 discussions.
- 25 Q But talking to her, she did confirm that she considered

Heath Gardner - Cross-examination
by Mr. Hastie

1 him her boyfriend?

2 A I didn't actually speak to her. Somebody else did, but
3 when we spoke, that's what we came up with.

4 Q That's your conclusion?

5 A Yes, sir.

6 MR. HASTIE: No further questions.

7 THE COURT: Any redirect?

8 SOLICITOR SPRATLIN: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY SOLICITOR SPRATLIN:

11 Q Corporal Gardner, you said you found marijuana on the
12 defendant?

13 A I did.

14 Q Did you smell marijuana when you first entered the
15 house at [REDACTED]

16 A I did not.

17 Q Did you smell marijuana on the defendant when you were
18 placing him in handcuffs?

19 A I didn't.

20 Q Was there anything to indicate to you that the
21 defendant had recently smoked marijuana?

22 A No, sir.

23 Q Again, was he coherent?

24 A Yes, sir.

25 Q How was he responding to the questions you were asking

Heath Gardner - Redirect examination
by Solicitor Spratlin

1 him?

2 A He knew what he was talking about.

3 Q Now, Mr. Hastie asked you about the fact that you went
4 ahead and detained him.

5 Is that common police procedure?

6 A That -- in a situation like that, yes, sir.

7 Q And why did you put the handcuffs on him again?

8 A Officer safety.

9 Q And ask -- I beg the Court's indulgence for one second.

10 THE COURT: Yes, sir.

11 (Pause.)

12 Q You said, Corporal Gardner, you didn't -- you basically
13 spoke to him about what happened in the house?

14 A Yes, sir.

15 Q And he told you that he had put his finger in her
16 vagina?

17 A Yeah.

18 Q And based on this, why did you decide to charge him
19 with CSC with a minor, criminal sexual conduct with a minor
20 in the second degree?

21 A Because she was under the age of 16.

22 Q And how old was he?

23 A Twenty-five.

24 Q What was the basis of any sexual battery to you?

25 Like what was your basis for that?

Heath Gardner - Redirect examination
by Solicitor Spratlin

1 A Digital penetration.

2 Q With -- sexual intercourse would just also count as
3 sexual battery to your knowledge?

4 A Yes, sir.

5 Q That's all the questions I have.

6 THE COURT: Thank you.

7 Any recross?

8 MR. HASTIE: Yes, sir.

9 RE CROSS EXAMINATION

10 BY MR. HASTIE:

11 Q Is this your report, incident report?

12 May I approach, Your Honor?

13 THE COURT: Yes.

14 A It is.

15 Q Where here do you have boyfriend and girlfriend?

16 A Right there where it says B.G.

17 Q Oh, B.G.

18 Okay. Boy---

19 A Boyfriend/girlfriend.

20 Q That's good.

21 Okay. This wasn't one of those situations when you got
22 the, to the house and someone said some guy came in and
23 kicked the door, took advantage of her?

24 This is a boyfriend/girlfriend situation?

25 That's why you got B.G. on this report?

Heath Gardner -- Recross examination
by Mr. Hastie

1 A Right, and---

2 Q This is a boyfriend/girlfriend admitted by all parties?

3 A I don't know what the other officer came up with. I
4 wasn't talking to him. I was talking with the suspect.

5 Q But that's what y'all---

6 A That's our conclusion.

7 THE COURT: Thank you. You may step down.

8 We're going to break at this point.

9 Ladies and gentlemen, this seems to be an opportune
10 time to break for the evening. I'm going to send you to
11 your homes with the instructions you're not to speak with
12 anyone about this.

13 If, in the morning, there's something in the paper, I
14 don't suspect that there will be, but if you see it, you are
15 not to read that. Again, you are not to discuss it with
16 anyone or among yourselves.

17 Court will resume tomorrow morning at 9:30. I will
18 need to have you here just a little bit before that so we
19 can start on time.

20 Thank you. Have a nice evening.

21 You probably need to still bring your jackets. Maybe
22 some gloves in the morning.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Anything from the State before we dismiss

1 for the evening?

2 SOLICITOR SPRATLIN: No, sir, Your Honor.

3 THE COURT: Mr. Hastie.

4 MR. HASTIE: Nothing, Your Honor.

5 THE COURT: You have two more witnesses?

6 SOLICITOR SPRATLIN: Your Honor, I plan on calling only
7 one more witness to the stand, Ms. Irene Kulickj.

8 THE COURT: I figured that may be a more than---

9 SOLICITOR SPRATLIN: Yes, sir, that would be the last
10 State's anticipated witness.

11 THE COURT: Then I will get your client after that---

12 MR. HASTIE: Yes, sir.

13 THE COURT: ---as to him testifying.

14 Court is adjourned until 9:30 in the morning.

15

16 (WHEREUPON, Court was adjourned for the evening.)

17

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November 10th, 2010

THE COURT: Bring the jury in.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen.

I hope you had a pleasant nights rest and I appreciate you being on time getting here so we can move along.

State ready to proceed?

SOLICITOR SPRATLIN: State's ready to proceed.

THE COURT: Defense ready?

MR. HASTIE: Yes, Your Honor.

THE COURT: State may call its next witness.

SOLICITOR SPRATLIN: State calls Detective Irene Kulickj to the stand.

IRENE KULICKJ, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SPRATLIN:

Q Ms. Kulickj, where are you employed?

A Sumter Police Department.

Q What is your title there?

A Sergeant over investigations.

Q Are you what's commonly referred to as a detective?

A Detective sergeant, yes, sir.

Irene Kulickj - Direct examination
by Solicitor Spratlin

1 Q What, as a detective sergeant, are your jobs and
2 obligations?

3 A One of the things we do is we give reports that patrol
4 officers or we generate and we assign these cases to
5 detectives to work. We also work cases ourselves.
6 Currently I work in the violent crimes area and work with
7 violent crime victims, and just follow through with cases
8 and seeing them through to Court helping victims.

9 Q Did you work on this case?

10 A Yes, this case was actually assigned to Detective
11 Ridgeway who is no longer with the police department. He is
12 with another agency now. We were working together at that
13 time in violent crimes.

14 Q Okay. So, y'all were partners?

15 A Yes.

16 Q Were you -- you and Detective Ridgeway were partners?

17 A Yes, we were.

18 Q How did y'all decide who would be the investigating
19 officer on the case?

20 A At that time I was not the sergeant back there. So,
21 the sergeant at the time was making -- she was assigning
22 reports and she would divide them up, who has what cases,
23 and this case was just assigned to Sergeant Ridgeway and he
24 asked if I would assist him in interviewing the victim in
25 this case.

Irene Kulickj - Direct examination
by Solicitor Spratlin

1 Q Were you -- you say Detective Ridgeway is no longer
2 with law, with the Sumter Police Department?

3 A No.

4 Q Is he still in law enforcement?

5 A Yes, he transferred to another agency.

6 Q Was that a voluntary transfer?

7 A Yes.

8 Q What was the demeanor of Minor when you spoke
9 with her?

10 A She was very shy, polite, a little nervous, never had
11 been to the law enforcement center before. Never in any
12 trouble or had to talk to officers. So, a little nervous
13 and embarrassed about the whole situation.

14 Q Okay. And when a detective such as yourselves or
15 Detective Ridgeway receives a case or a report from an
16 officer, who originally prepares the initial report?

17 A A patrol officer if they respond, if they're dispatched
18 to somewhere. Like in this case, Corporal Gardner went to
19 Flamingo Road. He spoke with the complainant on this case,
20 which was Mr. Green. He spoke with the defendant in this
21 case, Mr. Wells, and he prepared the report and that report
22 was assigned to Detective Ridgeway. And once you get a case
23 assigned to you, you contact the victims, the witnesses in
24 the case, talk with them, see if there needs to be anything
25 further, make sure that the warrants are served on the

Irene Kulickj - Direct examination
by Solicitor Spratlin

1 defendant.

2 Q Was all that done in this case to your knowledge?

3 A Yes, they were.

4 Q You were actually the detective that spoke with Minor

5 A Yes, I spoke with her while Detective Ridgeway spoke
6 with her father, Mr. Green.

7 Q Was that the same Mr. Green that was here in Court
8 earlier?

9 A Yes.

10 Q Let me ask you, Detective Kulickj, let me show you,
11 Detective Kulickj, what's already been entered into evidence
12 as State's Exhibit 1.

13 To your knowledge, were any sort of tests performed on
14 that towel?

15 A No, there were not any tests done on this towel.

16 Q Why were there no tests performed?

17 A Because when Detective Ridgeway talked about the case
18 and the towel, you could see that there was some blood on
19 the towel in which the victim in this case explained the
20 blood stating that it was her menstrual cycle, and that's
21 why there was blood on it. There did not appear to be
22 anything else on there. No other stains or marks on there
23 and this was a case where basically they were caught in the
24 act. And, so, it boils down to she was 15 and he was 25.

25 Q Okay.

Irene Kulickj - Direct examination
by Solicitor Spratlin

1 A So --.

2 Q Was there an admission by the defendant to Officer
3 Gardner which---

4 A According to the incident report and Corporal Gardner's
5 testimony, yes, he did admit that he committed a sexual
6 battery with Minor

7 Q How did he admit to committing that sexual battery
8 again?

9 A He stated that he inserted his finger into her vagina,
10 and, according to the law, that is a sexual battery. Now,
11 of course, when I interviewed Miss Minor she stated that
12 they actually had intercourse, and they had had intercourse
13 more than one time. But the law states however slight. It
14 could be a finger, a penis, an object. That is still sexual
15 battery.

16 Q Okay. And, Detective Kulickj, with items of evidence
17 such as a towel in question, is it common for law
18 enforcement to perform any kind of test that's possible on
19 an item like that?

20 A Is it common?

21 Q Is it, is it standard practice to perform every test
22 you could possible perform?

23 A No, SLED has limited us due to money, and puts limits
24 on what we send and what they test. We can, for example, a
25 burglary, they want one DNA sample. If there's blood found

Irene Kulickj - Direct examination
by Solicitor Spratlin

1 on a burglary, you might have blood all throughout the
2 house, where someone cuts their self and bleed in several
3 rooms, but they do not want that. They want one sample to
4 test in CSC kits. They find any type of DNA on the vaginal
5 swab, they won't go forward and test underwear, things like
6 that, because it's just not practical.

7 They do not have enough time to analyze that, but, in
8 this case, it was one that we did not feel we needed to.
9 Just from our examination, it just appears to be blood,
10 which the victim explains there was no cuts on the defendant
11 that was visible according to Corporal Gardner, and just --
12 basically they were caught in the act.

13 Q Okay. Detective Kulickj, was there anything else you
14 did in regards to the investigation that you want to talk
15 about at this time?

16 A Just that when I talked with **Minor** she stated that
17 this started actually when she was 14 is what she told me.
18 when I talked to her, this was over a year ago. So, things
19 were a little more fresh in her mind, and that's why I talk
20 to people so we can remember those things when we come to
21 Court a year or two later. She stated that when she talked
22 to him she was 14 years old, and then they stopped talking
23 for a while, and then she saw him again and it was around
24 the spring break time frame at her best friend's house.

25 Q Okay.

Irene Kulickj - Direct examination
by Solicitor Spratlin

1 A She stated that around June is when the sex started and
2 she just stated he would come through the window, never
3 through the door, never took her out to eat, anything like
4 that. We talked about pregnancy, STD's, things like that.

5 Q So, Detective Kulickj, besides talking about anything
6 that **Minor** told you, was there anything else you did
7 perform in the investigation?

8 A No.

9 Q All right. That's all the questions I have, detective.
10 Please answer any questions Mr. Hastie may have.

11 THE COURT: Mr. Hastie.

12 MR. HASTIE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. HASTIE:

15 Q Good morning.

16 A Good morning.

17 Q So, you admitted that the towel was noticed for blood.
18 whose blood or anything like that?

19 A No.

20 Q You pretty much knew whose blood it was from the
21 testimony of **Minor**

22 what about semen, wouldn't y'all normally test for that
23 if you had tested anything or---

24 A If we saw anything or felt like it needed to go in this
25 case. We didn't feel like it needed to. There's no obvious

Irene Kulickj - Cross-examination
by Mr. Hastie

1 semen on there, and from what the victim stated and what the
2 suspect stated, we didn't feel like a towel would produce
3 anything. Basically they were caught in the middle of it,
4 and like, in your opening statement, he thought she was 18.
5 So --.

6 Q You said they were caught in the middle of it.

7 A Well---

8 Q Anyone -- no one testified yesterday, to include the
9 father, that they were caught, to include Minor
10 They -- I think her testimony -- we may have to call her
11 back. They were done, you know.

12 But no one testified they were actually caught in the
13 middle of a sexual act?

14 A I believe that they were -- if you look at the totality
15 of the circumstances, the fact that she didn't have her
16 clothes on down below the waist, he's in her room, dad comes
17 home, here they are coming out, he's hiding behind the door,
18 I think that they might not have been in the middle of the
19 act or the dad did walk in it and see it, but they were
20 pretty much caught. I think they's why he told the officer
21 what had occurred also.

22 Q The father?

23 A No, your client, Mr. wells, told the officer.

24 Q But, but you have no proof that they were caught in the
25 middle of---

Irene Kulickj - Cross-examination
by Mr. Hastie

1 A I wasn't there, no.

2 Q You weren't?

3 A You're right, no, I wasn't there.

4 Q Just wanted to make sure.

5 I have no further questions.

6 THE COURT: Any redirect?

7 SOLICITOR SPRATLIN: No, sir, Your Honor.

8 THE COURT: You may step down.

9 WITNESS: Thank you.

10 THE COURT: Mr. Spratlin.

11 SOLICITOR SPRATLIN: Your Honor, at this time the State
12 would rest.

13 THE COURT: Ladies and gentlemen, I'm going to give you
14 an early break. I need to send you back to the jury room
15 while we take up a matter of law at this point.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Anything -- any motions to be
19 made at this point?

20 MR. HASTIE: Yes, Your Honor.

21 On behalf of my client, I would like to make a motion
22 for a directed verdict. I think, after all the testimony
23 you heard yourself, how she said she told him she was 18,
24 she pretty much invited him to her home, slid him through
25 the window. At no time did she say she told him she was 18.

1 she said he heard it from a friend and then, then you heard
2 the friend come into the courtroom yesterday and, and her,
3 her testimony was really sort of shaky because she was the
4 only person that got on the stand and said she had on
5 clothes waist down.

6 The only person that got -- she said I saw his car in
7 the driveway, and she never had seen him before that day.
8 She didn't know what type of car he had.

9 Now, did you get this information?

10 Well, I got my information from the police report.

11 So, I'm really a little concerned about her testimony.
12 Here is a gentleman and she also said about -- she knew that
13 if she had told this young man that she was 15 that he would
14 not have talked to her. So, he knew she -- he was -- this
15 guy wouldn't talk to her if she was 15. So, she lied and
16 his sister said -- she said my sister said a lie because the
17 sister too knew that if you tell my brother you're fifteen,
18 he doesn't want to get into trouble.

19 Your Honor, I just think this case is a tragedy, a sad
20 situation, and then you hear she still cares for him. So,
21 this is someone that was taken advantage of and the law
22 talks about, talks about in this case someone being coerced.
23 She was not coerced at all. There is no testimony of him
24 coercing her to go intentionally her will to for him to be
25 in the home.

1 So, Your Honor, those are the basis of my client just
2 feels I should ask for a directed verdict on his behalf.

3 THE COURT: Thank you, Mr. Hastie.

4 Mr. Spratlin.

5 SOLICITOR SPRATLIN: Your Honor, the law actually says
6 that consent is not an offense to this. [Minor] at
7 the time this happened, was 15 years of age. Well, below
8 the age of consent of 16 in this state.

9 As far as the evidence, Your Honor, goes, I think
10 there -- Mr. Hastie stated that no one besides Brenetta
11 Oliver testified that, that he knew she was under the age of
12 18. I believe the victim actually said on the stand and he
13 asked her, he said you're not 18. You're 15, aren't you,
14 and she said yes, I am. That was the testimony as given.

15 [Brenetta O.] took the stand and actually confirmed
16 the testimony that he, she had told him that she was 15.
17 Again, Your Honor, the fact that the law, as it is, is a
18 sexual battery, which the state has more than proven there
19 was a sexual battery based on the defendant's own statement
20 to law enforcement that there was a sexual battery, not to
21 mention the testimony of the victim about the sexual
22 intercourse, the fact the defendant is over the age of 18.

23 We have presented DMV records showing the defendant's
24 date of birth being that he is well over the age of 18. He
25 is over 25, almost 26, quarter of a century old. The victim

1 in this case is between the ages of 14 and 16.

2 You heard testimony from her about her age. You heard
3 testimony from her stepfather about her age. You heard
4 testimony from her sister about her age, and you heard from
5 the most reliable witness at all. The woman that birthed
6 her, her mother, about her age.

7 Given this substantial amount of evidence the State has
8 presented, and given the standard that the Court has to use
9 in determining whether or not a directed verdict is
10 appropriate that -- I mean there is enough competent
11 evidence in the record to support a finding of guilt. The
12 State feels a directed verdict should outright be denied.

13 THE COURT: Thank you.

14 A directed verdict shall be granted when there is no
15 evidence to support the nonmoving party's case, and in this
16 case that would be the solicitor's office. I think they
17 have provided sufficient evidence to give to the jury, as to
18 the jury. Whether the jury finds it enough to convict him
19 beyond a reasonable doubt is a different question. But at
20 this time I'm going to deny your motion for directed
21 verdict.

22 Mr. Hastie, would you have your client stand at this
23 time?

24 (Defendant Wells complies.)

25 THE COURT: Mr. Bradley, would you please place him

1 under oath?

2 (WHEREUPON, Defendant Wells was placed under oath at
3 this time.)

4 THE COURT: You are Wayne Wells?

5 DEFENDANT: Yes, sir.

6 THE COURT: Mr. Wells, at this time I'm going to
7 explain to you certain of your rights. If you do not
8 understand anything I say, please let me know. If you want
9 me to explain anything in more detail, I'll be happy to do
10 so as well.

11 We have now reached the stage of this trial where you
12 may present your defense. You have a right to claim these
13 rights under the Constitution which says no person shall be
14 compelled, in any way, to be a witness against himself.
15 This means that you can not be required to testify in this
16 case. You have the right to testify on your own behalf.
17 However, no one can make you testify. This is a personal
18 right and no one can waive this right except for you.

19 If you decide to testify, you will be subject to the
20 same rules that go concerning other witnesses in this case,
21 and you may be examined and cross-examined on any relevant
22 issue in this case. In addition, if you have any
23 convictions involving dishonesty or false statement or for
24 crimes punishable by imprisonment of more than one year, and
25 I determine that the probative value of admitting this

1 evidence outweighs the prejudicial effect to you, then the
2 solicitor will be able to introduce your record to attack
3 your credibility.

4 If you decide to testify, the decision on your part
5 must be freely and voluntarily and intelligently made with
6 knowledge of the protections that are given to you by the
7 Fifth Amendment of the Constitution and the consequences of
8 your decision. If you decide not to testify, I will
9 instruct the jury, the jurors that they can not give the
10 fact that you did not testify any consideration whatsoever,
11 and there is to be absolutely no prejudice to you because
12 you did not testify. It is left entirely up to you whether
13 or not you want to testify.

14 You may talk to your attorney, your family, your
15 friends, or anyone else, but the final decision is left up
16 to you.

17 Do you understand what I've explained to you?

18 DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions about what I have
20 explained to you?

21 DEFENDANT: No, sir.

22 THE COURT: Have you discussed with your lawyer whether
23 or not you should testify?

24 DEFENDANT: Yes, sir.

25 THE COURT: Do you wish to talk to Mr. Hastie and your

1 family members a little more before you testify, before you
2 make a decision?

3 I'll give you ten minutes if you want to go talk.

4 MR. HASTIE: Could we have ten minutes?

5 THE COURT: You may.

6 SOLICITOR SPRATLIN: Your Honor, would you like me to
7 state what convictions the defendant has that may be
8 impeachable against him?

9 THE COURT: Yes.

10 SOLICITOR SPRATLIN: Defendant has a forgery value
11 between 1,000 and 5,000 that the State would contend is a
12 crime of dishonesty and impeachable. Also has a conviction
13 in 2004 for strong armed robbery, which is a conviction
14 impeachable, as well as a burglary second degree conviction
15 at that which we would also allege is impeachable.

16 THE COURT: It is pretty clear that those crimes would
17 carry more than one year, and I would rule that the
18 probative value outweighs any prejudicial effect on the
19 defendant.

20 We'll take a ten minute recess and we'll be back.

21 (WHEREUPON, a short recess was taken at this time.)

22 THE COURT: Mr. Hastie, have you had an opportunity to
23 speak with your client?

24 MR. HASTIE: Yes.

25 THE COURT: Mr. Wells, have you had an opportunity to

1 speak with Mr. Hastie?

2 DEFENDANT: Yes, sir.

3 THE COURT: Have you made a decision as to whether or
4 not you wish to testify?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you wish to testify?

7 DEFENDANT: Yes, sir, I wish to testify.

8 THE COURT: Very well. You may be seated.

9 All right. Let's bring our jury in.

10 THE COURT: All right. Bring the jury in.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: Thank you.

14 Mr. Hastie, you wish to present a defense?

15 MR. HASTIE: Thank you, Your Honor.

16 I'd like to call Mr. Wayne Wells.

17 THE COURT: Mr. Wells, come forward.

18 WAYNE WELLS, having been first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HASTIE:

22 Q How are you doing, Mr. Wells?

23 A How you doing, Mr. Hastie?

24 Q Mr. Wells, how old are you now?

25 A Twenty-six.

Wayne Wells - Direct examination
by Mr. Hastie

1 Q How old were you at the time of this incident.

2 A Twenty-five.

3 Q Twenty-five years old.

4 where do you live now?

5 A Right now I stay on 426 Rodney Drive, Sumter, South
6 Carolina.

7 Q who do you live with?

8 A I was staying with my stepmother.

9 Q Stepmother.

10 Let's talk a little bit about your background because
11 you do -- have you been in some trouble before, is that
12 correct?

13 A Yes, sir.

14 Q You have had a forgery, is that correct?

15 A Yes, sir.

16 Q How much was that forgery?

17 A Twenty-five dollars.

18 Q Twenty-five dollars forgery.

19 SOLICITOR SPRATLIN: Your Honor, I'm going to object
20 to, to going into the details of the conviction. The fact
21 that there is a conviction, there's a burglary by the fact
22 that there---

23 THE COURT: I'm going to let him do what he wants to on
24 it.

25 Overruled.

Wayne Wells - Direct examination
by Mr. Hastie

1 Q You also had a strong armed robbery?

2 A Yes, sir.

3 Q Is that correct?

4 I won't go into the details of that, and a burglary
5 second, is that correct?

6 A Yes, sir.

7 Q But you paid the penalty for that?

8 A Yes, sir.

9 Q Have you ever had any other conviction or ever a charge
10 of this type of offense that you're accused of today?

11 A No, sir.

12 Q Any type of criminal sexual conduct with a minor, even
13 an adult, have you?

14 A No, sir.

15 Q Now, let's go back to this date in question. Let's go
16 back to Minor

17 Now, you know Minor pretty well, don't you?

18 A Yes, sir.

19 Q Because she said at one point that you-all were
20 boyfriend and girlfriend, is that correct?

21 A Yes, sir.

22 Q Do you consider her -- you consider her, in the past,
23 as your girlfriend?

24 A Yes, sir.

25 Q And you heard testimony yesterday that she still cares

Wayne Wells - Direct examination
by Mr. Hastie

1 for you a little bit.

