

VOLUME II OF II

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
COURT OF COMMON PLEAS

The Honorable Robin B. Stillwell, Circuit Court Judge
Appellate Case No: 2014-000693

RECEIVED

JAN 29 2015

S.C. Supreme Court

ANTHONY NEIL BRIGGS,

RESPONDENT-PETITIONER,

v.

STATE OF SOUTH CAROLINA

PETITIONER-RESPONDENT.

APPENDIX

JEREMY A. THOMPSON

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ATTORNEYS FOR PETITIONER

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- (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

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. Trial Attorney
Max B. Singleton PMB 156, The Parkway, Greer, SC 29650
- ii. South Carolina Commission on Indigent Defense Elizabeth A. Franklin-Best
Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial attorney Max Singleton
- ii. Appellate Defense Elizabeth Franklin-Best (Direct Appeal)
- iii. _____

19. State clearly the relief you seek in filing this application:

Both charges vacated or new trial

20. Are you now under sentence from any other court that you have not challenged?

No

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN 26 AM 8:43
M. HOFF-BLOOMLEY

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, ^{Anthony}~~Briggs~~, 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.

Anthony Briggs

SWORN to and subscribed before me this 20th
day of June, 2012.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN 26 AM 8:43
M. HOPE BLANKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, ^{Anthony}~~Briggs~~, 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.

Anthony Briggs
Applicant

SWORN or affirmed to and subscribed before me this
20th day of June, 2012.

Sydney Jones
Notary Public

My Commission Expires: 1/24/2018

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUN 26 AM 8:43
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-2674
Anthony Briggs, #342410,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 26, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor under 11 years of age, first offense (2009-GS-42-2627). The Applicant was then indicted at the August 2010 term of the Spartanburg County Grand Jury for sex/lewd act upon a minor (victim 0-15 years of age) (2010-GS-42-4657). Applicant was represented by Max B. Singleton, Esquire. On August 26, 2010, the Applicant was convicted of the charges by a jury. The Applicant was sentenced by the Honorable J. Derham Cole to confinement for life for criminal sexual conduct with a minor and a concurrent sentence of fifteen (15) years confinement for sex/lewd act upon a minor/

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v.

Briggs, Op. No. 2012-UP-323 (S.C. Ct. App. filed May 30, 2012). The Remittitur was returned on June 19, 2012.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to call alibi witness,
 - b. Counsel failed to present a defense,
2. Ineffective assistance of appellate counsel, in that;
 - a. "[D]idn't raise the issues I wanted,"
3. Prosecutorial misconduct; and
 - a. "Perjured testimony, vindictive prosecution,"
4. Lack of subject matter jurisdiction and personal jurisdiction.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where

the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Regardless, it is the Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, Respondent submits that this allegation should be summarily dismissed.

VI.

Applicant also claims the court lacked subject matter and personal jurisdiction. However, the Applicant does not explain with any specificity the grounds upon which these claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. §17-27-50 (2003).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. 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). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

VII.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegations of ineffective assistance of counsel and ineffective assistance of appellate counsel.

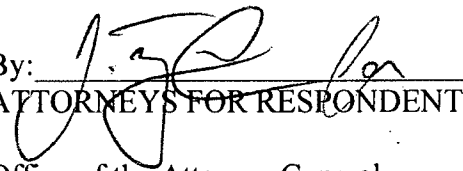
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 26, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Anthony Neil Briggs,

)
)

2012-CP-42-2674

Applicant,

)
)

v.

)
)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

)
)

Respondent.

)
)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
PO Box 12891
Columbia, SC 29211

Anne Mueller

Anne A. Mueller

Legal Assistant for the Respondent

DATED this 26th day of June, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

ANTHONY BRIGGS, #342410,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-42-2674

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving to amend his Application for Post-Conviction Relief. In general, the Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. The Applicant would further amend his Application for Post-Conviction Relief to contain the following specific allegations of ineffective assistance of counsel:

1. Trial counsel was ineffective for eliciting damaging testimony, which would have been improper testimony had it been sought on direct examination, including:
 - a. Testimony from Judy Petty that violated Rule 801(d)(1)(D), SCRE; see Trial Tr. p. 152, lines 16-23;
 - b. Testimony from Investigator Danny Morgan that the Applicant was guilty; see Trial Tr. p. 244, lines 7-11;
 - c. Testimony from Investigator Nikki Cantrell that the alleged victim did not appear to have been coached during her forensic interview; see Trial Tr. p. 281, line 15-p. 282, line 4;
 - d. Testimony from Investigator Nikki Cantrell that the alleged victim disclosed to her that she had been sexually abused by the Applicant; see Trial Tr. p. 282, line 22-p. 283, line 24; and

- e. Testimony from jailhouse informant Dwight Lamar Spears that the Applicant was guilty based on his conversations with the Applicant while they were both incarcerated together; see Trial Tr. p. 307, line 19-p. 308, line 10; p. 309, lines 19-21.
2. Trial counsel was ineffective for failing to object to the qualification of the forensic interviewer as an expert, and for failing to object to testimony given by the forensic interviewer which was qualified as being given in her "professional opinion" or with her "experience and education"; see, e.g., Trial Tr. p. 169, line 3-p. 170, line 7; p. 193, line 21-p. 195, line 16;
3. Trial counsel was ineffective for failing to object to the testimony of the forensic interviewer where the forensic interviewer impermissibly vouched for the credibility of the alleged victim; compare, e.g., Trial Tr. p. 163, line 18-p. 164, line 15 and p. 171, line 24-p. 174, line 21 with State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, 500 (2013).
4. Trial counsel was ineffective for failing to object to the testimony of the forensic interviewer identifying the Applicant as the perpetrator in violation of Rule 801(d)(1)(D), SCRE; see Trial Tr. p. 175, lines 10-20;
5. Trial counsel was ineffective for failing to specify an objection to the recordings of the alleged victim's interviews with the forensic interviewer, which were admitted pursuant to S.C. Code Ann. § 17-23-175, as well as for failing to renew his objection to the admission of the recordings at trial;
6. Trial counsel was ineffective for failing to object to Investigator Danny Morgan's opinion testimony characterizing the veracity of Applicant's statements; see Trial Tr. p. 235, lines 3-11;
7. Trial counsel was ineffective for failing to object to Investigator Nikki Cantrell's testimony that the Applicant was the alleged offender based on implied hearsay from the alleged victim; see Trial Tr. p. 255, lines 10-17;
8. Trial counsel was ineffective for failing to object to Investigator Nikki Cantrell's testimony characterizing his statements made to the alleged victim's mother via recorded phone calls made from the detention center; see Trial Tr. p. 266, line 16-p. 268, line 8;
9. Trial counsel was ineffective for failing to cross-examine jailhouse informant Demetrius Martin that there were provisions in his federal plea agreement where his sentence could be reduced pursuant to Rule 35(b), Fed.R.Crim.P., due to his cooperation with State authorities in the prosecution of others, including the Appellant;
10. Trial counsel was ineffective for failing to introduce impeachment evidence that jailhouse informant Dwight Lamar Spears:

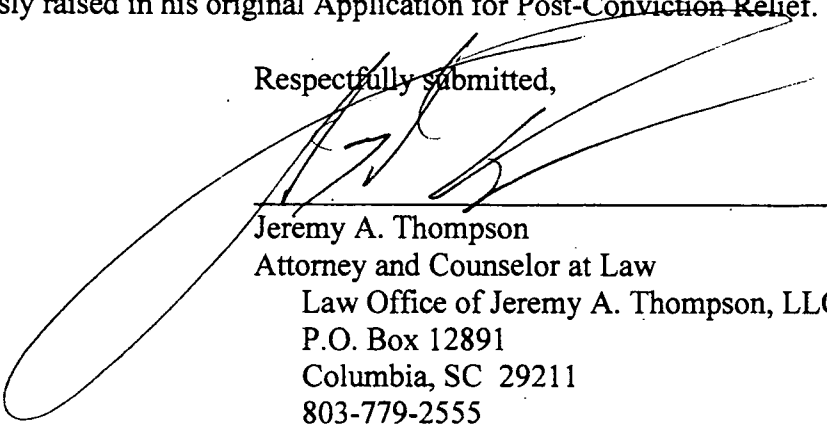
- a. Had been convicted of conspiracy to murder a federal law enforcement officer; see United States v. Spears, 350 Fed.Appx. 808 (4th Cir. 2009);
 - b. Had been sentenced to twenty years' imprisonment on that offense; see United States v. Spears, 350 Fed.Appx. 808 (4th Cir. 2009);
 - c. Lied under oath when he testified that he had only been convicted of a federal financial institution crime and that he would be released between March and April 2011; see Trial Tr. p. 300, line 12-p. 301, line 8;
 - d. Lied under oath when he testified that the Fourth Circuit "threw his whole case out"; compare Trial Tr. p. 302, lines 2-6 with United States v. Spears, 350 Fed.Appx. 808 (4th Cir. 2009); and
 - e. Could have his twenty-year sentence reduced pursuant to Rule 35(b), Fed.R.Crim.P., due to his cooperation in this case;
11. Trial counsel was ineffective for calling the alleged victim's grandmother Donna Parker as a witness for the defense, as:
- a. she did not testify to anything that benefited the defense; see Trial Tr. p. 331, line 14-p. 332, line 9;
 - b. she ultimately confirmed that the alleged victim had also disclosed to her the sexual abuse; see Trial Tr. p. 331, line 14-p. 332, line 9; and
 - c. trial counsel had her statement made to the police regarding the disclosure in his possession prior to trial;
12. Trial counsel was ineffective for calling the alleged victim's mother as a witness for the defense, as:
- a. she did not testify to anything that benefited the defense;
 - b. she ultimately confirmed the statements made to her by the Applicant on the recorded jail phone calls; see Trial Tr. p. 357, line 2-p. 359, line 6;
 - c. she ultimately confirmed that the alleged victim had also disclosed to her the sexual abuse; see Trial Tr. p. 359, line 7-p. 360, line 1;
 - d. she testified that she broke off all contact with the Applicant as soon as the alleged victim disclosed the abuse to her; see Trial Tr. p. 349, line 18-p. 350, line 2;
 - e. she testified that she believed the alleged victim; see Trial Tr. p. 348, lines 19-21;

- f. due to her damaging testimony, trial counsel had to impeach her with her violations of court orders; see, e.g., Trial Tr. p. 349, lines 4-14; p. 350, lines 8-17; and
- g. trial counsel had her statement made to the police regarding the disclosure in his possession prior to trial, as well as a representation from the prosecutor that she did not want to have any contact with trial counsel or anyone working on the Applicant's behalf;

Regarding the issue of prejudice, the Applicant asserts that trial counsel's performance "entirely fail[ed] to subject the prosecution's case to meaningful adversarial testing" and that prejudice should be presumed. United States v. Cronin, 466 U.S. 648, 659 (1984). Additionally, the Applicant contends that each error made by trial counsel is worthy of granting relief under the traditional prejudice inquiry conducted pursuant to Strickland v. Washington, 466 U.S. 668 (1984). In the alternative, the Applicant asserts that the cumulative prejudicial effect of all of the errors warrants the grant of a new trial; see generally State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999); Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 10, 466 S.E.2d 727, 732 (1996).

The Applicant asks that the above-referenced allegations be considered in addition to those allegations previously raised in his original Application for Post-Conviction Relief.

Respectfully submitted,



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 Attorney for the Applicant.

This 30th day of October, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

ANTHONY BRIGGS, #342410,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

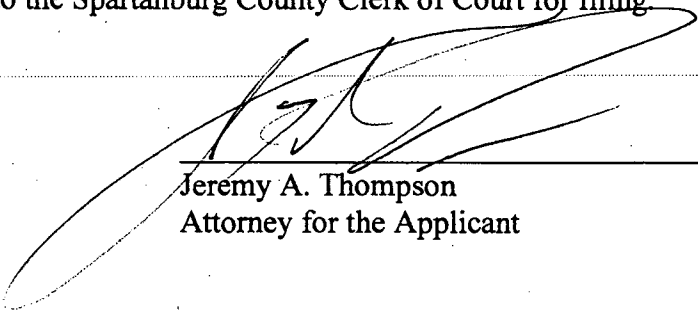
CASE NO.: 2012-CP-42-2674

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Amended Application for Post-Conviction Relief in the above matter has been served on opposing counsel this 30th day of October, 2013, by mailing in an envelope properly addressed with postage prepaid to:

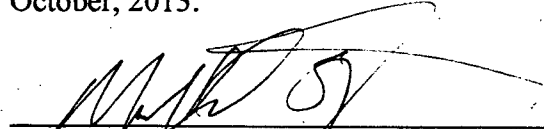
Suzanne H. White, Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been sent to the Spartanburg County Clerk of Court for filing.



Jeremy A. Thompson
Attorney for the Applicant

SWORN TO BEFORE ME this 30th day of
October, 2013.



Notary Public for South Carolina

(L.S.)

My Commission Expires: 7/10/2012

STATE OF SOUTH CAROLINA) IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
) 2012-CP-42-02674
ANTHONY NEAL BRIGGS,)
))
APPLICANT,)
))
VERSUS)
))
STATE OF SOUTH CAROLINA,)
))
RESPONDENT.) DATE: NOVEMBER 12, 2013
SPARTANBURG, SOUTH CAROLINA

POST-CONVICTION RELIEF HEARING

B E F O R E:

THE HONORABLE ROBIN B. STILWELL

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

JEREMY A. THOMPSON, ESQUIRE
ATTORNEY FOR THE APPLICANT

SUZANNE H. WHITE, ATTORNEY AT LAW
ATTORNEY FOR THE RESPONDENT

MAX B. SINGLETON, ESQUIRE
WITNESS

PROVIDED FOR: OFFICE OF THE ATTORNEY GENERAL

FOR COPIES CONTACT: JO RICE
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OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
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MR. THOMPSON	7-50		78-84	
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<u>AMBER WALKER</u>				
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STATE EXHIBITS

NO EXHIBITS ENTERED

COURT EXHIBITS

NO EXHIBITS ENTERED

DIRECT EXAMINATION OF MAX SINGLETON BY MR. THOMPSON

3

P R O C E E D I N G S

1
2 THE COURT: It is my understanding that we are going
3 forward this afternoon in the case of Anthony Briggs versus
4 The State, case number 2012-CP-42-2674. Am I right?

5 MS. WHITE: Yes, Your Honor.

6 THE COURT: Okay. I believe, Mr. Thompson, this is your
7 case, sir.

8 MR. THOMPSON: Yes, Your Honor. May it please the
9 Court. For the record, my name is Jeremy Thompson. I am
10 here as his current counsel of record. I have been accused,
11 quite rightly, of talking too fast. So, for the court
12 reporter's sake, I will try to keep it at a measured pace
13 today.

14 THE COURT: I'm sure she is a professional and she can
15 keep up with you.

16 MR. THOMPSON: All right. The Applicant alleges that he
17 received ineffective assistance of counsel at his trial in
18 violation of the sixth and fourteenth amendment rights of the
19 United States Constitution as well as corresponding
20 provisions of the South Carolina Constitution. And,
21 basically, Your Honor, just by way of a very brief, factual,
22 background, my client was charged with criminal sexual
23 conduct with a minor arising out of an alleged interaction
24 that he had with his girlfriend's daughter, a very young four
25 or five-year-old daughter.

ANTHONY BRIGGS VERSUS STATE OF SOUTH CAROLINA

1 This offense allegedly occurred inside their home where
2 they were all living while no one else was present, it was
3 just him and the little girl, and that it was, basically, her
4 word that he had done this. There was no forensic evidence,
5 nothing like that connecting him to the crime.

6 He proceeded to trial on these charges, was convicted as
7 charged, and sentenced to life imprisonment. Our allegations
8 here today are set forth in the amended application that I
9 filed that, I believe, Your Honor should have a copy of.

10 THE COURT: Yes, sir.

11 MR. THOMPSON: I have a couple of modifications to make
12 to this Amended Application. I told Ms. White that I would
13 be doing this. The first is that I am going to be
14 withdrawing allegation #5, which is an allegation dealing
15 with the videotape of the interview that the forensic
16 interviewer did with the little girl. We are not going to be
17 going forward with that allegation.

18 There are a couple of allegations that I would like to
19 add. The first is, and I will admit to pure oversight on my
20 part, because this, and my client will corroborate, this was
21 one of the first things I noticed and for some reason I just
22 didn't put it in the amended application. There is no charge
23 on expert witnesses in the case. The forensic interviewer
24 was qualified as an expert witness. I believe there was at
25 least one other witness at the trial who was qualified as an

DIRECT EXAMINATION OF MAX SINGLETON BY MR. THOMPSON

5

1 expert. We allege that Defense counsel was ineffective for
2 failing to object to the trial Court's failure to include a
3 charge on expert witnesses in his jury charge and, secondly,
4 Your Honor -- and this was brought to my attention earlier
5 today -- there is another witness by the name of Amber Walker
6 who was allegedly told by the victim that shortly after my
7 client was arrested that he didn't do anything to her and she
8 didn't understand why he had gone to jail and so it's our
9 contention that this witness was available for trial and Mr.
10 Singleton was aware of her information and just failed to
11 call her as a witness. So, those are the two allegations
12 that we would like to add to the Amended Application.

13 MS. WHITE: Your Honor, the State, obviously, objects to
14 any amendments at this point. I think the case has been put
15 together for a while and the Amended Application was pretty
16 detailed and filed a couple weeks ago and I think, at that
17 point, they could have added these. And the suddenness of
18 witness availability and a new witness with testimony, I
19 think, would prejudice the State, not having an opportunity
20 to be able to truly examine what background there is, we
21 can't run any kind of report on the witness or anything, and
22 so we would object to any amendments.

23 THE COURT: Okay. My inclination is to allow the
24 amendments. I think the Rules of Civil Procedure and the law
25 in the State of South Carolina would suggest that those

1 should be freely granted. In this instance, I am going to
2 take it under advisement. You are welcome to present
3 evidence with respect to those amendments and, really, the
4 dispositive question is going to be whether the State has the
5 opportunity to fully respond to the evidence that you present
6 in advancement of those causes of action. So, I'm going to
7 allow you to present the evidence. I will hold the ruling on
8 that amendment until I have heard all of the evidence in the
9 case. Please, before we adjourn, remind me to rule on that
10 so that we will have it on the record.

11 MR. THOMPSON: We will, Your Honor.

12 MS. WHITE: Thank you, Your Honor.

13 MR. THOMPSON: And with that background in mind, Your
14 Honor, we would call Max Singleton as the Applicant's first
15 witness.

16 (After being duly sworn by Judge Stilwell, **MAX**
17 **SINGLETON** testified as follows:)

18 THE COURT: You may take your seat, please, sir. Would
19 you state your name for the record, please.

20 MR. SINGLETON: Max B. Singleton.

21 THE COURT: All right, Mr. Thompson, your witness.

22 MR. THOMPSON: And, Your Honor, just as a kind of a
23 procedural matter, I know different judges like to do it
24 different ways. There are a number of allegations that
25 require a reference to the record. A lot of the record is

DIRECT EXAMINATION OF MAX SINGLETON BY MR. THOMPSON

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1 actually cited in the Amended Application already and that's
2 primarily what I'm going to be referring to, but would you
3 like me to place that information on the record or would you
4 like me to read it out or have the witness read it? Do you
5 have any preference on that?

6 THE COURT: However you think that I can most clearly
7 comprehend it, understanding I am not a jury. And if you
8 will just make the reference, if you are referring to
9 something in the record, specifically, if you will just make
10 the page and line number reference. Ordinarily, I can just
11 refer to it directly. So, what I'm telling you is, do it as
12 quickly and as efficiently as you can while not compromising
13 my ability to understand.

14 MR. THOMPSON: Will do, Your Honor.

15 THE COURT: Okay.

16 DIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q Mr. Singleton, how are you doing this afternoon?

19 A All right. How are you?

20 Q Doing well. Do you recall your representation of Mr.
21 Briggs?

22 A Yes, sir.

23 Q And how long have you been practicing law?

24 A I think, nine years, I guess. I believe.

25 Q And are you in private practice now?

1 A Yes, sir.

2 Q How much of your practice, now, is devoted to criminal
3 law?

4 A Zero.

5 Q Zero? And in the course of your nine years, how much of
6 your practice was devoted to criminal?

7 A When I first came out, I worked for two other attorneys.
8 The first year I worked for an attorney in Greenville.
9 That was all Workers' Comp. That was for a year and
10 then I worked for another private attorney for about a
11 year-and-a-half and that was probably 60% Comp. and 40%
12 criminal and then when I went on my own, it was all
13 criminal, so for the last, up until probably six months
14 ago, the five years before that was 100% criminal,
15 probably.

16 Q And how many criminal sexual conduct cases have you
17 handled prior to this case?

18 A Prior to going to trial or handled?

19 Q Trial.

20 A This was the first one, I believe.

21 Q And just how many have you handled?

22 A Oh, handled? I probably handled five to ten.

23 Q Now, how did you come to represent Mr. Briggs? Were you
24 hired or were you appointed to represent him?

25 A Oh, they hired me. I met with him and his mother and, I

DIRECT EXAMINATION OF MAX SINGLETON BY MR. THOMPSON

9

1 think, his step-father, at their house.

2 Q And how long, this trial took place in August of 2010,
3 how long before the trial were you retained?

4 A Between a year and a year-and-a-half, I guess.

5 Q And was Mr. Briggs in jail or was he out on bond while
6 this case was pending?

7 A He was out on bond when I first met him, but he got put
8 back in jail because they said he violated his home
9 detention, the details of being let out on bond.

10 Q So, he was out on bond and then put back in jail?

11 A Yeah.

12 Q How many times over the course of your representation
13 would you say you met with Mr. Briggs?

14 A In jail or at his home or where?

15 Q Both. All of them.

16 A Forty to fifty times, I guess. I don't know.

17 Q Forty to fifty? And did you feel like you had a good
18 working relationship with him?

19 A Yeah. Well, there were times at the end of, I guess,
20 his trial was scheduled for the beginning of 2010, I
21 believe, like in January or February, and there were
22 some emails from his parents or from him saying they
23 were unhappy with me and then the trial got continued or
24 whatever and then they decided to stay with me, to keep
25 me, and his trial went forward in August. So, we had

1 ups and downs, just like you have with any client. You
2 know, with some clients you have ups and downs and then
3 with some, you don't.

4 Q Now, you mentioned the trial. You had been scheduled to
5 go to trial at the beginning of the year and then,
6 ultimately, you went to trial in August of 2010.

7 A I believe -- yeah, August.

8 Q Did you receive any plea offers in this case?

9 A Yeah.

10 Q What were those plea offers?

11 A I can't remember all of them, but the last one was right
12 before we went to trial. They had offered to reduce it,
13 I think, to a lewd act and we actually had his mom come
14 in. We got special permission from the guards here at
15 the jail for her to come in and discuss the offer with
16 him. His mom came in there and we discussed it with him
17 based on what had happened earlier at the last trial and
18 because witnesses had changed their testimony, they
19 declined to take the offer.

20 Q And had there been offers made prior to that?

21 A I don't believe so. I think this was the main offer
22 they wanted, because they didn't want the little girl to
23 testify or put her through the trial, or whatever.

24 Q How certain, leading up to the trial, was Mr. Briggs
25 that he wanted to go to trial?

1 A He was pretty certain.

2 Q So, he knew, going into it, that you were expecting to
3 go to trial?

4 A Yeah, until I came up with that offer. It was the offer
5 I thought he wanted to hear and so that's why, you know,
6 his mom, we brought her in there to see if he wanted to
7 take it and it was left up to his decision.

8 Q But this wasn't a case where it was a plea the whole way
9 through and then it all of sudden changed to trial? Mr.
10 Briggs was pretty certain that he wanted to go to trial?

11 A Yeah.

12 Q Now, going into the trial, what was your strategy, what
13 were you trying to show at the trial? What was your
14 defense?

15 A Well, the first time we were getting ready to go, was to
16 say that it didn't happen, because nobody, her mother,
17 her grandmother, nobody believed the child, that it
18 happened. But then we were trying to show a time line,
19 because she said it happened at a certain time during
20 the school year and me and Anthony sat down with the
21 calendar and stuff like that and saying, well, if it
22 happened when she said it happened, the only time it
23 could have happened was a two-week window, instead of
24 saying that it happened over four months or five months
25 or something like that. And we, but then, right before

1 the February trial, or we were scheduled to go to trial,
2 his, the victim's mother and grandmother changed their
3 story saying that they now believed that the girl was
4 telling them the truth because, apparently, she told
5 them, coincidentally, the week-end, like two days before
6 the trial was supposed to go to trial. So, during that
7 time, we just continued with the strategy of doing it,
8 you know, it couldn't have happened because this is the
9 time line it supposedly happened and there's no way it
10 could have happened then because she's saying it
11 happened over a certain amount of time and, obviously,
12 there was no way it could have happened over that
13 certain amount of time because he was working, you know,
14 the girlfriend was out of work, the little girl was only
15 in school a certain amount of time, she went to school
16 at a certain time, got out at a certain time, so it
17 didn't match what she was saying. Now, regarding the
18 witnesses, her mother and stuff, like I said, they
19 believed him up until the last minute and then they
20 changed their story, for whatever reason.

21 Q And I'll come back to them in a minute, but you wanted,
22 so your defense at trial, if I'm understanding you
23 correctly, was just to show it hadn't happened.

24 A Yeah. They had no physical evidence, they had no
25 medical evidence that she had ever been violated, which

1 in my mind, to this day, I don't see how that's
2 possible, but I'm not a doctor, I'm not a medical
3 expert. And so, we continued with the time line.
4 Anthony and I talked about the issues with the doctor
5 and why there's no physical proof or anything like that
6 and then, basically, no one believed her for such a long
7 period of time and this was a little girl who was,
8 supposedly, abused, and nobody believed her, basically,
9 except for the police.

10 Q And so the State's case, then, turned on the credibility
11 of the victim, the little girl?

12 A Well, yeah, I mean, as far as, I guess, destroying the
13 credibility of a six-year-old and what I told Anthony,
14 basically, it would come down to whether they believed
15 her or not and that's, you know, the risk you run in any
16 kind of case that involves a victim, whether it be a
17 burglary case, an assault case, or anything like that.
18 And so, we did discuss our strategy. It was, basically,
19 that, you know, to go over the time line, to show the
20 jury that there were so many holes in the stories that
21 she was telling them and the reason for all these holes
22 was that it didn't happen.