2 How do you feel about her at this point?

3 A I mean I don't have nothing against her, you know what
4 I'm saying, but I just kind of wish we ain't had to go
5 through this. This point right here going through but all a
6 misunderstanding, and it didn't have to really come to this
7 point.

8 Q So, you're just sorry that it came to this point.

9 Okay. How did you first meet her?

10 A I met her because I got a call from my sister and my
11 sister said one of her friends wanted to talk to me.

12 Q Okay.

13 A I ain't never met her before that, you know what I'm
14 saying. So, I just talk on the phone then. We talk on the
15 phone for about I'd say like probably three weeks, and then
16 my phone, we got into a little argument, you know what I'm
17 saying, and my phone got cut off, you know what I'm saying,
18 because I had changed all phones, you know what I'm saying.
19 So, that was the last time I talked to her till maybe about
20 June, July.

21 Q When did you first talk to her?

22 A I'd say around -- I work at Voc Rehab. So, this is
23 probably about August or January. December of '08, January
24 of '09.

25 Q Okay. You didn't talk to her again until June or July?

Wayne Wells - Direct examination
by Mr. Hastie

1 A June or July of -- that's when I had my job at
2 Applebee's.

3 Q What's very important today is you've heard now the
4 question came up about her age.

5 How old did she tell you she was?

6 A She told me she, she always told me she was 18.

7 Q Did she tell you she was less than 18?

8 A No, sir.

9 Q Did you ask her whether she was less than 18?

10 A I never questioned because, you know what I'm saying,
11 the size of her. She looked like she was 18. So, I never
12 questioned her.

13 Q She looked like she could be 18 to you?

14 A Yes, sir.

15 Q Now, you heard the testimony about being at her house.

16 A Yes, sir.

17 Q Now, I'm a little concerned how you -- why would you be
18 coming to a house so late at night?

19 A I was coming out late at night because when I was --
20 she would call me. I would be at work at Applebee's.

21 Applebee's closed at 11:00 or 12:00. So, when I used to get
22 off work she used to call me and wanted to meet. So, I'd
23 bring her food. By the time I get off Applebee's, it would
24 be like one o'clock. We close at 11:00 or 12:00 and was
25 basically -- I had to clean up. So, I, I would be the last

Wayne Wells - Direct examination
by Mr. Hastie

1 one to leave basically cause I was the manager. So, I would
2 leave about 12:00 or 1:00.

3 Q You would take her something to eat?

4 A Yes, sir.

5 Q Why wouldn't you just knock on the door at one o'clock
6 in the morning?

7 A I was under the assumption that her parents were really
8 strict, and I kind of understood that because my parents
9 were strict too. And at the time I was staying with my
10 auntie when we were first talking, and my auntie is strict,
11 and she won't allow me to have women in the house. So, I
12 kind of understand that.

13 Q She wanted something to eat and you would too and you
14 get off about 1:30 in the morning and go to the house.

15 Where would you park your car?

16 A I'd park my car outside the fence.

17 Q Outside the fence?

18 A Yes, sir.

19 Q Was there a driveway there or outside the fence?

20 A There was a driveway, but they had a fence and the
21 fence would be closed and she always told me where to park
22 when I come.

23 Q She told you where to park?

24 A Yes, sir.

25 Q So, you'd park your car and she'd -- you'd come in

Wayne Wells - Direct examination
by Mr. Hastie

1 through the window or she'd open the door and you'd come
2 through the door?

3 A She'd open the window. She told me to come through the
4 window. It was so late.

5 Q It was so late. You'd come through the window.

6 All right. Let's talk about this, this incident.

7 This -- let's go right to the chase here.

8 So, you're in the room with her this particular night,
9 right?

10 A Yes, sir.

11 Q Now, the night of this incident now, and she said her
12 period was on, did she tell you that?

13 A No, sir, how I became with the period, she said she was
14 spotting. So, the period must have just went off or like to
15 come on, but she just said she was spotting. She didn't
16 tell me her period was on. So, she told me she was
17 spotting. I'm no female, but I know before it comes on or
18 after it goes off, one of the two.

19 Q So, you said in the police report that you stuck your
20 finger in her vagina, is that correct?

21 A Yes, sir.

22 Q Did you do that?

23 A Yes, sir.

24 Q Now, suddenly her father comes home.

25 Okay. You could hear him, I guess, he was talking

Wayne Wells - Direct examination
by Mr. Hastie

1 loud?

2 A Yes, sir.

3 Q Or was he talking loud?

4 You tell us.

5 A When he came to the door I was behind her, and when she
6 opened the door, I don't know how he didn't see me, but I
7 heard him ask her do you got somebody in my house, and he
8 said that, and that's when I kind of stepped back a little
9 bit into her closet, her closet door, and she was in front
10 of me, and she told him no, she ain't had nobody in the
11 house. Then I guess he did walk around, look around for
12 something. Then when she walked out the room, he came in
13 the room and that's when he seen me.

14 He asked me son, what are you doing in my house. I
15 said I'm here to see Minor and he said you're here to see
16 my 15 year old daughter. She tell me, she always told me
17 she was 18. That's when he -- he was already phoning the
18 police at the time.

19 He told me -- he said I think y'all need to come and
20 get this man out my house because he's in here with my 15
21 year old daughter, and he took me out, put me in his
22 computer, asked me how old I was. I told him I was 18
23 and---

24 Q Wait a minute.

25 He asked you how old you were?

Wayne Wells - Direct examination
by Mr. Hastie

1 A Yes, sir.

2 Q And you told him you were 18?

3 A Yes, sir.

4 Q But you just told the jury you were 25 at the time?

5 A Yes, sir.

6 Q Why didn't you tell the police officer you were 18?

7 A Because at the time he done told me that she was 15,
8 and I'm saying he already tell me she was 15. So, I got
9 scared. So, I'm 18 hoping he was letting me go because I
10 figured if he would let me go I wouldn't never come back.

11 Q Okay. You were just trying to get out of there?

12 A Yes, sir.

13 Q You did not get out of there because the police officer
14 testified that he handcuffed you in the house, is that
15 correct?

16 A No, sir, I never, I never got handcuffs till I got
17 outside the house.

18 Q He took you outside?

19 A When he came in he questioned me. He asked me my name.
20 I gave him a false name. He asked me how old I was. I gave
21 him the same age I gave Mr. Green, Mr. Green right there.
22 So, then he asked me the date of birth. I gave him 1987,
23 which is 18. That's when he took me outside. He put
24 handcuffs on me and asked me what happened and I told him --
25 I said all I did was put my finger in her and that was it.

Wayne Wells - Direct examination
by Mr. Hastie

1 Q Okay. So, you're in your girlfriend's room.

2 You know you're doing wrong because you're coming
3 through the window, but you're under the impression that
4 she's 18?

5 A No, that particular day I came to the door. I didn't
6 come through the window.

7 Q On this particular day you came through the door?

8 A Yes, sir.

9 Q She let you in the door at 1:30 in the morning?

10 A No, it wasn't 1:30 in the morning. It was around about
11 four o'clock maybe because she had called me over that
12 particular day because she said she cooked breakfast for me
13 that particular morning. I wasn't planning to come over,
14 but she had called me that day.

15 Q This is the day the father came?

16 A This is the day the father came.

17 Q Okay.

18 A Uh-huh. (Affirmative).

19 Q Now, you've got this father and he seems to be a pretty
20 big fellow?

21 A Yes, sir.

22 Q How were you feeling when he confronted you about his
23 daughter?

24 A Big fellow. I was pretty scared of him.

25 Q Justifiably so. So, you were afraid.

Wayne Wells - Direct examination
by Mr. Hastie

1 He asked you what are you doing with his 15 year old
2 daughter, and you said I thought she, she told me she was
3 18?

4 A Yes, sir.

5 Q He calls the police, police officer comes, takes you
6 outside, correct?

7 A Yes, sir.

8 Q You're outside.

9 At some point they did handcuff you.

10 What point was that?

11 A When I was outside after he had searched my pocket and
12 found marijuana and he said he know I was under arrest. I
13 think he was going to let me go, but he found marijuana and
14 he said, you know, you're under arrest now.

15 Q So, he found marijuana?

16 A Yes.

17 Q Which pocket?

18 A I think it was my right pocket.

19 Q Had you smoked marijuana that day?

20 A Yes, sir.

21 Q Since that day, have you seen her, visited her since
22 your arrest?

23 A No, sir.

24 Q Entered any conversation with her?

25 A No, sir.

Wayne Wells - Direct examination
by Mr. Hastie

1 Q I think I asked her yesterday how she felt about you.
2 She said she still cared a little bit.

3 Today, how do you feel about her?

4 A I don't have, I don't have nothing against her, but I
5 feel like -- I'm saying when I knew her she was a nice
6 person. She was a pretty cool person. I just wish, like I
7 said, I wish it never came to this. But I feel like, like,
8 relationship wise, we could never be nothing no more than
9 I'm saying friends. But then I don't think we really could
10 be friends now because of the circumstances.

11 Q Because of her age and everything?

12 A Yes, sir.

13 Q If you had known that she was 15 at that time, would
14 you have dated her?

15 A No, sir.

16 Q No way?

17 A No, sir.

18 Q You're---

19 A I have no problem getting women at all.

20 Q You have no problem getting women?

21 A No, sir.

22 Q And why couldn't you just look at her and tell that she
23 was not 18?

24 A She's bigger than me. I'm 160 pounds. At this time
25 she was about, at least about 220, 225 pounds. I'm 165.

Wayne Wells - Direct examination
by Mr. Hastie

1 We're about the same height. I'm like a three -- I'm like a
2 three, three and a half, maybe four years. I know things
3 change from the time till I got out, but I'm use to seeing a
4 16 year old girl kind of look, you know what I'm saying,
5 I---

6 Q So, there was no doubt in your mind that you thought
7 she was 18 at the time?

8 A No, sir, no doubt at all.

9 Q And why then would your sister want to introduce you to
10 this girl?

11 SOLICITOR SPRATLIN: Objection, Your Honor. Calls for
12 speculation.

13 THE COURT: Sustained. That's speculation.

14 Q You did say your sister introduced you to her?

15 A Yes, sir.

16 Q I'm sure you've had conversations with your sister
17 about this since you got in this trouble?

18 A Yes, sir.

19 Q If it was for her you wouldn't be here. So, I, I'm
20 just going to sum this up. You thought this was a
21 boyfriend/girlfriend relationship. She told you you were
22 18, she was 18.

23 SOLICITOR SPRATLIN: Your Honor, I'm going to object to
24 this. I don't think I hear a question in this.

25 THE COURT: You'll have your opportunity at the end of

Wayne Wells - Direct examination
by Mr. Hastie

1 the trial.

2 Mr. Hastie.

3 Q I'll just ask you, once again, did she tell you she was
4 18?

5 A Yes, sir.

6 Q At the very beginning?

7 A Yes, sir.

8 Q At anytime did she tell you she was not 18?

9 A No, sir.

10 Q At anytime did any of her friends tell you she was not
11 18?

12 A No, sir.

13 Q No one?

14 A No, sir.

15 Q You're sure about that?

16 A Yes, sir.

17 MR. HASTIE: Thank you, Your Honor.

18 THE COURT: Mr. Spratlin.

19 SOLICITOR SPRATLIN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY SOLICITOR SPRATLIN:

22 Q Mr. Wells, let me start the same place Mr. Hastie did.
23 You've been in trouble before?

24 A Right, yes, sir.

25 Q You were convicted of a felony back in 2003, correct?

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 A Yes, sir.

2 Q That forgery was a felony, correct?

3 The felony was forgery?

4 A Yes, sir.

5 Q You were convicted of two felonies back in 2004,
6 correct?

7 A Yes, sir.

8 Q Those felonies were strong armed robbery and burglary,
9 correct?

10 A Yes, sir.

11 Q So, back in 2003 you lied when you were convicted of
12 the forgery.

13 You, you basically committed a forgery in 2003,
14 correct?

15 A Yes, sir.

16 Q Okay.

17 A I don't see how I lied.

18 Q Okay. The, the conviction of it's -- you committed
19 that forgery, didn't you?

20 A Yes, sir.

21 Q All right. And that's a false misrepresentation to
22 someone, isn't that right?

23 A Oh, yes, sir.

24 Q Okay. So, that's a lie to somebody?

25 Go ahead and answer, Mr. Wells.

Wayne Wells - Cross-examination
by Solicitor Spratlin

- 1 A You never asked a question.
- 2 Q Is that a lie, a false misrepresentation?
- 3 That's a lie, right?
- 4 A I signed, signed a check for \$25 to cash a check. I
- 5 mean I didn't lie about it. I just signed my name on a
- 6 check.
- 7 Q So, you signed your name falsely to something, correct?
- 8 Right?
- 9 A Yes, sir.
- 10 Q And you don't consider that a lie, yes or no?
- 11 Mr. Wells, you don't consider that a lie?
- 12 A I don't see how you say I'm lying. When you say lying,
- 13 I'm thinking lying is telling a lie to somebody.
- 14 Q Okay. I just guess you just don't know the -- do you
- 15 know the difference between the truth and a lie?
- 16 A Yes, sir.
- 17 Q Were you being truthful when you presented that check?
- 18 A No, sir.
- 19 Q So, you were lying when you presented that check?
- 20 A Yes, sir.
- 21 Q Part one is done.
- 22 Now, Mr. Hastie went ahead and asked you a question,
- 23 didn't he?
- 24 He asked you have you ever been in trouble for this
- 25 kind of crime?

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 A Yes, sir.

2 Q And you told him no, I've never been in trouble for
3 this kind of crime before?

4 A No, sir.

5 Q Have you ever told anyone you've been in trouble for
6 this kind of crime before?

7 A No, sir.

8 Q You've never told Brenetta O. when is, she called
9 you on the phone that you'd been in trouble for messing with
10 an underage girl before?

11 A No, sir.

12 Q You never told her that?

13 A No, sir.

14 Q Okay. Now, one thing that you said that was true is
15 that you said Minor told you she was 18 eventually, right?

16 A Yes, sir.

17 Q And you said you met her through your sister, correct?

18 A Yes, sir.

19 Q How old is your sister?

20 A Eighteen.

21 Q Your sister is 18?

22 A Yes, sir.

23 Q When was she born?

24 A November 5th.

25 Q What year?

Wayne Wells - Cross-examination
by Solicitor Spratlin

- 1 A I'm not sure.
- 2 Q You don't know what year your sister was born?
- 3 A I know she's 18.
- 4 Q What grade was she in?
- 5 A My sister, I think she's been going to adult ed for a
- 6 while.
- 7 Q She's been going to adult ed for a while?
- 8 A Yes, sir.
- 9 Q What high school did she last attend?
- 10 A I think she attended Lakewood.
- 11 Q Lakewood High.
- 12 What was the last grade she was in at Lakewood?
- 13 A Maybe ninth or tenth.
- 14 Q Okay. And how long ago did she attend Lakewood?
- 15 A I just know a couple years back.
- 16 Q A couple years back?
- 17 A Yes, sir.
- 18 Q More than two years?
- 19 A Yes, I think so.
- 20 Q So, she would not have been going to Lakewood when you
- 21 first met Minor
- 22 A I think she already was in adult ed then.
- 23 Q Okay. Now, you said that Minor told you she was 18?
- 24 A Yes, sir.
- 25 Q At first, correct?

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 A Yes, sir.

2 Q You're saying that you never were told that she wasn't,
3 in fact, 18?

4 You were never told that?

5 A No, sir.

6 Q You never had a conversation with Brenetta O.

7 A No, sir.

8 Q ---who took the stand and testified yesterday that she
9 called you and told you how old Minor really was?

10 You're saying you never had a conversation with her?

11 A No, sir, I never had a conversation with her.

12 Q Okay. You're saying you never told Minor I know how
13 old you were?

14 A No, sir.

15 Q You're saying you never had a conversation with Minor
16 about her real age?

17 A No, sir.

18 Q So far as you knew, this, this was a grown woman that
19 you were in a relationship with?

20 A I mean not grown. I thought she was 18.

21 Q Okay.

22 A Eighteen.

23 Q An adult?

24 A Eighteen, yes, sir.

25 Q So, you thought, as far as you know, this was an adult

Wayne Wells - Cross-examination
by Solicitor Spratlin

- 1 woman that you're in a relationship with, correct?
- 2 A Yes, sir.
- 3 Q Let's talk about your relationship.
- 4 Did you ever meet her parents?
- 5 A No, sir.
- 6 Q Did you ever go out on a date with her?
- 7 A We went a couple places.
- 8 Q where did y'all go?
- 9 A We done been to the mall. We done been to Swan Lake.
- 10 She done been to my auntie house.
- 11 Q what time did y'all go?
- 12 A Daytime.
- 13 Q what time of day?
- 14 A One, two o'clock, three o'clock.
- 15 Q what time of year was this?
- 16 A Maybe around about June, July, after we start talking.
- 17 Q So, when she was not in school?
- 18 A sir?
- 19 Q When she was not in school, correct?
- 20 A No, sir, I ain't know nothing about being in school.
- 21 Q You didn't know she was in school?
- 22 A No, sir.
- 23 Q what do you think she did for a living?
- 24 A I don't know.
- 25 Q You don't know.

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 You were in a relationship with this woman and you
2 don't know if she had a job?

3 A No, sir, all women don't have jobs.

4 Q You snuck in her room at night to a woman through a
5 window?

6 A Correct.

7 Q You're in a relationship with this adult woman and
8 you're sneaking into her room at night through a window,
9 correct?

10 A Yes, sir.

11 Q Is that what you normally consider an adult
12 relationship?

13 A No, sir, but under the circumstances I would because if
14 she had come to my house, my auntie's house, I be staying
15 at -- she would have had to come through the window because
16 my aunt also---

17 Q A 25 year old guy would have snuck an 18 year old girl
18 through the window of his aunt's house?

19 A If it's not my house and it is my auntie's house and I
20 got to go by the rules, yes, sir.

21 Q Okay. Let me go ahead and talk to you about some of
22 your statements to Officer Gardner.

23 You said that you thought Officer Gardner was going to
24 let you go?

25 A Yes, sir.

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 Q Okay. You were just found having sex with a 15 year
2 old girl when you're 25 and you thought the officer was
3 going to let you go?

4 A We never had sex. They never caught me having sex
5 with---

6 Q They never caught you or did you never have sex with
7 her?

8 which is it?

9 A There's both of them because I never had sex with her
10 and they never caught me having sex.

11 Q So, you never had sex with Minor

12 A No, sir. Well, I had put my finger in it. He -- yes,
13 if you call that sex.

14 Q You stuck your finger in Minor Minor correct?

15 A Yes, sir.

16 Q So, you're saying not just on August 6, 2009, but at no
17 time before that had you had sex with Minor

18 A No, sir.

19 Q You were sneaking into her house through her bedroom
20 window at one o'clock in the morning, correct?

21 A Yes, sir.

22 Q How long were you staying there when you would do that?

23 A Maybe about an hour and a half, two hours, maybe a
24 little bit longer if I fall asleep.

25 Q And in all those times you did that, how many times did

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 you do that between I think you said June---

2 A July and August 6.

3 Q How many times did you sneak into her window?

4 A Probably like maybe four, five times.

5 Q Four or five times?

6 A Yes, sir.

7 Q But you never had sex with her?

8 A No, sir.

9 Q When you were in the room alone with her on
10 August 6th, 2009, she was wearing a shirt, no panties, you
11 never had sex with her?

12 A August 6?

13 Q Yes.

14 A Sexual intercourse, no, sir.

15 Q Okay. A towel is spread out on the bed with blood on
16 it from Minor period, but you never had sex with
17 her?

18 A No, sir.

19 Q In fact, you told Officer Gardner that as soon as you
20 found out she was on her period you quit having sex, isn't
21 that correct, or you quit digitally penetrating her, is that
22 correct?

23 A Yes, sir.

24 Q You didn't -- it didn't tip you off when a towel was
25 sitting there?

Wayne Wells - Cross-examination
by Solicitor Spratlin

- 1 A The towel was not -- I had grabbed the towel, towel for
2 me because I had blood on my hand.
- 3 Q You never met any of her family, did you?
- 4 A No, sir.
- 5 Q You're in an adult relationship with this woman and you
6 never met a single member of her family?
- 7 A No, sir.
- 8 Q You don't know where she works, do you?
- 9 A No, sir.
- 10 Q You hang out with any of her friends?
- 11 A No, sir.
- 12 Q Do you go out to the club together?
- 13 A I don't go to the club.
- 14 Q You don't go to the club?
- 15 A No, sir.
- 16 Q Do you go to the pool hall?
- 17 A Yes, sir.
- 18 Q You never went to the pool hall with her?
- 19 A No, sir.
- 20 Q And you consider this an adult relationship?
- 21 You thought you were having an adult relationship with
22 an 18 year old girl given these circumstances?
- 23 A Yes, sir.
- 24 Q Let's talk about when Officer Gardner arrived at the
25 house and started talking to you.

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 You wouldn't even tell him your real name, would you?

2 A No, sir.

3 Q You told him you were 20?

4 A Yes, sir.

5 Q Correct?

6 Is Dwayne Wells your brother?

7 A Yes, sir.

8 Q And Dwayne wells was actually here in the room earlier?

9 He was sitting back there earlier, wasn't he?

10 A Not today.

11 Q Yesterday?

12 A Yes, sir.

13 Q Yesterday Dwayne Wells was sitting back there the
14 entire time?

15 A Yes, sir.

16 Q And you gave Officer Gardner the fake name of Dwayne
17 Wells?

18 A Yes, sir.

19 Q And initially you told Officer Gardner you were 18 as
20 you just testified to, correct?

21 A Yes, sir.

22 Q But then when you gave him the, the wrong birthdate he
23 called you on that, you weren't really 18 because you didn't
24 really even know when an 18 year old was born, is that
25 correct?

Wayne Wells - Cross-examination
by Solicitor Spratlin

- 1 A Yes, sir.
- 2 Q And you gave him the date of birth that corresponds to
3 your brother, right?
- 4 A Yes, sir.
- 5 Q So, you gave him all the information to make a lawful
6 arrest upon your brother, your own brother, correct?
- 7 A My brother wasn't there.
- 8 Q Okay. But you gave him all the information to have a
9 warrant sworn out on your brother for sleeping with a 15
10 year old, didn't you?
- 11 A Why he need a warrant when he got me?
- 12 Q You gave him your brother's name, correct?
- 13 A Yes, sir.
- 14 Q You gave him your brother's date of birth, correct?
- 15 A Yes, sir.
- 16 Q You were trying to basically make it seem as the, your
17 brother was the one having sex with a 15 year old in that
18 house, weren't you?
- 19 A No, sir, I was trying to make him believe that I was
20 younger than my age. So, I'm saying, convince him that I'm
21 saying that nothing really going on so he could let me go.
- 22 Q You didn't think that there may be consequences for
23 your brother?
- 24 A Sir?
- 25 Q You would use your brother's information to try to get

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 yourself out of trouble?

2 A If I'm saying---

3 Q Yes or no, you would use your brother's information to
4 get yourself out of trouble?

5 You just said so, didn't you, yes or no?

6 A Yes, sir.

7 Q You would use your brother's information to get
8 yourself out of trouble, your own brother?

9 A I tried to use my brother's information at that time.
10 That don't mean at anytime I get in trouble I use my
11 brother's name.