23 Q So, had you, did you know that the State planned on
24 calling the forensic interviewer to testify at the
25 trial?

1 A They were -- she was on the witness list, I believe.

2 Q Had you done any research into forensic interviewing
3 prior to the trial?

4 A I believe so. I did the research on that and also, I
5 did research regarding medical experts. I had a whole
6 notebook full of medical articles and stuff like that
7 about how to deal with issues of penetration or lack of
8 penetration and how to deal with, you know, when people
9 are doing interviews, how they ask certain questions and
10 the reason they ask certain questions is to get,
11 sometimes, certain responses. These were articles by
12 medical professionals or other attorneys and stuff like
13 that from around the country.

14 Q And were you aware that, well, obviously it occurred at
15 trial. Do you recall the State asking that Ms. Arroyo-
16 Staggs be qualified as an expert witness?

17 A I believe so. I think it's in the record.

18 Q Did you consider objecting on the basis that she
19 shouldn't be qualified as an expert? Let me re-phrase
20 that. Had you researched the issue of whether or not
21 forensic interviewers should be qualified as experts?

22 A I don't know if I did or not. I would have to look back
23 at my file and see, but I didn't object to it at the
24 trial or anything.

25 Q And so you don't remember if you did any research on

1 that?

2 A I don't know. I mean, I did so much research on,
3 regarding the forensic and the medical doctor, because I
4 thought, I mean, me and Anthony discussed, when we went
5 through the case, we discussed the, I guess, the
6 documents from the Child Advocacy Center and, I believe,
7 how do I want to say it, pointed out there was a lack of
8 physical evidence on the child and that, basically, it
9 was just her coming in saying this is what happened over
10 a number of times.

11 Q And to that effect, were you or were you not aware that
12 the State was going to be introducing evidence that the
13 little girl had told other individuals about the
14 incidents?

15 A What do you mean, "other individuals"? Well, obviously,
16 she told the police, because it wouldn't have gotten
17 that far if she hadn't told anybody.

18 Q And had you seen the videotapes?

19 A From the Children's Advocacy Center?

20 Q Yes.

21 A Yeah.

22 Q So, you knew the forensic interviewer was going to
23 testify to that, as well?

24 A Yeah.

25 Q Did you consider objecting and...

1 MR. THOMPSON: Your Honor, it's on several pages and
2 it's cited in the Amended Application: Page 171, line 24, to
3 page 172, line 18. Page 174, lines 16 through 21.

4 Q It's where the expert, I say "expert", where Ms. Arroyo-
5 Staggs, the forensic interviewer, she started testifying
6 about coaching and whether or not she had, she saw any
7 signs of coaching in the victim's testimony or in the
8 victim's statements to her. Do you remember that
9 portion of the transcript?

10 THE COURT: What page are you on?

11 MR. THOMPSON: Page -- she testifies about coaching,
12 just in general experiences, starting on page 171 and on
13 page 172 and then on page 174, lines 12 through 21,
14 particularly 19 through 21.

15 Q The State asks if she had seen any evidence, any signs
16 of coaching in the interview and she responded she
17 looked for those signs and she didn't see any.

18 A Okay.

19 Q Did you consider objecting to that testimony as
20 bolstering or vouching for the victim's testimony or the
21 victim's statements?

22 A No, because I think one of the issues that Anthony and I
23 discussed was that this had been put in her head by some
24 other people.

25 Q But if your strategy was that ---

1 A And I wanted to see what she was going to say to see if
2 she said this is what she looked for. She said she
3 didn't find them, but, and our argument was, we did find
4 these issues, but she's saying she didn't see them.

5 Q But if she hadn't testified to it in the first place,
6 you wouldn't have had to make that argument. Right?

7 A Say that again, now?

8 Q If you had objected to the testimony about coaching and
9 had it excluded, you never would have had to make the
10 argument that she missed those signs. Right?

11 A No, that was the argument I was making, that she missed
12 those signs. Anthony and I discussed about somebody
13 putting this, telling the little girl what to say and
14 that was going to be -- we had talked about saying one
15 of the family members had actually told her what to say
16 in order to get him in trouble.

17 Q I understand that. But if the forensic -- the forensic
18 interviewer testified as an expert that she did not see
19 those signs. Wouldn't your case have benefitted if she
20 had not been able to make that testimony at all? If
21 your argument is that the little girl is lying, why have
22 an expert testify that she's not?

23 A Because I think, and my decision at that point in time
24 was that she, during her testimony, was to see what she
25 was going to say to see if it would match up to what we

1 were accusing the little girl of doing, like if she gave
2 certain testimony from the CAC interview that I saw in,
3 the Children's Advocacy Center video. So, no, I didn't
4 consider objecting at that point in time. No.

5 Q After she testified she didn't see any signs of
6 coaching, did you consider objecting at that point?

7 A No.

8 Q And, again, you didn't consider objecting to her
9 qualifications as an expert, altogether?

10 A No.

11 Q Did you consider objecting to her testimony where she
12 went through the steps she would take to interview
13 somebody to determine their veracity, to determine
14 whether or not they were telling the truth? Did you
15 consider objecting to that testimony?

16 A No.

17 Q On page 175, lines 10 through 20. Ms. Arroyo-Staggs
18 testifies, in reference to drawings that the victim made
19 about Mr. Briggs, it says, "One of the drawings is what
20 she referred to as the place that it happened on and a
21 picture of herself and the gentleman over here and also
22 specifically drew his private and was very specific as
23 to the condom." Did you consider objecting at that
24 point to the witness's identification of your client as
25 the perpetrator?

1 A No, because I thought there was something earlier in the
2 testimony where she identified him earlier on the stand
3 when she came, she first came in and started testifying.
4 I may be mistaken.

5 Q And is it proper for a witness in a criminal sexual
6 conduct case to testify as to what the victim told them
7 about the identity of the perpetrator?

8 A Say that again, now?

9 Q Is it appropriate, in a criminal sexual conduct case,
10 for a witness to testify as to what the victim told them
11 about the condom and the identity of the perpetrator?
12 And I'm specifically referring to Rule 801(d)(1)(d) of
13 the South Carolina Rules of Evidence, where hearsay
14 testimony is limited to place and time?

15 A I don't believe so, no, because it's not hearsay if it's
16 right after the fact.

17 Q So, did you consider objecting to this testimony as
18 hearsay testimony that the victim had identified your
19 client as the perpetrator in violation of Rule 801?

20 A No, because if I had thought it, considered it that, I
21 would have objected to it. But I think on this issue,
22 we were trying to say how she did the drawing, well, the
23 drawing didn't match up with how the house, or whatever,
24 was constructed, or whatever. I don't remember the
25 drawing, offhand.

1 Q But whether or not -- that information could have come
2 in without the testimony that your client was identified
3 as the perpetrator by the victim. Right?

4 A Right.

5 Q And I'm going to jump a little bit to the end because
6 it's relevant to the expert witnesses. Did you get a
7 copy of the Judge's proposed jury charge prior to the
8 case going to the jury?

9 A I would imagine so, yes.

10 Q Did you notice in those proposed instructions that there
11 was no instruction on expert witnesses?

12 A No, because I didn't notice anything, but I think the
13 judge, in all the trials that I had been in before that,
14 the judge would always say if there was an expert, you
15 didn't have to give more credibility to the expert than
16 any lay witness, that you give credibility to whoever
17 you want to.

18 Q Is that charge standard?

19 A I believe so.

20 Q And would that charge ---

21 A I mean, he would say that in his direction to the jury
22 before he sent them back.

23 Q Right. And would that have been an important charge to
24 have had in this case?

25 A Yeah, and I believe the Judge said that. I'm not sure

1 if he did or not. I haven't read through the whole
2 transcript.

3 Q And if the record reflects that he did not, do you have
4 any reason why you didn't object to the Judge's failure
5 to instruct the jury on expert witnesses?

6 A Did I have a reason to object after the fact that he
7 didn't do that?

8 Q Right. Did you notice that there was no such
9 instruction given?

10 A No. I'm sorry.

11 Q And do you have any reason why you didn't make an
12 objection to that?

13 A No.

14 Q And if you had caught it, would you have objected to it?

15 A Yeah.

16 Q Can I ask you to turn to page 152.

17 A One fifty-two?

18 Q Yes, sir.

19 A Okay.

20 Q And lines 16-23.

21 A I've got it.

22 Q In this testimony, would you or would you not agree with
23 me that Ms. Petty, the witness on the stand at this
24 point in time, goes beyond time and place in describing
25 what the victim told her?

1 A Say that again, please. I was reading it for the second
2 time.

3 Q Would you agree with me that that testimony goes beyond
4 time and place, in terms of testifying what the victim
5 told her?

6 A Well, I believe she's saying that when she first heard
7 about it, that day, they didn't call the police right
8 then and there, that they waited a few days to call the
9 police. But she's going on what they said to her when
10 she first disclosed it. I've forgotten who this lady
11 was.

12 Q And this is on your cross examination, correct?

13 A Yeah, it was, according to the top of the page.

14 Q Did you consider, and I know it's your witness, but did
15 you consider objecting to this testimony as going beyond
16 time and place?

17 A No. I think what we were trying to do on that, because
18 Anthony and I discussed what was told to her the day it
19 was disclosed, what they were told and why they waited
20 two or three days to say anything to the police and I
21 think our strategy was, the reason she told these things
22 or they didn't say anything to the police for two days
23 or however long it was, was because they didn't believe
24 her, because they were saying they didn't want to call,
25 I think it's somewhere, that they didn't call because

1 they were, either they didn't think the police
2 department was open or something like that or they were
3 waiting for their parents to take care of it or
4 something like that and we were trying to show to the
5 jury that any normal individual that had been told by
6 somebody, by a child that they had been sexually abused,
7 would have called the people right then and there,
8 called the police right then and there and not waited
9 two or three days.

10 Q So, you wanted this testimony to be elicited?

11 A Yes.

12 Q Now, do you recall Investigator Danny Morgan's testimony
13 at trial? Do you recall who Danny Morgan was?

14 A Not offhand, was he...

15 Q The polygraph examiner.

16 A Okay. Yeah.

17 Q And do you recall -- did he administer a polygraph
18 examination to your client?

19 A I believe so.

20 Q Do you recall what the result of that test was?

21 A I think the polygraph examiner felt that he wasn't
22 telling him -- I think at the time, that he was trying
23 to get him to confess or something like that.

24 Q He was trying to get your client to confess?

25 A Right. I think on -- Mr. Anthony was there, Mr. Briggs

1 was there for a number of hours, eight or nine hours, I
2 believe, and he was being told by all these different
3 people there that, I mean, the investigator who was
4 doing the polygraph or the investigator you know,
5 everything's going to be okay, nothing is going to
6 happen to you, you know, served him rotting food and
7 stuff like that and saying, you know, just tell the
8 truth and everybody will go easy on you and just trying
9 to basically coerce him, in my opinion, coerce him into
10 telling them what he supposedly did.

11 Q Now, on page 235, the Solicitor is asking Mr. Morgan
12 about whether or not your client's demeanor changed
13 during the course of the interview and at lines 7
14 through 11, Mr. Morgan responds that your client never
15 did strongly or even deny the charges -- that even in
16 the beginning or the allegation was that not even in the
17 beginning, that he didn't deny it very strongly, like
18 you would expect from someone who didn't do something.
19 Did you consider objecting to that testimony when it was
20 elicited?

21 A No.

22 Q Do you believe that testimony is improper?

23 A Yes.

24 Q And if you had -- do you know why you didn't object to
25 that testimony?

1 A Not at the time. I think on, in the later on questions,
2 I think we were trying to say that, and I haven't read
3 the entire transcript, was that everybody doesn't have
4 the same responses that somebody is supposed to have. I
5 mean, you may think that something that happens to me,
6 that I should act a certain way and if I don't, then
7 something's wrong with me, or whatever, and I think I
8 tried to elicit from him that, just because this person
9 may feel they are not guilty doesn't mean they will
10 start yelling and screaming and stuff like that, because
11 if you start yelling and screaming in the police
12 station, or whatever, you know, you'll probably get
13 arrested for something else.

14 Q Right. But what you did actually elicit from him on
15 page 244, lines 7 through 11, you asked him -- it was
16 your cross examination.

17 A What page? I apologize.

18 Q Two forty-four, lines 7 through 11. You asked him, "You
19 felt he was guilty of what he was charged with," and the
20 investigator responded, "By that point in the interview,
21 yes, I was. I was then and I'm very sure that he had."

22 A Yeah, Anthony and I discussed the detective and the
23 investigator, we tried to show that they had these
24 preconceived notions, before they got all the evidence,
25 that he was guilty. They were going to try to do

1 everything they could to show that he was guilty even
2 though they didn't get all the facts of the case yet.
3 This was the first day that he -- I think this was the
4 first day they met the Plaintiff, that they went to the
5 school and talked to her and brought him in that day or
6 the next day and tried to, basically, I don't know what
7 the right word is, but they had a bias, basically, but
8 they automatically believed the little girl and they are
9 going to -- instead of doing a full investigation.

10 Q But this is the individual that polygraphed your client.

11 A The same day that he was being interviewed by everybody.

12 Q Right.

13 A And he was there for eight or nine hours.

14 Q And this is the individual who polygraphed your client
15 and failed him and so why do you ask him, the individual
16 that administered the lie detector test to your client,
17 why do you ask him if he thought your client was guilty?

18 A Because he formed the questions in such a way that no
19 matter what his response was, it was so it would appear
20 to him that he was guilty, that he had a bias in the
21 questions that he was asking. He wasn't asking neutral
22 questions, or whatever.

23 Q And that goes toward the propriety of a lie detector
24 test, which you couldn't get in front of the jury.

25 Right?

1 A Right.

2 Q And so, instead, all you have is testimony from an
3 investigator saying that, "I believe he's guilty."
4 Right?

5 A Well, showing that he had -- I was trying to show --and,
6 you know, hindsight is 20/20, that he was basically
7 biased and he because since Anthony didn't throw a hissy
8 fit or start ranting and raving when he got in there,
9 that he was automatically guilty, no matter what he said
10 after that.

11 Q But if you had objected in the first place to his
12 testimony characterizing the responses as indicative of
13 guilt, you wouldn't have had to even get into that
14 testimony. Right?

15 A Right.

16 Q Turning to Investigator Cantrell's testimony, I'm going
17 to begin on page 255, lines 10-17. Investigator
18 Cantrell was testifying about the, what was the purpose
19 of getting the children off the school bus and she
20 testifies, "Because the alleged offender at that time
21 was Anthony Briggs, who was the mother's boyfriend".
22 Did you consider, at that point in time, objecting to
23 that testimony as identifying your client beyond the
24 scope of Rule 801(d)(1)(d)?

25 A On line 12?

1 Q Yes, sir. Twelve to thirteen.

2 A What was your question, again? I'm sorry.

3 Q Did you consider objecting to that testimony on the
4 basis that she's identifying your client as the
5 perpetrator through the information that she got from
6 the victim in violation of Rule 801(d)(1)(d)?

7 A No. If I would have thought about objecting to it, I
8 would have objected to it.

9 Q And turning to page 266. This goes through the rest of
10 her testimony to page 268, and it begins around line 16.
11 Were there recorded phone calls made between your client
12 and the victim's mother?

13 A From the jail?

14 Q Yes.

15 A Yeah.

16 Q And when did you get those phone calls?

17 A I believe it was probably about a week or two before the
18 first trial was supposed to start.

19 Q Before the first trial was supposed to start?

20 A I believe so.

21 Q Did you have an opportunity to listen to those phone
22 calls before the trial began?

23 A Yeah, there were about four or five hundred phone calls.

24 Q And in this testimony of Investigator Cantrell, she's
25 testifying about the phone calls. Is that correct?

1 A Yeah. It looks like she's starting on -- On page 266,
2 they are talking about, yeah, listening to phone calls
3 from the jail.

4 Q And in, would you agree or disagree with me that in this
5 testimony, Investigator Cantrell is not testifying to
6 the actual words, but is rather testifying to her
7 interpretation of what your client told Ms. Richards?

8 A Yeah, it doesn't look like they are talking about a
9 specific conversation.

10 Q She's just summarizing her interpretation of what she
11 heard or what she believed she heard?

12 A Would you let me read the rest of it, please?

13 Q Sure.

14 A It goes to page 268, is that what you said?

15 Q Yes.

16 A Okay. What was your question again? Was she just doing
17 a summary of them?

18 Q Right. Was she doing a summary of the phone calls.

19 A Yeah. She was just going to summarize, like, she called
20 at this time on this day.

21 Q Did you consider objecting to this summarization and
22 characterization of the phone calls, what she believed
23 she heard on the phone calls?

24 A No.

25 Q Do you think that would have been a proper objection to

1 make?

2 A An improper objection?

3 Q Would it have been appropriate to make that objection?

4 A I don't know, because I listened to the phone calls and
5 to be honest with you, there were 500 phone calls that
6 said these things.

7 Q Right. But this is this witness's, the lead
8 investigator's interpretation of what the phone calls
9 meant.

10 A Right. And I was scared if I objected, then they would
11 bring the actual phone calls in and play them.

12 Q And you thought the investigator's interpretation of the
13 phone calls was better than the actual phone calls being
14 admitted?

15 A I wouldn't say, better. I would say -- I don't know how
16 you want to say it. It's not better. If they had
17 brought the disk in or the audio disk in and they
18 actually heard his voice on the phone calls saying these
19 things and I thought, in my mind, and maybe I'm wrong,
20 I'm not always right, but I thought if they actually
21 heard his voice saying these things, it would hurt him
22 more in the end.

23 Q It would be preferable to have Investigator Cantrell
24 testify about it than ---

25 A Instead of having them playing all 400 phone calls or 30

1 phone calls where he may or may not have said these
2 things. And I went over the phone calls with Mr. Briggs
3 at some point in time. I mean, not all of them, 400 of
4 them, but the ones most pertinent to his case.

5 Q Now, was Investigator Cantrell qualified as an expert
6 witness?

7 A I can't remember.

8 Q And if the record reflects that she wasn't, you would
9 agree with that? That she was not qualified.

10 A Right. I would agree.

11 Q On page 281, and beginning at line 15 through page 282,
12 line 4, would you agree or disagree with me that you are
13 asking Investigator Cantrell as to whether she saw
14 evidence that VICTIM had been coached?

15 A Line 15 through what?

16 Q Page 282, line 4.

17 A Okay, what was the question, again? Asking about
18 coaching?

19 Q Yes. Were you asking Investigator Cantrell if she
20 thought the victim had been coached?

21 A It appears, because I said, she said that ...

22 Q Why were you asking Investigator Cantrell if she thought
23 that the victim had been coached? What possible
24 response did you think you were going to get?

25 A Well, I was hoping to get a response that proved that

1 she had been coached, because I looked at articles about
2 how, on the, how investigators use certain ways to
3 determine or they coach children or how to determine if
4 kids had been coached to say certain things by other
5 people, be it parents or siblings or whoever it was,
6 because we were trying to determine, like, Anthony and I
7 had discussed that she had been coached by somebody.
8 She had been told what to say and I was hoping to elicit
9 a response that would prove that she had been coached.

10 Q You thought you were going to get that response out of a
11 lead investigator?

12 A I mean, she wasn't going to come right out and say it,
13 that she had been coached, but, you know, she was
14 sitting there saying, "Well look, for these things, I
15 actually didn't see it," but I said you are saying you
16 went back through it and didn't see it, but here are all
17 these things staring you in the face.

18 Q Did you actually do that?

19 A No, because she really didn't give a good answer. She
20 would just say something about her emotions.

21 Q So, she testified that she didn't see any evidence of
22 coaching?

23 A She didn't testify, but it was in her report or
24 something like that, according to this.

25 Q And at no point in time did she ever waiver in that

1 assertion throughout your cross examination?

2 A I don't believe so. I didn't go back and read the
3 entire transcript, but I don't believe so.

4 Q And, again, if the -- correct me if I'm wrong. Your
5 defense is that these never happened, these allegations
6 never happened.

7 A Yeah. Anthony and I stated that from the beginning. I
8 mean, we discussed how these didn't happen and if it
9 didn't happen, we got the calendar out and went through
10 his work history and the mother's work history, when the
11 school started, when the little girl's school started,
12 what time she went to school, that she went to school a
13 hour or two later than her siblings, there were times
14 that Anthony did jobs for other people that didn't,
15 actually he did jobs for other people, odd jobs, there
16 were times when the victim's mother wasn't working or
17 was working. We tried to narrow it down to, I think, a
18 two-week window, if I'm correct, to around Christmastime
19 when this supposedly happened and they were sitting
20 there saying, I think in the warrant they were saying it
21 happened in August of that year to January, or whenever
22 he was arrested. We were trying to prove that it
23 couldn't have happened -- those two things, the time
24 line, for me, I mean, to this day, the time line for
25 eight months, basically, they are saying this thing

1 happened when it could only have possibly happened, if
2 at all, during this two-week window. And the reason it
3 didn't, the, her testimony didn't add up is because it
4 didn't happen. Plus, there was no physical evidence and
5 we were trying to show the doctors, how could it be no
6 physical evidence, you know, this is a, you know.

7 Q So, moving down the page on page 282 to a line on 283,
8 you asked an open-ended question to Investigator
9 Cantrell, asking her about the conversation she had with
10 the victim.

11 A Starting on what page?

12 Q Two eighty-two. And her response on page 283, lines
13 6-9, she says, she testifies, when she indicated the
14 allegations were true, that she was sexually abused by
15 Anthony, our focus at that point was just to protect her
16 and make sure she wasn't sexually abused anymore.
17 That's testimony you wanted elicited?

18 A No.

19 Q Why, then, did you ask a question asking how the victim
20 described the sexual acts to her, then?

21 A Because I think she was giving various testimony to
22 various people about what happened and they all
23 contradicted each other. They all weren't the same and
24 we were trying to show that what she was saying, she
25 kept on changing her story and, yes, she's a small child

1 and she kept on changing her story, or changing how
2 things happened or whatever and the only reason she's
3 doing that is because it didn't happen. She kept on
4 trying to, I don't want to say, make things up, but...

5 Q If you are trying to show that she's making things up,
6 wouldn't you want to limit the number of people who
7 could testify that she disclosed abuse from your client
8 to them?

9 A Well, there are always different ways that you can do
10 it. I mean, I'm no expert on how to handle sexual
11 trials and I assume, most people aren't. I was just
12 using, you know, my best strategy. Mr. Briggs talks
13 about it and so we're trying to get the various, you
14 know, that she told all these people this and nobody
15 believed her. Nobody called the police for a couple of
16 days. Nobody believed her. Even her own mother and
17 grandmother didn't believe her for over a year or year-
18 and-a-half and the reason they didn't believe her is
19 that it didn't happen and they didn't believe she was
20 telling the truth.

21 Q Prior to trial, were you informed that the State was
22 going to present the testimony of two, for the lack of a
23 better word, "jailhouse" informants?

24 A Uh-huh.

25 Q Do you practice in federal court?

1 A No.

2 Q Have you ever done anything in federal court?

3 A No.

4 Q Are you familiar with federal plea agreements?

5 A No.

6 Q Did you consider, when you got the information from
7 these two witnesses, Demetrius Martin and Dwight Spears,
8 did you research their cases to see if there was any way
9 they could have been impeached?

10 A I believe that I got the record or the, I believe the
11 Solicitor gave me their rap sheet, or whatever you want
12 to call it, for a lack of better words, and they said
13 that there were no, I believe in your allegations there
14 was someone who said something about getting a reduction
15 in their plea sentence, but the Solicitor told me that
16 there were no deals or anything for their testimony.

17 MR. THOMPSON: Your Honor, this is the plea agreement of
18 Demetrius Martin. I'd like to admit it as Applicant's
19 Exhibit #1.

20 MS. WHITE: No objection, Your Honor,

21 THE COURT: All right. Without objection, it's in.

22 (Whereupon, a plea agreement for Demetrius Martin is
23 entered into evidence as Applicant's Exhibit #1, without
24 objection)

25 Q On page seven of this document in paragraph #9 -- well,

1 before I get to that. Are you familiar with Rule 35(b)
2 in the Federal Rules of Criminal Procedure?

3 A No.

4 Q Are you aware that there is a rule of Federal Criminal
5 Procedure that allows defendants to get their sentences
6 reduced provided they cooperate with prosecuting other
7 individuals after they have been sentenced?

8 A No.

9 Q If you had known that was what Federal Rule 35(b) said
10 and you had known this plea agreement ---

11 A Are you talking about #9?

12 Q Yes.

13 A Can I look at it real quick?

14 Q Yes.

15 A Okay.

16 Q Had you known that Rule 35(b) had allowed for the
17 Federal Government to ask for a reduction in his
18 sentence based on his cooperation in prosecuting other
19 individuals and his plea agreement contained a provision
20 permitting that, would you have tried to impeach him
21 with the plea agreement?

22 A Yeah. I was not aware it was a plea agreement.

23 Q Did you consider calling the Clerk of Court's office to
24 see if there was any way you could get such a document?

25 A No. I asked the Solicitor if they knew if there was any

1 plea agreement they had or anything like that and they
2 said, "No", so I guess I was going by what the
3 Solicitor's office said.

4 Q If you had had that plea agreement, would you have used
5 it at trial?

6 A Yes.

7 Q Dwight Spears is the other jailhouse informant. You
8 were provided a copy of his rap sheet. Is that correct?

9 A I believe so.

10 Q Did you notice on the rap sheet -- I'm going to show you
11 -- and was this in the State's possession?

12 MS. WHITE: We obtained that just today. I don't know if
13 this is the exact same copy that he got or not, Your Honor.
14 This is what the Solicitor brought down to us and said they
15 had it in their files from that time, I would assume, but we
16 can't, you know, I don't have any independent knowledge that
17 that is ---

18 THE COURT: Okay.

19 MS. WHITE: --- the one he received. I think he will
20 need to verify.

21 THE COURT: Okay.

22 Q I know you don't remember each and every page of it, but
23 does that look like Mr. Spear's rap sheet?

24 A I mean, it looks like the type of rap sheets we get from
25 the Solicitor's office.

1 Q What was his charge?

2 A Actually, he was charged with conspiracy to murder a law
3 enforcement officer.

4 Q Did you catch that when reviewing the rap sheet?

5 A No, sir.

6 Q Did you happen to do any research into his offenses?

7 A No, I think they gave me that rap sheet like the day of
8 the trial, or whatever.

9 Q Had you been provided his name prior to the day of
10 trial?

11 A I believe so.

12 MR. THOMPSON: Your Honor, I would like to admit this
13 document. This is the indictment, the indictment for Mr.
14 Spears, as Applicant's #2.

15 MS. WHITE: No objection, Your Honor.

16 THE COURT: All right. Without objection, same is
17 admitted.

18 (Whereupon, Mr. Spear's indictment is entered into
19 evidence as Applicant's #2, without objection)

20 Q Would you take a look at the date on that for me, at the
21 top and could you read the highlighted portion of what
22 that indictment charges Mr. Spears with?

23 A Conspiracy to murder a federal law enforcement officer.

24 Q And Mr. Spears' name is on that indictment?

25 A Yeah. Twice.

1 MR. THOMPSON: Your Honor, this is the verdict against
2 Mr. Spears. I'd like to admit this as Applicant's #3.

3 MS. WHITE: With no objection, Your Honor.

4 THE COURT: All right. Without objection, same is
5 admitted.

6 (Whereupon, Mr. Spears' verdict is entered into evidence
7 as Applicant's Exhibit #3, without objection)

8 Q And this one, could you read that date, as well?

9 A Date filed: 07/23/08.

10 Q And could you read the verdict.

11 A Guilty of conspiracy to murder a federal law enforcement
12 officer.

13 Q And did you happen to do any research into this case to
14 see if, for example, his name had been in any published
15 opinions for his conviction?

16 A Who, Mr. Spears?

17 Q Mr. Spears.

18 A I don't believe so.

19 MR. THOMPSON: I'd like to admit this as Applicant's #4.
20 It's the Fourth Circuit's decision on his appeal.

21 MS. WHITE: No objection, Your Honor.

22 THE COURT: All right. Without objection, the same is
23 admitted.

24 (Whereupon, the Appellate decision for Mr. Spears is
25 admitted into evidence as Applicant's Exhibit #4, without

1 objection)

2 MR. THOMPSON: And Your Honor, I'm just going to read
3 this one out. It was decided November 10, 2009, a decision
4 by the Court of Appeals, Fourth Circuit. It says Defendant
5 was convicted by a jury for the conspiracy and murder of a
6 law enforcement officer, sentenced to 240 months
7 imprisonment.

8 Q Did you research that prior to trial?

9 A I don't believe so.

10 Q Now, if you recall, do you remember what Mr. Spears
11 testified he'd been convicted of?

12 A I believe he testified to fraudulent checks and stuff
13 like that, financial fraud, I think.

14 Q And based on this information, is that accurate?

15 A No.

16 Q If you had known he had been convicted of conspiracy to
17 murder a federal law enforcement officer and sentenced
18 to 20 years in prison, would you have impeached him with
19 that information?

20 A Yes.

21 Q Did he also testify that he only had a few more months
22 left to go on his sentence.

23 A Say that again. I'm sorry.

24 Q Did he also testify that he only had a few more months
25 left to go on his sentence?

1 A I can't remember. I guess, if it's in his testimony,
2 that's what he said, if it's in the record.

3 MR. THOMPSON: And, Your Honor, that begins on page 300,
4 line 12 through page 301, line 8.

5 A It looks like he says he doesn't have much time left, 8
6 to 9 months.

7 Q Did he also testify on page 302, lines 2-6, that the
8 Fourth Circuit had thrown his whole case out?

9 A What line, again?

10 Q Page 302, lines 4-6, they threw the whole case out.

11 A It says they had a federal case. It doesn't say they
12 threw the whole case out. It doesn't, specifically, say
13 that case was thrown out.

14 Q If, again, if you had the case in hand where the Fourth
15 Circuit had confirmed his conviction and not thrown his
16 whole case out, would you have impeached that testimony?

17 A Yes.

18 Q And if you had been aware of Rule 35(b) and had been
19 aware that he was not going to be released for another
20 20 year sentence, to go, would you have impeached him
21 with evidence that he could be seeking a reduction in
22 his sentence because of that?

23 A Yes.

24 MR. THOMPSON: Your Honor, I printed this out this
25 morning. This is from the Federal Bureau of Prisons showing

1 the release date for Dwight Lamar Spears as 8/18/2025. I'd
2 like to enter this as Applicant's #5.

3 MS. WHITE: No objection, Your Honor.

4 THE COURT: All right. No objection. Same is admitted.

5 (Whereupon, a printout from the Federal Bureau of
6 Prisons is entered into evidence as Applicant's Exhibit #5,
7 without objection)

8 Q Do you use the Bureau of Prisons website?

9 A Federal?

10 Q Yes.

11 A No.

12 Q Did you consider looking at the Bureau of Prison's
13 website to find out what his release date would be?

14 A I don't know if I did or not. 08/18/2025?

15 Q Yes.

16 A Dwight Lamar Spears, release date.

17 Q So, had you had that information at your disposal, you
18 certainly would have used it?

19 A Yes.

20 Q Now, on page 307, in particular, lines 19-25 and,
21 specifically, line 25, where you are cross examining Mr.
22 Spears.

23 A I'm sorry, 307, what line?

24 Q Just start at line 19.

25 A Okay.

1 Q You cross examined Mr. Spears about his review of your
2 client's case. On line 25 he says, "That's when I knew
3 he was guilty."

4 A Okay.

5 Q Did you consider objecting to his opinion testimony or
6 at least try to limit your cross examination of him so
7 that he would not elicit said testimony?

8 A I think I was so engrossed with the question that I
9 didn't think about objecting at that point.

10 Q And you actually asked him on page 309, lines 19 through
11 21, "When did you feel, in your mind, that he was
12 guilty."

13 A Page 309, line what?

14 Q Lines 19 through 21.

15 A Okay.

16 Q Is there any reason why you asked him that question?

17 A I don't know if this was the one where -- there was one
18 of the inmates that was trying to help him, I guess,
19 telling him, I mean, one of the inmates was telling him
20 what to do, what to tell Wendy to do, I'm sorry, the
21 victim's mother to do as far as the child couldn't have,
22 you know, how to make the child not be available for
23 court, your know -- saying that he, you know, basically
24 telling him the law about, you know, the child didn't
25 have to report it if the mother didn't want her to and

1 then, you know, he believed him up until some point in
2 time and then changed his mind just like everybody else
3 did.

4 Q I guess, let me ask it this way. If Mr. Spears had
5 testified on direct examination that it was his
6 subjective opinion that your client was guilty, would
7 you have objected to that testimony?

8 A Yeah.

9 Q So, why did you elicit it on cross examination?

10 A I really don't know, to be honest with you. I wish I
11 could go back and figure out what I was thinking at that
12 time. I think we were trying to say that he, that he
13 believed him up to a point and then, I guess when the
14 officer or somebody came to talk to him, that's when he
15 decided to change his mind and that he was guilty of it,
16 but it's, obviously, not as important what he thinks,
17 but what the jury thinks.

18 Q Now, in terms of -- let me re-phrase that. And I've
19 just got a few more topics to cover.

20 A Okay.

21 Q You called a few witnesses on Mr. Briggs' behalf at the
22 trial?

23 A I believe so.

24 Q Was one of those individuals Donna Parker, the victim's
25 grandmother?

1 A I believe so.

2 Q What were you trying to elicit from her?

3 A That she believed her, that everybody believed her up
4 until the night before trial and then I believe I was
5 made aware of it, later on down the road, that, or
6 somebody -- that she believed her up until the weekend
7 before trial. I think Ms. Parker lived in North
8 Carolina or somewhere and they went there Friday night
9 or Saturday night or something like that and she was, up
10 until that time, she believed her, she believed she was
11 in Mr. Briggs' corner as was the victim's mother and me
12 and Anthony discussed this about, you know, saying they
13 believed her up until time and then all of a sudden they
14 changed their mind and the reason they changed their
15 minds was that she was afraid he was going to get out of
16 jail, that she was dating somebody else or something to
17 that effect.

18 Q So, let me see if I'm understanding this correctly. The
19 purpose of your eliciting, your calling Ms. Parker as a
20 witness was to show that she believed your client up
21 until the abuse was disclosed to her?

22 A Up until it supposedly was disclosed to her, that she
23 never, that supposedly, the little girl didn't tell them
24 anything for a whole year or a year-and-a-half, anything
25 about this case, and that she had just automatically

1 changed her mind, basically, the night before trial.

2 She changed her mind and said this little girl is going
3 to disclose to everybody what she hasn't disclosed for a
4 year-and-a-half, that this happened, and she disclosed
5 right before trial and it seemed pretty obvious and it
6 seemed pretty obvious to Mr. Briggs that this happened
7 right at the last minute.

8 Q And so you wanted to elicit testimony that the victim
9 had disclosed the abuse to an additional family member?

10 A To say that they are changing their minds. Nobody
11 believed her, nobody believed the little girl, except
12 the police, up until a certain time. I mean, me and
13 Anthony discussed this back and forth about whether we
14 should do this or not, because the whole thing was that,
15 there was a time line issue and the fact that nobody
16 believed her up until the night before trial, or nobody,
17 you know, everybody was in Anthony's corner until the
18 night before trial and I didn't know this, they didn't
19 know until it was disclosed, until, I guess, that Monday
20 or Tuesday of the first trial, that they came down and
21 told us.

22 Q But you knew going into this trial ---

23 A Right.

24 Q --- that they believed the victim?

25 A Right. I mean, me and Anthony discussed that, if we

1 wanted to do that.

2 Q Your client told you he wanted to do that?

3 A We discussed the strategy beforehand. We went there and
4 discussed it, did we want to do this, is this what we
5 want to try to elicit, showing that they supported him a
6 year-and-a-half, why are they supporting her, because
7 they didn't believe her then, why do they believe her
8 now? Or saying they believe her because they don't want
9 Anthony to get out of jail, because she was dating
10 somebody else.

11 Q So, this was a joint strategy on your and your client's
12 part to elicit this testimony, from both Ms. Parker and
13 Ms. Richards?

14 A Yeah, I wouldn't have called them. He may have said at
15 one point he didn't want to call her as a witness,
16 because they had a falling out, but I would not have
17 called her as a witness if it hadn't been with his
18 approval. And we discussed this weeks or long before
19 trial, because we still went with the strategy for the
20 first trial and now we've got -- we were anticipating at
21 the first trial to go with the victim's mother and
22 grandmother and everybody else that was on our side and
23 the time line. Now, at this point, all we have is the
24 time line and who else are we going to call except for,
25 I mean, who else is going to testify, and so we were

1 trying to show that they believed him all this time.

2 Q Did you think your defense was benefitted by calling Ms.
3 Parker or Ms. Richards?

4 A I believe so, because if her own mother didn't believe
5 her all that time, why should the jury believe her?

6 Q But didn't her mother say the only reason she didn't
7 believe her was because it hadn't been disclosed to her?

8 A That's what she said.

9 Q Well, I mean ---

10 A Yeah, we were trying to bring it out on direct
11 testimony, that they were trying to say she didn't
12 disclose, she didn't say anything to you, her own
13 mother, for a year-and-a-half, which I find hard to
14 believe.

15 Q And do you recall speaking to Amber Walker, over here,
16 about this case?

17 A I don't remember. I may have. I spoke to some people.

18 Q Do you -- so, you don't remember what she had to say
19 about the ---

20 A No, I don't remember.

21 Q If there was somebody available that could have
22 testified that the victim disclosed to them that no
23 abuse had occurred, that your client had not abused her,
24 would you have wanted to call that witness at trial?

25 A Yeah. If the judge would allow that in, yeah.

1 Q Well, why wouldn't the judge ---

2 A All I'm just saying is, yeah, if somebody said, "She
3 told me it didn't happen," then, yeah. I don't remember
4 who I talked to back then. I mean, he gave me a list of
5 people to talk to and I contacted as many as I could
6 find. He and I went over what those people said.

7 MR. THOMPSON: Beg the Court's indulgence for a moment.

8 THE COURT: Sure.

9 MR. THOMPSON: I have no further questions of this
10 witness, Your Honor.

11 THE COURT: Ms. White.

12 CROSS EXAMINATION

13 BY MS. WHITE:

14 Q Mr. Singleton, I'm going to try to go back to the
15 beginning and do this in the same order as Mr. Thompson
16 so we can kind of follow through here. You testified
17 that you had been retained about a year before the
18 trial?

19 A I guess I'd say about a year to a year-and-a-half. I'm
20 not sure exactly when.

21 Q Okay. And during that time you said you met with Mr.
22 Briggs numerous times?

23 A Yeah, numerous times. I'd say forty to fifty, maybe not
24 that many times, but we met a lot of times. I mean, we
25 met -- we were talking sometimes when he was out of

1 jail. I went to his mother's or parents' house and then
2 I met with him at jail numerous times.

3 Q So, you met with him in and out of jail before he was
4 picked back up on the bond violation?

5 A Yes.

6 Q And then you met with him while he was in jail.

7 A Yes.

8 Q You communicated via telephone or letters?

9 A No, just in person. He may have written me letters. I
10 mean, I don't think he could call me, but I would always
11 go see him in person. I was right here in Spartanburg.

12 Q Okay. Now, did you have the chance to review with him
13 the discovery materials that ---

14 A Yeah. We went over all the evidence, the paper
15 evidence, the videos, you know there were 400 or
16 something phone calls. We didn't go over all those, but
17 I went through and listened to them and brought to him
18 my notes from the phone calls and told him what the
19 phone calls said.

20 Q And in regards to your trial strategy, you testified
21 that essentially it was, this didn't happen because of
22 issues of the time line and inconsistencies with the
23 victim's stories. Is that right?

24 A Basically, yeah.

25 Q And, in fact, what we've talked about with regards to

1 the victim disclosing to the mother and grandmother,
2 that was the weekend before the first trial, which was
3 almost a year after the initial disclosure. Is that
4 right?

5 A It was about seven or eight months, I guess.

6 Q Okay. So, at that point, the testimony from the mom was
7 that during that entire time after she had, after the
8 victim had disclosed this to someone else, she never
9 talked with her child about it ---

10 A Right.. That's what she said.

11 Q --- or the child never expressed anything to her?

12 A That's what she said. Because up until that time, she
13 was helping me gather whatever information we could for
14 Anthony. She would give me stuff that she thought might
15 help, or whatever.

16 Q In regards to the evidence that came out at trial, the
17 doctor that testified, Dr. Henderson, did she not
18 testify that there was a normal exam?

19 A Yeah. I mean, I had notes and she testified that there
20 was no evidence of penetration, basically, that that was
21 not uncommon and I probably read about 20 articles, or
22 whatever, about the issues, you know, there were some
23 that, basically, said that there was, depending if there
24 was force, or whatever, there could be sex abuse trauma,
25 or whatever, but she testified it was not uncommon for

1 there not to be any evidence.

2 Q And this was a child, when she testified, she was six,
3 but the alleged abuse occurred when she was four. Is
4 that right?

5 A I can't remember.

6 Q Okay. But does that sound right to you, she was a young
7 child?

8 A Somewhere around there, yeah.

9 Q Now, during the child's testimony, the victim's
10 testimony, what was your take on how she testified and
11 whether or not that hurt really or how she was able to
12 testify in front of the jury?

13 A To be honest with you, I can't remember her mannerisms.
14 I can't remember much of what happened. I remember that
15 they were, they cleared the courtroom because she was
16 afraid to come in there. She got up there and I would
17 say she was nervous, or whatever. And I think, I can't
18 remember what she said, but I think she said, basically,
19 when they asked her who did it and she pointed to Mr.
20 Briggs and said he did it or Anthony or whatever name
21 she used for him. I'm not sure I get what you are
22 asking, I guess.

23 Q Well, let me ask another question, then. When you cross
24 examined the victim, didn't you ask her if she could
25 identify when this happened and she could not answer

1 that?

2 A Right.

3 Q You asked her if she had told them that it had occurred
4 once and then said it occurred a thousand times?

5 A Right. Because I think that was, when Anthony and I
6 discussed the counter strategy, or whatever you want to
7 call it, strategy, was that, and I believe I made this
8 argument in closing, that she changed her story. She
9 said on the stand it only happened once and then
10 multiple times and it happened, and I think there was
11 something in there about around one of the holidays, and
12 there was no way it could have happened then because of
13 his work schedule, her work schedule or school schedule,
14 because I guess they were home at that time and there
15 was no way it could have happened at that time, there
16 was nobody going to school, she was not left alone with
17 Anthony during that time, so I think my argument to the
18 jury was that she changed her story from here on the
19 stand and what she told police because it didn't happen.
20 She was just making the story up and she couldn't keep
21 track of her lies.

22 Q Wasn't the testimony presented to the jury, as well,
23 that when it was initially disclosed her mother took her
24 to the hospital and the child actually said, "Nothing's
25 happened."?

1 A I believe I discussed that with Wendy, or the victim's
2 mother about the hospital visit and they said they found
3 no evidence that anything had happened.

4 Q And so, the testimony has been presented that the child
5 had actually told the folks or her mom or the folks at
6 the hospital that nothing had occurred. Is that right?

7 A I believe so. I think there's something in the medical
8 report or something saying that nothing happened.
9 Because I think what had happened was, I think there was
10 some family court case or something and the victim's
11 mother was trying to get the father for child support or
12 something and that he disclosed to her at that court
13 hearing or a day or two afterwards that she had said
14 something to him about it so she automatically took him
15 or took her to the hospital to see if they could find
16 out anything, or anything.

17 Q And nothing came of that.

18 A They didn't find anything.

19 Q Now, in regards to what you mentioned about the court
20 case, you actually talked with, I believe, the mother
21 about the fact that this all occurred around the time of
22 a family court case when they were fighting over some
23 custody or ---

24 A Something about child support, trying to get more in
25 child support or making him pay child support or

1 threatening to put him in jail if he didn't pay child
2 support or something like that.

3 Q And were you able to elicit testimony from Ms. Petty,
4 who was the one who supposedly had the initial
5 disclosure, that she had been told this on a date and it
6 was days later, if not a week or so later, before it was
7 even reported it to the police?

8 A Yeah, that's what I was saying, is that I think it
9 happened on a, supposedly, like a Thursday or a Friday,
10 and nobody reported it to the police until that Monday
11 or something.

12 Q And, in fact, your testimony was, or your questions were
13 for Ms. Petty about the fact that if this had happened
14 or this was believable, they let the child return back
15 to the home where Mr. Briggs was.

16 A Right. And I was trying to show to the jury that, you
17 know, hopefully they would be reasonable people and if
18 somebody said this to you that, one, you'd call the
19 police right then and there or, two, you'd make sure
20 that, you know, the alleged perpetrator or whatever you
21 want to call him, was around until they figured out the
22 facts, but the fact that none of that happened, I was
23 trying to show that the reason none of that happened was
24 because nobody believed her.

25 Q Now ---

1 A I think that's what I said in closing. I'm not positive
2 that's what I said, but I think so.

3 Q Okay. In regards to the forensic interviewer, you
4 testified that you saw the video tapes. Obviously, that
5 allegation has been removed but you did initially make
6 an objection and ask for a finding as to whether or not
7 that was going to be admissible. Is that right?

8 A I believe so, but I'm not positive.

9 Q And at the time, Judge Cole ruled that those were
10 permissible pursuant to the statute.

11 A I believe so.

12 Q Okay. And in regards to the testimony from the forensic
13 investigator, you talked a little bit about the fact
14 that she was asked what she looks for and whether or not
15 she looks for coaching. Did she ever, to your
16 recollection, use the words that the victim was
17 credible, the victim was believable, this was a
18 compelling story?

19 A I don't -- I can't remember, but I don't believe so. I
20 mean, the whole thing with that was, you know, we were,
21 at that point in time, we had a counter strategy or
22 whatever you want to call it, and I was trying to figure
23 out some way to, Anthony and I, I believe, discussed
24 this, how to use the experts or so-called experts,
25 question people to elicit certain information from them,

1 because there are, you know, some articles out there
2 that say you can't trust these investigators because
3 they are, they get paid for finding people, basically,
4 in my opinion, get paid for finding people credible or
5 not credible, but believing these children's stories,
6 because they are very serious allegations and I guess
7 they'd rather err on the side of caution because they
8 are going to, you know, elicit certain information from
9 the children whether the children picked it up or not
10 and that was, when I looked at the videos, I was trying
11 to determine if that could be determined from looking at
12 the videos or from what she used to examine these
13 children with.

14 Q So, and in her direct, she never said, "I believed this
15 child based on what she told me or based on her
16 interview?

17 A I don't believe so. I'm not positive, though.

18 Q Okay. And she never actually said -- she talked about
19 the processes and what they do and she talked about the
20 drawing and things, but the only thing that she really
21 said about anything was, "my professional opinion was
22 about partial disclosures". I don't know if you recall
23 that, on page 169. If you will just kind of scan that.
24 If you'll note, she talks about professional opinions,
25 but it's with regard to a general knowledge about

1 whether or not children will disclose partially or---

2 A Yeah, I believe in partial disclosure, they just give
3 you parts of a story about what happened and not give
4 you, you know, a complete story of what happened.

5 Q Okay. And there's no detail in that testimony about,
6 specifically, the victim in this case, is there?

7 A I don't believe so. No.

8 Q Okay.

9 A I think she only met with her one or two times and then
10 after that it was, you know, counseling, or whatever,
11 where the mother would take her to counseling and I
12 don't think the mother took her to counseling all that
13 much.

14 Q And, in fact, because of the phone calls where the
15 mother is told by the defendant not to take them to
16 counseling or not to take the daughter to counseling,
17 wasn't there testimony from a counselor that said she
18 stopped coming, she stopped bringing her daughter?

19 A Yeah, but there was testimony from the, you know -- she
20 didn't come and then she came periodically, and then she
21 stopped coming altogether.

22 Q Okay. In regards to the drawing, I know that when --
23 and we are looking at page 175. Mr. Thompson read that
24 one of the drawings is what she referred to as the place
25 that it happened on, a picture of herself and the

1 gentleman over here and, also, specifically drew his
2 private and was very specific as to the color. Now, the
3 way that -- the impression that I got when Mr. Thompson
4 was reading was that she literally pointed to the
5 Defendant and said, "The gentleman over here." Had she
6 done that would you have objected to her pointing out
7 and identifying your client in the courtroom?

8 A I believe so. Yeah.

9 Q So, is it possible that she was actually looking at the
10 drawing and pointing out the fact that this was a
11 picture of herself, the victim, and the gentleman over
12 her on the photo or on the drawing?

13 A I believe so. From what I can remember, she didn't
14 really have too much eye contact with him, because this
15 is the same courtroom the trial was in and I don't
16 believe she had much eye contact with Mr. Briggs,
17 because her mother was sitting where, I guess, y'all are
18 sitting.

19 Q Okay. So, the forensic interviewer, at that point, did
20 not point out and say she identified and drew this man
21 over her, pointing to the Defendant, to your
22 recollection?

23 A I don't believe so, no. Oh, I'm sorry. This was the
24 testimony from the ---

25 Q Yes, from the forensic ---

1 A I thought you meant the testimony from the little girl.
2 No, I don't remember her pointing at him or anything
3 like that.

4 Q Okay,

5 A I think she was just describing the picture.

6 Q In regards to the testimony from Judy Petty, who was the
7 person she initially disclosed to, during your cross
8 examination on page 152, went over the fact that the
9 child, when she was explaining what she was told by the
10 child, she essentially said, "Don't tell anybody. I
11 don't want you to tell anybody, somebody has touched me
12 in places. Don't tell anybody." Did she ever identify
13 the Defendant in that testimony?

14 A I don't believe so.

15 Q And did she ever say details as to what, if anything,
16 had happened?

17 A No. I think she just vaguely said something happened,
18 but you know, in my mind, if somebody says it happened,
19 you need to call the police right then and there. My
20 whole strategy and in talking with Anthony is, if they
21 thought this happened, why did they wait 48 or 72 hours
22 before they called the police.

23 Q And you went through and presented that testimony and
24 was able to have them talking about whether or not they
25 were concerned for her safety and why she didn't call 9-

1 1-1 on her own if she thought this had happened?

2 A Right.

3 Q In regards to the polygraph exam and in talking about
4 investigator Morgan, the jury wasn't aware that the
5 Defendant had taken and failed a polygraph. Is that
6 right?

7 A Correct.

8 Q All right. So ---

9 A They basically said that he was an investigator.

10 Q So, Investigator Morgan, for all the jury knows at this
11 time is that he's, essentially, an investigator of the
12 crime or the alleged crime.

13 A Yes.

14 Q So, when you talked to him, and we're looking at page
15 235, initially, when he's saying, you know, this is what
16 happened during the interview, he didn't really deny it,
17 you know, like somebody would expect, that wasn't having
18 anything to do with the polygraph exam, right? That was
19 just his opinion as to what ---

20 A Yeah. From what I remember of the video, they carried on
21 a conversation for, I mean, the investigator and Mr.
22 Briggs carried on a conversation maybe ten or twenty
23 minutes before the polygraph even got started, you know.
24 I guess that's what he was talking about. You know, he
25 didn't sit there and rant and rave. I believe Mr.

1 Briggs was actually, I believe upset. He wasn't yelling
2 or screaming or anything like that, but I think he was
3 emotional about it.

4 Q And didn't he, if you turn to the next page, page 236,
5 lines 10-12, didn't that investigator also say that at
6 some point during the interview, didn't Mr. Briggs say,
7 "I didn't do this"?

8 A Yes, on line 11.

9 Q So, he also, it came out that Mr. Briggs had not
10 necessarily denied it like he thought, but he had, at
11 one point, said, "I didn't do this".