12 Q That's the only time you were going to tell a lie to
13 try to get out of trouble?

14 A At that time, I'm in shock that I've been with a 15
15 year old, yes, sir.

16 Q Okay. But you wouldn't lie now to get yourself out of
17 trouble, would you?

18 A No, sir.

19 Q Okay. So, now you're telling the truth?

20 A Yes, sir.

21 Q You lied and lied and lied, but now you're telling the
22 truth?

23 A Because I believe it's all a misunderstanding.

24 Q You sold your own brother out to get yourself out of
25 trouble back on August 6, 2009, but now you're here telling

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 the truth?

2 A Yes, sir.

3 Q Because you wouldn't lie now to get yourself out of
4 trouble, would you?

5 A I don't think I really have to lie.

6 Q Your own brother.

7 Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (Pause.)

10 Q Mr. Wells, you said on direct examination of Mr. Hastie
11 you originally talked to Minor back in I think you said
12 December or January of 2009, correct?

13 A Yes, sir.

14 Q You said y'all quit talking for a while when you had
15 some sort of an argument?

16 A Yes, sir.

17 Q Given the testimony of Brenetta O. , wouldn't that
18 have been about the time that she said she called you and
19 told you how old Minor was?

20 A She said when I was speaking with her -- I didn't know
21 what time she called me.

22 Q She said she called you the first time she talked to
23 Minor didn't she?

24 A Uh-huh. (Affirmative).

25 Q Isn't it true that that argument was about the fact

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 that Minor was 14 years of age at the time?

2 A No, that was not the argument. The argument me and
3 Minor had was between me and Minor. That was someone
4 else's argument that told.

5 Q What was the argument about?

6 A The argument about her, she had like an attitude. She
7 said I used to come see her and at that time I had no
8 transportation because I was staying with my brother. So, I
9 had no transportation. So, she wasn't wanting me to come
10 over there and see her when I couldn't never get there. So,
11 she told me that she could call anybody she wanted to come
12 see her. She ain't even need me to come see her because how
13 she said she had clients. So --.

14 Q She told you she had clients?

15 A She had clients.

16 Q And this is a woman that you claim at one time you had
17 feelings for?

18 A Yes, sir.

19 Q Okay. This is a 15 year old woman that you said you
20 have feelings for her and she had clients?

21 That's what you're telling this Court now?

22 A At that time I didn't know she was 15.

23 Q Okay. Your testimony is you've never had sex with her,
24 correct?

25 A Yes, sir.

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 Q Your testimony is that you snuck into her room numerous
2 times over the course of your adult relationship with her,
3 but you never had sex with her?

4 Isn't that your testimony here today?

5 A Yes, sir.

6 Q And your testimony is that you never knew she was 18?

7 I mean you said you knew she wasn't under the age of
8 18. You thought she was 18.

9 A Right, yes, sir.

10 Q Despite the fact you never met any of her family,
11 correct?

12 A Yes, sir.

13 Q Despite the fact you didn't know where she had a job,
14 where she worked, or what she did during the day, correct?

15 A Yes, sir.

16 Q The countless times you snuck into her bedroom, you
17 never had sex, never once?

18 Is, is that true?

19 A No, sir, we never had sex, sir.

20 Q And you would lie about your own brother to get
21 yourself out of trouble, correct?

22 Yes or no?

23 A No, sir, I---

24 Q You wouldn't lie about your own brother?

25 A At that time I used that time to try to get, try to get

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 myself out of trouble. But no, sir, I would not use my
2 brother's name to get me out of any trouble, no, sir.

3 Q You would give law enforcement your brother's
4 information to avoid getting yourself out of trouble,
5 correct?

6 A At that time, yes, I did, sir.

7 Q All right. But now you would not tell us any lies to
8 get yourself out of trouble. Now you would stand up here
9 and tell the truth. Now you would sit here and speak
10 nothing but the honest truth to this crime when you know the
11 stakes are even higher than they were when Detective
12 Gardner, Officer Gardner was there?

13 Isn't that true, sir, that the stakes are higher?

14 The stakes are higher now, aren't they?

15 A Yes, sir.

16 Q A lot higher now, aren't they?

17 A Yes, sir.

18 Q But you wouldn't lie now, would you?

19 A If I think the truth would set me free, no, sir.

20 Q If you knew the truth would set you free, you wouldn't
21 lie?

22 A If the truth would set me free, I'd tell the truth.

23 Q But if the truth wouldn't set you free you'd lie?

24 A If the truth wouldn't set me free.

25 Q If the truth wouldn't set you free you'd lie?

Wayne Wells - Cross-examination
by Solicitor Spratlin

1 A The, the truth will set me free.

2 Q Okay. But what if the truth wasn't going to set you
3 free, would you lie?

4 A The truth ain't set me free yet.

5 Q Good luck to you, Mr. Wells.

6 THE COURT: Mr. Hastie, any redirect?

7 MR. HASTIE: None.

8 THE COURT: You may step down.

9 Mr. Hastie, any further witnesses?

10 MR. HASTIE: No further witnesses. We rest at this
11 time.

12 THE COURT: Does the State have any rebuttal?

13 SOLICITOR SPRATLIN: The State will not be presenting
14 any rebuttable, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, that will
16 be the conclusion of all the evidence in this case. I've
17 got to send you back to the jury room for a little while so
18 that we can take up some issues of law. Please do not
19 discuss the case amongst yourselves until I've directed you
20 to do so. Thank you.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Any motions from the defense?

24 MR. HASTIE: Your Honor?

25 THE COURT: Any motions?

1 MR. HASTIE: Certainly, Your Honor. Your Honor, I
2 would like to renew my directed verdict motions at this
3 time.

4 SOLICITOR SPRATLIN: For the same reasons I stated
5 earlier, Your Honor, there's been sufficient evidence to
6 establish the defendant's guilt. We've met our burden.

7 THE COURT: All right. I agree. I think the State has
8 provided sufficient evidence to take it to the jury.

9 Let me see the lawyers in my chambers for a charge
10 conference.

11 MR. HASTIE: Yes, Your Honor.

12 (WHEREUPON, a short recess was taken at this time.)

13 THE COURT: Let me see the attorneys over here for a
14 second.

15 (WHEREUPON, a bench conference was held at this time.)

16 THE COURT: State's ready?

17 SOLICITOR SPRATLIN: Yes, sir.

18 THE COURT: Defense ready?

19 MR. HASTIE: Yes, sir, Your Honor.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 THE COURT: Is it comfortable in y'all's jury room or
23 cold?

24 It is comfortable in my office. The courtroom feels
25 pretty good.

1 Ladies and gentlemen, we have reached the stage of the
2 trial where all the evidence you're going to hear concerning
3 this case has been presented to you. Now is the time where
4 the attorneys will make their closing arguments. After that
5 I will charge you on the law of the case.

6 All right. State ready?

7 SOLICITOR SPRATLIN: State's ready to proceed, Your
8 Honor.

9 THE COURT: You may proceed.

10 SOLICITOR SPRATLIN: Your Honor, the State would waive
11 opening on the law and take the last word on the closing.

12 THE COURT: You may do so.

13 Mr. Hastie.

14 MR. HASTIE: Thank you, Your Honor.

15 Good morning, ladies and gentlemen. You-all have heard
16 a lot. We're now at the end. Now the ball is in your
17 court. You're going to have to decide.

18 As I said earlier, the burden of proof is upon the
19 state. You have heard the evidence and you have heard all
20 the testimony and you know when I look at this whole
21 situation, this really is a tragedy because you have a
22 situation here where you heard testimony about a boyfriend
23 and girlfriend and a relationship. You've heard testimony
24 from so many people that was talking about this tragic
25 event.

1 When I look at the tenor of the parties, both the
2 parties, you can just see the intent is not harmful, but it
3 is harmful because that's why we're here today.

4 I look at the testimony of this young lady, Miss Minor
5 Minor you know, and she just admitted that, you know,
6 she lied about a lot of things and she said yeah, I lied
7 about that. I told him to come through the window, come
8 through the door. She knew it was wrong. That's why they
9 were sitting around. She knew what her age was.

10 You know, she, she let this young man come in. So, she
11 just admitted that she lied to my client, lied to her
12 parents, just lied to everybody. These lies are very costly
13 now.

14 This is an extremely serious charge as you know. The
15 charge today, I'm just concerned that you can look at her
16 size and you can see, as my client said on the stand, she is
17 bigger than he was and he believed her, you know, they
18 talked about, about the age situation. You heard her sister
19 come in and say, you know, that's my baby. That's my baby
20 sister, and if she doesn't answer the phone I get all
21 excited, but her baby sister didn't tell she was here, she
22 was having sex with men she was slipping through the window
23 and sometimes slipping through the front door, 11:30 in the
24 morning.

25 Again, like I say, this is just a tragedy. You heard

1 the testimony of the friend that came in and tried to
2 confirm what the age was, and, you know, her testimony was I
3 think was the worst one of all because she said she was the
4 one that, she said she was the, the one -- I think they
5 talked about the age, talked a little bit about the age, but
6 she was mistaken in her testimony.

7 You know, in the testimony she was the only one that
8 testified -- yeah, when I walked into the house, she had a
9 top on and she had a gray bottom on. Right. Everybody else
10 said she didn't have any bottoms on. She was the only one
11 that came in.

12 She talked about this, this car being in the driveway.
13 while, you know, never met him before.

14 How do you know what kind of car he drove?

15 I really don't know. I read it in the police report.

16 So, she's trying to get her testimony straight.

17 I looked at the father, you know, and he's -- I've got
18 a daughter myself. Maybe that's why it's so touchy, but the
19 father is a typical father, and he comes home and there's
20 some man in the house. I'm really surprised he didn't do
21 more than just call the police, but he didn't.

22 But, you know, she was walking around in the house with
23 no bottoms and the father didn't say go get, put some
24 clothes on. He says I want you to tell me who you got in
25 the room.

1 So, he confronts my client. You-all can imagine the
2 young man at that time. Here is this irate daddy, walks in,
3 into the room, what are you doing in my house messing with
4 my 15 year old daughter. Y'all know what his history is,
5 and I can imagine him just trembling and shaking out of his
6 boots at that point because that man, there's nothing he
7 can, can do about it.

8 You heard his testimony, what he thought, what she
9 said, what he said she told him about the age. So now he's
10 in a chair, father calling the police on him. The police
11 officer comes and he took the testimony about, what the
12 father said about his daughter. So, he knows he's in
13 serious trouble because he said she told me she was a
14 different age than this. But it really doesn't matter now
15 because the police is on its way.

16 So, he was trying to say what can I do to get out of
17 this trouble right now, and he did give the name of his
18 brother and he was a bit younger than him. Thought that
19 might be helpful. An officer came and took him outside, put
20 him in handcuffs, searched him.

21 He did have drugs in his pocket. We're not here about
22 the drugs today. We're here about this particular charge,
23 this criminal sexual conduct with a minor, and that's,
24 that's why we're here.

25 The police officer talked with him and he told the

1 police officer -- he said, told him he found the marijuana
2 in his pocket. I have had a chance to meet this young man
3 during the time he's been my client, and he just has
4 reiterated to me, Mr. Hastie, this is what she told me and
5 you heard the testimony that if I had known what her real
6 age was, heard testimony that his sister told her, tell him
7 this age because I know my brother, I know my brother, he's
8 not going to mess around with anyone of that age.

9 This is a tragedy. The law is clear on this, and the
10 judge is going to talk to you about the law. I think
11 sometimes, as jurors, you've got to look at what the intent,
12 what the intent of the law. Sometimes, you know, we have to
13 just -- so, that's why we, we have jurors. That's why the
14 decision in this case doesn't rest with me. It doesn't rest
15 with the state. Not even the judge. The decision rests
16 with you.

17 You've heard a lot about -- you heard the testimony
18 and, again, this is one of those cases I, I just say is
19 tragic because we did not have to be here if this young lady
20 would not have told the truth. If she told the truth from
21 the very beginning, we wouldn't be here but because of the
22 lies she told that initially -- it was not about just, just
23 this, this one. But that initially that she told caused us
24 to be here today.

25 I want you to just think about all that. I want you to

1 think about the intent of the law, and I ask that you find
2 my client not guilty of this charge.

3 Thank you.

4 THE COURT: Thank you, Mr. Hastie.

5 Mr. Spratlin.

6 SOLICITOR SPRATLIN: Thank you, Your Honor. Thank you.

7 Ladies and gentlemen, thank you for your time. Thank
8 you for your attention in this case. Thank you for
9 accepting your duties as jurors. I'm going to talk to you a
10 little bit later on about what the duties as jurors are.

11 Let's start out actually with something we don't
12 disagree. This is a tragedy. We disagree though on why it
13 is a tragedy. It is a tragedy because a 15 year old girl,
14 now 16, sitting over there, she lost her virginity to that
15 25 year old man sitting right over there. That is the
16 tragedy in this case.

17 Now, was it consensual sex?

18 Yes.

19 Yes, it was. But as the judge is going to tell you in
20 a minute, 15 year old girls can't consent to sex, and I'm
21 going to talk to you for a little bit, in a little bit later
22 on how that's a good thing, a good thing that a 15 year old
23 can't consent to sex. A 15 year old girl can not lawfully
24 consent to sexual intercourse with anyone over the age of
25 18. That man is over 18. That man is well over 18. He was

1 25 when this happened.

2 Before I go too much into the law, it's going to be --
3 I told y'all earlier on that this is kind of a version of a
4 word problem. When I first got up here I talked to you
5 about how in math class you've got a formula or some kind
6 of -- you learn how to do some and they give you a bunch of
7 facts that you then apply that formula to.

8 As I told you earlier on, this, this is in reverse.
9 You've heard the facts and in a minute I'm going to talk to
10 you about the law, and the judge is going to talk to you
11 about the law. But before I do that I'm going to talk to
12 you about civil law. Not the law of CSC with a minor, but
13 rather the law of a trial by jury.

14 Mr. Hastie is right. The burden of proof is on us, the
15 State. We have the burden of proving beyond a reasonable
16 doubt that the defendant committed the act that we said he
17 did.

18 Now, the defendant comes into Court presumed innocent,
19 and it is only when I present enough evidence to convince
20 you beyond a reasonable doubt that he did what we say he did
21 that you then can find him guilty.

22 See, that begs the question what is beyond?

23 Let me tell you first off what it's not. It's not
24 proof of all doubt. There are very few things in this world
25 that you can know with 100 percent absolute certainty and

1 the defendant's guilt is not one of those things that you
2 have to know beyond all doubt. Rather, it is beyond a
3 reasonable doubt, a doubt that you can assign a reason to.
4 You have any doubt.

5 I submit to you you shouldn't have a doubt about the
6 defendant's guilt. Think is that doubt reasonable. Think
7 why you have that doubt. Think the reason you have that
8 doubt. There's actually a reasonable reason to have doubt.
9 I submit to you there's no reason at no doubt in this case.

10 Every day you, as jurors, and this is another thing
11 that makes the, our justice system I think the best in the
12 world, the fact that you, as jurors, come into this
13 courtroom with your experiences, your life experiences, your
14 judgment, skills. You-all have the common sense necessary
15 to make any decision in this Court of law and that's what we
16 do here.

17 Everyday, as jurors, as people, you think when you see
18 two people talking on TV, say you're watching shows,
19 whatever. You see two people talking and they don't
20 necessarily agree with each other. You, in your head, think
21 all right, that, that person's telling the truth or that
22 person's lying. You determine whether or not people are
23 credible everyday.

24 You say, all right, well, I believe part of what this
25 person is saying, but I don't believe everything. So, I'm

1 going to believe this part because that makes sense for them
2 to say that, what they have a reason to lie about this part
3 so that I'm going to believe this and that. You do that as
4 jurors. You do that as people and as jurors here in the
5 courtroom. You don't have to do anything different.

6 You heard from Minor You heard from Brenetta. You
7 heard from Bianca. You've heard from Mr. Green. Heard from
8 the defense attorney. You heard from Corporal Gardner.
9 You've heard from Detective Kulickj. You heard from the
10 defendant.

11 Who here's got a reason to lie?

12 I would tell the truth if the truth would set me free.

13 What does that necessarily imply?

14 What else does that statement say besides just the,
15 the -- I think when the defendant said that he thought well,
16 that sounds good. I'll say that.

17 When you think about that statement and you analyze it,
18 what else has to be true?

19 If the Court will set me free, then I'll tell the
20 truth. The truth won't set you free, I won't tell the
21 truth.

22 Ladies and gentlemen, you looked at his demeanor on the
23 stand. You saw the way he responded to my questions.
24 That's something I want you to think about when you're back
25 there. Not only the way that the defendant responded to Mr.

1 Hastie's questions, but the way he responded to my
2 questions, but I also want you to think about the way my
3 witnesses responded to my questions, but also the way they
4 responded to Mr. Hastie's questions.

5 Were they taking time to think about well, what is my
6 best answer?

7 How do I best say this?

8 What do I do?

9 How do they say that?

10 They were telling the truth when -- you've everyday see
11 people tell lies. See people tell the truth. You use your
12 common sense. You use your judgment to determine whether
13 people are being credible and truthful with you. I think
14 you go back and you'll see that they were being credible and
15 they were being truthful.

16 Now, I want to talk to you about the law in the State
17 of South Carolina. Don't worry. I'm not about to read this
18 whole book to you.

19 A person is guilty of criminal sexual conduct in the
20 second degree when they engage in a sexual battery with a
21 victim who is less than 16 years of age, between the ages of
22 14 and basically is this case, and the judge is going to
23 tell you that. Sexual battery of a victim who is at least
24 14 years of age, but who is less than 16 years of age, and
25 this is important because there's several, there's several

1 things about the defendant's characteristics that you have
2 to determine whether or not he's guilty of the criminal
3 sexual conduct in the second degree. That is that he
4 engaged in a sexual battery with a victim who's at least 14,
5 but less than 16 years of age and the actor, that being the
6 defendant, was either in the position of a familial
7 relationship to the defendant or the victim.

8 He's not, not related to her in anyway. Custodial.
9 Has no control or custody over her or official authority.
10 He has no official -- but the last thing Your Honor -- I
11 mean the last thing, ladies and gentlemen, or he is older
12 than the victim. The fact that this defendant is older than
13 Miss Minor date of birth of the defendant is [REDACTED]
14 date of birth of Minor [REDACTED] as you heard, is February
15 of 1994, so at least ten years, a little bit over ten years
16 actually, about ten years and a month. So, he's older than
17 her and he's well over the age of 18. 25.

18 The judge is also going to tell you, ladies and
19 gentlemen, that even if the victim consents, which Miss
20 Minor did in this case, that's not a defense. The fact
21 that Minor consented to having sexual intercourse
22 with that 25 year old man is not a defense to his guilt or
23 having sex with a 15 year old. Twenty-five year old men
24 can't go around having sex with 15 year olds.

25 Ladies and gentlemen, even if they want to, that's the

1 law in the State of South Carolina, and I submit to you
2 that's a good law.

3 Now, I just read off to you the definition of criminal
4 sexual conduct in the second degree. The first thing you
5 have to determine, as a juror, is whether or not the State
6 has proven, beyond a reasonable doubt, that a sexual battery
7 occurred.

8 So, what is a sexual battery?

9 A sexual battery is sexual intercourse. You heard
10 Minor had sexual intercourse, overall sex. We haven't
11 heard any testimony regarding overall sex, anal sex, haven't
12 heard any testimony about anal sex or any intrusion, however
13 slight, of any pat of a person's body, i.e., a finger into
14 the body of the victim, Minor.

15 How do we know a sexual battery occurred?

16 We know it occurred because of Minor testimony that
17 it occurred. We also know from the fact that the defendant
18 told us that, us that it occurred when he told Officer
19 Gardner that he had basically stuck his finger was I believe
20 his exact words. We also know, ladies and gentlemen, just
21 by the stains surrounding it. Think about it.

22 You have a half naked 15 year old girl in a room alone
23 with a 25 year old man. If you can honestly sit back there
24 and say I don't think a sexual battery occurred, then I
25 submit to you you need to look a little closer because there

1 was obviously a sexual battery in this case, and it is
2 obvious and unquestionable that he is over the age of 18 and
3 it is obvious and unquestionable that she is under the age
4 of 16 at the time this occurred.

5 what you're not going to hear the judge talk about,
6 ladies and gentlemen, but you heard Mr. Hastie talk a little
7 bit about it, the lies. You're not going to hear the if he
8 thought she was 18, well, then he's not guilty. You're not
9 going to hear that because the judge isn't going to tell you
10 that because that's not what the law states in South
11 Carolina.

12 But I'm going to go ahead and address with you real
13 briefly, look at all the circumstances surrounding their
14 adult relationship. You know, I quote the quotes there, you
15 know, because nothing he testified about made this seem like
16 it was an adult relationship. He didn't know where she
17 worked. He didn't know what she did during the day. He
18 never met her family. He never met her sister. He never
19 met her friends. He used to climb in through the window in
20 the middle of the night to spend time with her.

21 That is not an adult relationship. That is a 25 year
22 old man having a relationship with a 15 year old girl, an
23 illegal relationship. When he's arrested, he tried to say
24 oh, it ain't that bad. Look, I'm not really 25. I'm
25 younger. I'm 18. Dad says you ain't 18.

1 when, when were you born?

2 He gives dad the false birthday. Officer Gardner shows
3 up. He says look, man, what's your name. Dwayne Wells.
4 Not Wayne Wells. Dwayne Wells. His brother's name.

5 when is your birthday?

6 November 8, 1987.

7 His brother's date of birth to get himself out of
8 trouble. To try to get himself out of trouble, he gave his
9 own brother's information.

10 Going back to credibility for a minute.

11 Can you honestly believe the word or taking that a man
12 who says, who gives his own brother's information to try to
13 get him out of trouble?

14 Can you take anything he says as the truth without
15 questioning him?

16 I submit to you you can't.

17 If he'll sell out his brother to get out of trouble,
18 what won't he do?

19 what won't he do?

20 I told you I was going to talk to you a little bit
21 about your job as jurors. I don't know what you people,
22 what jurors think about the fact that this 15 year old girl
23 consented to having sex with this 25 year old man. I don't
24 know what your moral compass tells you about that, but I do
25 know what the law tells you about that, and the law tells

1 you it's a crime. And your job, as jurors, is to determine
2 the facts in this case, the law, you have to take it as it's
3 given to you by the judge, even if you think it shouldn't be
4 a crime it is, and the oath you took when you first sat down
5 was to uphold the law of the State of South Carolina and
6 that's going to be given to you by the judge and the law is
7 that that's a crime. No if's, and's, or but's, about it,
8 that 25 year old man having sex with that 15 year old girl.
9 That 25 year old man sticking his finger in that 15 year
10 old. Man sticking his finger in that 15 year old girl's
11 vagina is a crime and it is CSC with a minor in the second
12 degree and that's why you have to vote guilty.

13 You heard her, you heard Minor on the stand
14 when Mr. Hastie was questioning her.

15 He said do you still have feelings for him?

16 She said yes, I love him.

17 She's 15. She doesn't know what love is if she thinks
18 her relationship with that man was love.

19 Did you get the fact that, when he was on the stand,
20 that he loved her?

21 I didn't.

22 The fact that she felt that way, the fact that she
23 still feels that way is exactly why we don't allow 15 year
24 olds to have sex with 25 year olds. They're not mature
25 enough to deal with it. They have to be protected.

1 He played upon her. He took advantage of her. He used
2 and abused her.

3 was she a willing participant?