12 A Right. I think he also said that to Investigator
13 Cantrell, as well, when they -- I think both of them
14 were saying, though, just tell us what happened, it'll
15 make it easier for you, you'll be able to get out on
16 bond or something like that and I think he was having a
17 conversation with his parents and them saying, "No,
18 don't say anything." They were trying to get him to say
19 certain things to show his guilt and promising him that
20 he would get out on bond and telling him he'd be able to
21 go home that night if he said certain things.

22 Q If you'll flip to the next page, page 237, right over
23 across, the middle of the page when the investigator
24 actually said, "I'm not going to deny it to you, because
25 you know better," so basically, it was an affirmation he

1 had done this. "You told me and couldn't deny it
2 because I knew the truth." You objected to that, didn't
3 you?

4 A Yes, ma'am.

5 Q And were you overruled by the Court?

6 A Yes, ma'am.

7 Q In addition, on your cross examination, when you talked
8 with him on page 244 about the statements, in your cross
9 examination, you mentioned when he made statements to
10 the Defendant, he already had it in his mind that he was
11 guilty. Lines 7-9.

12 A Yes, ma'am.

13 Q And then, weren't you able to have him further say that
14 he's not always correct when he initially thinks
15 somebody is guilty?

16 A Yeah, the next couple of questions, I asked him, you
17 know, when he was at the office, you know, if he was
18 always correct and he basically, you know, his beliefs,
19 and he said, "No, not always." He said, "I've been
20 wrong before."

21 Q And was that an effort to show the prediposition to
22 automatically believe that he was guilty without even
23 doing an investigation?

24 A Yeah, that's why I was asking about telling him
25 everything, you know, telling him, you know, everything

1 will be okay if you tell the truth and try to get him to
2 admit to something that he didn't do in order to prove
3 himself right, or whatever.

4 Q Okay. And ---

5 A And he said, "No, that wasn't what I was trying to do."

6 Q If you'll flip to 255 with Investigator Cantrell, when
7 the discussion is about going to the residence, trying
8 to contact the father, went to the school and got them
9 off the bus and what was the purpose, because the
10 offender was, at that time, the alleged offender,
11 Anthony Briggs, he was typically at home and they didn't
12 want the children to return to the home and so was that
13 answer a kind of a part of the investigation where
14 Officer Cantrell was kind of explaining what she did in
15 the process of the investigation?

16 A Yeah, I believe they -- I can't remember if they talked
17 with her at the school that day or if it was before that
18 they talked to her. I think earlier in the day they
19 talked to her. I can't remember. And then, I guess,
20 they found out he didn't work that day or wasn't working
21 that day or what time he got off so she was saying why
22 they went back to school that day.

23 Q So, she was just kind of explaining the investigative
24 process as to why the did the next steps of going to the
25 school or taking the children from school?

1 A I believe so.

2 Q In regards to the jail phone calls, you stated that you
3 listened to them and although a reference was made to
4 her characterization, the statements that he made, "you
5 can't prove or disprove oral sex, it's my word against
6 hers, don't take the children for the forensic
7 interview, no case, no face." Was that all said on the
8 tapes?

9 A Yes. And my thing was, I didn't want him -- it was on
10 the tapes and I didn't want them to bring in, you know,
11 they are summarizing, but then play thirty or forty
12 phone calls or however many it was. It may have only
13 been five or ten, but actually hearing his voice on
14 there, I thought, would hurt him even more.

15 Q So, those aren't, in general, Officer Cantrell's
16 impressions of what he said, that's literally, pretty
17 much, what he said on the tapes?

18 A I believe so. I mean, she's not going into when he said
19 those, the exact dates and times and so forth, but from
20 my recollection, those things were said.

21 Q Okay. And as you mentioned, you thought that hearing
22 his voice actually saying those statements would be more
23 damaging if they were allowed in?

24 A I thought so. In my opinion, you know. I'm not always
25 100% right, obviously.

1 Q Okay. Page 282, when you were cross examining Officer
2 Cantrell, you talk about the fact that she didn't give a
3 time period, she didn't say anything, you know, and then
4 again on page 283, when it says once she indicated that
5 the allegations were true, that she had been sexually
6 abused by Anthony, our focus was to just protect her and
7 then we referred her to the Children's Advocacy Center.
8 Does that, again, sound like she's giving a detail or
9 testimony about the investigative process and how they
10 went through and how the child got referred to the
11 Children's Advocacy Center?

12 A Yes.

13 Q And when she discusses demeanor, she's an investigator,
14 she observed the demeanor. To your understanding, is
15 there anything you could have objected to her
16 testifying, when Officer Cantrell testified as to when
17 she talked to the child, how she appeared?

18 A Say that again? I'm sorry.

19 Q That was a confusing question. I'm sorry.

20 A No, I was thinking about your previous question you said
21 about the allegations, and I don't know if she was
22 talking about, you know, whether she -- they called into
23 the police about her allegations and what she said about
24 this is what happened and her allegations and her
25 statement, I guess, proved what was reported to the

1 police. Not saying that they proved he was guilty or
2 not, but proved this is what they reported to the police
3 and the allegations and presenting the child to the
4 Children's Advocacy Center and then they arrested him
5 after that.

6 Q And, in fact, obviously, Mr. Briggs was present as the
7 defendant and so the jury knew that something had
8 happened and the testimony had been or the disclosure
9 had been that he was the alleged perpetrator ---

10 A Right.

11 Q --- and, therefore, he was arrested. Right?

12 A Right.

13 Q In regards to some of the testimony, you tried to get
14 Officer Cantrell to talk about the inconsistencies in
15 the victim's statements, did you not?

16 A Yeah. On page 202 I talked about how she never gave
17 specific times. It could have been in September or
18 October, November, into February, you know, and them
19 saying, you know, we don't expect a specific time and my
20 whole thing was, that I was trying to get across to the
21 jury was, you've got to have, I mean, this was seven or
22 eight months we were dealing with. You've got to have
23 some specificity. You can't just say it happened
24 between these months, even though she was a young child.
25 It seems like it would be specificity about when it

1 happened, was it around a holiday or a birthday or
2 something like that and that was what we were trying to
3 elicit with this testimony, other testimony and with the
4 calendar and stuff like that.

5 Q And, in fact, she wasn't able to recall if it happened
6 near Christmas, before Christmas --

7 A Right.

8 Q --- or after, if she rode the bus to school, if Anthony
9 walked her down to the bus. There were several things
10 she was not able to recall during her testimony.

11 A Right. I mean, basically, she said, "He did this to me,"
12 and that was it and there was no statement saying when
13 it happened.

14 Q Now, do you have the exhibits up there with you, still?

15 A I think I gave them back to her.

16 Q Okay. I'm just going to show you the first exhibit that
17 was presented is Demetrius Martin's plea agreement. If
18 you would, read for me who the plea agreement is with,
19 between.

20 A This plea agreement is made the 15th day of April, 2009,
21 between The United States of America, as represented by
22 the United States Attorney Walter Wilkins, assistant
23 United States Attorney Reagan A. Pendleton and Defendant
24 Demetrius Martin and Defense Attorney, James Bannister.

25 Q Okay. So, this doesn't mention the State of South

1 Carolina. This is a federal plea agreement?

2 A Yes. Under the district court of the United States.

3 Q Okay. So, the parties involved in this agreement were
4 the federal government and Mr. Martin?

5 A Yes.

6 Q I'm also going to flip to page 3 and if you'll see the
7 first line for me on Number 2, does that not appear --
8 that appears to be explaining what the Defendant agrees
9 to do in accordance with this plea agreement. Is that
10 right?

11 A Yes.

12 Q Okay. And at this time, this plea agreement was in
13 2009. This was well before the trial. Is that right?

14 A Yeah. This was about a year-and-a-half, maybe, before
15 trial.

16 Q So, if I told you there's no mention in the plea
17 agreement about anything he agreed to do in regards to
18 the Anthony Briggs case ---

19 A Right.

20 Q --- would you be surprised?

21 A No.

22 Q And ---

23 A But I, specifically, asked the Solicitor's office if
24 there was a plea agreement that they knew about
25 regarding these people and they said there were none

1 that they knew of.

2 Q So, there was no specific plea agreement in place with
3 the State to offer anything to Mr. Martin for his
4 testimony?

5 A That's what the Solicitor's office told me.

6 Q Okay. And, in fact, the plea agreement that Mr. Martin
7 had with the U.S. Government refers primarily to things
8 he agrees to do in regards to having knowledge, he can't
9 withdraw his plea, he's going to be truthful, he can
10 have a polygraph, but there's no mention in here about
11 specific testimony that he's offering at the Briggs'
12 trial?

13 A I haven't read the entire agreement, but from what I've
14 seen, there's nothing in there about Mr. Briggs,
15 himself.

16 Q Okay. In regards to Mr. Spears, the other jailhouse
17 informant, the case that Mr. Thompson brought up there,
18 which was his U.S. Court of Appeals case that was
19 affirmed and vacated, in part, was November 10th, 2009.
20 Now, this trial was August, 2010, but at this point this
21 case actually had remanded, vacated and remanded for a
22 re-sentencing, so if you were aware of that at that
23 point when he testifies that he thought his case had
24 been tossed out, does that make more sense if he knew at
25 the time that his case had been reversed and remanded or

1 vacated and remanded for re-sentencing?

2 A I don't know if he understood what remanded for
3 re-sentencing would have meant, per se. He may have, in
4 his mind, if they said vacated, if his attorney said it
5 or something like that he may have thought it was over
6 and done with, but I don't know what was told to him by
7 his attorneys. I don't know if they said it was
8 vacated, but you've still got to go back for re-
9 sentencing or something like that.

10 Q So, when he's referring to the eight or nine months that
11 he had left and the fact that the sentence on his other
12 case was going to be changed and he says, "Yes, ma'am,
13 they threw the whole case out," it's very well that he
14 could think that his case had been thrown out, because
15 it was vacated, in part, and being sent for re-
16 sentencing.

17 A It's possible. I don't know. The whole thing with him,
18 with jailhouse people, they are just trying to help
19 themselves out.

20 Q Well, and you were able to point out that he had a
21 pretty long history of counterfeit checks, fraudulent
22 checks and those were more convictions having to do with
23 telling lies and being dishonest. Is that right?

24 A Yeah. Trying to trick people, being deceitful and stuff
25 like that.

1 Q And, in fact, that's what you asked him about,
2 "Basically, you've got a lot of charges that are lies or
3 deception, lying about people forging checks," and he
4 says, "No, it was just counterfeiting," and so on.

5 A Yes.

6 Q Now, he is the one, I believe you testified, that tried
7 to offer, essentially, legal advice to your client in
8 jail and spoke to the victim's mom on the phone in
9 advising her not to take the victim to therapy. Is that
10 right?

11 A Yeah. And when I found that out, I told Mr. Briggs to
12 quit listening to people in jail, that listening to
13 people in jail can get you in more trouble than help
14 you. They are in jail for a reason and it may sound
15 good, what they're doing, he's basically saying I don't
16 know if it was this guy who said he was a paralegal or
17 something like that, but you know, I was a paralegal for
18 10 years and I didn't know the law or anything like
19 that.

20 Q And, in fact, he also testified that he had reviewed all
21 of your client's discovery materials. Is that right?

22 A I believe so, that he and Anthony looked at everything.

23 Q Okay. So, the knowledge he had from the case very well
24 could have been from what he actually looked at?

25 A It could have been.

1 Q Now, tell me a little bit about, you were talking about
2 the fact that you called the grandmother and the
3 victim's mom. I want to just clarify. You testified
4 that the strategy had been to show that they had
5 supported the Defendant for this entire time up until a
6 few months before, even before this trial, maybe six or
7 seven months up until this trial.

8 A Yeah. I think I also used one or both of them to help
9 with the time line on the calendar, because the mother
10 would know when she went to school and I think I asked
11 the mother when she worked or where she worked, how long
12 she worked for, different people she worked for, when
13 she was fired from those jobs, relieved from those jobs,
14 you know, they had this open-ended, basically from, you
15 know, from August to February when this could have
16 happened and we were trying to melt it down to a certain
17 time period where it possibly could have happened and I
18 was using her, partly, as well, to get help with the
19 time line of when she worked and everything.

20 Q And, in fact, she testified to the times she was out of
21 work and she would be home with the children and things
22 like that.

23 A Right.

24 Q Now, you testified that you had talked with the
25 Defendant about calling them. Did y'all every have a

1 discussion and consider at one point not calling them as
2 witnesses?

3 A I mean, we had discussions. We went through the pros
4 and cons, I believe. There were benefits calling her
5 and, obviously, we needed her for the time line and
6 stuff and then I believe we both talked about, I asked
7 her why she believed him over her daughter after all
8 this time, you know, calling him 400 times over -- all
9 the calls weren't from her, but a number of them were
10 from her and why she supported him all that time and
11 then all of a sudden changed her mind.

12 Q And you were able to ask her, in fact, about the fact
13 that when she initially took her child in, the child
14 told her nothing had happened. Is that right?

15 A Right. And I think she, you know, when he got out of
16 jail, I think she, when he was out of jail at one time I
17 think she even let him be around the children.

18 Q Okay. And at the time of the trial, would you have
19 called them as witnesses if your client was adamant
20 against you calling them?

21 A Yeah, it was a combined strategy. I wouldn't have done
22 anything he told me not to. He may have indicated to me
23 beforehand, you know, "Don't call them," or whatever,
24 but then we started, as it got closer to trial, we'd sit
25 there and talk about what we needed to do and, you know,

1 if he didn't want me to call anybody, I wouldn't have
2 called anybody.

3 Q In regards to the jury charge, you testified that you
4 expected an expert charge to be given and that was,
5 generally, the standard charge. Is that right?

6 A Right.

7 Q Now, the judge, during the jury charge went through, in
8 fact, several pages to talk about the credibility of
9 witnesses and how -- and this is page 440.

10 A Okay.

11 Q It started off on that page talking about how the jury
12 has to decide about what weight, what value to give
13 them, you should look at the demeanor of the witness,
14 whether the testimony is consistent or inconsistent, how
15 that witness came to the facts, their opportunity to
16 proceed, any biases or prejudices. So, he went through
17 several pages, in fact, through about page 442 giving
18 the jury instructions as to believing the witnesses,
19 judging the credibility of the witnesses, you can
20 believe one witness as opposed to several, several
21 against one, it does not need to be corroborated. So,
22 the judge did review how the credibility of witnesses
23 and how the jury was to take testimony. Is that right?

24 A Right.

25 Q Okay. And just, finally, in your closing arguments, you

1 went through and -- page 389 is where it started. And
2 you were able to go through and point out, kind of bring
3 together the fact, that the victim's testimony at trial
4 versus the video was inconsistent. She couldn't answer
5 where, how many times, or when.

6 A Right.

7 Q That there were inconsistencies about whether or not she
8 had had any pain when these alleged acts occurred, the
9 lack of physical signs, the lack of a history of medical
10 problems as in; anything from no irritation, there's
11 been no urinary tract infection, no problems with going
12 to the bathroom and things.

13 A Right. I think I went over those things in the trial.
14 That was one of those things with the victim's mother,
15 to show that she hardly missed any school and if this
16 would have supposedly happened, she would have missed a
17 lot more time in school due to, I guess, the trauma and
18 being medically ill or something like that.

19 Q And you continued, as well, with pointing out the issues
20 of credibility with Mr. Spears, about the fact that
21 you've got a drug dealer and a fraudulent check, lying
22 to the public roommate, that somehow just happened to be
23 able to provide some testimony in this case.

24 A Right.

25 Q You also were able to go through and reiterate the dates

1 and the issues with the time line and the fact that the
2 mother continued to support Mr. Briggs throughout that
3 time, weren't you?

4 A Right.

5 Q Okay.

6 MR. WHITE: One moment, Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. WHITE: Your Honor, I think that's all the questions
9 I have at this time.

10 THE COURT: Redirect, sir?

11 MR. THOMPSON: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. THOMPSON:

14 Q Ms. White just asked you about raising some issues
15 regarding Mr. Spear's credibility during closing
16 argument and impeaching him with evidence that he had
17 been writing fraudulent checks and things of that
18 nature. Do you believe your argument would have been
19 bolstered if this had been an individual, if the jury
20 had known this was an individual who had been indicted
21 for and convicted of conspiracy to murder a federal law
22 enforcement officer?

23 A Do I think it would have benefitted?

24 Q Yes.

25 A Yes.

1 Q And do you also believe that your argument would have
2 benefitted if you had been able to show that he had a
3 vested interest in getting that 20-year sentence reduced
4 through his cooperation?

5 A Right. That's why I asked the Solicitor's office,
6 specifically, if there was any agreements that they knew
7 of on either of these individuals and they said, "No".

8 Q And it's not -- and I know you don't practice in federal
9 court, but Rule 35(b), the offer was made by the federal
10 government. It's the federal government, right?

11 A (Nods head)

12 Q So, the State could tell you there was no agreement
13 because they don't have the power to make that
14 agreement. Right?

15 A Right.

16 Q And in terms of the questioning about Mr. Martin's plea
17 agreement, the issue is whether or not he could have had
18 his sentence reduced through his cooperation. Right?

19 A Right.

20 Q And you definitely would have used that information if
21 you had known about it at trial.

22 A Right.

23 Q Now, Ms. White also asked you about the instruction
24 given by the judge, about credibility of witnesses.
25 That's not the same as an instruction on how to treat an

1 expert witnesses' testimony, is it?

2 A I don't believe so. I think it would have been
3 something along the lines of, just because they are an
4 expert doesn't mean you have to believe them or anything
5 more than any lay witness or something to that effect.

6 Q And would you have had that concern, that because, and
7 particularly, Ms. Arroyo-Staggs, was qualified as an
8 expert, the jury would give her more credibility than
9 other witnesses?

10 A Possibly, yeah.

11 Q Ms. White also asked you about Ms. Arroyo-Staggs'
12 testimony referring to "the gentleman over here". Did
13 you definitively remember her not pointing to your
14 client or do you not remember what she did?

15 A I mean, I can't remember what happened two-and-a-half
16 years ago, so I can't remember. I mean, I don't
17 recollect, but I believe I would have remembered if she
18 had pointed at Mr. Briggs right then and there. I mean,
19 I hope I would have jumped up and down, but I don't
20 remember that being done. I think she was looking at
21 the picture talking about, I guess, the counselor or
22 whoever it was that she said it happened on.

23 Q And Ms. White asked you about Ms. Arroyo-Staggs'
24 testimony regarding believability saying, "I believe the
25 victim and believe she told the truth." Something along

1 those lines. Isn't saying, "I didn't see any indication
2 that she was lying," basically a statement that you
3 believe she was telling the truth?

4 A I guess you could take it that way. I mean, if you say
5 I don't believe she was lying you are basically saying
6 she is telling the truth.

7 Q Right. So, that is expressing believability in what she
8 said.

9 A I guess you could take it that way. You could take it
10 that way that she was telling the truth, but I can see
11 how you can take it that way. Yeah.

12 MS. WHITE: Do you have a page reference for that?

13 MR. THOMPSON: It's the testimony about the...

14 MS. WHITE: You are referring to coaching?

15 MR. THOMPSON: Yes. Coaching testimony.

16 MS. WHITE: Okay.

17 Q And on page 197 through 198, you, specifically, ask her
18 starting at line 9 on 197, "How can you, as an expert,
19 determine if she's telling the truth if she can't tell
20 you exactly around the time it happened, again, using
21 the calendar" and she responded, "I can definitely
22 assess it, which I have, I believe, accurately and
23 appropriately, again, based on the age appropriateness
24 information she provided us." Isn't she testifying,
25 based on your cross examination of her, that she

1 believes the victim?

2 A Can I read it?

3 Q Yes.

4 A Okay. Ask your question again? I'm sorry..

5 Q Isn't she, in fact, responding to your questioning at
6 that point in time, asking her opinion as an expert,
7 that the victim is telling the truth?

8 A It sounds like it.

9 Q Again, continuing on to page 198, she testifies again,
10 lines 1-4. What I deducted was a disclosure based on
11 the appropriateness of the; what I saw, what I heard,
12 her statements, the effect. All were appropriate for
13 her age. Isn't she, again, testifying, in her opinion
14 as an expert, testifying that the victim was telling the
15 truth?

16 A I mean, I guess so, because, ultimately, in her report
17 she states, you know, she believes that this happened
18 and that she reported it to the police and the police
19 made an arrest after that, so I mean, I can see how
20 that's possible. Yeah.

21 Q And if this ---

22 A And not just coming out and saying it was true, but I
23 can see what you are saying, yes.

24 Q And if this testimony had come out on direct, would you
25 have objected to it?

1 A I believe so.

2 Q Do you have any explanation why you elicited it on cross
3 examination?

4 A To show that she was, she couldn't pinpoint a time line,
5 that she was, the little girl would say it happened one
6 time or a thousand times and she laughed in the
7 interview when she said a thousand times, which, to me,
8 kind of indicated to me that she was kind of making the
9 whole thing up. She was, how do you tell somebody, I
10 was asking her how you can determine if somebody is
11 telling you the truth if they can't even tell you when
12 it happened and she said they were saying that's not
13 unusual for somebody her age, when somebody goes through
14 that trauma and not be able to give exact dates, but I
15 was trying to show the jury that, you know, she's not
16 being honest with anybody, because she can't tell
17 anybody what happened because it didn't happen.

18 Q Could you have elicited that testimony in a different
19 way as opposed to asking her, as an expert, whether she
20 believed her or not?

21 A Yeah. Possibly.

22 Q And, I'm sorry. I realize we're going in reverse order
23 to how we started. Going back to the very beginning,
24 your testimony is that you met with Mr. Briggs 40 or 50
25 times. Does that include phone calls or is that all

1 in person meetings?

2 A Honestly, I don't think I had any phone calls while he
3 was in jail. It may have been while he was out of jail,
4 I had phone calls with him, but most of my meetings with
5 all my clients are in person. I don't hardly ever talk
6 to clients over the phone. I try to do it in person if
7 at all possible, because, you know, when Anthony and I
8 were meeting, we would go over the evidence, either
9 paper evidence or video or something like that.

10 MR. THOMPSON: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. THOMPSON: No further questions of this witness,
13 Your Honor.

14 MS. WHITE: Your Honor, could I follow up with just one
15 brief re-cross?

16 THE COURT: Yes, ma'am.

17 RE-CROSS EXAMINATION

18 BY MS. WHITE:

19 Q I just want to follow up with the reference about Ms.
20 Arroyo-Staggs saying that how she makes her
21 determination, she still never said, "This child is
22 believable. I believe that she was sexually abused.
23 This was a compelling story or this child is credible."
24 Did she?

25 A I don't think she used those exact words, but there was

1 something, I mean, she had to believe, at some point,
2 that she was credible or she wouldn't have taken her
3 statement or her report to the -- The Child Advocacy
4 Center report states that she believed that she was
5 telling the truth, or whatever, but I don't think she
6 said that in her testimony.

7 Q And you are recalling that from the discovery, but the
8 report was not placed into evidence. Right?

9 A Right. Right.

10 Q Okay. Thank you. That's all I have.

11 THE COURT: How many additional witnesses do you have
12 Mr. Thompson?

13 MR. THOMPSON: Two, Your Honor.

14 THE COURT: Okay. Let's take about a five minute break
15 and we'll come back in. Mr. Singleton, you are excused from
16 the stand.

17 MR. SINGLETON: Okay. Thank you.

18 (Brief Break)

19 THE COURT: All right, Mr. Thompson. You may call your
20 next witness, sir.

21 MR. THOMPSON: We call Amber Walker.

22 THE COURT: Mr. Thompson, also, I've been looking
23 through all the documents that I have and I don't think I
24 have everything. It may be that I'm just not very
25 perceptive, but I haven't seen your Amended Application.

1 MS. WHITE: You know what, Your Honor? I had my
2 assistant make copies and because I have three copies, I
3 think she may have made copies and not put them in the
4 Judge's packet. I apologize.

5 THE COURT: Okay. I've got it now.

6 (After being duly sworn by Judge Stilwell, **AMBER**
7 **WALKER** testified as follows:)

8 THE COURT: You may have a seat, ma'am. Would you state
9 your full name for the record?

10 MS. WATFORD: Amber Starr Walker.

11 THE COURT: Thank you very much.

12 DIRECT EXAMINATION

13 BY MR. THOMPSON:

14 Q Ms. Walker, how are you doing this afternoon?

15 A Pretty good.

16 Q I promise I won't keep you here too terribly long. I'd
17 just ask that you speak up and speak clearly. This nice
18 lady sitting next to you is taking down everything that
19 you say. Okay?

20 A Okay.

21 Q How do you know Mr. Briggs?

22 A My husband used to work with him. We became friends
23 from them working together.

24 Q So, how long have you known him?

25 A Seven years.

1 Q Did you also know Wendy Richards?

2 A Yes.

3 Q And did you know her children?

4 A Yes.

5 Q And did you know them through Anthony?

6 A Yes, sir.

7 Q How did you -- Did you have a relationship with them?

8 A Yes, sir.

9 Q What kind of relationship did you have? Describe it.

10 A Well, the girls usually stayed at my house. I would
11 make them dinner. Even through all, everything that
12 happened, then he would bring the girls over and the
13 girls loved tacos, so...

14 Q And so, obviously, you've known them for a long time.

15 So, you knew them when the, when Anthony was arrested?

16 A Yes, sir.

17 Q Did there come a time when you had the opportunity to
18 speak to the victim about this?

19 A Yes.

20 MS. WHITE: Your Honor, I'm going to object to anything
21 she testifies as to any conversation with the victim as
22 hearsay.

23 THE COURT: Okay. All right. Well, I haven't heard the
24 next question. Right now you are fine, so let's take it as
25 it comes.

1 MS. WHITE: Anticipatory.

2 THE COURT: Yes, ma'am. I understand.

3 MR. THOMPSON: And that would be where my next question
4 is going. So, in response, Your Honor, it's our position
5 that this evidence could have been used at the trial had Mr.
6 Singleton asked the victim about it and had she denied it, it
7 would have been acquiring an inconsistent statement that,
8 then, Ms. Walker could have been used to testify to impeach.

9 THE COURT: I understand. Given that explanation and
10 the manner in which it is offered, do you have a continued
11 objection?

12 MS. WHITE: We'd still object to hearsay, but I
13 understand for the purposes of this hearing and for what we
14 are presenting, Your Honor.

15 THE COURT: All right. I'm going to allow it in. I
16 don't think at this point that it is offered to prove the
17 fact of the matter asserted. I think it's offered for the
18 limited purpose of what she disclosed. I don't think it's
19 hearsay and so I'm going to allow it in. Ask your question.

20 MR. THOMPSON: Thank You, Your Honor.

21 Q What did the victim disclose to you about this?

22 A That it didn't happen with Anthony.

23 Q Did she tell you anything as to, did she indicate being
24 upset about Anthony?

25 A She really wanted him to come home.

1 Q Did it appear to you that she understood what happened?

2 A Yes. She knew that he was in jail because of something
3 she said.

4 Q By her?

5 A Yeah.

6 Q But she indicated to you that nothing had actually
7 happened?

8 A Yes, sir.

9 MR. THOMPSON: Beg the Court's indulgence?

10 THE COURT: Yes, sir.

11 Q Did you convey this information to Mr. Singleton?

12 A Yes, I did.

13 Q And when do you remember speaking to Mr. Singleton?

14 A I spoke to him sitting out in court the day of the last
15 trial, the first day of the last trial.

16 Q So, that was in August of 2010?

17 A Yes, sir.

18 Q And did you tell Mr. Singleton this information, that
19 the victim had disclosed to you?

20 A Yes, sir.

21 Q And did you tell him you would be willing to testify
22 about it?

23 A Yes, sir.

24 Q What was his response to you?

25 A That he didn't think it was necessary.

1 Q And were you, ultimately, called as a witness?

2 A No, sir.

3 Q Were you still there at the trial and available to
4 testify?

5 A Yes, sir.

6 MR. THOMPSON: Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. THOMPSON: No further questions, Your Honor.

9 THE COURT: Cross examination?

10 MS. WHITE: Just briefly, Your Honor.

11 THE COURT: Yes, ma'am.

12 CROSS EXAMINATION

13 BY MS. WHITE:

14 Q Ms. Walker, you testified that you knew the children and
15 Wendy through Mr. Briggs, is that right?

16 A Yes, ma'am.

17 Q And your husband worked with Mr. Briggs?

18 A Yes, ma'am.

19 Q And so, would you say that you were more friends with
20 Mr. Briggs than you were with Wendy, because they had
21 only been together several years?

22 A Well, me and Wendy hung out while they were at work a
23 lot of times. We would go hang out, you know, and go
24 shopping and stuff and take the girls and I had a little
25 boy at the time.

1 Q But you knew Mr. Briggs before he was even dating Wendy.
2 Is that right?

3 A Yes.

4 Q All right. And you said that the victim talked with you
5 about the fact that this had happened and if it had not
6 happened, Anthony could come home. What, when did she
7 disclose that to you?

8 A When he got his bond revoked, she was still letting the
9 girls come over to see Anthony and she come over to my
10 house like two days after he got his bond revoked.

11 Q And this was before the time frame where he got his bond
12 revoked, several months before the first trial in
13 February. Is that right?

14 A Yes, ma'am.

15 Q But the first mention that you had to his attorney was
16 the first day of the last trial in August, so about
17 eight months later?

18 A Yes.

19 Q So, you didn't mention that the child had said this
20 didn't happen to -- did you mention it to Mr. Briggs?

21 A Yes. Well, I mentioned it to Wendy, as well, because
22 the girls had stayed at my house that night and Wendy
23 said that she would talk to Max about it.

24 Q Okay. But you didn't try to contact him?

25 A I hadn't met Mr. Max yet. No.

1 Q But, so you didn't try to contact him within, at least,
2 that eight month period?

3 A I was told it was already told to him.

4 Q All right. But when you talked to him at the day of
5 trial, you said you mentioned you had that information
6 and so you weren't aware he wasn't aware of that
7 information at trial?

8 A No, ma'am.

9 Q Did you also call the police to let them know that the
10 child had disclosed that maybe somebody else had done
11 this?

12 A No, because it was a minor child at the time.

13 Q It was, I'm sorry?

14 A A minor child at the time.

15 Q Okay. But you didn't think it was important to let the
16 police investigate as to whether or not she had said
17 someone else had committed the crime?

18 A Wendy said that she would take care of it.

19 Q Okay. Thank you.

20 MS. WHITE: That's all I have, Your Honor.

21 THE COURT: Redirect, sir?

22 MR. THOMPSON: Nothing further, Your Honor.

23 THE COURT: All right. You may step down, ma'am. Your
24 next witness, Mr. Thompson?

25 MR. THOMPSON: We call the Applicant, Your Honor.

1 (After being duly sworn by Judge Stilwell, **ANTHONY**
2 **BRIGGS** testified as follows:)

3 THE COURT: If you would state your full name, please
4 sir.

5 MR. BRIGGS: Anthony Briggs.

6 DIRECT EXAMINATION

7 BY MR. THOMPSON:

8 Q Anthony, I'm going to tell you the same thing I told
9 Andrea, to speak up and clearly so everybody can hear
10 you. All right?

11 A All right.

12 Q Do you recall your representation, or Mr. Singleton's
13 representation of you?

14 A Yes, sir, I do.

15 Q And you've been in the courtroom for his testimony
16 today?

17 A Yes, sir.

18 Q How many times would you, how many times did you meet
19 with Mr. Singleton, face-to-face?

20 A Approximately, six, eight times.

21 Q Throughout the entire course of the case?

22 A Yes, sir.

23 Q And was that while you were in jail or while you were
24 out of jail?

25 A A couple was out of jail for payments and court

1 appearances up here and probably, I'd say about six,
2 five or six, while I was locked up in jail.

3 Q And how long were you locked up in jail prior to trial?

4 A Prior to trial, it was, I'd say, approximately fourteen
5 months, fifteen months..

6 Q So, about one meeting every two months or so, on
7 average?

8 A Something like that, yes, sir.

9 Q Did you have any trouble getting him to come see you?

10 A Oh, yes, sir.

11 Q Describe that. What kind of trouble did you have?

12 A Well, he wasn't coming to see me. I wrote him letters
13 to come and see me. These are some of the letters I
14 have written him. I even wrote letters to my mother to
15 have her, to email him and sent her the letters for her
16 to email them and I got several responses back and a lot
17 of them wasn't responded to, but all these right here,
18 Judge, are emails and letters. (Indicating)

19 Q All right.

20 A The last one was asking him to come, to show me motions,
21 discovery, and stuff like that.

22 Q Okay. And did you have an opportunity during these
23 meetings to discuss trial strategy with him?

24 A We did, but not really in depth.

25 Q Were you aware of his defenses, that he's described here

1 today, his calendar strategy?

2 A Yes, sir. I am.

3 Q You knew that was what he was going to try to show at
4 trial?

5 A Yes, sir.

6 Q Did you have any conversations with Mr. Singleton about
7 what witnesses to call in your defense at trial?

8 A I did. I also provided him with lists and questions to
9 ask those witnesses.

10 Q Did you tell Mr. Singleton about Ms. Walker?

11 A I did.

12 Q Did you believe he was going to follow up on that
13 information?

14 A I did.

15 Q Did you discuss calling the victim's mother and her
16 grandmother to testify at trial?

17 A Yes, sir, I did. I didn't think that it was a good
18 idea.

19 Q Why was that?

20 A Because Ms. Parker and her daughter has a history of
21 putting little things into her kids' head. This
22 started, first off, to their father, putting stuff in
23 their head about their father and later on in the
24 relationship putting little things into her head about
25 myself and I didn't want them to testify at all, because

1 it just wasn't important and they didn't need to be
2 here.

3 Q Could you identify this document for me? (Indicating)

4 A Yes, sir. That's a letter I wrote Max.

5 Q And what's the date on that?

6 A Five, ten, ten.

7 MR. THOMPSON: Your Honor, if I could admit this as
8 Applicant's #6.

9 THE COURT: All right. Any objections?

10 MS. WHITE: Just one moment, Your Honor. Your Honor,
11 the only objection that I would have is that there is no
12 clarity as to whether or not this was actually received by
13 counsel, so I would just put that note on my objection to it,
14 Your Honor.

15 THE COURT: All right. I'll allow it to be accepted as
16 Applicant's Exhibit #6.

17 (Whereupon, Applicant's letter dated 05/05/2010 is
18 entered into evidence as Applicant's Exhibit #6, over
19 objection)

20 Q I've handed a copy to you. Could you read the
21 highlighted portion of that letter?

22 A It says, "Although I think we need to get on the same
23 page again, I don't understand why you would want to
24 subpoena Wendy and the little girl for trial. To me, I
25 think we need to worry about subpoenaing people for me,

1 not against me."

2 Q And was that a letter you sent to your defense attorney?

3 A Yes, sir. It is.

4 Q Did you discuss this letter with your defense attorney?

5 A Not particularly, that letter, but that issue, yes, sir.
6 I did.

7 Q And what was your position about calling Wendy as a
8 witness at your trial?

9 A I didn't want her.

10 Q And was that consistent throughout the course of his
11 representation?

12 A Yes, sir.

13 Q Or at least after she had given the statement that she
14 didn't believe you anymore?

15 A Yeah. After, yeah.

16 Q And were you aware that that statement had been given?

17 A Yes.

18 Q That she could not believe you any longer?

19 A Yes, sir.

20 Q So, was it your choice to call Ms. Richards and Ms.
21 Parker as witnesses at your trial?

22 A No, it was not.

23 Q If it had been up to you, would you have called them as
24 witnesses?

25 A No, sir. I wouldn't have.

1 Q Now, because of your issues with communicating with your
2 attorney, did you take any other action in trying to
3 have that situation rectified?

4 A I did. I wrote the Office of Disciplinary Counsel,
5 Sabrina C. Todd.

6 Q And did they investigate that matter?

7 A They sure did.

8 Q Could you identify this document for me. (Hands document
9 to witness)

10 A This is the letter that the Supreme Court sent me, dated
11 December 20th, 2011. Do you want me to read it?

12 Q No.

13 MR. THOMPSON: I'd like to admit this as Applicant's
14 Exhibit #7.

15 MS. WHITE: Your Honor, the State does have an
16 objection. It's my understanding that the reason Mr.
17 Singleton was reprimanded in regards to this case had to do
18 with a fee dispute and at this point we would argue that it
19 is not relevant to the actual trial in this case.

20 THE COURT: Was it a public reprimand or a private
21 reprimand?

22 MS. WHITE: It was public.

23 THE COURT: It was public. Okay. All right. I don't
24 know what that letter says, but it may explain it in full. I
25 don't know. You can certainly put evidence into the record

1 regarding what the actual finding was, so with that objection
2 and also, giving you the opportunity for cross examination
3 and to present evidence yourself, if you think it's
4 necessary, then I'm going to let it in as Plaintiff's Exhibit
5 #7.

6 MS. WHITE: Thank you.

7 MR. THOMPSON: Thank you, Your Honor.

8 (Whereupon, a letter from the Supreme Court, dated
9 12/20/2011 is entered into evidence as Applicant's Exhibit
10 #7, over objection)

11 MR. THOMPSON: And, Your Honor, to that end, I'd like
12 to submit the Disciplinary Opinion as Applicant's #8.

13 MS. WHITE: Same objection, Your Honor, but
14 understanding your ruling.

15 THE COURT: Does the disciplinary opinion set forth the
16 reasons for the reprimand?

17 MR. THOMPSON: Yes, sir.

18 MS. WHITE: It does, Your Honor, but it does not
19 identify any of the clients, so we're left -- you know, you
20 can take somebody's word that matter #3 was related to them
21 or matter #1, but we don't know.

22 THE COURT: All right. I'll allow it in, understanding
23 that objection and recognizing that there does need to be
24 scrutiny applied to it by the Court as an evidentiary matter
25 and credibility attached to it and weight just as with any

1 finder of fact. All right. You may proceed.

2 (Whereupon, a Disciplinary Opinion is admitted into
3 evidence as Applicant Exhibit #8, over objection)

4 Q Have you had a chance to review the Disciplinary
5 Opinion?

6 A I have, but I didn't at trial. Oh, you're talking about
7 this. Yes, I have.

8 Q And the Disciplinary Opinion, is it your understanding
9 that matter #3 identifies you?

10 A Yes, sir, it is.

11 Q And is the issue discussed in matter #3, is that what
12 you alleged he had done wrong?

13 A Yes, sir, it is.

14 Q And was that borne out of a lack of communication with
15 Mr. Singleton?

16 A Yes.

17 Q And is the issue over, the discussion over the fee
18 indicative of your relationship with him and your
19 communication with him as a whole?

20 A Yes, as a whole.

21 Q When, getting back to the issue of Ms. Parker and Ms.
22 Richards, when they testified, did you believe they
23 aided your defense at all?

24 A No, not at all.

25 Q Did you feel their testimony was damaging?

1 A Yes.

2 Q And did you communicate that to your attorney?

3 A I did.

4 Q What did you tell him?

5 A I don't know why he called them. I couldn't understand
6 his trial strategy at that point in time. He never took
7 me into the room back there and explained to me, you
8 know, this is how he wanted to go about it. If he did,
9 I might have had some insight of how he was going to do
10 it.

11 Q All right. I think I have covered most of the issues
12 that we had planned to talk about through your
13 testimony. I believe I've also covered the issues
14 covered in the Amended Application, but this is your one
15 and only shot at a PCR hearing, so barring very unusual
16 circumstances, this is your only chance you will have at
17 this kind of proceeding, so is there anything that you
18 would like to add that you think I have left out from my
19 presentation here today?

20 A No, sir. You've done a very good job.

21 Q Thank you. And what was the sentence you received in
22 this case?

23 A Life, a natural life sentence with 15 years added onto
24 it.

25 Q Is it your understanding that is pretty much the highest

1 sentence you could have received in this case?

2 A Yes, it is.

3 Q So, in that sense, you understand that if you go forward
4 with this case, your case is not thrown out, you just
5 get another chance to go forward with your trial?

6 A Yes, sir.

7 Q And knowing that, do you still want to go forward with
8 that here today, with this proceeding here today?

9 A Yes, sir.

10 MR. THOMPSON: No further questions of this witness,
11 Your Honor.

12 THE COURT: Okay. Cross examination, ma'am?

13 MS. WHITE: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. WHITE:

16 Q Mr. Briggs, you said that you were actually locked up
17 about 14 months prior to trial. Is that what you said?

18 A It was approximately a year-and-a-half total.

19 Q Okay. So, that wasn't, you weren't locked up the entire
20 year-and-a-half prior to the August trial?

21 A No.

22 Q Okay. When were you arrested or locked back up on the
23 bond violation?

24 A I was locked up July 19th, July 20th, of 2009.

25 Q Okay. And from that point on, a little over a year, you

1 were in jail?

2 A Yes, ma'am.

3 Q Now, to your understanding, you said you met with him
4 six to eight times, did he ever meet with or communicate
5 with your family?

6 A Very rarely. I got some emails that he did communicate
7 to my mother, but she had sent him numerous emails and
8 called him and all he would say is, I'm going to see
9 him, I'm going to see him, I'm going to see him next
10 week, I'm going to see him Monday and he would never
11 show.

12 Q Now, you did testify that you had received the discovery
13 materials. Is that right?

14 A I received a portion of them. I received an extra
15 document when I arrived at the Department of Corrections
16 that I hadn't seen before trial and that was the DSS
17 findings.

18 Q And you are aware that when you were in jail that a
19 jailhouse informant testified that he reviewed and
20 talked with you about all the discovery. Right?

21 A Yes.

22 Q Okay. And that was several months, obviously, before
23 the trial.

24 A Yes, ma'am.

25 Q Okay.

1 A That was, I talked with him, yes, several months, but I
2 didn't know he was going to testify until a few weeks
3 before trial.

4 Q And the letter that you introduced, that you wrote to
5 Mr. Singleton in May of 2010, does it not start off
6 with, "I just wanted to write and tell you I appreciate
7 the work you're doing on my case"?

8 A It does.

9 Q Okay. And then, you do mention that you want to worry
10 about subpoenaing people that are for you and not
11 against you, you mention wanting to get your car back on
12 the bond list. There are several things on here. Had
13 you talked with him about all those things?

14 A I did. I asked him to appoint my mother for power of
15 attorney so she could get my belongings and he never
16 did.

17 Q Okay. Had your -- when he was representing you on the
18 criminal charges, he wasn't retained to represent you on
19 any kind of estate or power of attorney work, was he?

20 A That's true, but he is my legal counsel and all I could
21 understand, I was in lockup, I was confined to a 24-
22 hour-a-day cell and so I had no way I could have called
23 my mother. I couldn't -- they were taking my letters
24 from me. All this is documented at the jail. I had no
25 contact except through my attorney.

1 Q Okay. Now, the opinion that we mentioned earlier
2 references matter #3 and you said it's your
3 understanding that's your matter. Is that right?

4 A Yes, ma'am.

5 Q And it refers to the fact that there was a dispute about
6 fees.

7 A Yes, ma'am.

8 Q Okay. The letter from disciplinary counsel is dated
9 December 20th, 2011, but the matter number starts with a
10 2010. When did you file this Complaint about fee
11 disputes against Mr. Singleton?

12 A I filed it, I would say, December, around October,
13 August, October, somewhere in '09 was when I started
14 writing.

15 Q Okay.

16 A December, maybe? January. Somewhere in there.

17 Q Okay. August, October, December of '09 or January.

18 A Somewhere around there. It's been a really long time.

19 Q Okay. You filed Complaints with ODC starting before you
20 even had the first trial, is that right?

21 A As a matter of fact, the first letter was 1/13/10.

22 Q Okay. But you had problems with him, but you remained
23 with him as your attorney.

24 A I did.

25 Q So, you didn't fire him as your attorney and hire

1 someone else?

2 A And I was going to do this and this was also on one of
3 the jail recordings that Wendy and myself was wanting to
4 fire him and when the tax money came, she was going to
5 take the tax money and pay for me another attorney.

6 Q Okay. But that did not happen. Is that right?

7 A That did not happen.

8 Q Okay. So, you continued to be represented by Mr.
9 Singleton even after you began filing Complaints?

10 A I did.

11 Q Okay.

12 A I felt that I had no choice.

13 Q Weren't you originally represented by John Rickenbaur on
14 this case?

15 A I did.

16 Q Okay, so you had retained an attorney, initially, and
17 then switched to Mr. Singleton.

18 A I did when it came to my attention that it was a
19 conflict of interest because he was also representing
20 Eddie Tate Richards against me and it came to my
21 knowledge that he couldn't represent me against him.

22 Q So, you did realize, though, that you had a choice of
23 who represented you?

24 A I did. That's why I relieved him of services.

25 Q Okay. But you, after being upset, you claim, with Mr.

1 Singleton, you never relieved him?

2 A Because I was out of money and what could I do.

3 Q Did you they ever talk to you or did you ever talk to
4 anyone about being represented by a public defender?

5 A I did, but I tried to stay away from them because they
6 work for the same people that the solicitors do.

7 Q But you were aware that was an option if you didn't have
8 any money?

9 A It was. Yes. But you've got to understand, my life was
10 on the line here. They were giving me 25 years to life
11 for a crime I never committed.

12 Q Thank you.

13 MS. WHITE: That's all the questions that I have, Your
14 Honor.

15 THE COURT: Any redirect, sir?

16 REDIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q I just want to clarify, sir. The first letter that you
19 sent to the Office of Disciplinary Counsel was dated
20 January 13th of 2010?

21 A That's what I have here.

22 Q All right.

23 A That's what I have here. I mean, I don't know if I have
24 a earlier one, but this is what they sent me back.

25 MR. THOMPSON: I have no further questions, Your Honor.

1 A January 13th, 2010.

2 THE COURT: Okay.

3 MS. WHITE: I have nothing further, Your Honor.

4 THE COURT: All right. Good enough. Mr. Briggs, thank
5 you, sir. You may step down. All right, anything further
6 from the Applicant?

7 MR. THOMPSON: I have no further witnesses, Your Honor.
8 Just a brief argument.

9 THE COURT: Okay. Anything from the State?

10 MS. WHITE: Nothing, Your Honor..

11 THE COURT: Okay. Good enough. All right. I'll be
12 happy to hear from you, Mr. Thompson.

13 CLOSING ARGUMENT

14 BY MR. THOMPSON:

15 Your Honor, for us, this case comes down to ineffective
16 assistance of counsel in several different respects, but
17 basically, I think you can group them into a few general
18 areas where I believe Mr. Singleton failed Mr. Briggs in
19 representation.

20 The first I will start out with is the testimony of the
21 forensic interviewer. It's our contention, and I will hand
22 up a number of cases, Your Honor. I will go through each of
23 them and a couple of them are cited in the Amended
24 Application, but this is an issue that the Supreme Court has
25 been particularly active in as of late saying that you can't

1 have a forensic interviewer testify as an expert, that you
2 can't have them vouch for the credibility of the victim and
3 have them, basically, acting as human lie detectors.

4 For that proposition, Your Honor, I would hand up four
5 decisions, two of which were decided prior to this trial, two
6 that were decided after. The two that were cited before are
7 State v. Douglas 380 S.C. 499 671 S.E.2nd 606, (2009). I've
8 been told I talk really fast with this and I'm going to try
9 to be conscious of that and slow down. Second one, Smith
10 versus State, 386 S.C. 562 689 S.E. 2nd 629 and two more
11 recent decisions subsequent to the trial are State versus
12 Jennings 394 S.C. 473, 716 S.E. 2nd 91, and State versus
13 Kromah, 401 S.C. 340, 737 S.E. 2nd 499(2013). All of these
14 are decisions by the South Carolina Supreme Court, Your
15 Honor, and I'm not going to go through the details and
16 particulars of each and every one. I know it's getting late
17 and we're getting close to the end of the hearing.

18 THE COURT: I'm going to read them.

19 MR. THOMPSON: And ---

20 THE COURT: I have every intention of reading them.

21 MR. THOMPSON: But again, these cases stand for the
22 proposition that you can't qualify a forensic interviewer as
23 an expert at trial and that was stated as early as James and
24 stated definitively in Kromah and Smith versus State
25 actually holds the opposing defense attorney ineffective for

1 failing to object to certain matters dealing with a forensic
2 interviewer's corroboration of a witness and things of that
3 nature. We believe that directly is in support of our
4 allegations here today.

5 With regard to the forensic interviewer, Your Honor, Ms.
6 Arroyo-Staggs was permitted to testify as to, giving her
7 opinion on numerous occasions. She testifies, in my
8 professional opinion, in my expert opinion, questioned as an
9 expert, on a number of occasions. We believe that each of
10 those times those were objectionable statements. They are
11 elicited on cross examination by Mr. Singleton and that's one
12 of the things that's going to be kind of pervasive through
13 our presentation of this case is that we simply disagree with
14 the strategy that was employed to some degree with regard to
15 some of these witnesses by Mr. Singleton. On a number of
16 occasions, he did testify that he didn't have an explanation
17 for why he let certain testimony in, but where he did, Your
18 Honor, I don't understand why, if your case is based around
19 the credibility of a victim and the, and because there's no
20 forensic evidence and there are no other witnesses, just the
21 victim, the case is based on the credibility of the victim,
22 why you would constantly be eliciting testimony that people
23 believed her, why you would constantly be eliciting testimony
24 of people that thought Mr. Briggs was guilty, why you would
25 be questioning Ms. Arroyo-Staggs as to why, in her

1 professional opinion, she felt that the victim was credible,
2 that she was telling the truth. I think that is just a
3 completely unreasonable trial strategy, if that, indeed, was
4 what it was and Smith versus State stands for that
5 proposition, Your Honor, that there is no reason to elicit
6 this kind of testimony, there's no reason to let that
7 testimony come in and Mr. Singleton, I'll be quite honest,
8 gave a number of conflicting answers on that point. At times
9 he would say, if this testimony had come in on direct, I
10 would have objected to it, but then I wanted to elicit it on
11 cross. I don't think that makes much sense. If he wants it
12 to come in, it should come in no matter what. I think he
13 recognizes it was wrong. I think he's just trying to go back
14 and find a reason why he would have wanted that testimony to
15 come out and the truth of the matter is, there was no good
16 reason for it to come out.

17 We also believe, Your Honor, that the failure -- and
18 this is one of the two you asked us to remind you of the
19 issues that you took under advisement. I think with regard
20 to the expert witness charge, Your Honor, just in regards
21 to... (hands document to the judge)

22 THE COURT: And I will allow the amendment on the expert
23 witness charge given the testimony and the witnesses that
24 were presented. I don't think the State was prejudiced in
25 any manner in allowing that. I don't think there is anything

1 that could have been discovered in addition to what was
2 presented at trial. It's a jury charge.

3 MR. THOMPSON: Thank you, Your Honor. The case that I
4 handed up, and I apologize having to use something out of
5 circuit, out of this jurisdiction. It's United States versus
6 Lopez Medina, 461 F.3d 724 (6th Cir. 2006). In that case, Your
7 Honor, the 6th circuit held that it was plain error. It
8 wasn't objected to at trial, but it was so bad to allow a cop
9 to testify as both fact and as an expert witness without a
10 cautionary instruction of how that testimony is to be
11 treated. They held that that was plain error such that it
12 appeared on the face of the record and the Defendant was
13 prejudiced by that testimony, because you have to have that
14 kind of cautionary instruction in order to properly evaluate
15 that kind of testimony, because of the danger. And all of
16 these other cases, Smith and Jennings and Kromah, those
17 cases, all indicate how troubling it can be to have an expert
18 testify to this kind of thing. We believe that it definitely
19 should have been objected to, the fact that there was no
20 expert witness charge in this jury instruction, Your Honor,
21 and the reason why I had to go out of circuit is because,
22 honestly, I can't find something in South Carolina. I think
23 it's because, as Mr. Singleton testified to, it's always
24 done. You always get a charge on expert witnesses whenever
25 an expert witness testifies and I think that's why his

1 initial reaction was, "Well, I'm sure it's in there," because
2 that's what you would expect. It always goes in there. It
3 wasn't in this case and we believe, especially because of the
4 opinion testimony given by Ms. Arroyo-Staggs, the failure to
5 include that charge and the failure to object to the jury
6 charge prejudiced Mr. Briggs.