4 Yes.

5 But she couldn't be a willing participant because of
6 her age. She couldn't consent to sex. He's guilty of
7 criminal sexual conduct with a minor in the second degree
8 and you, ladies and gentlemen, it's up to you to go back
9 there, take the facts as they've been given to you, take the
10 facts as you find beyond a reasonable doubt that they are,
11 take the law as it's given to you by the judge, and make the
12 decision that you have to make, that he's guilty of CSC with
13 a minor in the second degree. Criminal sexual conduct in
14 the second degree.

15 Thank you.

16 THE COURT: Ladies and gentlemen, all the testimony and
17 other evidence that's been presented to you in this case has
18 now been presented. The attorneys have given their closing
19 arguments. Now is the time in the trial when I will charge
20 you with the law to be applied in this case.

21 I remind you that, during this trial, you and I have
22 had certain duties to perform. As the trial judge, it is my
23 responsibility to preside over the trial of this case, and I
24 also have the duty to rule on the admissibility of evidence
25 that is offered during this trial.

1 You are to consider only the competent evidence before
2 you. If there was any testimony ordered stricken from the
3 record in this case during the trial, you must disregard
4 that testimony. You are to consider only the testimony
5 which has been presented from this witness stand, any
6 exhibits which have been made a part of the record in this
7 case, or any stipulations of counsel.

8 I have the additional duty to charge you the law
9 applicable to this case. That, as the presiding judge, I'm
10 the sole judge of the law of this case, and it is your duty,
11 as jurors, to accept and apply the law as I now state it to
12 you. If you already have an idea as to what the law is or
13 what the law ought to be and it does not agree with what I
14 tell you that the law is, you must abandon that idea because
15 you are sworn to accept the law and apply the law exactly as
16 I state it to you now.

17 In every case tried before this Court before a jury,
18 the jury is the sole and exclusive judge of the facts in
19 this case. As the trial judge, I can not state, comment on,
20 or make any statement to a trial jury about the facts in a
21 case. Since you are the jury, you are the sole judges of
22 the facts in this case, and you are not to infer from what I
23 have said during the progress of this trial in ruling upon
24 the admissibility of evidence or otherwise or anything that
25 I say now during the course of this instruction to you that

1 I have any opinion about the facts in this case. The law
2 simply does not allow me to have an opinion about the facts
3 in this case. It is solely for you, the jury, to determine.

4 As jurors, it is your duty to determine the effect, the
5 value, weight, the value, and the truth of the evidence that
6 is presented during this trial. The indictment in this case
7 alleges one offense against the defendant, Wayne Wells.

8 Under an Indictment, 10-GS-43-377, he is charged with the
9 criminal sexual conduct with a minor in the second degree.

10 I remind you the fact that the defendant was arrested,
11 charged, and indicted in this case is not evidence in this
12 case and can not be considered by you as evidence of guilt
13 in this case nor does it create any presumption or inference
14 of guilt. The indictment is simply the formal written
15 instrument which contains the charge made against the
16 defendant. It is the formal document which this case has
17 brought into Court. The defendant has pled not guilty to
18 the indictment, and the plea puts the burden upon the State
19 to prove the defendant guilty.

20 A person charged with committing a criminal offense in
21 South Carolina is never required to prove himself innocent.
22 I charge you that it is an important rule of law that the
23 defendant, in a criminal case, no matter how serious the
24 charge is, will always be presumed to be innocent of the
25 crime for which the indictment was issued unless guilt has

1 been proven by evidence satisfying you, the jury, of that
2 guilt beyond a reasonable doubt. This presumption of
3 innocence does not end when you begin your deliberations,
4 but it accompanies the defendant throughout the trial until
5 you reach a verdict of guilt based on evidence satisfying
6 you of that guilt beyond a reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the defendant
9 which remains with the defendant until it has been stripped
10 from the defendant by evidence satisfying you of the
11 defendant's guilt beyond a reasonable doubt. Presumption of
12 innocence is not a mere legal theory. It is not just a
13 legal phrase that we use, but a substantial right to which
14 every defendant is entitled to and, again, unless you are
15 satisfied, upon the evidence presented, of the defendant's
16 guilt beyond a reasonable doubt.

17 That begs the question what is a reasonable doubt in
18 the law?

19 A reasonable doubt is the kind of doubt that would
20 cause a reasonable person to hesitate to act. The State has
21 the burden of proving the defendant guilty beyond a
22 reasonable doubt. Some of you may have served as jurors in
23 civil cases where you were told that it is only necessary to
24 prove that a fact is more likely true than not or by the
25 greater weight or the preponderance of the evidence.

1 In criminal cases, the State's proof must be more
2 powerful than that. It must be proof beyond a reasonable
3 doubt. Proof beyond a reasonable doubt is proof that leaves
4 you firmly convinced of the defendant's guilt.

5 There are very few things in this world that we know
6 with absolute certainty, and, in criminal cases, the law
7 does not require proof that overcomes every possible doubt.
8 If, based upon your consideration of the evidence, you are
9 firmly convinced that the defendant is guilty of the crime
10 charged, you must find the defendant guilty. If, on the
11 other hand, you think there's a real possibility that the
12 defendant is not guilty, you must give the defendant the
13 benefit of that doubt and find him not guilty.

14 Now, there are two types of evidence which are
15 generally presented during the trial. There's direct
16 evidence and circumstantial evidence.

17 Direct evidence is the testimony of a person who claims
18 to have actual knowledge of a fact such as an eye witness.
19 It is evidence that immediately establishes the main fact to
20 be proven.

21 Circumstantial evidence is proof of a chain of facts
22 and circumstances indicating the existence of a fact. It is
23 evidence that immediately establishes collateral facts from
24 which the main fact may be inferred. Circumstantial
25 evidence, evidence is based on inference and not on personal

1 knowledge or observation.

2 The law makes absolutely no distinction between the
3 weight or value to be given from either direct or
4 circumstantial evidence nor is a greater degree of certainty
5 required of circumstantial evidence than of direct evidence.
6 You should weigh all the evidence in this case, and after
7 weighing all the evidence in this case, and after weighing
8 all the evidence, if you are not convinced of the guilt of
9 the defendant beyond a reasonable doubt, you must find the
10 defendant not guilty.

11 The defendant, Wayne Wells, is charged with second
12 degree criminal sexual conduct with a minor. The State must
13 prove, beyond a reasonable doubt, that the defendant engaged
14 in a sexual battery with the victim.

15 Sexual battery is sexual intercourse, cunnilingus,
16 fellatio, or any intrusion, however slight, of any part of a
17 person's body or any object into the genital or anal opening
18 of another person's body except when the intrusion is
19 established for medically recognized treatment or diagnostic
20 purposes. The State must then prove, beyond a reasonable
21 doubt, that the defendant was at least 14 years of age and
22 less than 16 years old at the time of the sexual battery.

23 The State must also prove that the defendant was older
24 than the victim at the time of the sexual battery. Consent,
25 willingness, indifference, or ignorance on the part of a

1 minor, if any as to what was taking place, does not, in any
2 way, affect the charge of criminal sexual conduct with a
3 minor because an unmarried woman under the age of 16 can not
4 legally consent to sexual intercourse with anyone over the
5 age of 18. The testimony of a victim need not be
6 corroborated by the prosecution.

7 Ladies and gentlemen, there are two forms of verdicts
8 which you may find under the case. Under, under Indictment
9 10-GS-43-377 of criminal sexual conduct with a minor in the
10 second degree, not guilty and guilty. There is no
11 significance whatsoever in the order in which I state the
12 possible verdicts. It is simply that one must be stated
13 first.

14 Ladies and gentlemen, your verdict must be a unanimous
15 one. All 12 of you must agree on the verdict. Your
16 decision must not be based upon sympathy, passion,
17 prejudice, or emotion, or any other consideration that is
18 not evidence in this case.

19 Mr. Foreperson, when the jury agrees on the verdict,
20 you will write your, you will check the block as to the
21 verdict and sign your name and, as foreperson, and then
22 knock on the jury room door and inform the bailiff that you
23 have reached a verdict. At that time, you will then be
24 received back into the courtroom for publication of your
25 verdict.

1 Ladies and gentlemen, I'm going to ask that you return
2 to your jury room. But please do not begin your
3 deliberations until the bailiffs instruct you to do so.
4 There are some matters that must be discussed with the
5 attorneys before you begin your deliberations.

6 Thank you.

7 The alternates need to be placed in a separate room at
8 this time.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Any objection from the State to the charge
12 given?

13 SOLICITOR SPRATLIN: Your Honor, there is one. On the
14 third, third to the last page of the charge where it says
15 the State must then prove, beyond a reasonable doubt, that
16 the victim was at least 14 years old and less than 16 years
17 old, Your Honor, you actually said the State must then prove
18 beyond a reasonable doubt that the defendant was at least 14
19 years old and---

20 THE COURT: Is that what I said?

21 SOLICITOR SPRATLIN: You actually said defendant. I
22 think you meant victim, Your Honor.

23 THE COURT: Let's bring them back in.

24 SOLICITOR SPRATLIN: That's the only objection from the
25 State.

1 THE COURT: Mr. Hastie.

2 MR. HASTIE: None, Your Honor.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: Ladies and gentlemen, I apologize for
6 bringing you back and forth. I misspoke one word when I was
7 giving the instructions concerning the charge of criminal
8 sexual conduct in the second degree. I will read you what I
9 should have read.

10 The State must then prove, beyond a reasonable doubt,
11 that the victim was at least 14 years old and less than 16
12 years old at the time of the sexual battery. The State must
13 also prove that the defendant was older than the victim at
14 the time of the sexual battery. Consent, willingness, or
15 indifference, or ignorance on the part of the minor, if any
16 as to what was taking place, does not effect, in any way,
17 the charge of criminal sexual conduct with a minor because
18 an unmarried woman under the age of 16 can not legally
19 consent to sexual intercourse with anyone over the age of
20 18.

21 Thank you.

22 Now, I'll send you back to the jury room one more time.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: Was that my only point of misspeaking?

1 SOLICITOR SPRATLIN: That was, Your Honor.

2 THE COURT: From Mr. Hastie?

3 MR. HASTIE: Nothing further.

4 THE COURT: Have y'all seen the verdict form?

5 SOLICITOR SPRATLIN: Yes, sir.

6 MR. HASTIE: Yes, sir.

7 THE COURT: Please instruct the jury they may begin
8 deliberations. The Court will stand at ease pending the
9 verdict.

10 (WHEREUPON, the jury began deliberations at 12:11.)

11 THE COURT: Have two questions. If, if the defendant
12 truly believed the victim was 18, does that matter and/or is
13 ignorance of her age no excuse?

14 The correct answer that I'm going to write on here is
15 if the defendant truly believed the defendant was over 18
16 does that matter, the answer is no, and ignorance is no
17 excuse. I'll let y'all look at it before I send it in.

18 Would you like to look at it?

19 (Pause.)

20 THE COURT: Any objections?

21 MR. HASTIE: None.

22 SOLICITOR SPRATLIN: That's fine.

23 THE COURT: Court's at ease.

24 (WHEREUPON, the jury returned with a verdict at
25 3:12 p.m.)

1 THE COURT: Bring the indictment forward.

2 Bring the alternate forward.

3 (WHEREUPON, the alternate juror was dismissed at this
4 time.)

5 THE COURT: Let's bring our jury in.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: It is my understanding the jury has reached
9 a verdict in this case.

10 Mr. Foreman, is that right?

11 FOREMAN: That's correct, Your Honor.

12 THE COURT: Is it unanimous?

13 FOREMAN: Yes, Your Honor.

14 THE COURT: Please pass it to the bailiff.

15 (Foreman complies.)

16 THE COURT: Please publish the verdict.

17 The defendant will stand.

18 (Defendant complies.)

19 CLERK: State of South Carolina, County of Sumter, in
20 the Court of General Sessions, Indictment 2010-GS-43-0337,
21 State of South Carolina versus Wayne Wells, defendant, as to
22 the charge of criminal sexual conduct in the second degree
23 with a minor under 16 years of age contained in Indictment
24 10-GS-43-0337, we, the jury, unanimously find the defendant,
25 Wayne Wells, guilty. Signed Douglas Back, foreperson.

1 Dated November 9, 2010.

2 Ladies and gentlemen, if this is your verdict, so say
3 you all by raising your right hands?

4 (WHEREUPON, all jurors raise their hands at this time.)

5 THE COURT: All right. Does the State or the defense
6 request polling of the jury?

7 SOLICITOR SPRATLIN: The State does not, Your Honor.

8 MR. HASTIE: I do, Your Honor.

9 THE COURT: Please poll the jury.

10 (WHEREUPON, the jury was polled at this time and all
11 jurors answered in the affirmative that this was and is
12 still their verdict.)

13 THE COURT: Thank you.

14 Mr. Bradley, the verdict does stand.

15 (WHEREUPON, the jury was dismissed at this time.)

16 THE COURT: Wayne Corey Wells, please stand.

17 (Defendant complies.)

18 THE COURT: Having been found guilty by a jury of your
19 peers of the charge of criminal sexual conduct with a minor
20 in the second degree, I will now impose sentencing. You may
21 be seated.

22 (Defendant complies.)

23 THE COURT: I'll give the State an opportunity to speak
24 and then I'll give Mr. Hastie an opportunity to speak.

25 SOLICITOR SPRATLIN: Your Honor, I have a sentencing

1 sheet.

2 THE COURT: Let me back up. Excuse me.

3 Mr. Hastie, do you have any motions?

4 MR. HASTIE: Certainly do, Your Honor. I would like to
5 renew my motion for a directed verdict and also I would like
6 to make a motion for a new trial based on my earlier motion
7 for a directed verdict that I made this morning.

8 THE COURT: Thank you.

9 Mr. Spratlin.

10 SOLICITOR SPRATLIN: Your Honor, the same response I
11 gave to Mr. Hastie's earlier motion would still apply. The
12 State has presented substantial evidence. Certainly enough
13 evidence to convict the jury beyond a reasonable doubt, and
14 as far as his directed verdict motion goes, the standard is
15 any competent evidence in the record. This is a substantial
16 amendment of evidence in the record that the defendant could
17 have been found guilty and the jury's verdict is, is only
18 just and appropriate.

19 THE COURT: Based upon your previous motion and this
20 motion, I'm going to deny a new trial. I think the jury
21 took it under consideration. They were out for a little
22 over three hours. They obviously considered everything that
23 was presented and the verdict stands.

24 Any other motions?

25 MR. HASTIE: None.

1 THE COURT: Thank you.

2 Mr. Spratlin.

3 SOLICITOR SPRATLIN: Your Honor, if I could approach, I
4 do have a sentencing sheet, Your Honor.

5 In aggravation of sentencing, the State would like to
6 present the defendant's prior criminal history you heard
7 earlier. He was convicted in 2003 of a forgery charge in
8 which he received one year suspended to a hundred dollar
9 fine and one year probation.

10 In 2004 he was convicted of strong armed robbery, which
11 he received a seven year sentence and a burglary second
12 degree which he received also a seven year sentence. Those
13 sentences ran concurrently.

14 The victim, as well as her mother, are present in the
15 courtroom. Let me ask my victim's advocate if they would
16 like to say anything.

17 Your Honor, Ms. Lelia Green would like to address the
18 Court in regards to sentencing.

19 Say your name.

20 MS. GREEN: I'm Lelia Green. My daughter is **Minor**,
21 and it's just been so hard. That has been a year of going
22 through this and trying to get some sort of closure on this.
23 I don't know if there ever will be.

24 We've moved. We don't feel safe. He was in our house
25 when we were asleep. That's just, that's just so wrong. My

1 daughter was 15 years old, led by somebody that was over ten
2 years her senior. Her virginity is lost. Smooth talk.

3 I put her in a different school. I've had to change
4 shifts on my job to make sure that somebody is always home,
5 to make sure that somebody else can't do this. It's just
6 been so bad and I just want to see, I just want to see some
7 justice and I thank the jury. I really do to their verdict
8 and I thank you for the sentencing that you will place.

9 THE COURT: Thank you.

10 SOLICITOR SPRATLIN: Your Honor, the last thing the
11 State would ask for is given the fact the defendant has
12 several prior convictions, the last two of which he received
13 a substantial prison sentence for and he apparently did not
14 learn his lesson to stay out of trouble, the State would ask
15 for a substantial prison term in this case.

16 THE COURT: Thank you.

17 Mr. Hastie.

18 MR. HASTIE: Thank you, Your Honor.

19 As I said earlier today, this really is a tragedy.
20 There are no winners here. There are losers on both sides.
21 The loses are certain to Minor the young lady
22 that's involved, and certainly involves my client.

23 Your Honor, you heard the testimony today where he said
24 that she told him that she was 18. That's no excuse. We
25 know what the law says, but, in his mind, he didn't know

1 what the law said at that time. There was no harm
2 intentional to this young lady. You heard her testify today
3 that she still loves this gentleman, and she still cares for
4 him.

5 Now, she is a 15 year old and we aren't disputing that.
6 But, Your Honor, at no time was this any intent of this man
7 to coerce this young lady into having a relationship with
8 him.

9 As you heard the testimony, she initiated the phone
10 conversations to my client. She initiated this. I truly
11 believe had he really knew what her real age was that he
12 wouldn't have done this as he testified and that's all I'm
13 saying, Your Honor, is we're asking for some leniency here
14 today because, again, as the mother already said, this is
15 tragic.

16 As I said earlier, there are no winners here. They
17 didn't make it today because it took their family through so
18 much. My client, he did not win here today because he's
19 going to have to pay a penalty for this situation. Once
20 again, this started when this young lady reached out to him.
21 He didn't call her. She reached out to him and said, you
22 know, I want to talk to you and when he asked her how old
23 she was, she said, she said she was 18. Along those lines,
24 Your Honor, I'm just asking for leniency on my client's
25 behalf.

1 Thank you.

2 THE COURT: Would your client like to say anything?

3 MR. HASTIE: Yes, sir, he certainly would.

4 THE COURT: Yes, sir.

5 DEFENDANT: Your Honor, first of all, I would like to
6 apologize for all that's gone on today. Also I would like
7 to say, again, that I feel like although I did commit sexual
8 battery with **Minor** and she was 15, I was unaware that she
9 was 15 years old. She was 18, Your Honor. I feel like even
10 in the, the Bible it says we will not be punished for what
11 we do not know, and I'm sitting here telling you she told me
12 she was 18 and I did not know.

13 No one ever got in contact with me and told me that she
14 was 15. I feel like once I have prison time for what, for
15 something I did do, but also I'm saying please have leniency
16 on me because I feel like I didn't know. I didn't know.

17 THE COURT: Anything further?

18 DEFENDANT: Sir?

19 THE COURT: Anything further?

20 DEFENDANT: No, sir.

21 THE COURT: You may be seated at this time.

22 (Defendant complies.)

23 THE COURT: Has he been in jail on this charge?

24 MR. HASTIE: On this charge?

25 THE COURT: Has he been out on bail?

1 MR. HASTIE: No, sir, he's in jail.

2 SOLICITOR SPRATLIN: Your Honor, if I may, that's
3 incorrect. He's currently in jail on an armed robbery
4 charge he has pending as well as an unlawful pistol charge
5 he has pending, and he was released on bail and actually had
6 to go off the bond hearing last Wednesday with this
7 defendant. Date of arrest is August 7, 2009. He was
8 released from jail on October 7, 2009, on a \$10,000 surety
9 bond by Anderson Bail Bonding. It was only after this new
10 armed robbery arrest and new pistol arrest he went to jail.

11 THE COURT: So, he was out on bail?

12 SOLICITOR SPRATLIN: Yes, sir, Your Honor.

13 THE COURT: The defendant will now stand.

14 (Defendant complies.)

15 THE COURT: Mr. Wells, the jury heard your case. I
16 listened to the evidence. I, as well as the jury, feel that
17 it seems from the testimony that you were almost, you were a
18 predator in this situation. This is a violent serious
19 crime.

20 You seem to have a problem in the past. This is not
21 your first time in here. I'm going to sentence accordingly.

22 The Sentence of this Court also, because of the nature
23 of the offense, you will be placed on the Sexual Central
24 Registry of Child Abuse and Neglect, and will probably be
25 under lifetime monitoring with that.

1 Sentence of the Court is that you, Wayne Wells, under
2 Indictment 10-GS-43-0377, be committed to the State
3 Department of Corrections for a period of 20 years. This is
4 suspended to 13 years followed by two years of probation.
5 Again, you will be placed on the Central Registry of Child
6 Abuse and Neglect according to South Carolina Code
7 17-25-135. I'm not giving you credit for time served
8 because he was not in jail on this.

9 That's the Sentence of the Court.

10 Thank you.

11 SOLICITOR SPRATLIN: Thank you, Your Honor.

12 (WHEREUPON, the note from the jury was marked as
13 Court's Exhibit No. 1 for identification purposes only at
14 this time.)

15

16 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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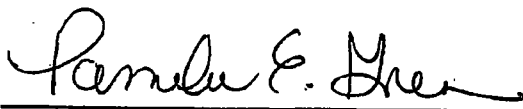
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 Court of General Sessions for Sumter County, South Carolina, on the 8th and 9th day of November, 2010, as reported by Priscilla Nay and transcribed by myself to the best of my ability.

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

July 5th, 2011



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE WELLS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in overruling trial counsel's objection to hearsay testimony provided by Victim concerning how and when Appellant learned of Victim's actual age.

STATEMENT OF THE CASE

The Sumter County Grand Jury indicted Appellant for criminal sexual conduct with a minor in the second degree. R. 209, Indictment. The state called the case to trial on November 8, 2010. Marvin Spratlin prosecuted the case, and Calvin Hastie represented Appellant. The jury found Appellant guilty as charged. R. 199 lines 19-25. In addition to ordering the placement of Appellant on the Sexual Central Registry of Child Abuse and Neglect, the Honorable William J. Young sentenced Appellant to imprisonment for a period of twenty years. R. 206 line 22 – R. 207 line 3. Judge Young then suspended the sentence to thirteen years followed by two years of probation. R. 207 lines 3-4.

Appellant filed a timely notice of appeal.

ARGUMENT

The trial court erred in overruling trial counsel's objection to hearsay testimony provided by Victim concerning how and when Appellant learned of Victim's actual age.

The state called Victim to testify during its case in chief. R. 32 line 24. Victim testified that she told Appellant she was eighteen-years old during her first conversation with him. R. 36 lines 14-17; R. 39 lines 6-8. Victim testified she did this at the behest of Appellant's sister. R. 36 lines 10-17; R. 38 line 25 – R. 39 line 1. According to Victim, Appellant would not have talked to her had she told him her real age of fifteen. R. 55 lines 13-24. Victim and Appellant did not see or speak to each other for some time after this initial telephone conversation. R. 57 lines 12-15.

Victim testified when she saw Appellant during the summer months of 2009, he informed her that he knew her real age because her friend had informed him of her age. R. 41 lines 8-9. Appellant objected. R. 41 line 10. The court sustained the objection and ordered the jury to disregard the answer. R. 41 lines 11-14. The prosecutor then asked what Appellant said to her about her age. R. 41 line 16. Victim answered that Appellant said he knew the age she gave him was not true because Appellant's friend told him. R. 41 lines 17-21. The prosecutor asked when Victim told Appellant her real age. R. 41 lines 22-23. Victim responded that after Appellant said her friend told him Victim's age, Victim asked what age the friend said and began to explain his answer. R. 41 lines 24-25. Appellant immediately objected. R. 42 line 1. The prosecutor countered "it is the statement of [Appellant]." R. 42 lines 2-3. Overruling the objection, the trial judge stated "It is his statement she's talking about." R. 42 lines 4-5. Victim then responded Appellant said Victim's friend told him Victim was fifteen. Victim then told Appellant that was her true

age. R. 42 lines 7-11. According to Victim, the two then began a sexual relationship. R. 42 line 23; R. 43 lines 11-13; R. 44 lines 18-20; R. 45 lines 24-25; R. 46 lines 5-7.

The state also called Brenetta O. to testify. R. 67 line 1. Brenetta testified that she and Victim were friends. R. 68 lines 3-6. Brenetta testified that she spoke to Appellant by phone. R. 69 lines 1-3. During her conversation with Appellant, Brenetta told him that Victim was only fourteen. R. 69 lines 4-11. Brenetta estimated this phone conversation took place sometime in 2008. R. 70 line 25 – R. 71 line 2. Although Brenetta was unable to provide an estimate of the date of her conversation with Appellant, she ultimately said she called Appellant the same day Appellant and Victim first spoke. R. 74 lines 4-13.

The trial judge erred in admitting the hearsay within hearsay testimony of Victim regarding how and when Appellant allegedly learned Victim's real age. The trial judge initially sustained Appellant's objection and ordered the jury to disregard the answer when Appellant testified to hearsay testimony concerning this subject. However, the trial judge admitted the testimony when offered a second time because it was a statement by Appellant. The trial judge apparently permitted the testimony as an admission by a party-opponent under Rule 801(d)(2)(A), which provides that a statement that is offered against a party and is the party's own statement is not hearsay. Rule 801(d)(2)(A), SCRE. Nevertheless, the trial judge failed to engage in the proper analysis because the testimony offered by Victim was hearsay within hearsay requiring the court to determine all parts of the combined statements were admissible pursuant to Rule 805, SCRE.

Victim testified as to what Appellant allegedly said Victim's friend said. In South Carolina, "[h]earsay included within hearsay is not excluded if each part of the combined

statements conforms with an exception to the hearsay rule provided" in the South Carolina Rules of Evidence. Rule 805, SCRE. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(b), SCRE. In State v. Burroughs, 328 S.C. 489, 496, 492 S.E.2d 408, 411 (Ct. App. 1997), the prosecution introduced evidence from an officer and a nurse that the victim said the defendant asked for a hug prior to raping the victim. This Court held the testimony was "double hearsay, or hearsay within hearsay" requiring all parts to be admissible. Id. at 498 n. 5, 492 S.E.2d at 412 n. 5. Although the defendant's statement was admissible pursuant to Rule 801(d)(2)(A) as not hearsay because it was made by a party opponent, this Court held the determination still must be made regarding the admissibility of the victim's statement. Id. In the instant case, the statements are inverted from those presented in Burroughs. Nevertheless, the same analysis applies. Victim's testimony regarding the statement allegedly made by Victim's friend to Appellant is hearsay as it was made by someone other than the declarant while testifying and offered to prove the truth of the matter asserted - that Appellant knew Victim's real age before the sexual relationship began. The question, then, is whether the statement by Victim's friend to Appellant falls within any of the hearsay exceptions.

The statement allegedly made by Victim's friend to Appellant was that Victim's age was fifteen. The declarant, Appellant's friend, was available, and in fact, did testify. Therefore, the appropriate starting point is Rule 803 of the South Carolina Rules of Evidence. Without question none of the exceptions to hearsay found in Rule 803, SCRE apply. Therefore, the trial judge erroneously admitted the testimony by Victim as to the

hearsay within hearsay regarding Appellant stating Victim's friend informed Appellant of Victim's age.

Next, this Court must determine whether the introduction of the inadmissible hearsay within hearsay prejudiced Appellant. See State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006); State v. Mitchell, 286 S.C. 572, 573, 336, S.E.2d, 150, 150-151 (1985). An error that could not have reasonably affected the result of the trial is harmless. Mitchell, 286 S.C. at 573, 336 S.E.2d at 151. The improper admission of hearsay evidence is harmless if the evidence is cumulative to other evidence. State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006). In Burroughs, 328 S.C. at 502-503, 492 S.E.2d at 414-415, this Court held the introduction of the double hearsay testimony by the nurse and police officer prejudiced the defendant where the testimony served to corroborate the victim's story and the prosecution presented the testimony of three others who stated the defendant sexually assaulted them after asking for a hug. At first blush, the improperly admitted hearsay presented by Victim appears cumulative to the testimony of Brenetta, but it is not. Brenetta testified that she spoke to Appellant by phone. There was no evidence that she was familiar with Appellant's voice and knew that she was speaking with him. There was no evidence Brenetta had ever called Appellant at the number she used that day. Thus, Victim's testimony that Appellant knew her actual age from her friend prior to their sexual relationship was not cumulative to Brenetta's testimony that she advised someone she believed to be Appellant by phone of Victim's true age.

CONCLUSION

Appellant respectfully requests this Court to reverse his conviction and sentence in light of the trial judge's erroneous admission of hearsay within hearsay by the Victim concerning the ultimate issue in the case – Appellant's knowledge of Victim's age.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of January, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE WELLS,

APPELLANT

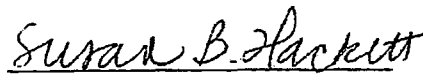
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Wayne Wells states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on November 9, 2010, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Wayne Wells.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 31st day of January, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 31st, 2012

Susan B. Hackett

Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE WELLS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a true copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Wayne Wells, #314139 at Lieber Correctional Institution, this 31st day of January, 2012.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of January, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEAL

ANDERS RESPONSE BRIEF

Appeal from Sumter County

William Jeffrey Young, Circuit court Judge

The State,

Respondent

v.

Wayne Wells Jr. ,

Appellant

FINAL ANDERS BRIEF OF APPELLANTWayne Wells
AppellantRECEIVED
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Statement of Issue on Appeal

The trial court erred by violating the Appellant 6th and 14th Amendment Constitutional Rights by giving a prejudicial and erroneous statement to the jury not allowing them to consider the Appellant's reasonable mistake as to the victim's age.

The trial court erred by refusing to instruct jury on the statutory mitigating circumstances contained in SC Code Ann. § 16-3-655 (D)(2)(B) criminal law (2009)

Trial court erred when motion for direct verdict was denied when no criminal intention was involved to find appellant guilty beyond a reasonable doubt.

STATEMENT OF THE CASE

The Sumter County Grand Jury indicted Appellant for criminal sexual conduct with a minor in the second degree. R.* Indictment. The state called the case to trial on November 8, 2010. Marvin Spratlin prosecuted the case, and Calvin Hastie represented Appellant. The jury found Appellant guilty as charged. Tr. 199 lines 19-25. In addition, to ordering the placement of Appellant on the Sexual Central Registry of Child Abuse and Neglect, the Honorable William J. Young sentenced Appellant to imprisonment for a period of twenty years. Tr. 206 line 22 – Tr. 207 line 3. Judge Young then suspended the sentence to thirteen years followed by two years of probation. Tr. 207 lines 3-4.

Appellant filed a timely notice of appeal.

Arguments

The trial court erred by violating the Appellant's 6th and 4th Amendment Constitutional Rights by giving a prejudice and erroneous statement to the jury not allowing them to consider the Appellant's reasonable mistake as to the victim's age.

The trial court erred by refusing to instruct jury on the statutory mitigating circumstances contained in SC Code Ann. § 16-3-655 (D)(2)(B)(V) criminal law (2009).

Trial court erred when motion of direct verdict was denied when no criminal intention was involved to find Appellant guilty beyond a reasonable doubt.

The constitution requires that a criminal defendant be given the opportunity to present evidence that is relevant, material, and favorable to his defense.

The defendant has a constitutional right to present admissible evidence that is prohibitive of his innocence by showing the government's failure to prove the offense charged by establishing a defense, or by attacking the credibility or fair mindedness of a witness. U.S. v Saunder, 943 F.2d 388 (4th cir) (1991). See also, Olden v Kentucky, 488 US. 227, 109 S.ct. 480, 102 L.E2d 513 (1988).

The victim testified that she told Appellant she was eighteen years old during her first conversation with him. R. 36 lines 14-17; R.39 lines 6-8. victim testified she did this a the behest of Appellant's sister. R. 36 lines 10-17; R. 38 line 25- R. 39 line 1.

According to victim, Appellant would not have talked to her had she told him her real age of fifteen. R. 55 lines 13-24. which shows the victim's capacity of judgment and discretion. US v Ransom, 942 F.2d 775 (10th cir) (1991).

Id. At 775 n.3, Ransom argues that the statue denies him equal protection of the law because it's arbitrarily denies him a defense of mistake of age while providing such a

defense to those accused of engaging in sexual relations with minors twelve, which is 14 in S.C., years or older. In Ransom the history of Blackstone indicted by the year 1275 the law in England prohibited carnally knowing and abusing any women child under the age of ten years in which case the consent or nonconsent is immaterial as by reason of her tender years she is incapable of judgment and discretion.

The Appellant testified that he was told by the victim that she was eighteen. R. 148 lines 16-17; R. 154 lines 3-5; R. 158 lines 23-24. The Appellant never considered the victims statement regarding her age to be untrue. R. 159 lines 18-20. The S.C. code Ann. 16-3-830 give affirmative defense to a prosecution that the defendant in good faith, reasonably believed that the person who engaged in the sexual conduct was 18 years of age or older. In sexual abuse of minor or ward it is a defense which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had obtain the age of 18 years.

Legislative intended whether knowledge and intent are necessary elements of a statutory crime must be determined from the language of the stature, construe in the light of it's purpose and design. State v Jenkins 294 S.E. 2d 44, 278 S.C 219.

The Appellant went to trial and took the stand to present his defense of mistake of age. Appellant was under the deception of the victim and could not knowingly or purposely know that he was committing a crime. The 22 C.J.S. criminal law § 93 states that the mistake of fact may negate the element of a specific intent crime which requires that accused acts be done knowingly or purposely, or recklessly. The jury was instructed and released to deliberate. The jurors sent back two questions, " If the defendant truly believed the victim was eighteen, does that matter, and is ignorance to her age no

excuse?" R. 198 lines 11-13. the trial court answered that if the defendant believed the victim to be eighteen that it does not matter and his ignorance is no excuse. R. 198 lines 14-17. The Appellant mistake was honest, and reasonable about the matter of fact and serried to negate the kind of culpability required for the commission of the offense in which making it a valid defense in which the trail court deprived the Appellant of the right to present a defense in violation of 6th and 14th Amendment.

[2] The trial court erred by refusing to instruct jury on the S.C. code Ann. § 16-3-655 (D)(2)(B)(V) criminal law (2009) statutory matigating circumstances, which would allow the jury to consider the Appellants capacity to appreciate the criminality of his conduct, or his ability to conform his conduct to the requirements of the law. State v Hale 326 S.E.2d 418, 284 S.C 348, Id at 418m 284 S.C 348 n.1. A case will rarely be reversed on ground that trial judge permitted leading question , and then only if there has been a clear abuse of discretion resulting in prejudice to objection party. Id at 418 n.6. Trial judge has a wide discretion in ruling on relevancy of evidence and his decision will be reversed only for clear abuse of discretion resulting in prejudice to objecting party. A defendant has the right to present his version of the facts as well as the prosecutions to the jury so it may decide where the truth lies. Washington v State of Texas 388 US 14, 87.S.Ct. 1920, 18 L.E.2d 1010 (1967). When the jury sent out the two questions, it was clear that they had reasonable doubt. The trial court instructed the jury that he could not have any opinion about the facts in the case, and that facts were solely for the jury to determine. R. 191 lines 1-3. The jury was instructed that they must find the Appellant guilty beyond a reasonable doubt based upon the evidence presented. R. 192 lines 13-16. The trial court defined reasonable doubt as the kind of doubt that would cause a reasonable person to

hesitate to act. R. 192 lines 19-20. The Appellant was under the deception of the victim believing that she was eighteen years old. How could the Appellant have the capacity to appreciate the criminality of his conduct or his ability to conform his conduct to the requirements of the law, contained in S.C. code Ann. § 16-3-655 (D)(2)(B)(V), which would give a reasonable person doubt. The Trial court gave a prejudice opinion, because it went against the Appellant's defense which was clearly evidence as a matter of fact, and was allowed for examining by the jury in the mitigating circumstances. By the bias of the court action the jury reasonable doubt was removed because they were not allowed to consider evidence that the Appellant was acting under ignorance and mistake of fact to the victims age. If the trial court would have allowed the jury to consider the Appellant's belief or consider the conduct of the victim to the extent that such conduct contributed to accused's mistaken belief, the jury would have found the Appellant not guilty.

[3] Appellant asked for direct verdict motion. R. 134 lines 21-22; R. 173 lines 1-3. The trial court denied the motion. R. 137 lines 19-21; R. 173 lines 7-8. The ignorance or mistake of fact will exempt on from criminal responsibility for mistake would be a crime results in the absence of the malice or criminal intention which is generally a essential element of crime as a general rule. See. 22 C.J. S criminal law § 93. The Appellant was acting under the impression that the victim was an adult of eighteen years. If the Appellant participates in a mutual act of sexual intercourse, believing his partner to be beyond the age of consent, with reasonable grounds for such beliefs, where is his criminal intent. People v Ratz 115 Cal. 132. In such circumstances the Appellant has not consciously taken any risk. Instead he has subjectively eliminated the risk by satisfying himself on reasonable evidence that the crime could not be committed.

See People v Hernandez 61 Cal. 2d 529, 39 Cal. Rptr 361. The Appellant mistake of fact was honest and reasonable mistaken belief. The victim testified that she lied about her age. The Appellant's act was not done knowingly, purposely, or recklessly. The Appellant's did not have the capacity to appreciate the criminality of his conduct and if the trial court would had considered the Appellant's intention, See SC code Ann. 1962 § 16-71 (2), (3) that tends to establish intent, and the absence of mistake or accident upon a defendant for prosecution, the trial court would have seen that a direct verdict motion could have been granted.

Conclusion

Appellant respectfully request this court to reverse his conviction and sentence in light of the trial judge's erroneous and prejudice instruction to the jury not allowing them to consider the Appellant's defense of mistake of age and erred when denied the Appellant's request for direct verdict concerning the ultimate in this case. Appellant's knowledge and mistaken belief of the victim's age.

Respectfully Submitted,

Wayne Wells Jr.
Wayne Wells Jr.

Pro.se

This 12th day of April, 2012.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Wayne Wells, Appellant.

Appellate Case No. 2010-178346

Appeal From Sumter County
William Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2012-UP-621
Submitted November 1, 2012 – Filed November 21, 2012

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia;
and Wayne Wells, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Senior Assistant Deputy
Attorney General Salley W. Elliott, all of Columbia, for
Respondent.

PER CURIAM: Dismissed after consideration of appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**RECEIVED**

DEC 10 2012

ATTORNEY GENERALS *Case 6*
OFFICE**The South Carolina Court of Appeals**JENNY ABBOTT KITCHINGS
CLERKV. CLAIRE ALLEN
DEPUTY CLERKPOST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 07, 2012

The Honorable James C. Campbell
141 N Main St Rm 308
Sumter SC 29150-4965**REMITTITUR**Re: The State v. Wells, Wayne
Lower Court Case No. 2010GS4300337
Appellate Case No. 2010-178346

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny Abbott Kitchings".
CLERKcc: Salley W. Elliott
Susan Barber Hackett

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

County of Sumter

2013 APR 18 PM 1:16

IN THE COURT OF COMMON PLEAS

Wayne Wells Jr. 314139

JAMES O. CAMPBELL

CLERK OF COURT

2013-CP-43-

675

Full name and prison number (if any) of Applicant

CERTIFIED TRUE COPY
OF ORIGINAL FILE

v.

State of South Carolina

Barbara Shaper

APPLICATION FOR

DEPUTY CLERK OF COURT

SUMTER COUNTY

SOUTH CAROLINA

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 Turberville Correctional Institution
2. Name and location of Court which imposed sentence Sumter County Court of General Session
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-43-00379 337
 - (b) Criminal Sexual Conduct w/minor 2nd

RECEIVED

APR 26 2013

Referred to

Harriagan /dm

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 9th 2010
- (b) 20 years suspended to 13 years w/ 2 years probation
- (c) With life-time registration as Sex Offender Act.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty a jury found 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. State of SC in the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Court of Appeals dismissed my appeal
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 27, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Rule Canon 3B(5), LJC, Rule 501, SCACR
- (b) 6th Amendment
- (c) 14th Amendment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) A judge shall perform judicial duties without bias or prejudice.
- (b) Trial counselor was ineffective.
- (c) Due process was violated deprive Appellant of fair trial. d
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. _____

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?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Violation of Appellant's 6th Amendment

ii. Violation of Appellant's 14th Amendment

iii. Trial judge's erroneous and prejudicial instruction to jury

(b) the proceedings in which each ground was raised:

i. Court of Appeals

ii. Court of Appeals

iii. Court of Appeals

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) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Public Defender Calvin Hastie
- (c) your sentencing? Public Defender Calvin Hastie
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Susan B. Hackett
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Calvin Hastie, 7 East Hampton Avenue, Sumter, SC 29150
 - ii. Susan Hackett, P.O. Box 11589, Columbia, SC 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Calvin Hastie represented Appellant at Preliminary Hearing and Trial
 - ii. Susan Hackett represented Appellant at Court of Appeals
 - iii. _____

19. State clearly the relief you seek in filing this application:

Appellant is requesting the court to reverse his sentence and conviction

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

RECORDED

VERIFICATION

2013-CP-43-675

County of Sumter

2013 APR 18 PM 11:19

I, James C. Campbell, being duly sworn upon my oath, depose and swear that I have subscribed to the foregoing application; that I know the contents therein, and 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.

Wayne Wells Jr

SWORN to and subscribed before me this 17day of April, 2013.

Emily Holt (L.S.)
Notary Public

My Commission Expires: 4-27-2013

2013-CP-43-675

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

RECORDED
2013 APR 18 PM 1:18
JAMES C. CARR
CLERK OF PROBATE
AND VICE CHIEF CLERK
SOUTH CAROLINA
COUNTY, S.C.

I, WWS, 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.

Wayne Wells Jr

Applicant

SWORN or affirmed to and subscribed before me this
17 day of April, 2013.

Emily H. H.
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Sumter)

RECORDED

2013 APR 18 PM 1:15

JAMES CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
Sumter JUDICIAL CIRCUIT

Wayne Wells Jr. 314139

Petitioner
 vs.

CASE # 2010-65-43-00377

STATE OF SOUTH CAROLINA,
 RESPONDENT

CERTIFICATE OF MAILING

I CERTIFY THAT ON THE 17 DAY OF April, 2013,
 I served a copy of the Clerk of Courts in the above-
 referenced matter upon P.C.B. Application by depositing
 same in the U.S. Mail in an envelope with sufficient postage
 affixed thereto for first class delivery, addressed as
 follows:

Clerk of Court

141 North Main St.

Sumter SC 29150

CLERK OF COURT FOR Sumter COUNTY, S.C.

BY: Wayne Wells Jr.

Dated: _____

At: _____

SWORN to and subscribed before me this
17th day of April, 2013.
James Campbell (L.S.)
 Notary Public for South Carolina

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-43-675

Wayne Wells, Jr., #314139,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief filed April 18, 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 Sumter County Clerk of Court. The Applicant was true billed indicted at the October 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor-Second Degree (2010-GS-43-337). Calvin Hastie, Esquire, represented him. Applicant proceeded to a jury trial and found guilty November 9, 2010. The Honorable W. Jeffrey Young sentenced Applicant to twenty years imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf by Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Wells, Op. No. 2012-UP-621 (Ct. App. filed November 21, 2012). The Remittitur was issued on December 10, 2012.

Attached herewith and incorporated herein by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, records from the South Carolina Department of Corrections, appellate records, and the transcript. The Respondent reserves the

right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Rule Canon 3B(5). C.S.C. Rule 501, SCACR
 - a. "A judge shall perform judicial duties without bias or prejudice."
2. Ineffective assistance of counsel
3. Due Process Violation
 - a. "Due process was violated deprive Applicant of fair trial."
 - b. "6th Amendment."
 - c. "14th Amendment."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent submits that the first allegation should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss this application for post-conviction relief.

IV.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of 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).

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held.

Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

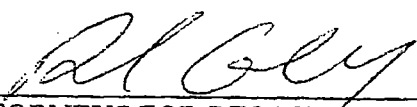
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 13th, 2013

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

WAYNE WELLS, JR., 314139,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-43-675

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Fulton Casey Dale Cornwell, Esquire
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, SC 29250

DATED this 13th day of June, 2013.


Caroline Kaiser, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SUMTER) COURT OF COMMON PLEAS
3) No. 2015 CP 43 1008

4 WAYNE WELLS, JR.)
5 Petitioner)
6 versus) TRANSCRIPT OF RECORD
7)
8 STATE OF SOUTH CAROLINA)

9
10 Sumter, South Carolina
11 May 29, 2014

12 B E F O R E :

13 HONORABLE R. FERRELL COTHRAN, JR., Judge

14
15 A P P E A R A N C E S:

16 For the State DANIEL GOURLEY, ESQ
Assistant Attorney General

17 For the Petitioner: TIMOTHY GRIFFITH, Esq.

18
19 Reporter Present: DAPHNE D. HELMS

20
21
22 HARRIET P. BENNETT
Reporter, S. C. Court Administration
23 46 Regency Oaks Drive
Summerville, S. C. 29485
24
25

I N D E X

DIRECT-REDIRECT CROSS-RECROSS

1

2

3

WAYNE WELLS

4

By Mr. Griffith

5-15

5

By Mr. Gourley

12-15

6

CAMERON HASTIE

7

By Mr. Gourley

16-24

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By Mr. Griffith

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EXHIBITS

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3 NOTE: No Exhibits were proffered or marked by
4 either party to the action.

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1 (The within matter came before the Court for hearing
2 on May 29, 2014)

3 MR. GOURLEY: Your Honor, this is Wayne Wells versus
4 the State of South Carolina, Indictment Number 2013 GS 43
5 675.

6 He is presently confined in the Department of Correc-
7 tions for South Carolina. He was indicted in the October
8 2010 Term of the Sumter County Grand Jury for criminal
9 sexual conduct with a minor, second degree.

10 Mr. Hastie represented him. He was found guilty on
11 November 9, 2010, at a jury trial. He was sentenced to
12 (Inaudible).

13 He filed an appeal and the South Carolina Court of
14 Appeals dismissed the appeal.

15 Remittitur was issued on December 10, 2012, and he
16 filed an application for post-conviction relief alleging
17 ineffective assistance of counsel and due process viola-
18 tion.

19 Return was filed on June 13, 2013, and the case is
20 before the Court for hearing, represented by Tim Griffith.

21 THE COURT: Okay.

22 (Brief pause in the proceeding)

23 MR. GRIFFITH: We'd call Mr. Wells to the stand,
24 Your Honor.

25 THE COURT: Okay.

1 WAYNE WELLS, being duly sworn,
2 testified as follows:

3 CLERK: State your name, sir, and spell your last for
4 the record.

5 WITNESS: Wayne Wells, W E L L S.

6 DIRECT EXAMINATION

7 BY MR. GRIFFITH:

8 Q. How you doing, Mr. Wells?

9 A. All right.

10 Q. Do you see your attorney from your trial here in the
11 Courtroom?

12 A. My attorney at the trial?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Can you state his name for the record?

16 A. Cameron Hastie.

17 Q. How much did you talk with Mr. Hastie before you got
18 in the system?

19 A. About five or ten years at the time.

20 Q. How many times did you meet with him to discuss your
21 case in chief?

22 A. Once.

23 Q. You say you only met with him once before?

24 A. Yes, sir.

25 Q. And in that meeting did you discuss trial strategy

W. WELLS ON DIRECT

1 and things of that nature?