7 In terms of the testimony with regard to -- there are a
8 number of issues, your Honor. I'll say, 1(A), 1(D), 4, 7. I
9 believe those, in general, are statements, Your Honor,
10 examples of testimony, Your Honor, where Rule 801(d)(1)(d) of
11 the South Carolina Rules of Evidence was violated. It's our
12 contention, Your Honor, that on each of those occasions, the
13 witnesses went beyond the scope of Rule 801(d)(1)(d) which
14 only allows a witness to testify as to the time and place of
15 an alleged abuse, but that's only what's not hearsay under
16 that Rule and on each of those occasions, Your Honor, either
17 details of the abuse, what actually occurred, was admitted or
18 testimony identifying Mr. Briggs was admitted, as well. Both
19 of those examples of testimony are improper, and again, I
20 cannot imagine any possible reason why, if the victim's
21 credibility is the main issue at trial, why you would want
22 multiple people coming in and saying, "She told us this, she
23 told us this, she told us this". You want to limit that
24 testimony at a case like this. And so, to the extent that
25 trial counsel's strategy was to allow that kind of testimony,

1 we submit, was totally unreasonable.

2 As multiple cases have made clear, the improper
3 corroboration of a sexual assault victim's testimony, it's
4 been called into question whether that is, per se, reversible
5 error, but still very damaging. There are multiple cases,
6 Smith versus State, again, cites a number of them where
7 that's been held to be prejudicial testimony and, again,
8 there's virtually no reason why you would allow them.

9 With regard to the testimony of the jailhouse
10 informants, I'll just hand up Rule 35(b) of the Federal Rules
11 of Criminal Procedure.

12 THE COURT: Yes, sir.

13 MR. THOMPSON: I don't know how familiar Your Honor is
14 with federal court practice, but Federal Rule 35(b) does
15 permit the federal government in certain situations, it
16 doesn't limit it to federal or state cooperation. (B)(1)
17 says, "Upon the government's motion made within one year's
18 sentencing, the Court may reduce the sentence if the
19 Defendant, after sentencing, provides substantial assistance
20 in investigating or prosecuting another person" and then Rule
21 35(b)(2) permits it to be done after one year of sentencing
22 provided certain requirements are met. In this case, Your
23 Honor, Demetrius Martin's plea agreement included language
24 that he could get his sentence reduced if through Rule 35(b),
25 he required substantial assistance in cooperation with the

1 prosecution of another individual. And, quite honestly, Your
2 Honor, with regard to Mr. Martin and Mr. Spears, none of this
3 was difficult to find. It's all filed with the Clerk's
4 office. As soon as Mr. Singleton knew that these individuals
5 were going to testify and they had federal charges, he should
6 have done some basic investigation into what their charges
7 were. I don't believe it was admitted as an exhibit, but I
8 believe Ms. White will stipulate to the fact that the
9 printout of the rap sheet says, for Mr. Spears, says at the
10 bottom, I believe it's 8-23-10, so that it was printed out at
11 least when this trial began and it says in that printout that
12 he was charged with conspiracy to murder a federal law
13 enforcement officer, Mr. Spears was. And a simple Westlaw,
14 Casemaker, Lexus search would have revealed that this
15 conviction had come out and so I believe that Mr. Singleton
16 was egregiously ineffective in failing to investigate these
17 witnesses after being provided their names and information
18 and where they had been convicted, because again, it would
19 have been very easy for him to find all of that information
20 either by contacting the Clerk's office of getting his own
21 federal account so he can sign up, because it is all filed
22 electronically on line. He could have done any of that. He
23 did not do so and because of that, Mr. Martin was permitted
24 to testify that he didn't really have anything to gain by
25 testifying when his federal plea agreement certainly

1 indicates that he does and Mr. Spears was permitted to
2 testify that he had nothing to gain because he was going to
3 get out in a few months, when he's got 24 years to go.
4 So, we believe he was definitely ineffective with regards to
5 those issues.

6 Finally, Your Honor, with regard to the presentation of
7 the Defense case, I submit that we will have to agree to
8 disagree and I would just ask Your Honor to actually read,
9 and obviously Your Honor will, but just read the testimony of
10 Donna Parker and Wendy Richards. I think to any objective
11 viewer it comes off as extremely damaging for the defense.
12 There is virtually nothing that is testified to that is
13 beneficial to the Defense by either witness. And as I
14 alleged in the Amended Application, the calling of those two
15 witnesses got the State to be able to introduce evidence that
16 the victim had again disclosed the abuse to both of those
17 witnesses and with regard to Ms. Richards, they got to get
18 into the evidence of the damaging phone calls, again, they
19 got to elicit testimony that as soon as the abuse had been
20 disclosed to her, she stopped communicating altogether with
21 the Applicant, that she believed the victim, and that she
22 ended up being impeached in her testimony by Mr. Singleton.

23 So, again, just in general, it is, I believe, pervasive
24 in terms of preparation and presentation of the case in terms
25 of how this kind of damaging testimony was elicited all

1 throughout the case. I don't know why you would possibly ask
2 the investigator who polygraphed and failed your client
3 whether or not he subjectively believed that your client was
4 guilty. I don't know why you would ask and confirm through
5 the lead investigator that she, too, believed the victim
6 because she didn't believe she had been coached. This sort
7 of testimony came out all the time throughout cross
8 examination and, again, with Mr. Spears he testifies again,
9 he gets on cross examination again that he believes Mr.
10 Briggs is guilty. It just, throughout the entire case from
11 beginning to end, Mr. Singleton failed so poorly in his job
12 to represent the Applicant. We believe that each one of
13 these issues, standing alone, is worthy of granting relief,
14 but when you take them either collectively, through a
15 cumulative error analysis, which I know has not been formerly
16 recognized by our courts as appropriate in a PCR court, but
17 it has been recognized in both criminal cases and civil
18 cases, we believe that the cumulative error analysis, that
19 you take each one of these examples of deficient conduct and
20 you add them all together there is no way you can conclude
21 Mr. Briggs got a fair trial and even if you don't look under
22 cumulative error analysis, if you look at United States
23 versus Cronin, which permits a finding of per se prejudice
24 based on a Defense attorney's so complete failure to submit
25 the State's case to rigorous examination that you can assume

1 prejudice in those kinds of cases, we believe, that Mr.
2 Singleton just abjectly failed Mr. Briggs in this case.

3 He admitted this was his first trial, his first criminal
4 sexual conduct trial. He had never handled one before. I
5 understand he had some kind of strategy going into it. I
6 don't think it comes out. I don't think it comes out in
7 reviewing the record. I don't think you can review it
8 honestly and come to the conclusion, again, that Mr. Briggs
9 received a fair trial and that he was represented competently
10 by Mr. Singleton in this case.

11 And so, for all those reasons, Your Honor -- and I ,
12 apologize, I wasn't as brief as I thought I would be -- but
13 for all those reasons we would ask Your Honor to grant this
14 application for post-conviction relief.

15 THE COURT: Okay. Ms. White?

16 CLOSING ARGUMENT - MS. WHITE

17 MS. WHITE: Thank you, Your Honor. In response, and
18 obviously, to start off with, in regards to cumulative error,
19 two cases, specifically, Lorenzen v. State and Walker v.
20 State specifically said that South Carolina does not
21 recognize cumulative error in post-conviction relief and so I
22 think that's a pretty set standard right now and, in
23 addition, the Cronin analysis has been identified as being
24 such an instance that it has to be essentially a complete
25 lack of counsel at a critical stage and I don't think that is

1 anywhere near what happened in this case.

2 Just to touch base on the forensic interviewer, Your
3 Honor, I think the cases are distinguishable. The Smith case
4 actually, specifically, had the forensic interviewer identify
5 the defendant as the person that she said sexually assaulted
6 her and that she said she found the victim's statement
7 believable and found no reason not to believe that she was
8 not truthful. So, I think the actual testimonies are clearly
9 distinguishable in those cases. Obviously, Kromah was a 2013
10 case.

11 The Sixth Amendment guarantees the right to reasonable
12 competence, not perfect representation pursuant to the
13 benefit of hindsight. In this case, I think a lot of things
14 looking back could have been, or maybe Mr. Singleton says
15 now, looking back, he should have objected or would have
16 objected, but in this case he did go through and attempt to
17 put forth a defense, work with the Defendant, call witnesses
18 on his behalf, objected initially to the forensic interviews
19 coming in and tried to show the inconsistencies of the
20 victim's testimony.

21 In regards to, specifically, the case about the expert
22 testimony, I think, also, if Your Honor will read it, will
23 find that this is a specific situation regarding dual roles
24 where police officers are actually fact witnesses and expert
25 and there needed to be a specific instruction defining the

1 fact that they are operating in dual rôles. I don't think
2 it's applicable to this situation at all.

3 And in that, obviously, there is no evidence that the
4 jailhouse informants did receive any kind of deal. In this
5 situation, I believe he received, honestly, information from
6 the State that there were no plea offers, that there were no
7 deals, no indication and the Applicant has not presented any
8 indication, that they received any consideration for their
9 testimony, as well.

10 And further, the testimony of the grandmother and the
11 mother also involved the testimony of the mother saying that
12 when she took her after the initial allegation to the
13 hospital the daughter told her that nothing had happened, so
14 you're looking at different evidence and testimony that came
15 through with each of those witnesses and we would just argue
16 that they failed to demonstrate, even if there was deficient
17 conduct, that there was deficient prejudice to involve
18 granting Mr. Briggs a new trial in this case.

19 THE COURT: Okay. Thank you very much. I appreciate
20 it. I'm going to take the case under advisement. You've
21 given me a lot to read and also I need to go back and read
22 the transcript. It's illuminating to read it in full context
23 as opposed to snippets here and there. I'm taking it under
24 advisement and I will get back to you with a ruling, I'm
25 sure, within a month if not sooner. I'd like to do it by the

1 end of the week, but don't know if I'm going to have time
2 with as many as we have before me to actually go back and
3 read all of this and so good luck to you all and I wish you a
4 good evening.

5 MS. WHITE: Thank you, Your Honor.

6 MR. THOMPSON: Thank you very much, Your Honor.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR SPARTANBURG COUNTY, SOUTH CAROLINA, SO GIVEN ON NOVEMBER 12, 2013 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 23RD DAY OF SEPTEMBER, 2013.

s/ Jo Rice
JO RICE
OFFICIAL COURT REPORTER

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA	)	Criminal No: 7:09-167
	)	
V.	)	
	)	<u>PLEA AGREEMENT</u>
DEMETRIUS MARTIN	)	
	)	

General Provisions

This PLEA AGREEMENT is made this 15th day of April, 2009, between the United States of America, as represented by United States Attorney W. WALTER WILKINS, Assistant United States Attorney Regan A. Pendleton; the Defendant, **DEMETRIUS MARTIN**, and Defendant's Attorney, James Bannister, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties hereto agree as follows:

1. The Defendant agrees to plead guilty to Counts 1,2,3 and 4 of the Indictment now pending, which charges , violations of Title 21 , United States Code, Sections 846, 856 and 841 and Title 18, United states Code, Section 924(c).

In order to sustain its burden of proof as to this offense, the Government is required to prove the following:

Count 1 : Conspiracy

- (1) The conspiracy described in the indictment was willfully formed and was existing at or about the alleged time; and
- (2) The accused willfully became a member of the conspiracy.

Possible Penalties for 21 U.S.C. § 846

In a case involving 5 kilograms or more of cocaine or 50 grams or more of cocaine base and one prior felony drug conviction, a minimum term of incarceration of not less than 20 years and a maximum term of life imprisonment, no probation, no parole; a fine of \$8,000,000 and a term of supervised release of at least ten years in addition to any term of imprisonment, plus a special assessment of \$100.00.

Count 2: Stash house

- (1) The accused did knowingly open, lease, rent, or maintain a place; and
- (2) The accused did so, at least in part, for the purposes of manufacturing, distributing, or using a controlled substance;

Possible Penalties for 21 U.S.C. § 856

A maximum term of twenty years imprisonment; a fine of not more than \$500,000 and a term of supervised release of three years in addition to any term of imprisonment, plus a special assessment of \$100.00.

Count 3: Possession with intent to distribute cocaine

- (1) That the defendant knowingly and intentionally possessed the controlled substance described in the indictment;
- (2) At the time of such possession, the defendant knew that the substance possessed and distributed was a controlled substance; and
- (3) That the defendant possessed the controlled substance with intent to distribute.

Possible Penalties for 21 U.S.C. § 841

In a case involving 5 kilograms or more of cocaine, a minimum term of incarceration of

not less than 10 years and a maximum term of life imprisonment, no probation, no parole; a fine of \$4,000,000 and a term of supervised release of at least five years in addition to any term of imprisonment, plus a special assessment of \$100.00.

Count 4: Possession of firearm in furtherance of drug trafficking

- (1) The defendant committed a crime of violence or a drug trafficking crime; and
- (2) During and in relation to the commission of the crime, the defendant knowingly used or carried a firearm.

Possible penalties for 18 U.S.C. 924(c)

A term of imprisonment of not less than five (5) years consecutive to any other term of imprisonment; ineligible for probation or suspension of sentence during the term of imprisonment imposed herein, a fine of \$250,000, and a term of supervised release of at least five(5) years in addition to any term of imprisonment, plus a special assessment of \$100.00.

2. The Defendant agrees to provide detailed financial information to the United States Probation Office prior to sentencing. The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Responsibility Program if sentenced to a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands and agrees that any monetary penalty imposed is not dischargeable in bankruptcy.

- (A) Fines: The Defendant understands and agrees that the court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572, which fine may be due and payable immediately after sentencing regardless of whether the Defendant has the money to pay the fine. In the event the Defendant does not have

the money, the Defendant understands and agrees that the court may establish a payment schedule, taking into account the Defendant's present and future means of earning money, or of obtaining money to pay the fine.

- (B) Special Assessment: Pursuant to 18 U.S.C. §3013, the Defendant must pay a special assessment of \$100.00 for each felony count for which he is convicted. This special assessment must be paid at or before the time of the guilty plea hearing.

3. The Defendant understands that the matter of sentencing is within the sole discretion of the Court and that the sentence applicable to Defendant's case will be imposed after the Court considers as advisory the United States Sentencing Commission Guidelines, Application Notes and Policy Statements, as well as the factors set forth in Title 18, United States Code, Section 3553(a). The Defendant also understands that Defendant's sentence has not yet been determined by the court, and that any estimate of a probable sentencing range Defendant may have received from Defendant's attorney, the Government or the United States Probation Office is only a prediction, not a promise, and is not binding on the Government, the Probation Office or the Court. The Defendant further understands that the Government retains the right to inform the Court of any relevant facts, to address the Court with respect to the nature of the offense, to respond to questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report, to respond to any statements made to the Court by or on behalf of the Defendant and to summarize all evidence which would have been presented at trial to establish a factual basis for the plea.

4. The Defendant agrees that all facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum (including facts that support any specific offense characteristic or other enhancement or adjustment) can be found by the court at sentencing by a preponderance of the evidence standard and the court may consider any reliable evidence, including hearsay. By executing this Agreement, the Defendant understands that he waives any argument that facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum should be alleged in an indictment and found by a jury beyond a reasonable doubt.
5. The Defendant understands that the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and state laws and complying with the terms and conditions of any bond executed in this case.
6. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either expressed or implied, it is understood that the Government will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to withdraw his plea of guilty to the offense(s) enumerated herein.

Cooperation and Forfeiture

7. The Defendant agrees to be fully truthful and forthright with federal, state and local law enforcement agencies by providing full, complete and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the Government including any books, papers, or

documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truthful and forthright at any stage will, at the sole election of the Government, cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on the part of the Defendant, the Defendant understands that:

- (A) the Defendant will not be permitted to withdraw his plea of guilty to the offenses described above;
 - (B) all additional charges known to the Government may be filed in the appropriate district;
 - (C) the Government will argue for a maximum sentence for the offense to which the Defendant has pleaded guilty; and
 - (D) the Government will use any and all information and testimony provided by the Defendant in the prosecution of the Defendant of all charges.
8. The Defendant agrees to submit to such polygraph examinations as may be requested by the Government and agrees that any such examinations shall be performed by a polygraph examiner selected by the Government. Defendant further agrees that his refusal to take or his failure to pass any such polygraph examination to the Government's satisfaction will result, at the Government's sole discretion, in the obligations of the Government

- within the Agreement becoming null and void.
9. Provided the Defendant cooperates pursuant to the provisions of this Plea Agreement, and that cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person who has committed an offense, the Government agrees to move the Court for a downward departure or reduction of sentence pursuant to United States Sentencing Guidelines §5K1.1, Title 18, United States Code, § 3553(e) or Federal Rule of Criminal Procedure 35(b). The Defendant further understands that any such motion by the Government is not binding upon the Court, and should the Court sentence the Defendant within the Guidelines, to the maximum penalty prescribed by law or refuse to reduce the sentence imposed, the Defendant will have no right to withdraw his plea.
10. The Defendant stipulates and agrees that he has one prior felony drug conviction that has become final and that the Attorneys for the Government have filed an Information pursuant to 21 U.S.C. § 851 which subjects him to a mandatory minimum term of imprisonment of 20 years on Count One. The Defendant further stipulates and agrees that this paragraph and the Information that has been filed pursuant thereto fulfills the requirements of § 851, including service, and constitutes adequate and sufficient notice of a prior felony drug conviction for purposes of that statute. The Defendant agrees to not contest the Information that has been filed pursuant to 21 U.S.C. § 851 in accordance with this paragraph.
11. The Defendant agrees to voluntarily surrender to, and not to contest the forfeiture by, the United States of America of any and all assets and property, or portions thereof, owned or

purchased by the Defendant which are subject to the forfeiture pursuant to any provision of law and which are in the possession or control of the Defendant or Defendant's nominees. The Defendant further agrees to prevent the disbursement, relocation or encumbrance of any such assets and agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above, wherever located. The Defendant further agrees to make a full and complete disclosure of all assets over which Defendant exercises control and those which are held or controlled by nominees. The Defendant further agrees to submit to a polygraph examination on the issue of assets if it is deemed necessary by the United States. The Defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title and the signing of any other documents necessary to effectuate such transfers. The Defendant agrees not to object to any civil forfeiture proceedings brought against these properties pursuant to any provision of law and the Defendant further understands that any such civil proceedings may properly be brought at any time before or after acceptance of Defendant's guilty plea in this matter and agrees to waive any double jeopardy claims he may have as a result of the forfeiture of these properties as provided for by this Agreement.

Merger and Other Provisions

12. The parties agree that if the Court determines the Defendant has readily demonstrated acceptance of responsibility for his offenses, that USSG § 3E1.1(a) applies, thereby providing for a decrease of two (2) levels. In addition, if the Defendant qualifies for a

decrease under § 3E1.1(a), the Government will move that he receive the one level decrease set forth in § 3E1.1(b), and requests that this provision be considered as that request.

13. The Defendant represents to the court that he has met with his attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant's case and receive advice; that the Defendant has been truthful with his attorney and related all information of which the Defendant is aware pertaining to the case; that the Defendant and his attorney have discussed possible defenses, if any, to the charges in the Indictment including the existence of any exculpatory or favorable evidence or witness, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the proceedings, the right to confront and cross-examine the government's witnesses, the Defendant's right to testify in his own behalf, or to remain silent and have no adverse inferences drawn from his silence; and that the Defendant, with the advice of counsel, has weighed the relative benefits of a trial by jury or by the Court versus a plea of guilty pursuant to his Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.
14. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all

other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

4/15/09

DATE

Demetrius Martin

DEMETRIUS MARTIN, Defendant

4/15/09

DATE

James Bannister
James Bannister
Attorney for the Defendant

W. WALTER WILKINS
UNITED STATES ATTORNEY

April 10, 2009
DATE

BY:

s/ Regan A. Pendleton
Regan A. Pendleton
Assistant U. S. Attorney

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA	)	CR. NO. <u>7:08-112</u>
	)	18 U.S.C. § 115(a)(1)(A)
vs.	)	
	)	
KENNETH MANIGAN	)	
MARIELENA LEDY MARTINEZ	)	
DWIGHT SPEARS	)	<u>INDICTMENT</u>

COUNT 1

THE GRAND JURY CHARGES:

That beginning on or about October 1, 2007, and continuing up to November 17, 2007, in the District of South Carolina, the Defendants, **KENNETH MANIGAN, MARIELENA LEDY MARTINEZ** and **DWIGHT SPEARS**, did conspire to murder a federal law enforcement officer, Special Agent Brian Bryan of the Federal Bureau of Investigation, with intent to intimidate or retaliate against Special Agent Brian Bryan while he was engaged in, or on account of, the performance of his official duties;

In violation of Title 18, United States Code, Section 115(a)(1)(A).

A True Bill

s/ Foreperson
Foreperson

s/ Reginald I. Lloyd
REGINALD I. LLOYD (RAP/twd)
UNITED STATES ATTORNEY

AO156 - Verdict Form

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA
Plaintiff

V.

VERDICT

DWIGHT SPEARS

Defendant.

CASE NUMBER: 7:08-112

WE, THE JURY, UNANIMOUSLY FIND, THE DEFENDANT,
DWIGHT SPEARS,

☒

Guilty of conspiracy to murder a federal law enforcement officer.

☐

Not Guilty

s/Jury Foreperson
JURY FOREPERSON

July 22, 2008
DATE

350 Fed.Appx. 808, 2009 WL 3748573 (C.A.4 (S.C.))
 (Not Selected for publication in the Federal Reporter)
 (Cite as: 350 Fed.Appx. 808, 2009 WL 3748573 (C.A.4 (S.C.)))

H

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fourth Circuit Rule 32.1 (Find CTA4 Rule 32.1)

United States Court of Appeals,
 Fourth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
 v.

Dwight SPEARS, Defendant-Appellant.

No. 08-5216.

Submitted: June 25, 2009.

Decided: Nov. 10, 2009.

Background: Defendant was convicted by jury in the United States District Court for the District of South Carolina, Henry F. Floyd, J., of conspiracy to murder a federal law enforcement officer, and sentenced to 240 months of imprisonment. Defendant appealed.

Holdings: The Court of Appeals held that:

- (1) defendant failed to prove that he withdrew from conspiracy, and
- (2) evidence supported defendant's conviction for unambiguous participation in conspiracy to murder federal law enforcement officer.

Affirmed in part, vacated in part, and remanded.

West Headnotes

[1] Conspiracy 91 ↪28(3)**91 Conspiracy****91II Criminal Responsibility****91II(A) Offenses****91k28 Conspiracy to Commit Crime****91k28(3) k. Particular crimes. Most****Cited Cases****(Formerly 91k29)**

Even if an overt act was required for conviction of conspiracy to murder a federal law enforcement officer, defendant engaged in acts in furtherance of conspiracy, including casing area where coconspirators expected to ambush and shoot Federal Bureau of Investigation agent. 18 U.S.C.A. § 115(a)(1)(A).

[2] Conspiracy 91 ↪44.2**91 Conspiracy****91II Criminal Responsibility****91II(B) Prosecution****91k44 Evidence**

91k44.2 k. Presumptions and burden of proof. Most Cited Cases

Defendant failed to prove that he withdrew from conspiracy, as required for defense of withdrawal to charge of conspiracy to murder a federal law enforcement officer. 18 U.S.C.A. § 115(a)(1)(A).

[3] Criminal Law 110 ↪1181.5(8)**110 Criminal Law****110XXIV Review**

110XXIV(U) Determination and Disposition of Cause

110k1181.5 Remand in General; Vacation

110k1181.5(3) Remand for Determination or Reconsideration of Particular Matters

110k1181.5(8) k. Sentence. Most**Cited Cases**

Evidence supported defendant's conviction for unambiguous participation in conspiracy to murder federal law enforcement officer, rather than influencing, impeding, or retaliating against a federal official by threatening or injuring a family member, which was statute charged in indictment, warranting remand for resentencing under appropriate statute. 18 U.S.C.A. §§ 115(a)(1)(A), 1114.

350 Fed.Appx. 808, 2009 WL 3748573 (C.A.4 (S.C.))
 (Not Selected for publication in the Federal Reporter)
 (Cite as: 350 Fed.Appx. 808, 2009 WL 3748573 (C.A.4 (S.C.)))

*808 Appeal from the United States District Court for the District of South Carolina, at Spartanburg. Henry F. Floyd, District Judge. (7:08-cr-00112-HFF-3). C. Carlyle Steele, Greenville, South Carolina, for Appellant. W. Walter Wilkins, United States Attorney, Regan A. Pendleton, William J. Watkins, Jr., Assistant United States Attorneys, Greenville, South Carolina, for Appellee.

Before MOTZ, GREGORY, and DUNCAN, Circuit Judges.

Affirmed in part, vacated in part, and remanded by unpublished PER CURIAM opinion. Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

**1 Dwight Spears was convicted after a jury trial of conspiracy to murder a federal law enforcement officer in violation of 18 U.S.C. § 115(a)(1)(A) (2006). He was sentenced to 240 months of imprisonment. On appeal, counsel raises three issues: (1) whether the district court erred by failing to dismiss the indictment or grant a directed verdict because testimony revealed that Spears had withdrawn from the conspiracy; *809 (2) whether the district court erred in failing to dismiss the indictment because Spears committed no overt act in furtherance of the conspiracy; and (3) whether the district court erred by charging the jury that it was Spears' burden to prove withdrawal from the conspiracy by a preponderance of the evidence. Spears has filed two pro se supplemental briefs, alleging that his conviction under 18 U.S.C. § 115(a)(1)(A) was erroneous and therefore his indictment should be dismissed for lack of subject matter jurisdiction under Fed.R.Crim.P. 12(b)(3)(B). For the reasons that follow, we affirm in part, vacate in part, and remand.

Although we review Spears' first argument de novo, *United States v. Loayza*, 107 F.3d 257, 260 (4th Cir.1997), the argument fails because the evi-

dence did not reveal that Spears withdrew from the conspiracy. *United States v. Cardwell*, 433 F.3d 378, 391 (4th Cir.2005).