2 A. I talked to him about fifteen minutes but not about
3 my trial strategy, no, sir.

4 Q. Did he talk to you about the crime you were charged
5 with and explain to you the maximum penalty; things of
6 that nature?

7 A. We discussed the crime but the maximum penalty we
8 did not discuss.

9 Q. Did you know what the maximum was before you went to
10 trial?

11 A. Yes, sir.

12 Q. And when you -- did you understand the case that was
13 against you and the crime you were charged with?

14 A. Yes, sir.

15 Q. So you had some understanding about the case against
16 you?

17 A. You mean, the charge or . . .

18 Q. Yeah. The evidence that was going to be presented
19 against you?

20 A. Yes, sir.

21 Q. And before you went to trial, did you discuss any
22 offers by the State?

23 A. Before I went to trial there was -- the Solicitor
24 did offer two different pleas.

25 Q. You received two offers to plead?

W. WELLS ON DIRECT

1 A. Yes, sir.

2 Q. Did you discuss those plea offers with your attorney
3 before trial?

4 A. No, sir.

5 Q. You did not?

6 A. No, sir.

7 Q. And do you remember or recall what those offers were?

8 A. One was for ten years and another one was for seven
9 years.

10 Q. And do you remember what the reason was for not ac-
11 cepting either of those offers?

12 A. Well, I accepted one but then when that was taken
13 to the Judge he refused to accept that offer.

14 Q. Which offer was that?

15 A. The seven years.

16 Q. Did you actually go in front of a Judge and try to
17 take the plea?

18 A. No, sir. We didn't go in front of him. They said
19 the Judge made that statement that he wouldn't take the
20 seven years. It was stated in Chambers.

21 MR. GRIFFITH: Beg the Court's indulgence.

22 (Brief pause)

23 BY MR. GRIFFITH:

24 Q. Let me just kind of fast forward to the trial.

25 You say you knew what you could receive before you

W. WELLS ON DIRECT

1 went to trial?

2 A. Yes, sir.

3 Q. So did you discuss the possible penalty before the
4 trial?

5 A. We didn't discuss it.

6 Q. And you say you only saw him once before you went to
7 trial?

8 A. Yes, sir.

9 Q. But you knew the possible penalty?

10 A. Yes.

11 Q. But you didn't discuss the possible penalty the one
12 time you met with him?

13 A. We didn't discuss it but I told him I knew. It was a
14 (inaudible).

15 REPORTER: What was that?

16 WITNESS: With respect to age, it was all a fib.

17 BY MR. GRIFFITH:

18 Q. Can you explain what you mean when you say that?

19 A. Well, because she deceived me and made me believe she
20 was eighteen, the victim, when she was actually fifteen.
21 Since it was a lie, I didn't feel like I should be prose-
22 cuted.

23 What I'm saying is I didn't know she was fifteen un-
24 til the time of trial.

25 Q. And Mr. Hastie was aware that was your position all

W. WELLS ON DIRECT

1 along as far as your defense?

2 A. Yes, sir.

3 Q. And were you able to present this defense at trial?

4 A. Yes, sir.

5 Q. Were you able to get on the stand and testify as to
6 that?

7 A. Yes, sir.

8 Q. Did Mr. Hastie present this defense at trial?

9 A. He presented it in his closing argument. Yes, sir.
10 In his opening and closing argument.

11 Q. His opening and closing?

12 A. Yes, sir.

13 Q. All right, and your case went to the jury and they
14 deliberated, and were there any incidents during the de-
15 liberation that happened?

16 A. Yes, sir.

17 Q. Please explain that, what happened?

18 A. Well, after the jury went out to deliberate, they
19 came back in with some questions, and they asked, if the
20 Defendant believed the victim was eighteen, does that
21 matter and is ignorance of the age any excuse.

22 Q. And do you remember the Judge's response in regard to
23 the jury's questions?

24 A. Uh, I'm not sure what you mean.

25 Q. They had a question for the Judge when they came out?

W. WELLS ON DIRECT

1 A. Yes, sir.

2 Q. And so when they asked him the questions, he told
3 them what?

4 A. He answered and said it was according to law.

5 Q. So he answered and it was according to law?

6 A. Yes, sir.

7 Q. And at that time did you say anything to your lawyer
8 or mention any problems you had with his instructions?

9 A. Yes, sir.

10 Q. Okay, and did your lawyer object to anything or at
11 that time suggest any instructions to the jury -- to the
12 Judge to give to the jury?

13 A. No, sir.

14 Q. When his instructions were given to the jury, did
15 your lawyer ^{before they deliberated} make any objections to the jury instructions?

16 A. No, sir.

17 Q. And during that time were you able to talk to your
18 attorney about the instructions that the Judge had given
19 to the jury?

20 A. Before or after?

21 Q. Before the jury went to deliberate?

22 A. No, sir.

23 Q. Did you understand the instructions the Judge gave
24 to the jury?

25 A. I understand the instructions but we did not discuss

W. WELLS ON DIRECT

1 it.

2 Q. Either before or after they were given?

3 A. No, sir.

4 MR. GRIFFITH: If I may have a moment?

5 (Brief pause in proceeding)

6 BY MR. GRIFFITH:

7 Q. After your conviction, did you appeal your conviction?

9 A. Yes, sir.

10 Q. And what was the result of that appeal?

11 A. My direct appeal was dismissed.

12 Q. All right, and after that time you filed PCR based
13 on the ground of ineffective assistance of counsel?

14 A. Yes, sir.

15 Q. And a ground for your PCR was that your attorney did
16 not object to the instructions given to the jury. Is
17 that correct, sir?

18 A. Yes, sir.

19 Q. That he didn't object to what the Judge told the
20 jury in answer to their question, or that he didn't object
21 to the Judge's instruction as to what the law means?

22 A. That he didn't object to the first one, yes, sir.

23 Q. What do you believe he should have done?

24 A. I believe that my attorney should have objected to
25 the Court's instructions because that was my belief and

W. WELLS ON DIRECT

1 my whole theory of my defense and that should have gone
2 to the jury.

3 Because I came to Court and admitted to the Judge and
4 offered the fib as my justification for the Judge to con-
5 sider before they find me guilty or innocent, and my at-
6 torney was aware of this, but he still failed to object
7 to the jury charges after he basically stated that, no, I
8 could not confer that defense.

9 Q. All right, no further questions.

10 Please answer any questions that the Attorney General
11 may have.

12 A. Yes, sir.

13 THE COURT: Mr. Gourley.

14 CROSS EXAMINATION

15 BY MR. GOURLEY:

16 Q. Hello, Mr. Wells.

17 A. How you doing?

18 Q. You only met with your lawyer once?

19 A. I met with him twice, once at the County Jail and
20 once at Court.

21 Q. Did you all go over the evidence and stuff like that?

22 A. Yes, sir.

23 Q. Okay, and you all talked about a defense in your
24 case? A defense of mistake?

25 A. We talked about the facts.

W. WELLS ON CROSS

1 Q. Did you all talk about a defense of mistake?

2 A. A defense of mistake -- a defense of mistake of the
3 age because of the fib.

4 Q. And did you and your attorney offer any other defenses,
5 anything like that?

6 A. No, sir.

7 Q. That's as far as it got?

8 A. Yes, sir.

9 Q. Did you give him the names of any witnesses or any-
10 thing like that?

11 A. No, sir.

12 Q. Did you give him any other leads?

13 A. No, sir.

14 Q. You testified in your trial, right?

15 A. Yes, sir.

16 Q. And did you testify from the stand that you and the
17 victim had a boyfriend-girlfriend type relationship?

18 A. Yes, sir.

19 Q. And as far as you were aware, she was eighteen?

20 A. Yes, sir.

21 Q. Okay, and you would visit in the early morning
22 hours?

23 A. . . .

24 Q. One o'clock, two o'clock, three o'clock in the morn-
25 ing?

W. WELLS ON CROSS

1 A. Yes, sir.

2 Q. And she lived with her parents, right?

3 A. Yes, sir.

4 Q. And as I understand it, you apologized for what you
5 had done?

6 A. Yes, sir.

7 Q. And, again, you admitted that you committed a sexual
8 battery with the victim when she was fifteen? Correct?

9 A. Yes, sir.

10 Q. Now, regarding the plea offers, you stated there
11 were two plea offers made?

12 A. Yes, sir.

13 Q. Ten years and seven years?

14 A. Yes, sir.

15 Q. And did you discuss these with your attorney?

16 A. No, sir.

17 Q. Then how did you know about the plea offers?

18 A. Because he brought me the plea offers and I told him
19 I would sign one of them, but then he said that the Judge
20 said that he wasn't going to accept that plea.

21 Q. So obviously you had some kind of discussion about
22 the plea offers? At least the one for seven?

23 A. Yes, sir.

24 Q. Okay.

25 MR. GOURLEY: Beg the Court's indulgence.

W. WELLS ON CROSS

1 (Brief pause in proceeding)

2 MR. GOURLEY: That's all. Thank you, Judge.

3 THE COURT: Anything further?

4 MR. GOURLEY: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. GRIFFITH:

7 Q. You did take the stand, is that correct?

8 A. Yes, sir.

9 Q. And when you took the stand, you testified you
10 thought the victim was over the age of eighteen, is that
11 correct?

12 A. Yes, sir.

13 Q. And is it your position that the entire time that
14 you thought the victim was of age, is that correct?

15 A. Yes, sir.

16 Q. I think you testified during the trial too, is that
17 correct?

18 A. Yes, sir.

19 RECROSS EXAMINATION

20 BY MR. GOURLEY:

21 Q. Did you testify she told you she was fifteen?

22 A. No, sir.

23 Q. You did not?

24 A. No, sir.

25 Q. Hold on one second.

W.WELLS ON RECROSS

- 1 (Brief pause in proceeding)
- 2 BY MR. GOURLEY:
- 3 Q. Now I'm turning to page 42 of the transcript.
- 4 A. Okay.
- 5 Q. Read lines six through 11 for me.
- 6 A. Yes, sir. Question, what did he say?
- 7 He said he had always known how old I was so then I asked
- 8 him -- I said -- and she said I was fifteen.
- 9 No, he told me -- he told her that I was fifteen be-
- 10 cause I wanted to be sure she told you the right thing.
- 11 So he said, yes, and I said that was true because I
- 12 was fifteen at that time.
- 13 That is Miss Ross.
- 14 Q. So the victim did state that you thought she was
- 15 fifteen, right?
- 16 A. No, that transcript said that she did not admit that.
- 17 Q. I have no further questions.
- 18 THE COURT: All right. Thank you, Mr. Wells.
- 19 You may leave the stand.
- 20 (Witness excused from stand)
- 21 MR. GRIFFITH: We have nothing further.
- 22 MR. GOURLEY: Your Honor, we'd call Mr. Hastie to
- 23 the stand, please.
- 24 THE COURT: All right.
- 25 CAMERON HASTIE, being duly

C. HASTIE ON DIRECT

1 sworn, testified as follows:

2 CLERK: State your name, please.

3 WITNESS: Cameron Hastie.

4 DIRECT EXAMINATION

5 BY MR. GOURLEY:

6 Q. Good morning, Mr. Hastie.

7 A. Good morning.

8 CLERK: State your name again and spell your last
9 for the record.

10 WITNESS: Cameron Hastie, H A S T I E

11 Q. How long have you been practicing law, Mr. Hastie?

12 A. Sixteen years.

13 Q. Were you appointed or retained in this case?

14 A. Appointed.

15 Q. How many times did you meet with him prior to the
16 trial?

17 A. I don't remember the exact number, but several times
18 at the jail prior to the trial.

19 Q. Did you file for the evidence?

20 A. Yes, I did.

21 Q. And did you all discuss the evidence in the case?

22 A. Yes, we did.

23 Q. Did you explain to him the elements of the charges
24 he was facing?

25 A. Yes, I did.

C. HASTIE ON DIRECT

1 Q. Did you all discuss any kind of a defense?

2 A. Yes, we did. His version tended to change from
3 conversation to conversation.

4 Q. But you all discussed his possible defenses to the
5 charges he was facing?

6 A. Well, the first time I went out there he had torn a
7 page out of a law book and he wanted us to use mistaken
8 age as his defense.

9 I shared with him that, one, that could not be a de-
10 fense, but that's what he was adamant about.

11 Q. Did you advise him that mistaken age is not a de-
12 fense in South Carolina?

13 A. Yes, I did.

14 Q. Okay. Would you briefly discuss the evidence that
15 you discussed?

16 A. Yes, after the young lady testified and she was their
17 biggest witness -- she said she was fifteen at the time,
18 and there were several that testified that she was fifteen
19 at the time.

20 That's why he would sneak in her windows to get to
21 see her and visit her in the house where her parents were.

22 His defense to me was to say that she was -- even
23 though she was fifteen, she was a big girl. She weighed
24 two hundred pounds and, of course, he weighed about one
25 sixty, I believe.

C. HASTIE ON DIRECT

1 I still shared with him that a young man of that
2 age cannot be having sex with someone who is fifteen,
3 and he wanted to have his day in Court. He wanted to
4 tell his side of the story.

5 I think he believed he could convince the jury, but
6 because of what the rules were that he did not know, you
7 know, that she -- he really and truly thought she was
8 eighteen years of age.

9 Q. Did you believe the State could prove him guilty?

10 A. Yes, merely because of the fact that she was fifteen
11 and he was twenty-five. The evidence -- it was overwhelm-
12 ing.

13 Q. Basically, he was coming to her house?

14 A. Yes, he was.

15 Q. Did he ever give you any potential leads or witnes-
16 ses that could testify in his behalf?

17 A. Yes, he had his brother who he wanted to testify, and
18 I spoke with him prior to trial, and his brother refused
19 to testify because he also had a CSC charge himself.

20 Q. Did you prepare for the trial?

21 A. Yes, I did.

22 Q. And regarding the plea offers, were plea offers made
23 in this case?

24 A. Yes, and I went back to get the file to look at the
25 plea offers because once the case is over we have to turn

C. HASTIE ON DIRECT

1 in all of our records. So I went by there to try to get
2 a copy of the plea offers but I was told I still was not
3 able to, but there were plea offers.

4 Q. When you received plea offers did you relate them
5 to him?

6 A. Of course, yes.

7 Q. And was a plea offer taken to a Judge?

8 A. No, it was not taken before a Judge. Sometimes they
9 like to discuss some matters in the case prior to trial in
10 the Judge's Chamber, but, no, the Judge certainly wouldn't deny
11 the plea offer prior . . .

12 Q. If Mr. Wells would accept the plea offer and pled
13 guilty, you certainly would have been before the Judge
14 for that?

15 A. Yes.

16 Q. And you would have presented it to the Judge for his
17 decision?

18 A. Yes.

19 Q. And regarding to the instructions to the jury, did you
20 have any objections to the charge to the jury by the
21 Judge?

22 A. No, I did not because prior to trial the Judge, as
23 with most Judges, give us a copy of the Judge's instruc-
24 tions.

25 What I do is either share that copy with my client

C. HASTIE ON DIRECT

1 and say, here are the instruction the Judge is going to
2 give to the jury, and I did not see anything to object
3 to there or any issues there.

4 Q. And at the time the jury did come back with a ques-
5 tion regarding whatever the statement was, was age a de-
6 fense or excuse, did you make any objection to the in-
7 structions by the Judge to the jury?

8 A. No, I had no objection to it because the Judge was
9 stating what the law was.

10 MR. GOURLEY: I don't have any further questions,
11 Your Honor. Thank you, Mr. Hastie.

12 THE COURT: All right, you may cross examine.

13 CROSS EXAMINATION

14 BY MR. GRIFFITH:

15 Q. How are you, Mr. Hastie?

16 A. Pretty good... How are you?

17 Q. I just have a few questions for you.

18 A. All right.

19 Q. Did you have conversations with or speak with Mr.
20 Wells more than one time before the trial?

21 A. Yes. As I said, I went up to the jail several times
22 and talked to him about the case. So, yes.

23 I can't say really how many times but I kept him
24 informed of what was going on in his case.

25 Q. And by the time of trial do you think he fully

C. HASTIE ON CROSS

1 understood the nature of the charges against him?

2 A. Yes, I think he understood, but he was just adamant
3 about having his day in Court and telling his story. He
4 was going to be able to tell his story and regardless of
5 what I said or anything I did.

6 Q. And you were aware of what the evidence was the State
7 had against him, and you went over that with him?

8 A. Yes, I did.

9 Q. So you shared that with him?

10 A. Yes, I did.

11 Q. And did you tell him what your opinion was about his
12 defense?

13 A. Yes, I did.

14 Q. Did you agree with it?

15 A. No, I did not.

16 Q. Okay.

17 A. But I told him it was his decision to make and he
18 made the final decision.

19 Q. And does it appear in the transcript in the opening
20 statement that you did present that as far as his posi-
21 tion went, causing there to be an inconsistency?

22 A. As what?

23 Q. Let me read it for you.

24 (Brief pause)

25 BY MR. GRIFFITH:

C. HASTIE ON CROSS

1 Q. You said that was his defense, is that correct, in
2 your opening statement from the transcript?

3 A. His position.

4 Q. And the jury came back and asked a couple of ques-
5 tions about that?

6 A. About what?

7 Q. They asked two questions about whether what the Defen-
8 dant believed about her age was a defense or was an ex-
9 cuse, and the Judge's answer was no.

10 Did you object to that at all?

11 A. No, I did not.

12 Q. And did you speak to your client about that to make
13 sure he understood what was going on in Court?

14 A. I don't show I did but, you know, it's been -- we had
15 conversations between myself and my client, you know. I
16 had said it would be difficult for him to prevail but he
17 wanted to stick with it.

18 Q. You don't recall having a conversation with him about
19 that to make sure he understood what was going on?

20 A. About the age situation?

21 Q. About the age situation, the jury instructions and
22 the question to the Judge?

23 A. Well, we were talking throughout the trial, so I'm
24 sure I did.

25 MR. GRIFFITH: Beg the Court's indulgence.

C. HASTIE ON CROSS

1 (Brief pause in proceeding)

2 BY MR. GRIFFITH:

3 Q. Right before the trial and when this happened, did
4 you ever have a conversation about this mistaken age not
5 being a proper defense?

6 A. Not during the course but once we started the trial
7 he wanted to go to trial to present his side of the story
8 so, no, we did not go much into that during the course
9 of the trial.

10 You know, at the proper time, when you start the
11 trial, you are together at the table, but I don't recall
12 that, but I was real concerned about it even during the
13 trial when he got into his story. I had suggested he not testify.

14 He started by just penetrating with his finger, and
15 I heard that the first time when he took the stand. I
16 think he thought if he said he only penetrated her with
17 his finger that he wouldn't be having sex.

18 I had told him from the beginning that I thought he
19 should not testify but those kind of things just..

20 Q. No further questions.

21 THE COURT: From the State?

22 MR. GOURLEY: If you'll bear with me a minute, Your
23 Honor?

24 THE COURT: Yes, sir.

25 (Brief pause in proceeding)

C. HASTIE ON REDIRECT

1 REDIRECT EXAMINATION

2 BY MR. GOURLEY:

3 Q. Just to clarify, at some point Mr. Wells said what he
4 wanted his defense to be? Is that correct?

5 A. Yes, it is.

6 Q. Even though you told him it was not a defense?

7 A. Yes, he did.

8 Q. And he still wanted to continue with that defense,
9 despite your opinion?

10 A. Yes, he did.

11 Q. No further questions.

12 THE COURT: Thank you, you can step down.

13 (Witness excused from stand)

14 MR. GOURLEY: Your Honor, I have nothing further.

15 THE COURT: Okay. Anything else?

16 MR. GRIFFITH: Nothing further.

17 THE COURT: Okay, I will review the file and let you
18 know my decision.

19 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing Transcript was prepared from the records of
5 Daphne D. Helms to the best of my ability, having been
6 heard in the Court of Common Pleas for Sumter County on
7 May 29, 2014.

8 FURTHER, I certify that I am neither of kin nor of
9 counsel to any party to this matter, nor do I have any
10 interest in the same.

11 May 21, 2016

12 *Harriet P. Bennett*
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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Wayne Wells, Jr., #314139,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2013-CP-43-675
NOTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

RECORDED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 18, 2013. Respondent made its return on June 13, 2013. An evidentiary hearing in to the matter was convened on May 29, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true billed indicted at the October 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor-Second Degree (2010-GS-43-337). Calvin Hastie, Esquire, represented him. Applicant proceeded to a jury trial and found guilty November 9, 2010. The Honorable W. Jeffrey Young sentenced Applicant to a twenty year imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf by Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Wells, Op. No. 2012-UP-621 (Ct. App. filed November 21, 2012). The Remittitur was issued on December 10, 2012.

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Rule Canon 3B(5). C.S.C. Rule 501, SCACR
 - a. "A judge shall perform judicial duties without bias or prejudice."
2. Ineffective assistance of counsel
3. Due Process Violation
 - a. "Due process was violated deprive Applicant of fair trial."
 - b. "6th Amendment."
 - c. "14th Amendment."

During the evidentiary hearing, Applicant only proceeded on an allegation that Trial Counsel was ineffective for failing discuss plea offers, failing to object to judge's answer to the jury's question.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Calvin Hastie, Sr. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant stated he met with Trial Counsel one time for five to ten minutes prior to trial. Applicant stated that he discussed the crime with Trial Counsel. Applicant stated Trial Counsel failed to discuss the maximum penalties. Applicant stated that he reviewed the discovery material with Trial Counsel. Applicant stated that there was a ten year

plea offer and a seven year plea offer. Applicant stated he wanted to accept the seven year plea offer, but Trial Counsel stated that judge would not accept the offer.

Applicant stated that he told Trial Counsel the defense should be "mistake of age." Applicant further stated Trial Counsel argued this defense during opening and closing arguments. Applicant explained that Victim told him she was eighteen years old. Applicant stated he was not aware that she fifteen. Applicant stated that he testified during trial and recalled admitting that he and Victim had a boyfriend/girlfriend relationship. Applicant stated that he would visit the Victim at her parents' house in the early morning hours after getting off work. Applicant recalled admitting that he digitally penetrated the Victim. Applicant recalled apologizing for everything that happened. Applicant further recalled admitting that he committed a sexual battery with the Victim and she was fifteen, but he thought she was eighteen. Applicant further stated Trial Counsel argued this defense during opening and closing arguments.

Applicant stated the jury asked a question regarding whether mistake of age was a defense in South Carolina. Applicant stated Trial Counsel should have objected to the judge answering the question that mistake of age was not a defense. Applicant further stated he did not discuss the jury instruction with Trial Counsel, but he did understand them. Applicant stated that he filed a direct appeal, but his conviction and sentence was affirmed.

Following Applicant's testimony, Trial Counsel was called to testify by the State. Trial Counsel stated that he has been practicing law for fifteen years. Trial Counsel stated he was appointed in this case and met with Applicant several times prior to his trial. Trial Counsel stated he filed for and reviewed all rule 5 and discovery material. Trial Counsel stated he discussed the elements of the offense and what the State was required to prove. Trial Counsel

stated that he reviewed Applicant's version of events. Trial Counsel stated Applicant wanted his brother to testify during trial, but Trial Counsel did not call him because he had a criminal sexual conduct charge as well. Trial Counsel stated he had ample time to prepare for trial.

Trial Counsel stated Applicant was adamant that they present "mistake of age" as a defense. Trial Counsel stated that he thoroughly advised and Applicant fully understood that that mistake of age was not a valid defense in South Carolina. Trial Counsel stated Applicant was adamant about having his day in court and felt that he could convince the jury that he did not know her real age. Trial Counsel stated Applicant wanted to pursue the mistake of age defense over Trial Counsel's advice. Trial Counsel concluded that the final decision was Applicant's and therefore he attempted to argue that Applicant was not aware of Victim's true age. Trial Counsel stated that he did attempt to argue the mistake of age defense in opening and closing.

Trial Counsel characterized the State's evidence as "overwhelming." Specifically, Trial Counsel stated that Victim testified that they had a relationship and Applicant knew she was fifteen. Trial Counsel stated there were various witness testimonies stating Applicant knew Victim's age. Trial Counsel stated Applicant would come through Victim's window in the early morning hours. Trial Counsel stated Applicant was caught by Victim's step father in her bedroom.

Trial Counsel stated that he suggested to Applicant that he not testify, however Applicant testified. Trial Counsel stated he was not aware that Applicant was going to admit to digitally penetrating the Victim while on the stand. Trial Counsel clarified that it was the first time he heard Applicant admit to digitally penetrating the Victim and was completely unaware that he was going to say that while on the stand.

Trial Counsel stated there may have been plea offers, but he could not specifically recall. However, Trial Counsel stated that if there were plea offers he would have relayed them to Applicant. Trial Counsel further stated that if Applicant was willing to accept a plea offer then he would have went before a judge to plead guilty. However, Trial Counsel stated Applicant was adamant about going to trial and presenting his side of the story. Trial Counsel stated there was no offer available at the time of trial.

Trial Counsel stated that he did not object to the trial court's jury instruction because he did not see anything wrong with the jury instruction. Trial Counsel stated he received an advance copy of the jury instruction and reviewed it with Applicant. Trial Counsel further stated he did not object to the judge's answer to the jury's question because there was no objection to be made. Trial Counsel concluded that the judge properly answered the question that ignorance is no excuse in regards to Victim's age.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Counsel was ineffective for failing to relay plea offer.

This Court finds Applicant's allegation that Counsel was ineffective for failing to relay a plea offer to be without merit. This Court finds Counsel's testimony credible, while Applicant's testimony not credible. In Davie v. State, the applicant was granted post-conviction relief based upon ineffective assistance of counsel because counsel did not communicate a plea offer made by the State to the applicant. 381 S.C. 601, 675 S.E. 416 (2009). The South Carolina Supreme Court held that the standard to be successful on such a claim required that the Applicant prove that: (1) plea counsel's failure to communicate the State's initial plea offer constituted

deficient performance, and (2) the applicant was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted his original plea offer. Id. at 608 and 420. The Davie Court held that, generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case by case basis. Id. at 609 and 420.

In Lafler v. Cooper, ___ U.S. ___, 132 S.Ct. 1376 (2012) and Missouri v. Frye, ___ U.S. ___, 132 S.Ct. 1399 (2012), the United States Supreme Court analyzed ineffective assistance of counsel in the context of lapsed or rejected plea offers. In Frye, the Court determined that a criminal defendant must prove three things to demonstrate prejudice for ineffective assistance of counsel for a plea that lapsed or was rejected. The second part of the test is broken into two subparts:

[1] defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel[;]

[2] [d]efendants must also demonstrate a reasonable probability:

[a] the plea would have been entered without the prosecution canceling it or

[b] [without] the trial court refusing to accept it, if they had the authority to exercise that discretion under state law[;] [and]

[3] [t]o establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Frye, 132 S. Ct. at 1409. Similarly, in Lafler, the Court articulated a three-part test for this proof. A defendant must show “a reasonable probability

[1] that the plea offer would have been presented to the court (i.e.,

[a] that the defendant would have accepted the plea and

[b] the prosecution would not have withdrawn it in light of intervening circumstances),

[2] that the court would have accepted its terms, and

[3] that the conviction or sentence, or both, under the offer's terms would have been less severe" than the punishment ultimately faced.

Lafler, 132 S. Ct. at 1385. The two tests focus on the same factors.

For the issue of remedy once prejudice is proven, in Lafler, the Court held that a state trial court has three options on remand:

[1] "vacate the convictions and resentence respondent pursuant to the plea agreement";

[2] "vacate only some of the convictions and resentence respondent accordingly"; or

[3] "leave the convictions and sentence from trial undisturbed."

Lafler, 132 S. Ct. at 1391. The Court did not list a new trial as a remedy. In implementing the three options, the Court did not define the boundaries of a state trial court's discretion, and, instead, left "open to the trial court" how best to exercise its discretion. *Id.* The Court identified two considerations of relevance: the defendant's earlier willingness to accept responsibility for his actions and information discovered post plea. *Id.* at 1389.

In the present case, Trial Counsel credibly testified that it was his standard practice to relay all plea offers to his clients. Trial Counsel stated that if there were plea offers he would have relayed them to Applicant. Trial Counsel further stated that if Applicant was willing to accept a plea offer then he would have went before a judge to plead guilty. However, Trial Counsel stated Applicant was adamant about going to trial and presenting his side of the story. Trial Counsel stated there was no offer available at the time of trial. This Court finds Trial

Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudiced by Counsel's alleged ineffectiveness.

Counsel was ineffective for failing to object to the judge's answer to the jury's question.

This Court finds Applicant's allegation that Counsel was ineffective for failing to object to the trial judge's answer to the jury's question to be without merit. During deliberations, the jury asked the question "If the defendant truly believed the victim was 18, does that matter and/or is ignorance of her age no excuse." (Tr. p. 198 lines 11-14). The trial judge responded "...if the defendant truly believed the defendant was over 18 does that matter, the answer is no, and ignorance is no excuse." (Tr. p. 198 lines 14-17). Counsel stated he did not object to the judge's answer to the jury's question because the judge's answer was not objectionable. Trial Counsel concluded that the judge properly answered the question that ignorance is no excuse in regards to Victim's age. This Court finds Trial Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, this Court finds Applicant has failed to allege sufficient evidence to meet his burden of proving that he was prejudice by Counsel's alleged ineffectiveness.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

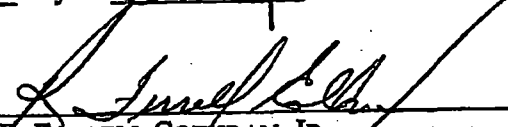
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of July, 2014.


R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

Manning South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 12 2014

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Referred to Courtesy Jdn
Answered _____

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2013-CP-43-0675

The State,

Respondent,

v.

Wayne Wells, Jr.

Appellant.

Notice of Appeal

Wayne Wells Jr. is requesting for a Stay of Appeal. Appellant has filed a post-trial motion under Rule 59(a) dated July 21, 2014 to James C. Campbell, 215 North Harrin Street, Sumter, SC 29150. Appellant appeals the order [judgement] of the Honorable R. Ferrell Cothran, Jr. dated July 11, 2014. Appellant received written notice of entry of this order [judgement] on July 15, 2014. Appellant's post-trial motion was filed July 22, 2014 and the Appellant would like for his post-trial motion to be considered by the Court, pursuant to Hudson v Hudson cited as 349 S.E.2d 341 (1986), on this Notice of Appeal

August 7, 2014

Subscribed before me this
21st day of August, 2014

Notary Public for South Carolina

My Commission Expires: 6-27-2016

By _____

Fulton Dale Cornwell

448 Deerwood St. Unit 9A

Columbia, SC 29205

Attorney for Appellant

By Wayne Wells Jr.

Wayne Wells Jr. #314139

YCC P.O. BOX 352

Turberville SC 29162

Appellant Pro se

Other Counsel of Record:

Alan McCrory Wilson

Post Office Box 11549

Columbia, SC 29211

Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2013-CP-43-0675

The State,

Respondent,

v.

Wayne Wells, Jr.

Appellant.

Proof of Service

I certify that I have served the Notice of Appeal on The State by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2014, address to his attorney of record, Alan McCrory Wilson, at his office at P.O. Box 11549 Columbia, SC 29211

August 8, 2014

By _____

F. Casey Dale Cornwell

448 Deerwood St. Unit 9A

Columbia, SC 29205

Attorney for Appellant

31 Wayne Wells Jr. # 314139

Y.C.L. PO Box 252

Turbeville SC 29162

Appellant, Pro se

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2013-CP-43-0675

The State,

Respondent,

v.

Wayne Wells Jr

Appellant.

Notice of Stay of Appeal

Wayne Wells, Jr. is requesting for a Stay of Appeal. Appellant has filed a post-trial motion under Rule 59(e) dated July 21, 2014, to the office of James C. Campbell, 215 North Harrin Street, Sumter SC 29150. Appellant's post-trial motion was timely filed and would like for his Rule 59(e) motion considered by the Honorable R. Ferrell Cothran, Jr., pursuant to Hudson v Hudson cited as 349 S.E.2d 341 (1986).

August 7, 2014

Other Counsel of Record:

Alan McCrory Wilson

P.O. Box 11549

Columbia S.C. 29211

Attorney for Respondent

By

F. Casey Dale Cornwell

448 Deerwood St. Unit 9A

Columbia S.C. 29205

Attorney for Appellant

By Wayne Wells Jr # 314139

Wayne Wells Jr

P.O. Box 252

Yurberville SC 29162

Appellant Pro Se

The Supreme Court of South Carolina

Wayne Wells, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-001722

Lower Court Case No. 2013CP4300675

ORDER

Petitioner has failed to provide this Court with correspondence showing that the transcript has been ordered as required by Rules 243(b) and 207 of the South Carolina Appellate Court Rules.¹ Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

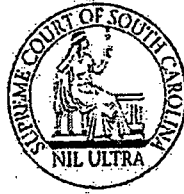


CLERK

Columbia, South Carolina
October 29, 2014

cc: Daniel Francis Gourley, II, Esquire
Fulton Casey Dale Cornwell, Esquire

¹ The Division of Appellate Defense has advised this Court that it has not received any request to provide representation in this matter. See Rule 71.1(g) of the South Carolina Rules of Civil Procedure ("If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.").



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

November 14, 2014

The Honorable James C. Campbell
Sumter County Judicial Center
215 N Harvin St Rm 303
Sumter SC 29150-4974

REMITTITUR

Re: Wayne Wells v. State
Lower Court Case No. 2013CP4300675
Appellate Case No. 2014-001722

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,



CLERK

cc: Daniel Francis Gourley, II, Esquire
Fulton Casey Dale Cornwell, Esquire
Wayne Wells, Jr., #314139

RECORDED

2015 APR 21 AM 8:44

STATE OF SOUTH CAROLINA

County of SumterJAMES C. CAMPBELL, Clerk of Common Pleas
CLERK OF COURT
SUMTER COUNTY, S.C.Wayne Wells Sr #314139
Full name and prison number (if any) of Applicant,

vs.

State of S.C. and Fulton Casey Dale Cornwell
Name of Respondent.

2015-CP-43-1008

APPLICATION FOR
POST-CONVICTION RELIEFBarbara Meyer
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

1. Place of detention Turkeyville Correctional Institution
2. Name and location of Court which imposed sentence Sumter County Court of General Session
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2010-GS-43-00337
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) November 9th 2010
 - (b) 20 years suspended to 13 years incarceration with 2 years probation
 - (c) and place on the Central Registry of Child Abuse and Neglect according to 17-25-135

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty Applicant was found guilty by a jury of his peers
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. SC. Courts of Appeal
 - ii. SC. Court of Common Plea
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. SC. Courts of Appeal dismissed Applicant's Appeal
 - ii. Court of Common Plea dismissed with prejudice
 - iii. _____
 - (c) the date of each such result:
 - i. November 27, 2013
 - ii. July 11, 2014
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) P.C.R. Counsel was ineffective in
 - (b) P.C.R. Counsel representation was deficient
 - (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) P.C.R. Counsel failed to raise all Applicant's issues that was requested.
 - (b) P.C.R. Counsel failed to file motions, orders, and notice of appeal on client's behalf.
 - (c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
- (d) any other petitions, motions or applications in this or any other Court?
Yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

I. Direct Appeal

II. Appeler's Brief

III. Pro-Se. Brief

IV. P.C.R. Application

(b) the name and location of the Court in which each was filed:

I. Sumter County Clerk of Court

II. SC Court of Appeal

III. SC Sumter County Court of Common Pleas

IV. _____

(c) the disposition thereof:

I. Direct Appeal was dismissed

II. P.C.R., Evidentiary hearing was heard and dismissed

III. _____

IV. _____

(d) the date of each such disposition:

I. November 27, 2012

II. July 11, 2014

III. _____

IV. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

I. _____

II. N/A

III. _____

IV. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. P.R. Counsel representation was ineffective.
- ii. P.R. Counsel performance was deficient in failing to file motions
- iii. _____

(b) the proceedings in which each ground was raised:

- i. S.C. Court of Administration
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? 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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

- i. Calvin Hastie, 7 East Hampton Avenue, Sumter, SC 29157
- ii. Susan Harkett
P.O. Box 11584, Columbia, SC 29211
- iii. Fulton Lacey Dale (attorney)
448 Deerwood Street Unit 9A, Columbia SC 29205

(b) the proceedings at which each such attorney represented you:

- i. Preliminary Hearing and Trial
- ii. Court of Appeal Direct Appeal
- iii. Evidentiary hearing

18. State clearly the relief you seek in filing this application.

I am requesting for the reversal of my original application judgement and to be granted a New hearing.

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of Sumter

VERIFICATION

I, Wayne Wells Jr, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Wayne Wells Jr

SWORN to and subscribed before me this 15thday of April192015

Emile H. H.
Notary Public

(L.S.)

My Commission Expires: 4-27-2016

RECORDED
2015 APR 21 AM 8:45
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Wayne Wells Jr, 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 therefor.

Wayne Wells Jr
Applicant

SWORN or affirmed to and subscribed before me this

15th day of April 192015

Emile H. H.
Notary Public

My Commission Expires 4-27-2016

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

RECORDED

2015 APR 21 Case No. 15-00000

The State of South Carolina and

Fulton Casey Dale Cornwell,

Defendant(s)

-v-

Wayne Wells Jr. #314139

Plaintiff

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

UNDETERMINED APPLICATION
FOR POST-CONVICTION
RELIEF

2015-CP-43-1028
CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Stange
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

To: The Honorable Presiding Judge

NOTICE: Applicant trust that your Honor will adhere to the Rules of Judicial Conduct and allow him to be fully heard according to law. ACCORD. Canon 3(B) 7 of Rule 50), Judicial Conduct ("A judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to law")

Procedure History

On November 9, 2010 the Applicant pled not guilty to a Criminal Sexual Conduct with a minor in the Second degree. Counselor Calvin Hastie, Esquire represented the Applicant and the case was heard by the Honorable W. Jeffrey Young. The Applicant was found guilty by a jury of his peers and Judge Young sentenced him to a prison term of 20 years in which he suspended to 13 years incarceration with 2 years probation and a life-term registration to the Central Registry of Child Abuse and Neglect. The Applicant appealed his conviction and was appointed and represented

by Susan Hackett. Mrs. Hackett Siled an Ander's brief and the Applicant Siled a Pro-se brief to the Court of Appeals. The Court of Appeals dismissed the case. The Applicant then Siled an Application for post-conviction relief on April 18, 2013. May 3, 2013 counsel Fulton Casey Dale Cornwell was appointed to the Applicant's case by the state. The evidentiary hearing was held on May 29, 2014 at the Sumter County Courthouse. The presiding Judge R. Ferrell Lothran, Jr. heard the case and Assistant Attorney General Daniel Gourley was the representative for the S.C. Attorney General Office. On July 13, 2014 the Honorable Judge Lothran, Jr. issued an order of dismissal. July 19, 2014 the Applicant Siled a Rule 59(c) post-trial motion to the Sumter County Clerk's office and forward a copy of the motion to Mr. Cornwell's office and to the Supreme Court of South Carolina. No action was taken on the motion because Mr. Cornwell did not file the motion for his client and the Applicant did not provide a proof of service with the motion that he sent to the Supreme Court of S.C. indicating that he also provided the opposing party with a copy of the motion. The Applicant then made the request to Mr. Cornwell that he wanted a motion to stay to be Siled so his post-trial motion could be heard and his wish to Appeal Judge Lothran decision on August 7, 2014.

ARGUMENTS

I. P.C.R. Counsel was ineffective and deficient in his representation of his client before, during, and after his evidentiary hearing.

According to the S.C.A.C.R., Rule 407 of Professional Conduct a lawyer has a responsibility in representing his client. The Applicant's counsel, Mr. Fulton Casey Dale Cornwell, was ineffective and deficient in his representation of his client when the Applicant filed a P.C.R. application stating concisely the grounds in which he was being held in custody unlawfully were 1) the Trial Judge performed his judicial duties with bias and prejudice. 2) the Applicant's 6th and 14th Constitutional Rights were violated which deprived him of his 6th Amendment right to a fair and impartial trial. 3) Trial Counsel was ineffective in failing to object to the trial judge's answer to the jury's question. The Applicant prepared a brief that presented all of the arguments that he set forth in his application with legal authorities that supported his claims. The Applicant sent a copy of that brief to Mr. Cornwell's office for his inspection and to be filed to the court for the judge's review and consideration. On May 29, 2014 the evidentiary hearing was held with the Honorable R. Ferrell Cothran, Jr as the presiding judge. Mr. Cornwell called the Applicant to the stand and questioned him about his trial counsel relaying and explaining an guilty plea, then he ask the client about the trial counsel failure to object to the trial court answer's to the jury's question. Mr. Cornwell representation was deficient because the latter issue that was raised was only partial of the Applicant's issue. In order for the court to grasp the whole understanding of the Applicant's argument Mr. Cornwell had to raise the Trial judge performed his judicial duties with bias and prejudice when his answers to the jury questions were pertaining to the circumstances and facts of the case, and the Applicant's due process rights were violated and he did not have a fair and impartial trial because the trial judge answer's to the jury invaded

the province of the jury.

Under Rule 1.3, S.C.A.L.R., Rule 407 it states that "a lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." Mr. Cornwell's representation did not fall within the Rules of professional conduct or to the guidelines of *Strickland v Washington* to be deemed effective when he failed to pursue the issues that the Applicant set forth in his P.L.R. application or his pro-se brief. Mr. Cornwell instead pursued an issue of his own choice that did not have any merit and did not make any sense to raise as a argument and only raised one of the Applicant's issue when the remaining issues were relevant and critical in understanding the Applicant's argument in its entirety.

The Honorable Judge Cothran, Sr heard this case and issued an Order of dismissal on July 11, 2014. Upon review of the order the Applicant realized that not only did Mr. Cornwell did not file the Amended brief that was prepared for the judge's consideration but that Judge Cothran were deeming that all allegations that were raised on the Applicant's application and not verbally raised during the evidentiary hearing were abandoned. This was never the Applicant's intention so he immediately filed a Rule 59(e) post-trial motion in order to reverse Judge Cothran's decision for a New hearing or to receive a final judgement on all of the Applicant's issues. The Applicant sent a copy of his post-trial motion to

Mr. Cornwell, the Sumter County Clerk's office, and the Supreme Court of S.C. Mr. Cornwell did not respond back to the Applicant's motion nor did he make the Applicant aware of the status of his filing. Since the Applicant was not made aware of his filing status and the Supreme Court responded that since the Applicant did not provide a proof of service with the motion no action would be taken so the Applicant file for a motion of Stay and a Notice of Appeal. The Supreme Court of S.C. received the Applicant's motions and sent Mr. Cornwell a letter making him aware that his client was interested in filing a notice of appeal and a motion to stay. This letter was to inform Mr. Cornwell of his obligation to file any motions or letter on his client's behalf because if it was not filed by him then it would be deemed nullity because there is no right to 'hybrid representation'. Even after Mr. Cornwell was notified of this fact he still failed to file the Applicant's post-trial motion, his motion to stay, or his notice of appeal.

Rule 407 S.C.A.C.R., Rule 1.1 states clearly that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Mr. Cornwell's failure to file proposed order, and notices of appeal, actions against client's interest and failure to timely turn over client files violates multiple Rules of Professional Conduct, including rules requiring competent representation and reasonable diligence and prohibiting concurrent conflicts of interest and conduct prejudicial to administration of justice. Pursuant to *In re Sheek* (S.C. 2012) 399 S.C. 351, 731 S.E.2d 873.

II. P.C.R. Counsel was ineffective when failure to raise that Trial Court's answers to the jury's question invaded the province of the jury and deprived the Applicant of a fair and impartial trial.

The Trial Court instructed the jury that when determining what the facts are in the case is for them to decide and it was up to them to decide if a witness testimony was believable. It was the court's responsibility to rule as a matter of law as to whether certain testimony was admissible, but once the testimony was admitted it was solely the jurors responsibility to determine what was believable. "Under the 6th Amendment jurisprudence the two steps that are strictly for the jury is (1) determining the facts as to each element of the crime (2) applying the law as instructed by the judge to those facts. Questions of fact in criminal proceeding are to be tried by the jury. The jurors are the sole and exclusive judge of, or they have the exclusive province to find the facts, and the trial court cannot interfere with their exercise thereof. It is improper for the trial court to take a question of fact away from the jury and decide it itself, or deny the existence of any fact bearing on the issues which is in contest." 23A C.J.S. Criminal Law § 12.75 see also State v. Robinson, 262 S.E.2d 729, 274 SC 198 (1980) State v. Deas, 23 S.E.2d 830, 202 SC 9 (1943)

Once the jury heard the evidence and was charged by the court before they were sent to deliberate while in deliberation the jury sent out two questions about the case. They were 1.) "If the Defendant truly believed the victim to be eighteen, would it matter and 2.) is his ignorance to her age an excuse?" The trial judge then instructed the jury by answering the question

in saying that, "No, it did not matter if the defendant believed the victim to be eighteen and his ignorance is not an excuse." The Trial judge's answers were an invasion of the province of the jury and erroneous because the jurors were suppose to be the sole judges of the fact and the question that were sent to the court were not only pertaining to the facts of the case but were also pertaining to the specific circumstances that made the case unique. As the jury questions were in reference to the Applicant's ignorance of the law then the trial court answers would have been justified, but since it is rooted in the legal maxim *ignorantia facti excusat* that ignorance of a fact is an excuse; whatever is done under a mistaken impression of a material fact is excused or provides grounds for relief, Black's Law Dictionary, 749 (7th ed. 1999) then the trial court answers invaded the province of the jury because it removed the circumstances that made the case relevant, specific and unique from the juror's consideration and left them with only the conflict of the case while disregarding the testimonies of the victim and the Applicant. The victim and the Applicant testified that if it were not for the victim's deception concerning her age the act would not have occurred. The Trial Court's answers were erroneous because the jury questions were inquiring on the Applicant's ignorance of a material fact and the trial court should have left the jury, the sole judges of the facts, to make a determination of the facts with the evidence that was presented during the trial free from any form of intimidation or subjective persuasion. As the fact finders of the case it should have been left to the jury as to what was believable and did the Applicant act was done reasonably.