[1] The second argument lacks merit because there is no overt act element in a conspiracy offense. See *United States v. Shabani*, 513 U.S. 10, 13-14, 115 S.Ct. 382, 130 L.Ed.2d 225 (1994) (noting that absent statutory or congressional guidance to the contrary, the common law understanding of conspiracy does not make the doing of any other act a condition of liability). Moreover, even if an overt act was required for conviction under the statute, the record reveals that Spears engaged in acts in furtherance of the conspiracy, e.g., casing the area where the coconspirators expected to ambush and shoot the Federal Bureau of Investigation agent. See generally *United States v. Ochoa-Torres*, 626 F.2d 689, 691 (9th Cir.1980) (noting that a trip in an automobile was an overt act in furtherance of conspiracy).

[2] Spears' third argument simply is incorrect that it was not his burden to prove the defense of withdrawal from the conspiracy. Withdrawal from a conspiracy "requires the defendant to take affirmative actions inconsistent with the object of the conspiracy and communicate his intent to withdraw in a manner likely to reach his accomplices." *Cardwell*, 433 F.3d at 391. Spears did have the burden to prove the defense. See *United States v. Watford*, 894 F.2d 665, 670 (4th Cir.1990) (stating that the burden is on the defendant to show that he withdrew from the conspiracy by affirmative action); *United States v. Urbanik*, 801 F.2d 692, 697 (4th Cir.1986) (same). Once a defendant produces evidence of withdrawal, it then becomes a jury issue which the Government must prove beyond a reasonable doubt that the defendant did not withdraw from the conspiracy. *United States v. West*, 877 F.2d 281, 289 (4th Cir.1989). Thus, we affirm Spears' conviction.

**2 [3] In his final argument, Spears alleges, pro se, that his indictment was defective because the evidence did not support his conviction under

350 Fed.Appx. 808, 2009 WL 3748573 (C.A.4 (S.C.))
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18 U.S.C. § 115(a)(1)(A) (2006). We agree with Spears that evidence did not support his conviction under § 115(a)(1)(A) or under § 115(a)(1)(B), as the Government argues. Rather, the evidence supports his conviction for his unambiguous participation in the conspiracy to murder a federal law enforcement officer in violation of 18 U.S.C.A. § 1114 (West Supp.2009). The indictment and criminal conviction properly note the conspiracy to murder; however, those documents erroneously cite to § 115(a)(1)(A), which is inapplicable to the instant facts. Rather than dismissing the indictment, however, this court has held that the proper remedy in this circumstance is to vacate and remand for resentencing under the appropriate statute. See *United States v. Massuet*, 851 F.2d 111, 115 (4th Cir.1988) (noting that the “proper procedure for dealing with the problem of the erroneously cited statute *810 would be to remand the case for resentencing under the proper statute”) (citation omitted); see also *United States v. Bennett*, 368 F.3d 1343, 1352-55 (11th Cir.2004) (holding that sufficient evidence supported a conviction for attempt to kill an officer of the United States, under 18 U.S.C. § 1114, where the defendant was actually charged with violating 18 U.S.C. § 115), *vacated on other grounds*, 543 U.S. 1110, 125 S.Ct. 1044, 160 L.Ed.2d 1041 (2005). Accordingly, we grant Spears’ motion to file his second pro se supplemental brief, vacate Spears’ sentence, and remand for resentencing in accordance with this opinion.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART, VACATED IN PART,
AND REMANDED.

C.A.4 (S.C.),2009.

U.S. v. Spears

350 Fed.Appx. 808, 2009 WL 3748573 (C.A.4
(S.C.))

END OF DOCUMENT

653

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- Visiting Hours
- Who Can Visit?
- Background Checks
- Business Visits
- Special Circumstances
- Visiting Room Procedures
- Conjugal Visits

Locate Inmates Released Before 1982

Who is a "Federal" Inmate?

Name	Register.#	Age-Race-Sex	Release Date Actual or Projected	Location
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1. DWIGHT SPEARS	15846-050	55-Black-M	10-22-2010	RELEASED
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2. DWIGHT LAMAR SPEARS	12210-171	49-Black-M	08-18-2025	ESTILL FCI
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Results 1 - 2 of 2

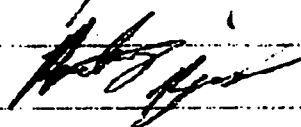
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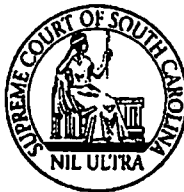
Max,

5/10/10

I just wanted to write and tell you that I appreciate the work that your doing on my case. Although I think we need to get on the same page again. I don't understand why you would want to supena Wendy and the little girl for trial. To me I think we need to worry about supenaing people for me and not against me. I thought that was the solicitor's job to supena people against me. I don't know I wish you can explain Also does the solicitor know where Wendy lives? Can you get my car back with the title signed? I also would like for you to please put me on the bond list Max I've been here for almost 2 yr. waiting on a bond I will not mess up again. This woman is not worth my freedom. I don't want to talk to her or see her. I just want out of jail this has been going on long enough. I think it would look better when we went to court if I had my own place, with a job and I also want to be able to wear a suit to trial. Able to do all of that and still have no contact with Wendy I think that would look good. I need a hair cut and the jail want give me one I've wrote request's to Cpl Melvin to try to get one and she doesn't respond. Please put me on the bond list so I can get out, write back or come and see me so you can explain how its going to work out.

Thank you





The Supreme Court of South Carolina
OFFICE OF DISCIPLINARY COUNSEL

Lesley M. Coggiola
Disciplinary Counsel

Sabrina C. Todd
Assistant Disciplinary Counsel

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Telephone: (803) 734-2038
Fax: (803) 734-1964

December 20, 2011

PERSONAL AND CONFIDENTIAL

Anthony Neil Briggs
Spartanburg County Detention Center
950 California Avenue
Spartanburg, SC 29303

RE: NOTICE OF FINAL DISPOSITION
Lawyer: Max B. Singleton, Esquire
Matter Number: 10-DE-L-0057

Dear Mr. Briggs:

You previously filed a complaint with the Commission on Lawyer Conduct concerning Max B. Singleton, Esquire. On December 19, 2011, the Supreme Court of South Carolina issued an opinion (Opinion No. 27079) in which Mr. Singleton was found to have committed misconduct and was sanctioned. The Court determined that the appropriate sanction in this matter was a public reprimand.

Enclosed is a copy of the Court's opinion in this matter. This action by the Court constitutes a final disposition of your complaint. Your cooperation with the investigation into this matter is appreciated.

Sincerely,

Sabrina C. Todd

Enclosure

C

Supreme Court of South Carolina.
 In the Matter of **Max B. SINGLETON**, Respondent.

No. 27079.
 Submitted Nov. 21, 2011.
 Decided Dec. 19, 2011.

Background: Attorney disciplinary proceedings were commenced. The Office of Disciplinary Counsel (ODC) and attorney entered into an agreement for discipline by consent.

Holding: The Supreme Court held that public reprimand was the appropriate sanction for attorney's admitted professional misconduct.

Public reprimand ordered.

West Headnotes

[1] Attorney and Client 45 ⇨ 37.1

45 Attorney and Client
 45I The Office of Attorney
 45I(C) Discipline
 45k37 Grounds for Discipline
 45k37.1 k. In general. Most Cited Cases

Attorney and Client 45 ⇨ 44(1)

45 Attorney and Client
 45I The Office of Attorney
 45I(C) Discipline
 45k37 Grounds for Discipline
 45k44 Misconduct as to Client
 45k44(1) k. In general. Most Cited Cases

Attorney's admitted misconduct, including his failure to communicate with criminal clients, to retain copy of his written fee agreement with client, or to file copy of letter he wrote to prospective client

ent directly soliciting client to hire him on pending criminal charges, violated numerous rules of professional conduct, including rules requiring lawyers to act with diligence and promptness in representing a client and to keep client reasonably informed about status of a matter, as well as rule governing a lawyer's solicitation of professional employment. Appellate Court Rule 407, Rules of Prof. Conduct, Rules 1.2, 1.3, 1.4, 1.16(d), 7.3(c, d), 8.1(b); Appellate Court Rule 413, Lawyer Disciplinary Enforcement Rule 7(a)(1, 3).

[2] Attorney and Client 45 ⇨ 59.8(1)

45 Attorney and Client
 45I The Office of Attorney
 45I(C) Discipline
 45k59.1 Punishment; Disposition
 45k59.8 Public Reprimand; Public Censure; Public Admonition
 45k59.8(1) k. In general. Most Cited Cases

Public reprimand was the appropriate sanction for attorney's admitted misconduct that included failure to communicate with criminal clients, to retain copy of his written fee agreement with client, or to file copy of letter he wrote to prospective client directly soliciting client to hire him on pending criminal charges. Appellate Court Rule 407, Rules of Prof. Conduct, Rules 1.2, 1.3, 1.4, 1.16(d), 7.3(c, d), 8.1(b); Appellate Court Rule 413, Lawyer Disciplinary Enforcement Rule 7(a)(1, 3).

****668** Lesley M. Coggiola Disciplinary Counsel, and Sabrina C. Todd, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Max B. Singleton, of Greer, pro se.

PER CURIAM.

***522** The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agree-

ment for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to the imposition of a public reprimand with conditions. We accept the agreement and issue a public reprimand with conditions as specified in the conclusion of this opinion. The facts, as set forth in the agreement, are as follows.

FACTS

Matter I

Respondent represented Client A on criminal charges. Respondent failed to communicate with Client A for several months and failed to timely relay a plea offer made during that time. Several months after the initial plea offer, the prosecutor made a more favorable plea offer. Respondent relayed the plea offer to Client A; Client A rejected the offer. Ultimately, the charges against Client A were dismissed.

Respondent did not respond to ODC's initial inquiry in this matter and did not respond in a timely manner to a reminder letter sent pursuant to *In the Matter of Treacy*, 277 S.C. 514, 290 S.E.2d 240 (1982).

*523 Matter II

Client B, a criminal defense client, filed a complaint against respondent. Although the investigation did not reveal misconduct during the representation, respondent failed to respond to ODC's initial inquiry and responded only after receiving a reminder letter pursuant to *In the Matter of Treacy*, *id.*

Matter III

Respondent represented Client C on criminal charges. A dispute arose concerning the fee respondent originally quoted and the fee he collected. Respondent believed he had a written fee agreement with Client C, but failed to retain a copy as required by Rule 417, SCACR. Respondent further violated Rule 417, SCACR, by failing to retain records of the source and amount of payments received.

During the investigation, respondent failed to timely respond to several inquiries from ODC. He cited the birth of his daughter and his wife's related medical problems for the delay of some of his responses. Respondent admits these personal issues negatively impacted his communications with Client C and other clients.

Matter IV

Respondent wrote to Client D, directly soliciting the client to hire him on pending drug charges. Client D was not an attorney and was a stranger to respondent.

Respondent did not file a copy of the letter with the Commission on Lawyer Conduct as required by Rule 7.3(c), RPC, Rule 407, SCACR. The letter contained none of the statements required by Rule 7.3(d)(1), (2), and (3), although respondent represents he included a second page with the mailing which included each of the statements required by the rule. Respondent was unable to produce a complete copy of the letter he mailed to Client D. Additionally, respondent acknowledges Rule 7.3 requires that the words "ADVERTISING MATERIAL" appear on the front of each page of the material and the words were not on the first page of the letter he sent to Client D.

Respondent filed an untimely response to ODC's initial inquiry in this matter.

**669 *524 Matter V

Respondent represented Client E on criminal charges. He failed to adequately communicate with Client D during the misrepresentation and was ultimately relieved at the client's request.

Respondent failed to submit a full and timely response to ODC's request for additional information in this matter.

Matter VI

Client F hired respondent to represent him on criminal charges. Sometime after respondent began work and made an appearance, the client advised he

719 S.E.2d 667
 395 S.C. 521, 719 S.E.2d 667
 (Cite as: 395 S.C. 521, 719 S.E.2d 667)

was unable to pay respondent's fee and asked respondent to step aside so he could be assigned a public defender. Respondent failed to timely respond to this request, thereby delaying the client's access to a public defender.

Respondent did not respond to ODC's Notice of Investigation. ODC sent respondent a reminder letter pursuant to *In the Matter of Treacy, supra*, and scheduled respondent for an interview. Respondent responded shortly before his scheduled interview, approximately two months after issuance of the reminder letter.

Matter VII

Client G hired respondent to represent her on pending criminal charges in Spartanburg County. Respondent reports he had worked out a favorable plea deal approximately eleven months into the representation, but the plea was postponed indefinitely as a result of the client's attempted suicide. By that time Client G had also been charged with a crime in Greenville County. Thereafter, she was arrested on three additional Greenville County charges.

Respondent agreed to represent Client G on all of her pending charges in both counties. At times, respondent failed to keep Client G informed of the status of her Spartanburg County charges.

Respondent failed to timely respond to ODC's Notice of Investigation in this matter, but submitted a response shortly before his interview with ODC. Before the interview, respondent spoke with Client G and they agreed she would release *525 him from representing her on the Greenville County charges. Respondent prepared an order releasing him on three of the Greenville County charges, but failed to release him on the fourth. Believing he had been released on all of Client G's Greenville County charges, he ceased working on the charges even though he still represented Client G on the fourth charge.

During his interview with ODC, respondent agreed to submit additional information to support

his response in the matter. After the interview, ODC sent respondent a written request for the additional information on April 13, 2011. In spite of reminders by letter and telephone, respondent failed to comply with the request for additional information until August 10, 2011. His response was incomplete and required ODC to make multiple additional inquiries to obtain a complete response.

LAW

[1][2] Respondent admits that, by his misconduct, he has violated the Rules of Professional Conduct, Rule 407, SCACR, particularly Rule 1.2 (lawyer shall abide by a client's decisions concerning objectives of representation); Rule 1.3 (lawyer shall act with diligence and promptness in representing client); Rule 1.4 (lawyer shall keep client reasonably informed about status of matter and promptly inform client of any decision or circumstance to which client's informed consent is required); Rule 1.16(d) (upon termination of representation, lawyer shall take steps to the extent reasonably practicable to protect a client's interests); Rule 7.3(c) (lawyer who uses written solicitation shall maintain a file for two years showing the basis by which lawyer knows the person solicited needs legal services and the factual basis for any statements made in the written communication); Rule 7.3(d) (every written communication from lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter, and with whom the lawyer has no family, close personal or prior professional relationship, shall conform to Rules 7.1 and 7.2, RPC, and communication must contain certain statements); and Rule 8.1(b) (lawyer **670 shall not knowingly fail to respond to lawful demand for information from disciplinary authority). In addition, respondent further admits that he violated provisions of Rule 417, SCACR. Respondent *526 acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional

Conduct) and Rule 7(a)(3) (it shall be ground for discipline for lawyer to knowingly fail to respond to a lawful demand from disciplinary authority).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct. In addition, respondent shall 1) pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (the Commission) within thirty days of the date of this opinion and 2) complete the Legal Ethics and Practice Program Ethics School, Trust Account School, and Advertising School within one year of the date of this opinion.

Further, within forty-five days of the date of this opinion, respondent shall hire a law office management advisor approved by the Commission. Within thirty days of retaining the advisor, respondent shall meet with the advisor to conduct a thorough review of respondent's law office management practices. Within thirty days of the review, the advisor shall file a complete report of respondent's law office management practices with the Commission. The report shall include a review, an analysis, and recommendations concerning respondent's law office management practices. Thereafter, for a period of two years, respondent shall meet with his advisor once every three months and the advisor shall file a complete report with the Commission within thirty days of each meeting. Respondent shall be responsible for payment of the advisor as well as timely submission of the advisor's reports.

Respondent's failure to comply with any of the conditions set forth in this opinion or with the advisor's recommendations shall constitute grounds for discipline.

PUBLIC REPRIMAND.

TOAL, C.J., PLEICONES, BEATTY,
KITTREDGE and HEARN, JJ., concur.

S.C., 2011.

In re Singleton

395 S.C. 521, 719 S.E.2d 667

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
ANTHONY BRIGGS, #342410,	)	CASE NO.: 2012-CP-42-2674
	)	
Applicant,	)	
v.	)	ORDER GRANTING APPLICATION FOR POST-CONVICTION RELIEF
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed June 26, 2012. The State made its Return on June 26, 2013. An evidentiary hearing into this matter was convened on November 12, 2013. The Applicant was present and was represented by Jeremy A. Thompson, Esquire. The Respondent was represented by Suzanne H. White, Assistant Attorney General.

I. PROCEDURAL HISTORY

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. At the May 2009 term of General Sessions, the Spartanburg County Grand Jury indicted the Applicant for criminal sexual conduct with a minor under eleven years of age (2009-GS-42-2627). Subsequently, at the August 2010 term of General Sessions, the Spartanburg County Grand Jury indicted the Applicant for lewd act (2010-GS-42-4657). On August 23-26, 2010, the Applicant proceeded to trial by jury. Max B. Singleton, Esquire, represented the Applicant at this proceeding. At the conclusion of the trial, the jury convicted the Applicant as charged. The Honorable J. Derham Cole, presiding circuit court judge, sentenced the Applicant to life



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imprisonment for the CSC offense and to a fifteen year term of imprisonment for the lewd act offense, with the sentences to run concurrently.

The Applicant pursued a direct appeal to the South Carolina Court of Appeals, and was represented in this proceeding by Elizabeth A. Franklin-Best, Appellate Defender. On May 30, 2012, the South Carolina Court of Appeals affirmed the Applicant's conviction and sentence in an unpublished opinion. State v. Briggs, Op. No. 2012-UP-323 (S.C. Ct. App. filed May 30, 2012). This Application followed.

II. ALLEGATIONS RAISED

In his Application for Post-Conviction Relief, the Applicant alleged that he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Ineffective assistance of appellate counsel; and
3. Prosecutorial misconduct

He alleged generally that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, were violated prior to, during, and after his trial, as well as during his direct appeal.

In an Amended Application for Post-Conviction Relief filed November 1, 2013, the Applicant submitted the following specific allegations of trial counsel:

1. Trial counsel was ineffective for eliciting damaging testimony, which would have been improper testimony had it been sought on direct examination, including:
 - a. Testimony from Judy Petty that violated Rule 801(d)(1)(D), SCRE; see Trial Tr. p. 152, lines 16-23;
 - b. Testimony from Investigator Danny Morgan that the Applicant was guilty; see Trial Tr. p. 244, lines 7-11;

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- c. Testimony from Investigator Nikki Cantrell that the alleged victim did not appear to have been coached during her forensic interview; see Trial Tr. p. 281, line 15-p. 282, line 4;
 - d. Testimony from Investigator Nikki Cantrell that the alleged victim disclosed to her that she had been sexually abused by the Applicant; see Trial Tr. p. 282, line 22-p. 283, line 24; and
 - e. Testimony from jailhouse informant Dwight Lamar Spears that the Applicant was guilty based on his conversations with the Applicant while they were both incarcerated together; see Trial Tr. p. 307, line 19-p. 308, line 10; p. 309, lines 19-21.
2. Trial counsel was ineffective for failing to object to the qualification of the forensic interviewer as an expert, and for failing to object to testimony given by the forensic interviewer which was qualified as being given in her "professional opinion" or with her "experience and education"; see, e.g., Trial Tr. p. 169, line 3-p. 170, line 7; p. 193, line 21-p. 195, line 16;
 3. Trial counsel was ineffective for failing to object to the testimony of the forensic interviewer where the forensic interviewer impermissibly vouched for the credibility of the alleged victim; compare, e.g., Trial Tr. p. 163, line 18-p. 164, line 15 and p. 171, line 24-p. 174, line 21 with State v. Kromah, 401 S.C. 340, 737 S.E.2d 490, 500 (2013).
 4. Trial counsel was ineffective for failing to object to the testimony of the forensic interviewer identifying the Applicant as the perpetrator in violation of Rule 801(d)(1)(D), SCRE; see Trial Tr. p. 175, lines 10-20;
 5. Trial counsel was ineffective for failing to specify an objection to the recordings of the alleged victim's interviews with the forensic interviewer, which were admitted pursuant to S.C. Code Ann. § 17-23-175, as well as for failing to renew his objection to the admission of the recordings at trial;
 6. Trial counsel was ineffective for failing to object to Investigator Danny Morgan's opinion testimony characterizing the veracity of Applicant's statements; see Trial Tr. p. 235, lines 3-11;
 7. Trial counsel was ineffective for failing to object to Investigator Nikki Cantrell's testimony that the Applicant was the alleged offender based on implied hearsay from the alleged victim; see Trial Tr. p. 255, lines 10-17;
 8. Trial counsel was ineffective for failing to object to Investigator Nikki Cantrell's testimony characterizing his statements made to the alleged victim's mother via recorded phone calls made from the detention center; see Trial Tr. p. 266, line 16-p. 268, line 8;

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9. Trial counsel was ineffective for failing to cross-examine jailhouse informant Demetrius Martin that there were provisions in his federal plea agreement where his sentence could be reduced pursuant to Rule 35(b), Fed.R.Crim.P., due to his cooperation with State authorities in the prosecution of others, including the Applicant;
10. Trial counsel was ineffective for failing to introduce impeachment evidence that jailhouse informant Dwight Lamar Spears:
 - a. Had been convicted of conspiracy to murder a federal law enforcement officer; see United States v. Spears, 350 Fed.Appx. 808 (4th Cir. 2009);
 - b. Had been sentenced to twenty years' imprisonment on that offense; see United States v. Spears, 350 Fed.Appx. 808 (4th Cir. 2009);
 - c. Lied under oath when he testified that he had only been convicted of a federal financial institution crime and that he would be released between March and April 2011; see Trial Tr. p. 300, line 12-p. 301, line 8;
 - d. Lied under oath when he testified that the Fourth Circuit "threw his whole case out"; compare Trial Tr. p. 302, lines 2-6 with United States v. Spears, 350 Fed.Appx. 808 (4th Cir. 2009); and
 - e. Could have his twenty-year sentence reduced pursuant to Rule 35(b), Fed.R.Crim.P., due to his cooperation in this case;
11. Trial counsel was ineffective for calling the alleged victim's grandmother Donna Parker as a witness for the defense, as:
 - a. she did not testify to anything that benefited the defense; see Trial Tr. p. 331, line 14-p. 332, line 9;
 - b. she ultimately confirmed that the alleged victim had also disclosed to her the sexual abuse; see Trial Tr. p. 331, line 14-p. 332, line 9; and
 - c. trial counsel had her statement made to the police regarding the disclosure in his possession prior to trial;
12. Trial counsel was ineffective for calling the alleged victim's mother as a witness for the defense, as:
 - a. she did not testify to anything that benefited the defense;
 - b. she ultimately confirmed the statements made to her by the Applicant on the recorded jail phone calls; see Trial Tr. p. 357, line 2-p. 359, line 6;

- c. she ultimately confirmed that the alleged victim had also disclosed to her the sexual abuse; see Trial Tr. p. 359, line 7-p. 360, line 1;
- d. she testified that she broke off all contact with the Applicant as soon as the alleged victim disclosed the abuse to her; see Trial Tr. p. 349, line 18-p. 350, line 2;
- e. she testified that she believed the alleged victim; see Trial Tr. p. 348, lines 19-21;
- f. due to her damaging testimony, trial counsel had to impeach her with her violations of court orders; see, e.g., Trial Tr. p. 349, lines 4-14; p. 350, lines 8-17; and
- g. trial counsel had her statement made to the police regarding the disclosure in his possession prior to trial, as well as a representation from the prosecutor that she did not want to have any contact with trial counsel or anyone working on the Applicant's behalf;

The Applicant also alleged that defense counsel's performance "entirely fail[ed] to subject the prosecution's case to meaningful adversarial testing" and that prejudice should be presumed. United States v. Cronin, 466 U.S. 648, 659 (1984). Additionally, the Applicant alleged that the cumulative prejudicial effect of all of the errors warranted the grant of a new trial.

At the evidentiary hearing in this matter, the Applicant proceeded on the allegations presented in the Amended Application, with the exception of allegation #5, which he withdrew. Furthermore, the Applicant moved to amend his Application to include the following allegations for relief:

13. Trial counsel was ineffective for failing to object to the trial court's failure to charge the jury on the role of expert witnesses and on the evaluation of their testimony; and

14. Trial counsel was ineffective for failing to call Amber Wofford as a witness on the Applicant's behalf at trial.

The State objected to this Court's consideration of these claims, arguing that the State was unduly prejudiced by their presentation because the State had not had an opportunity to prepare a

defense for these claims. This Court finds that the State was not prejudiced by the presentation of these claims because they were matters which needed little to no preparation to defend, and that the Applicant should be permitted to present all of his claims in order to have his "full bite at the apple." Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008). Accordingly, this Court finds that the claims are proper amendments to the Applicant's Application for Post-Conviction Relief, and that they are ripe for review. See Rule 15(a), SCRPC ("[A] party may amend his pleading only be leave of court ... and leave shall be freely given when justice so requires and does not prejudice any other party").¹

III. EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case on November 12, 2013, the Applicant presented testimony from defense counsel Max B. Singleton, Esquire, his own testimony, and testimony from Amber Wofford. In addition to this testimony, this Court has before it a transcript of the trial, a copy of the briefs filed on direct appeal, a copy of the Court of Appeals' opinion on direct appeal, a copy of the records of the Spartanburg County Clerk of Court regarding the subject conviction, a copy of the Applicant's records with the South Carolina Department of Corrections, and the exhibits introduced by the parties during the evidentiary hearing. What follows below are findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 *et seq.*

As a threshold matter, this Court concludes on that on the facts of this case, the effects of defense counsel's errors and omissions were such that the Applicant was denied the effective assistance of counsel at trial. For that reason, this Court finds that defense counsel failed to provide the Applicant reasonable, professional assistance of counsel.

¹ This Court would note that the State did not present any additional evidence to this Court following the hearing to demonstrate that the State was, in fact, prejudiced by the presentation of these claims.

IV.
RELEVANT FACTS

For the purposes of evaluating this action, this Court would note the following relevant facts which were presented at the Applicant's trial. Additional facts supporting each claim for relief will be addressed as necessary in this Court's consideration of those claims below.

At the time of the Applicant's arrest, the Applicant lived with his girlfriend and the victim's three children, the youngest of which was the victim² in this case. The victim, who was four years old, would stay with the Applicant at the home while her mother, Wendy Richards, went to work and her siblings went to school in the fall of 2008. The victim testified that while the others were away from the home, the Applicant would touch her "private" with his "private," mouth, and hands. Trial Tr. p. 132, line 10-p. 135, line 19.