In many jurisdiction, by reason of express Constitutional or statutory

provisions, or under the common law, in the absence of any constitutional or statutory restrictions, the trial court may, in its charge to the jury, comment on the evidence, or express an opinion on disputed questions of fact, provided such questions are ultimately left to the jury for their decision, without any direction or advice as to how they shall find the facts, and whenever the judge delivers his opinion to the jury on a matter of fact, it should be delivered as a mere opinion, and not as a direction and the jury should be made to understand clearly that they are to decide the facts on their own view of the evidence." 23 ALSS Criminal Law § 1294. Under section 3d of Article V it was intended clearly to leave to the jury all questions of fact, and to prevent the judges from forcing upon juries their own convictions as regards matters of fact. The force and effect of any evidence is for the jury; it is for them to determine what credence they will give to it and what weight it will have with them. The jurors are the judges of all matters of fact, and cannot look to the court for a controlling view; they are to form their own conclusions from the facts submitted to them, and the court cannot employ its influence over the minds of the jurors to force upon them its conclusion in any case, because the judge's position would naturally add great weight to any opinion he might express upon any question of fact arising in a case. State v Thorne, 116 S.E. 2d 854, 237 SC 248 (1960) ("The jury should be left free to determine questions of fact. Under Constitution, jury is exclusive judge of facts, and true meaning and real object is that jury must be left to form its own judgement, unbiased by any expression or even intimations of opinion by the judge.") State v Leonard, 292 SC 133, 355 S.E. 2d 270 (1987) ("The

purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a correct verdict." It is error to give instructions which are calculated to confuse or mislead the jury.) State v Mahaffey, 125 SC 313, 118 S.E. 623, SC (1923) ("The jurors are to determine all questions of fact uninfluenced by the judge and unbiased by his impressions.")

It was the Applicant's Constitutional Right to present any favorable defense that applied to his case at the time of trial. The Applicant testified and presented an affirmative defense that could justify or excuse his conduct as a defense. "An affirmative defense is a matter which, assuming charge to be true, constitutes a defense to it and is to admit to the doing of the act charged, while seeking to justify, excuse, or mitigating it. The defense is not restricted to those negating elements or facts necessary to conviction of the offense charged and may also rely on separate matters consisting of facts wholly disconnected from the body of the particular offense charged, and constituting a distinct affirmative defense;" 22 C.S.S. Criminal Law § 36. Justification as a defense is two-pronged on admission that a proscribed act was done, and the establishment of an exculpatory excuse that takes the act out of the criminal law. Thus, justification defenses are not based on the nonexistence of any essential element of an offense, but rather on circumstances which make accused's conduct excusable on policy grounds. A justification should, therefore be treated as affirmative defenses is not constitutionally required, but constitutes a separate issue, 22 A C.S.S. Criminal Law § 689.

The Applicant's victim initiated the relationship between herself and the

Applicant. The victim testified written and verbally that she willingly deceived the Applicant about her actual age with the knowledge of knowing that if the Applicant knew her actual age he would not have been with her. At the time of the offense the Applicant was unaware of the victim's deception and the Applicant's act was done under the false pretense that the victim was an adult of eighteen years. If the Applicant participated in a mutual act of sexual intercourse or relations believing his partner to be beyond the age of consent, with reasonable grounds for such belief, where is his criminal intent? The Applicant did not consciously take any risk, instead he subjectively eliminated the risk by satisfying himself on reasonable evidence that the crime could not be committed. In State v Ferguson, 302 SC 269, 395 S.E.2d 182 (1990) it states that a defendant may not be convicted of a criminal offense unless the state proves beyond a reasonable doubt that he acted with criminal intent, or mental state, required for a particular offense. The Applicant could not have had the legal mental capacity to commit the crime charge because he was unaware that his act was criminal, due to the victim's contributory negligence. The Applicant was mentally impaired by deception, and did not have the legal capacity to commit the crime. "The criminal law ordinarily requires that the defendant possess both an evil meaning mind and an evil doing hand before liability is imposed." State v Rowell, 326 SC 313, 487 S.E.2d 185 (1997) State v Turkness, 257 SC 295, 185 S.E.2d 607 (1971) (The question of the intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstances from

which intent may be inferred.)

Conclusion

Therefore, the Applicant is respectfully requesting that this Court reverse or alter and amend R. Ferrell Cothran judgement and rule upon all the Applicant's allegations that he set forth in his original P.C.R. application or grant a new evidentiary hearing to allow the Applicant to present all his issues, evidence, and testimonies to the Court and ruled upon according to law.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	2015-CP-43-1008
Wayne Wells, Jr., # 314139	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed by Wayne Wells, Jr., (Applicant) on April 21, 2015, Respondent would show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. The Applicant was true billed indicted at the October 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor-Second Degree (2010-GS-43-337). Calvin Hastie, Esquire, represented him. Applicant proceeded to a jury trial and found guilty November 9, 2010. The Honorable W. Jeffrey Young sentenced Applicant to a twenty year imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf by Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Wells, Op. No. 2012-UP-621 (Ct. App. filed November 21, 2012). The Remittitur was issued on December 10, 2012.

First PCR Application: 2013-CP-43-0675

Applicant filed his first application for post-conviction relief on April 18, 2013, alleging the following grounds for relief:

- a. "Rule Canon 3B(5). C.S.C. Rule 501, SCACR;
 - i. "A judge shall perform judicial duties without bias or prejudice."

- b. Ineffective assistance of counsel;
- c. Due Process Violation
 - i. "Due process was violated deprive Applicant of fair trial."
 - ii. "6th Amendment."
 - iii. "14th Amendment."

An evidentiary hearing was held at the Sumter County Courthouse on May 29, 2014. The Applicant was present and represented by Casey Cornwell, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented the Respondent. The Honorable R. Ferrell Cothran, Jr., denied and dismissed the application in written order filed July 11, 2014.

Applicant filed a timely *pro se* Notice of Appeal. The South Carolina Supreme Court dismissed Applicant's appeal in an order dated October 29, 2014 for failure to provide correspondence showing that the transcript had been ordered as required by Rules 243(b) and 207 of the South Carolina Appellate court Rules. The remittitur was issued on November 14, 2014.

II.

Applicant filed his *second* and current application on April 21, 2015, alleging the following grounds for relief:

- a. "PCR Counsel was ineffective in"
 - i. "PCR Counsel failed to raise all Applicant's issues that was requested."
- b. PCR Counsel representation was deficient"
 - i. "PCR Counsel failed to file motions, orders, and notice of appeal on client's behalf."

Applicant also filed a *pro se* amended application on April 21, 2015, alleging the following grounds for relief:

- a. "PCR Counsel was ineffective and deficient in his representation of his client before, during, and after his evidentiary hearing."
- b. "PCR Counsel was ineffective when failure [sic] to raise that Trial Court's answers to the jury's questions invaded the province of the

jury and deprived the Applicant of a fair and impartial trial.”

For the purpose of this return, Respondent incorporates the Sumter County Clerk of Court's records regarding the subject conviction, appellate records, South Carolina Department of Corrections records, and Applicant's current and prior PCR records. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

This Court should summarily dismiss the current PCR application because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise

those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

Respondent submits Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of PCR counsel. Aice, 305 S.C. at 452, 409 S.E.2d at 395.

The South Carolina Supreme Court held the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, "Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 395. Aice further held that "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under § 17-27-90." Id. at 452, 409 S.E.2d at 394. Applicant's contention that prior PCR counsel was ineffective is not a sufficient reason warranting a successive PCR application. Thus, Applicant has failed to show that a successive application is appropriate.

Respondent moves to summarily dismiss this application because it is successive to Applicant's previous PCR application.

IV.

Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Moreover, ignorance of the statute of limitations for filing a petition for post-conviction relief is not an excuse for late filing. Learnon v. State, 363 S.C. 432, 435, 611 S.E.2d 494, 496 (2005). Applicant was convicted of the offense he challenges on November 9, 2010. The Remittitur in Applicant's appeal was returned on December 10, 2012. Applicant was therefore required to file his application on or before December 11, 2013. This Application was filed on April 21, 2015, which was over a *year* after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. 363 S.C. 432, 611 S.E.2d 494. In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent

requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

Respondent denies each allegation not expressly admitted, qualified or explained.

[Signature block on following page]

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action, and was filed after the statute of limitations had expired..

Respectfully submitted,

ALAN WILSON
Attorney General

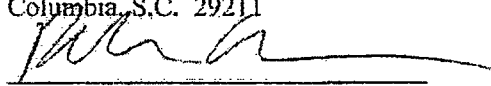
JOHN W. McINTOSH
Chief Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

PATRICK L. SCHMECKPEPER
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

Columbia, South Carolina

July 8, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2015-CP-43-1008
WAYNE WELLS, JR., #314139,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Wayne Wells, Jr., #314139
Turbeville Correctional Institution
Post Office Box 252
Turbeville, SC 29162

DATED this 8th day of July, 2015.



Caroline Collins, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Wayne Wells, Jr., #314139,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE THIRD JUDICIAL CIRCUIT

2015-CP-43-1008

CONDITIONAL ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2015 JUL 22 PM 1:24

RECORDED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Wayne Wells, Jr., on April 21, 2015. Respondent made its Return, requesting the application be summarily dismissed because it is successive and beyond the statute of limitations.

I. PROCEDURAL HISTORY

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. The Applicant was true billed indicted at the October 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor-Second Degree (2010-GS-43-337). Calvin Hastie, Esquire, represented him. Applicant proceeded to a jury trial and found guilty November 9, 2010. The Honorable W. Jeffrey Young sentenced Applicant to a twenty year imprisonment.

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the following grounds for relief:

- a. "Rule Canon 3B(5). C.S.C. Rule 501, SCACR;
 - i. "A judge shall perform judicial duties without bias or prejudice."
- b. Ineffective assistance of counsel;
- c. Due Process Violation
 - i. "Due process was violated deprive Applicant of fair trial."
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Current Application

Applicant filed his *second* and current application on April 21, 2015, alleging the following grounds for relief:

- a. "PCR Counsel was ineffective in"
 - i. "PCR Counsel failed to raise all Applicant's issues that was [sic] requested."
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- b. "PCR Counsel was ineffective when failure [sic] to raise that Trial Court's answers to the jury's questions invaded the province of the jury and deprived the Applicant of a fair and impartial trial."

Before this Court are the Sumter County Clerk of Court records regarding the subject conviction, appellate records, records from the South Carolina Department of Corrections, Applicant's current and prior PCR records, and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Successiveness

This Court finds this current PCR application must be summarily dismissed because it is successive to his previous PCR applications. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

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Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised...in the previous application." Id. at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. Id. Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

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The South Carolina Supreme Court held the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Aice, 305 S.C. at 452, 409 S.E.2d at 395 (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). The court also noted, "Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice." Id. at 451, 409 S.E.2d at 395. Aice further held that "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under § 17-27-90." Id. at 452, 409 S.E.2d at 394. Applicant's contention that prior PCR counsel was ineffective is not a sufficient reason warranting a

successive PCR application. Accordingly, this Court finds that Applicant has failed to show that he is entitled to file a successive PCR application and this application must be dismissed.

Statute of Limitations

The Court finds that this Application for post-conviction relief must be summarily dismissed for failing to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

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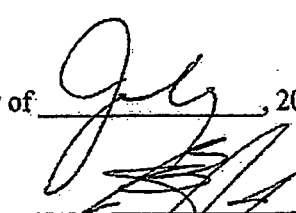
to file within the time mandated by the Post-Conviction Procedure Act and Applicant's post-conviction relief application must be summarily dismissed.

CONCLUSION

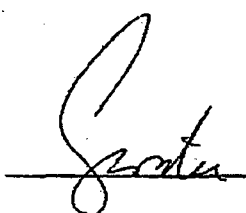
Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Sumter County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Patrick L. Schmeckpeper, Esquire
PCR Division – 3rd Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 16 day of July, 2015.



GEORGE C. JAMES, JR.
Chief Administrative Judge, Third Circuit

 South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Wayne Wells, Jr., #314139

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-43-1008

**AMENDED RETURN AND MOTION
TO DISMISS ALL CLAIMS BEYOND
AUSTIN REVIEW**

In response to the post-conviction relief application filed April 21, 2015, Respondent would show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. The Applicant was true billed indicted at the October 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor-Second Degree (2010-GS-43-337). Calvin Hastie, Esquire, represented him. Applicant proceeded to a jury trial and found guilty November 9, 2010. The Honorable W. Jeffrey Young sentenced Applicant to a twenty year imprisonment.

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Applicant filed his first application for post-conviction relief on April 18, 2013, alleging the following grounds for relief:

- a. "Rule Canon 3B(5). C.S.C. Rule 501, SCACR;
 - i. "A judge shall perform judicial duties without bias or prejudice."
- b. Ineffective assistance of counsel;
- c. Due Process Violation
 - i. "Due process was violated deprive Applicant of fair trial."

- ii. "6th Amendment."
- iii. "14th Amendment."

An evidentiary hearing was held at the Sumter County Courthouse on May 29, 2014. The Applicant was present and represented by Casey Cornwell, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented the Respondent. The Honorable R. Ferrell Cothran, Jr., denied and dismissed the application in written order filed July 11, 2014.

Applicant filed a timely *pro se* Notice of Appeal. The South Carolina Supreme Court dismissed Applicant's appeal in an order dated October 29, 2014 for failure to provide correspondence showing that the transcript had been ordered as required by Rules 243(b) and 207 of the South Carolina Appellate court Rules. The remittitur was issued on November 14, 2014.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the prior post-conviction relief records, and appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:¹

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file an appeal from the denial of his first PCR application.

¹ Respondent initially filed a return and motion to dismiss Applicant's current application as it was filed beyond the statute of limitations and successive to his prior application. The Honorable George C. James, Jr issued a conditional order of dismissal provisionally denying the PCR application. Applicant filed a timely response alleging PCR Counsel was ineffective for failing to file an appeal following the denial of his first PCR application.

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to a review of his first PCR application pursuant to Austin v. State, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after

the statute of limitations had expired. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

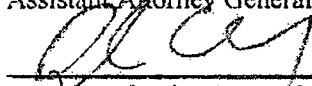
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By:


Attorneys for the Respondents
Post Office Box 11549
Columbia, South Carolina 29211

February 2, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2015-CP-43-1008
WAYNE WELLS, JR., #314139,	)	
Applicant,	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return and Motion to Dismiss All Claims Beyond Austin Review** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy Lee Griffith, Esquire
 Timothy L. Griffith, Attorney at Law
 360 W Wesmark Blvd, Second Floor
 Sumter, South Carolina 29150

DATED this 2nd day of February, 2016.


 Caroline Collins, Legal Assistant
 For Respondent

State of South Carolina)
)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2015-CP-43-1008

Wayne Wells, Jr.,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

March 18, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Timothy L. Griffith, Esquire
Attorney for Applicant

Daniel F. Gourley, II, Esquire
Attorneys for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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I N D E X

Proceedings 4

Certificate Page 7

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

No exhibits marked during proceeding.

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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:07 a.m.)

MR. GOURLEY: May it please the Court, Your Honor?

THE COURT: Certainly.

MR. GOURLEY: This is *Wayne Wells v. the State of South Carolina*, Docket No. 2015-CP-43-1008. Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. It's true-bill indicted at the October 2010 term of the Sumter County Grand Jury for criminal sexual conduct with a minor in the second degree. Mr. Hastie represented him.

He proceeded to a jury trial and was found guilty November 9th, 2010. And the Honorable W. Jeffrey Young sentenced the applicant to a 20-year term of imprisonment.

A notice of appeal was filed on applicant's behalf, and the South Carolina Court of Appeals dismissed the appeal. The remittitur was issued on December 7th, 2012.

He filed his first application for postconviction relief on April 18th, 2013, alleging various claims of ineffective assistance of counsel, due process violation, a Rule Canon 3(b)(5) violation, Sixth Amendment violation, and Fourteenth Amendment violation. The evidentiary hearing was held at the Sumter County Courthouse on May 29th, 2014. He was represented by -- or the applicant was

1 present and represented by Mr. Case Cornwell. This-- Your
2 Honor, I represented the attorney general's office. And
3 the Honorable R. Ferrell Cothran, Jr., denied and dismissed
4 the application in a written order filed July 11th, 2014.

5 He subsequently filed a timely pro se notice of
6 appeal. However, the South Carolina Supreme Court
7 dismissed the applicant's appeal in an order dated October
8 29th, 2014, for failure to provide correspondence showing
9 that the transcript had been ordered as required by Rules
10 243(b) and 207 of the South Carolina Appellate Court Rules.
11 The remittitur was issued on November 14th, 2014.

12 He subsequently filed a second application for
13 postconviction relief on April 21st, 2015, alleging
14 ineffective assistance of PCR counsel for failure to file
15 an appeal from the denial of his first application.

16 And, Your Honor, the state filed its return and motion
17 to dismiss all claims but the *Austin* review on February
18 2nd, 2016. He is represented here today by Mr. Griffith.

19 And, Your Honor, just for the record, I have been in
20 discussion with Mr. Cornwell about this situation. And he
21 -- he is in agreement that he did not timely order the
22 transcript to perfect Mr. Wells's appeal. And for those
23 reasons, Your Honor, we would certainly consent to Mr.
24 Wells receiving his appeal, pursuant to *Austin*.

25 THE COURT: Mr. Griffith?

1 MR. GRIFFITH: Your Honor, the state, again, has -- is
2 consenting to Mr. Wells' request. And I have talked to Mr.
3 Wells, and he understands that this -- if the Court agrees
4 to the consent, that he will have the opportunity then to
5 refile that -- for that PCR again. And we would again
6 agree with the attorney general's office and ask the Court
7 to grant that ---

8 THE COURT: All right.

9 MR. GRIFFITH: --- order.

10 THE COURT: Court agrees and grants the motion. You
11 prepare ---

12 MR. GOURLEY: Thank you, Your Honor.

13 THE COURT: --- an order.

14 MR. GOURLEY: I'll prepare it.

15 THE COURT: All right, sir.

16 MR. GRIFFITH: Thank you, Your Honor.

17 (Whereupon, the proceeding was concluded at 10:11 a.m.)

18 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
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 IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 18TH
DAY OF MARCH, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 27, 2016

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2015 APR -7 PM 3:08

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Wayne Wells, Jr., #314139

2015-CP-43-1008

Applicant,

v.

**ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE¹**

State of South Carolina,
Respondent.

CERTIFIED TRUE COPY
OF ORIGINAL FILE
WAYNE WELLS, JR.
DEPUTY ATTORNEY GENERAL
SUMTER COUNTY, SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed April 21, 2015. The Respondent made its Return on May 28, 2014, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on March 18, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy Griffith, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's orders of commitment. The Applicant was true billed indicted at the October 2010 term of the Sumter County Grand Jury for Criminal Sexual Conduct with a Minor-Second Degree (2010-GS-43-337). Calvin Hastie, Esquire, represented him. Applicant proceeded to a jury trial and found guilty November 9, 2010. The Honorable W. Jeffrey Young sentenced Applicant to a twenty year imprisonment.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

A timely Notice of Appeal was filed on Applicant's behalf by Susan Hackett, Esquire. The South Carolina Court of Appeals dismissed the appeal. State v. Wells, Op. No. 2012-UP-621 (Ct. App. filed November 21, 2012). The Remittitur was issued on December 10, 2012.

Applicant filed his first application for post-conviction (2013-CP-43-675) relief on April 18, 2013, alleging the following grounds for relief:

1. "Rule Canon 3B(5). C.S.C. Rule 501, SCACR;
 - i. "A judge shall perform judicial duties without bias or prejudice."
2. Ineffective assistance of counsel;
3. Due Process Violation
 - i. "Due process was violated deprive Applicant of fair trial."
 - ii. "6th Amendment."
 - iii. "14th Amendment."

An evidentiary hearing was held at the Sumter County Courthouse on May 29, 2014. The Applicant was present and represented by Casey Cornwell, Esquire. Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office represented the Respondent. The Honorable R. Ferrell Cothran, Jr., denied and dismissed the application in written order filed July 11, 2014.

Applicant filed a timely *pro se* Notice of Appeal. The South Carolina Supreme Court dismissed Applicant's appeal in an order dated October 29, 2014, for failure to provide correspondence showing that the transcript had been ordered as required by Rules 243(b) and 207 of the South Carolina Appellate court Rules. The remittitur was issued on November 14, 2014.



ALLEGATIONS

*In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:*²

1. Ineffective Assistance of PCR Counsel
 - a. Failure to file an appeal from the denial of his first PCR application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. The State explained that they were consenting based off of their discussion with prior PCR Counsel, a review of the various documents filed by Applicant to the South Carolina Supreme Court, and their discussion with Applicant's current PCR Counsel.

After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his first post-conviction relief application (2013-CP-43-675) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of the

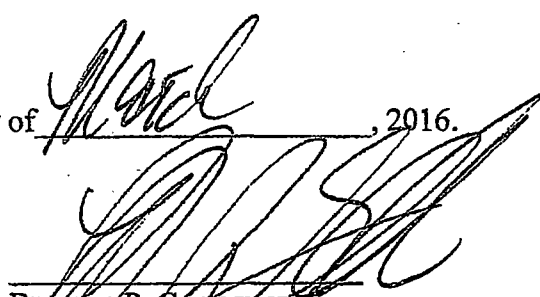
² Respondent initially filed a return and motion to dismiss Applicant's current application as it was filed beyond the statute of limitations and successive to his prior application. The Honorable George C. James, Jr issued a conditional order of dismissal provisionally denying the PCR application. Applicant filed a timely response alleging PCR Counsel was ineffective for failing to file an appeal following the denial of his first PCR application.

Applicant's first post-conviction relief action (2013-CP-43-675) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That the Applicant be granted an appeal of case 2013-CP-43-675 pursuant to Austin v. State; and
2. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 30 day of March, 2016.


BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit

 , South Carolina.

WITNESSES

C Ridgeway, Sumter Police Dept.

ARREST WARRANT NUMBER

M001267

ACTION OF GRAND JURY

True Bill

Leroy N. Thompson Jr.

Foreperson of Grand Jury
Date: 10-28-10

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-43-0337

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

OCTOBER

TERM

2010

THE STATE

vs.

WAYNE WELLS

Indictment for

Sex / Criminal sexual conduct with minor, or
Attempt - victim under 16 years of age - 2nd degree

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Sex / Criminal sexual conduct with minor, or Attempt -
victim under 16 years of age - 2nd degree

At a Court of General Sessions, convened on October 28, 2010 the Grand Jurors of

SUMTER County present upon their oath:

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Belen Hager
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE - CSC WITH A MINOR (2ND DEGREE)

That WAYNE WELLS, a person over the age of eighteen (Date of Birth: [REDACTED]), did in Sumter County, on or about August 6, 2009, commit a sexual battery upon one [REDACTED] a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, by digitally penetrating the minor's vagina and/or having sexual intercourse with said minor, all in violation of Section 16-3-655(B)(2), S.C. 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.

P. Kelly Jackson

SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Wayne Wells

AKA:

Race:

2

Sex: M

Age:

26

DOB:

984

SS#:

Address: 3775 Artesian Drive

City, State, Zip:

Sumter, SC 29150

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 with minor, or Attempt - victim under 16 years of age - Second degree

in violation of § 16-03-065(B)(2)

of the S.C. Code of Laws, bearing CDR Code #

0397

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lawd Act)☐ §17-25-45

The charge is:

☐ As Indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Spratlin, Martin D

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 20 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 13 days/months/years and/or payment

of \$

probation for

2 years

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

☒ 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

\$

§ 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

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(D) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

§ 44-53-450(C) (Conditional Discharge)

\$350

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

James C. Campbell

Priscilla May

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-43-0337

A/W#: M001267

Date of Offense: 8/6/2009

S.C. Code §:

16-03-065(B)(2)

CDR Code #: 0397

SENTENCE SHEET

DEPUTY CLERK OF COURT

SUMTER COUNTY

☒ CONVICTED OF orSOL ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

2156
9 Nov 2010D-20
Sex off
registry