The victim eventually disclosed the abuse to Judy Petty, a friend of the victim's father; Petty then reported the assault to the police. The victim was taken to the hospital on February 13, 2009, and had a normal vaginal and rectal exam. See Trial Tr. p. 220, lines 11-18. She was also interviewed on two occasions by a forensic interviewer—Michele Arroyo-Staggs—and disclosed sexual abuse to the interviewer. See Trial Tr. p. 172, line 19-p. 173, line 19.

Additionally, the State presented evidence that the Applicant would not deny the allegations against him in various interviews with police investigators. See Trial Tr. p. 234, line 16-p. 235, line 11; p. 260, line 24-p. 263, line 22. The State further presented testimony from two jailhouse informants who each claimed that the Applicant admitted the sexual abuse to them. See Trial Tr. p. 294, lines 9-22; p. 302, line 19-p. 303, line 14; p. 304, lines 6-22.

The Applicant's primary defense was the lack of evidence to support the victim's assertions. The Applicant also introduced evidence from his mother and stepfather that he

² To protect the victim's privacy and identity, this Court will refer to the victim only as "victim" throughout this Order.

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worked with them during the period of time in which the assaults allegedly occurred. See Trial Tr. pp. 361-386.

V. STANDARD OF REVIEW

This Application for Post-Conviction Relief generally raises specific allegations of ineffective assistance of counsel. The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC. In evaluating an Application for Post-Conviction Relief, the Applicant must demonstrate that trial counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standard for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In other words, the Applicant must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.; Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant's Application presents numerous allegations for relief. This Court, however, finds that only the issues regarding the forensic interviewer and the lack of an expert witness charge are worthy of granting relief. This Court will begin its analysis of the Applicant's

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allegations by discussing the claims which are meritorious before turning to the claims which are not meritorious.

A. Meritorious Allegations

1. Defense Counsel was Ineffective for Failing to Object to Testimony by the Forensic Interviewer which Vouched for the Credibility of the Victim (Allegations #2 and 3)

The Applicant alleges that defense counsel was ineffective for failing to object to the qualification of Michelle Arroyo-Staggs as an expert witness. The Applicant also alleges that defense counsel was ineffective for failing to object to Arroyo-Staggs' improper vouching of the victim's veracity. Finally, the Applicant alleges that defense counsel was ineffective for eliciting improper vouching testimony. This Court agrees with the Applicant's contentions, and finds that defense counsel was ineffective with regard to all of these claims. The Court will first address the improper qualification of Arroyo-Staggs as an expert before turning to the nature of her testimony at trial. Finally, the Court will address the prejudice inquiry as to both issues together, as the prejudice analysis largely overlaps both claims.

a. The Qualification of Arroyo-Staggs as an Expert

This Court finds that Arroyo-Staggs was improperly qualified as an expert witness. At the outset of her testimony, the State moved to have Arroyo-Staggs qualified as an expert witness in "child abuse assessment and treatment," a request that was granted without objection. Trial Tr. p. 162, lines 16-22. Under South Carolina law, the qualification of a forensic interviewer as an expert witness is improper. See State v. Douglas, 380 S.C. 499, 502, 671 S.E.2d 606, 608 (2009) ("We find the testimony given by [the forensic interviewer] in the present case simply was not required to be presented by an expert witness"); State v. Kromah, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013) (footnote 5) ("[W]e state today that we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate"). While

Kromah was decided after the Applicant's trial, Douglas predated the Applicant's trial and defense counsel should have raised an objection to the qualification of Arroyo-Staggs as an expert witness based on the conclusions reached by the Supreme Court in Douglas as to the propriety of such testimony being presented by an expert. Defense counsel had no explanation for his failure to object to Arroyo-Staggs' qualification as an expert, nor could this Court envision a scenario where defense counsel would have given a valid strategic reason for permitting such a qualification. Accordingly, this Court concludes that defense's performance counsel was deficient with regard to this issue.

b. Arroyo-Staggs Improperly Vouched for the Credibility of the Victim

When Arroyo-Staggs testified at trial regarding her interviewing procedure, she described the goal of her interview "to find out ... if something happened or didn't happen." Trial Tr. p. 163, lines 16-17; see also p. 160, lines 8-13. She then outlined her methods of assuring that she was being told the truth:

At the Children's Advocacy Center we were trained to use what we consider the APSAC guidelines, American Professional Society Abuse of Children guidelines. And with using those guidelines there's always specifically three rules that we use.

The first one we can only talk about the truth. And my role is to always find out at the child's developmental abilities of course whether or not the child is able to know the difference between a truth and a lie.

And then the second rule would be that there's no guessing. If I ask a question the child can say they don't know, I don't remember.

And then from there the third rule is to kind of just adequately be able to say that the child, you know—that *everything has to be truthful*. If you don't know, you don't recall, you just say I don't remember.

Trial Tr. p. 163, line 20-p. 164, line 10 (emphasis added). She also testified extensively regarding "coaching," which she defined as "when the child is being coerced to think about the trauma from somebody else's viewpoint perspective for words." Trial Tr. p. 171, line 25-p. 172, line 2; see also p. 172, lines 3-18.

After describing her interviewing procedure, she testified that the victim disclosed sexual abuse to her and that there was no evidence that the victim had been "coached"; *i.e.*, was lying. Trial Tr. p. 173, line 11-p. 174, line 21. On cross-examination and redirect examination, she testified that the nature and description of the victim's disclosures were entirely appropriate. See Trial Tr. p. 179, line 8-p. 180, line 10; p. 185, lines 7-18; p. 186, lines 3-15; p. 188, lines 7-17; p. 190, line 14-p. 191, line 3; p. 192, lines 3-19; p. 193, line 21-p. 194, line 5. Finally, on recross, she unequivocally testified that it was her opinion that the victim told her the truth:

Q: Okay. I guess what I'm trying to ask is if she can't pinpoint the time, not, you know, a specific date or-but around a holiday or a birthday or something like that, I guess, I mean, *how can you assess if she's telling—I mean, how can you as an expert determine if she's telling the truth* if she can't tell you exactly around about the time when it happened, around some specific event or holiday?

A: *I can definitely assess it, which I have I believe accurately and appropriately, again, basing it on age appropriateness, information she's provided.*

Trial Tr. p. 197, lines 5-15 (emphasis added); see also p. 197, line 18-p. 198, line 4 (concluding that "what I deducted was a disclosure ... what I saw, what I heard, her statements, behavior and affect—were all appropriate for her age").

It is inappropriate for a witness to give an opinion as to the credibility and truthfulness of another witness. See State v. Douglas, supra; State v. Dawkins, 297 S.C. 386, 393-394, 377 S.E.2d 298, 302 (1989). That is precisely what occurred in this case. The sum of Arroyo-Staggs' testimony consisted of opinions, given as an expert in *child abuse assessment*, that: (1)

the victim was not lying; (2) the victim gave an age-appropriate disclosure of sexual abuse; and (3) Arroyo-Staggs had independently reviewed the disclosure and found it to be truthful. In other words, “[t]here is no other way to interpret the language used in the [testimony] than to mean the forensic interviewer believed the child[] [was] being truthful.” State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011). As the Supreme Court has recently elucidated, such testimony, given as an expert, is “not appropriate in a court of law when they run afoul of evidentiary rules and a defendant’s constitutional rights.” State v. Kromah, *supra*, 401 S.C. at 357, 737 S.E.2d at 499 (footnote 5). Accordingly, Arroyo-Staggs’ testimony was highly improper and should have been objected to by defense counsel.

Defense counsel did not levy a single objection to Arroyo-Staggs’ vouching for the credibility of the victim. Instead, defense counsel compounded Arroyo-Staggs’ prejudicial testimony on direct examination by repeatedly asking her, as an expert and in her professional opinion, whether or not she felt the victim was truthful. Accordingly, defense counsel’s failure to object to Arroyo-Staggs’ improper testimony, and his reinforcement of her vouching for the victim’s credibility on cross and recross examination constituted unmistakable deficient conduct. See Smith v. State, 386 S.C. 562, 568, 689 S.E.2d 629, 633 (2010) (concluding that defense counsel’s conduct was deficient for “fail[ing] to object to the improper hearsay and bolstering testimony” of a forensic interviewer”). Consequently, this Court concludes that the Applicant has met his burden with regard to Strickland’s performance prong on this issue.

c. Defense Counsel’s Deficient Conduct Prejudiced the Applicant

This Court finds that the Applicant was prejudiced by the following deficient aspects of defense counsel’s performance: (1) his failure to object to Arroyo-Staggs’ qualification as an expert witness; (2) his failure to object to Arroyo-Staggs’ improper vouching testimony; and (3)

his eliciting of improper vouching testimony during his questioning of Arroyo-Staggs. The crux of this case came down to the victim's believability and credibility. There was no forensic evidence demonstrating that the victim was abused by the Applicant. Aside from the testimony of two jailhouse informants whose credibility is highly suspect, the State did not present any evidence that the Applicant admitted to assaulting the victim. Given the paramount issue of the victim's credibility, and the highly impermissible nature of Arroyo-Staggs' vouching, given as an expert, this Court concludes that there is a reasonable probability that the result of the Applicant's trial would have been different had defense counsel raised the proper objections to Arroyo-Staggs' qualifications and testimony.

This Court finds support for this conclusion in several decisions of the Supreme Court. In State v. Jennings, *supra*, the Supreme Court concluded that the erroneous admission of reports given by a forensic interviewer which vouched for the credibility of the victims warranted a new trial because

There was no physical evidence presented in this case. The only evidence presented by the State was the children's accounts of what occurred and other hearsay evidence of the children's accounts. Because the children's credibility was the most critical determination of this case, we find the admission of the written reports was not harmless.

394 S.C. at 480, 716 S.E.2d at 94-95. Similarly, in Smith v. State, *supra*, the Supreme Court concluded that the improper admission of hearsay and bolstering testimony by a forensic interviewer was prejudicial because

[T]he outcome of the case hinged on the Victim's credibility regarding identification of the perpetrator, and there was otherwise an absence of overwhelming evidence of Smith's guilty. The forensic interviewer's hearsay testimony impermissibly corroborated the Victim's identification of Smith as the assailant, and the forensic interviewer's subsequent opinion testimony improperly bolstered the Victim's credibility.

386 S.C. at 569, 689 S.E.2d at 633 (emphasis added). Contrarily, in cases where the Supreme Court has found overwhelming evidence of guilt such that a forensic interviewer's improper bolstering testimony was harmless, there has been physical evidence of trauma to corroborate the victim's description of the assault. See State v. Douglas, *supra*, 380 S.C. at 504, 671 S.E.2d at 609 ("A pediatric nurse practitioner ... examined Victim and determined she had vaginal tearing and scarring consistent with past penetration. In light of this evidence, there is no conceivable prejudice to Douglas from [the forensic interviewer's] testimony"); State v. Kromah, *supra*, 401 S.C. at 361, 737 S.E.2d at 500 (concluding that the forensic interviewer's testimony merely "restated what the overwhelming evidence had already indicated, that the injury was the result of physical abuse").

The facts presented at the Applicant's trial are far more consistent with those presented in Jennings and Smith as opposed to Douglas and Kromah. There is simply no overwhelming evidence of physical abuse present in this case that would overcome the extreme prejudice stemming from Arroyo-Staggs' impermissible testimony. Accordingly, the Applicant has met his burden of proof with regard to establishing Strickland's prejudice prong, and a new trial is warranted.

2. Defense Counsel was Ineffective for Failing to Object to the Trial Court's Failure to Charge the Jury Regarding Expert Witnesses (Allegation #13)

As noted above, Arroyo-Staggs was qualified as an expert witness in the field of "child abuse assessment and treatment." Trial Tr. p. 162, lines 16-22. However, the trial court did not instruct the jury on the consideration of expert witnesses either following his qualification of Arroyo-Staggs as an expert or during his charge to the jury at the conclusion of the case. The Applicant alleges that defense counsel was ineffective for failing to object to the absence of an instruction on expert witnesses. This Court agrees.

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“[T]he trial court is required to charge only the current and correct law of South Carolina.” Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). “After expert testimony is admitted by the court, it is to be considered by the jury just as other evidence, and given such weight as, in the opinion of the jury, it should receive.” State v. Johnson, 66 S.C. 23, 44 S.E. 58, 63 (1903). The failure to give a proper charge on the jury’s role in considering an expert witness’ testimony is reversible error. Id.

Here, it is clear that a charge on expert witnesses was warranted on the facts of this case as two expert witnesses—Arroyo-Staggs and the pediatrician who examined the victim—testified at trial. Furthermore, as explained above, Arroyo-Staggs’ credibility was a paramount issue for the jury, as her conclusions essentially confirmed that the abuse occurred. Defense counsel’s failure to secure an instruction which made it clear that the jury could accept or reject Arroyo-Staggs’ conclusions and evaluate her credibility just like any other witness constituted unmistakable deficient conduct. Moreover, defense counsel’s failure cannot be justified as a strategic decision, as defense counsel testified before this Court that he simply assumed that the standard expert witness charge³ had been given. Accordingly, this Court concludes that the Applicant has met his burden of proof with regard to Strickland’s deficiency prong.

This Court also finds that the Applicant was prejudiced by the lack of a charge on the credibility of expert witnesses. “[Q]ualification as an expert clothes the witness with an air of authority that does not attach to ‘ordinary’ witnesses.” State v. Douglas, *supra*, 380 S.C. at 506, 671 S.E.2d at 610 (2009) (Pleicones, J., dissenting); see also State v. Kromah, *supra*, 401 S.C. at 357, 737 S.E.2d at 499 (“[I]t is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts”). Juries need to understand that they are “free to weigh and reject [an expert witness’] opinions” in their consideration of the evidence. United States v.

³ See generally <http://sccourts.org/juryCharges/GS%20InstructionsJune2013.pdf> at 38-39.

Lopez-Medina, 461 F.3d 724, 749 (6th Cir. 2006).⁴ The Applicant's jury, however, was not afforded the opportunity to fairly evaluate Arroyo-Staggs' testimony because of the lack of an instruction on the consideration of expert witness testimony. Without the proper cautionary instruction, it is highly likely that the jury concluded that the victim was telling the truth because an "expert" confirmed that she was truthful. As described in detail above, Arroyo-Staggs' testimony was extremely prejudicial and the evidence against the Applicant was not overwhelming. Accordingly, the Applicant has met his burden of proof with regard to Strickland's prejudice prong, and this Court grants him a new trial.

B. Non-Meritorious Allegations

Although this Court's rulings on the forensic interviewer and expert witness charge claims are dispositive of this Application, this Court must address all of the Applicant's allegations which were presented at the evidentiary hearing in this matter. See S.C. Code Ann. § 17-27-80 ("The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented"); Marlar v. State, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (concluding that a PCR court's failure to comply with § 17-27-80 "precludes appellate review of the issues" not addressed in the order). This Court finds that the Applicant's remaining allegations are without merit.⁵

1. Defense Counsel's Cross-Examination of the State's Witnesses (Allegation #1)

The Applicant alleges that defense counsel was ineffective for eliciting damaging and impermissible testimony during his cross-examination of several of the State's witnesses. This

⁴ In Lopez-Medina, the Sixth Circuit held that the trial court's failure to give an instruction on the consideration of testimony by an expert witness established plain error warranting reversal.

⁵ With the exception of allegations #9 and 10, this Court concludes that defense counsel's performance was not deficient with regard to each of these allegations. Inasmuch as the inquiry on the deficiency prong of Strickland is dispositive as to each of these allegations, this Court does not address Strickland's prejudice prong for these claims. See Strickland, *supra*, 466 U.S. at 697 (holding that "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one").

Court finds that defense counsel's performance was not deficient with regard to this issue as defense counsel's questioning on cross-examination fell "within the wide range of reasonable professional assistance." Strickland, *supra*, 446 U.S. at 689. Indeed, "[c]ross-examination is always a risky process—even experienced counsel conducting a brilliant cross-examination might inadvertently elicit damaging disclosures, a risk inherent in the tactical decision to conduct cross-examination." People v. Ervin, 22 Cal.4th 48, 94, 990 P.2d 506, 531 (2000). Accordingly, this allegation is denied and dismissed.

2. The Forensic Interviewer's Identification of the Applicant as the Perpetrator (Allegation #4)

During Arroyo-Staggs' direct examination, the State questioned her regarding a picture that the victim drew for her during one of their interviews:

Q: And what were the pictures of that she drew for you?

A: It's numerous things on here. One of the drawings is what she referred to as the place that it happened on, and a picture of herself *and the gentleman over here*, and also specifically drew his private and was very specific as to the color. And she worded it as white. And she also made a drawing of his hair on his private as well. And where they were positioned. And she specifically said where each of them were positioned, on what side. And she also was clear as to what they were on top, because she said what was there on the place as far as two covers were concerned.

Trial Tr. p. 175, lines 10-20 (emphasis added). The Applicant alleges that defense counsel was ineffective for failing to object to this testimony because the testimony violated the time and place limitations of Rule 801(d)(1)(D), SCRE,⁶ by specifically identifying the Applicant as the perpetrator. This Court disagrees.

Defense counsel testified that he believed that the reference that Arroyo-Staggs made to "the gentleman over here" was to the picture itself and that she did not point out or reference the

⁶ This Rule provides that a statement of an alleged victim in a criminal sexual conduct case is not hearsay so long as the victim testifies at the trial, is subject to cross-examination regarding the statement, "and the statement is limited to the time and place of the incident."

Applicant during this portion of her testimony. This Court finds defense counsel's explanation of the testimony reasonable. Accordingly, he was not deficient for failing to object to this portion of Arroyo-Staggs' testimony. This allegation is denied and dismissed.

3. Investigator Danny Morgan's Opinion Testimony on the Applicant's Veracity (Allegation #6)

Investigator Morgan interviewed the Applicant on February 3, 2009. Trial Tr. p. 229, lines 6-15. During his testimony on direct examination, he testified that the Applicant would not directly respond to his questions about the victim's allegations of abuse. Trial Tr. p. 234, line 16-p. 235, line 2. The State then asked whether the Applicant's "demeanor ever change[d]," and Investigator Morgan responded:

Yes ma'am. He—he got to the point where he—he never—he never did very strongly or vehemently deny the charges even in the beginning, or the allegations. Not even in the beginning he didn't really deny very strongly *like you would expect from someone who didn't do something.*

Trial Tr. p. 235, lines 7-11 (emphasis added). The Applicant alleges that defense counsel was ineffective for failing to object to this testimony on the basis that Investigator Morgan improperly gave opinion testimony that characterized the veracity of the Applicant's statements. This Court finds that defense counsel was not deficient with regard to this issue.

This Court concludes that Investigator Morgan did not give improper opinion testimony. The minor statement made by Investigator Morgan was not given in the form of an opinion and was not couched in terms indicating that he knew that the Applicant was lying because of his knowledge and experience in interviewing witnesses. Instead, Investigator Morgan simply testified that the Applicant did not vehemently deny the allegations. This was proper testimony based on Investigator Morgan's observations of the Applicant. Consequently, defense counsel

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was not deficient for failing to object to this portion of Investigator Morgan's testimony, and this allegation is denied and dismissed.

4. Investigator Nikki Cantrell's Testimony that the Applicant was the Alleged Offender (Allegation #7)

On direct examination, Investigator Nikki Cantrell testified as to the actions she took after she spoke to the victim:

Q: What next did you do?

A: We attempted to contact [the victim's] father. I spoke to him on the phone. And then since we could not get in touch with [the victim's] mother or her mother's boyfriend, we went back to the school and got the children off the school bus.

Q: And what was the purpose in getting the children off the school bus?

A: *Because the alleged offender at that time was Anthony Briggs who is the mother's boyfriend. And he typically is at home with the children when the mother is working. And we could not allow the children to return to his home until we investigated this case. We didn't want to put them in any danger.*

Trial Tr. p. 255, lines 4-17 (emphasis added). The Applicant contends that the highlighted testimony constituted improper implied hearsay testimony that violated Rule 801(d)(1)(D), SCRE, and that defense counsel was ineffective for failing to object to this testimony on that basis. This Court disagrees and concludes that Investigator Cantrell's testimony was proper.

Investigator Cantrell's statement was not hearsay. "'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(c), SCRE. Here, Investigator Cantrell never repeated statements made to her by the victim identifying the Applicant as the perpetrator. Consequently, Investigator Cantrell's testimony does not constitute actual hearsay.

Investigator Cantrell's testimony also does not constitute implied hearsay. While Investigator Cantrell's testimony does move directly from her conversation with the victim to a declaration that the Applicant was "the alleged offender," this Court concludes that the testimony was not admitted for the truth of the matter asserted. Investigator Cantrell's testimony was limited to the purpose of her investigation and was not intended to establish that the victim had identified the Applicant as the perpetrator. See generally State v. Weaver, 361 S.C. 73, 85-86, 602 S.E.2d 786, 792 (Ct. App. 2004) (concluding that testimony that "[a]ll the evidence led to" the defendant was proper because "Lieutenant Weston never repeated statements made to him by individuals at the crime scene. Rather, he testified only to the conclusions he made based on what his investigation had thus far revealed"). Accordingly, this testimony was not objectionable, and defense counsel could not have been deficient for failing to object to its admission. This allegation is denied and dismissed.

5. Investigator Cantrell's Characterization of the Applicant's Conversations with Wendy Richards (Allegation #8)

While the Applicant was incarcerated at the Spartanburg County Detention Center, he made numerous phone calls to Wendy Richards which were recorded. Investigator Cantrell gave a summary of those phone calls at the conclusion of her direct examination. See Trial Tr. p. 266, line 16-p. 268, line 8. The Applicant argues that defense counsel was ineffective for failing to object to her description of the content of those phone calls. This Court finds that defense counsel was not deficient with regard to this issue.

Defense counsel explained that he felt that there was no need to object to Investigator Cantrell's testimony because the phone calls would be played for the jury instead of summarized by Investigator Cantrell if his objection was sustained. This Court finds this explanation reasonable inasmuch as having the jury hear the Applicant's voice would just as damaging, if not

more so, than having the jury hear Investigator Cantrell's summary of the conversations. Therefore, defense counsel was not deficient in failing to object to this portion of Investigator Cantrell's testimony, and this allegation is denied and dismissed.

6. Impeaching Jailhouse Informants on Prior Convictions and Possible Reductions in Their Sentences (Allegations #9 and 10)

At the Applicant's trial, two jailhouse informants—Demetrius Martin and Dwight Lamar Spears—each testified that the Applicant confessed to them that he had sexually assaulted the victim. Both informants were incarcerated on federal charges. Martin testified that he was not offered anything by the State in exchange for his testimony. Trial Tr. p. 293, lines 14-16. Spears testified that he had only been convicted of a federal financial institution crime, that he was to be released in March or April of 2011—seven to eight months after the trial concluded, and that he had not been promised anything in exchange for his testimony. Trial Tr. p. 300, line 14-p. 301, line 11.

During the evidentiary hearing in this case, the Applicant admitted evidence that Martin had entered into a plea agreement with the federal government which permitted him to have his federal sentence reduced if he substantially assisted in the "prosecution of another person who has committed an offense." Applicant's Exhibit #1 at 7 (paragraph 9). The Applicant also admitted evidence that Spears had been convicted of conspiracy to murder a federal law enforcement officer and that he had been sentenced to twenty years' imprisonment for that offense. See United States v. Spears, 350 Fed.Appx. 808 (4th Cir. 2009); Applicant's Exhibits #2-5. Defense counsel admitted that he did not have any of this information at his disposal during the trial because he did not research the background of the informants prior to trial.

This Court finds that defense counsel's performance was deficient. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

investigations unnecessary.” Strickland, *supra*, 446 U.S. at 691. Here, it is clear that defense counsel undertook no investigation as to the possible avenues of impeachment for these two informants. Furthermore, such impeachment evidence would have been readily available, inasmuch as a basic review of their files would have revealed their charges, sentences, the existence of any plea agreements, etc. Defense counsel’s failure to obtain this impeachment evidence and subsequent failure to utilize this impeachment evidence constitutes clear deficient conduct.

This Court concludes, however, that the Applicant has failed to demonstrate how he was prejudiced by defense counsel’s deficient conduct. Both informants were thoroughly questioned regarding their conversations with the Applicant, and both informants were cross-examined about their federal charges and sentences. Under these circumstances, this Court fails to see how further impeachment of either jailhouse informant would have likely changed the result at trial. Accordingly, this Court concludes that the Applicant has failed to meet his burden of proof regarding Strickland’s prejudice prong with regard to these issues. These allegations are denied and dismissed.

7. Calling Donna Parker and Wendy Richards as Witnesses (Allegations #11 and 12)

The Applicant contends that defense counsel was ineffective for calling the victim’s grandmother, Donna Parker, and her mother, Wendy Richards, as witnesses for the defense constituted ineffective assistance of counsel. This Court concludes that defense counsel was not deficient in presenting either witness at trial.

The decision of whether or not to present a witness at trial is quintessentially the defense lawyer’s purview. See Taylor v. Illinois, 484 U.S. 400, 418 (1988) (“Putting to one side the exceptional cases in which counsel is ineffective, the client must accept the consequences of the

lawyer's decision ... not to put certain witnesses on the stand"). Here, defense counsel testified that he called both witnesses to show that the victim did not disclose the abuse to two of the individuals she was closest to—her mother and her grandmother—until long after the abuse occurred. This evidence was in fact introduced through their testimony. See Trial Tr. p. 331, lines 14-24; p. 349, line 18-p. 350, line 2. This Court concludes that defense counsel's explanation for calling Parker and Richards as witnesses is reasonable and, therefore, cannot be considered deficient conduct. Accordingly, these allegations are denied and dismissed.

8. Amber Wofford (Allegation #14)

At the evidentiary hearing in this case, the Applicant presented the testimony of Amber Wofford, who testified that she had spoken to the victim following the Applicant's arrest and that the victim had disclosed to her that the victim didn't understand why the Applicant was in trouble because he hadn't done anything wrong. She further testified that she was present during the trial and that she would have been willing to testify on the Applicant's behalf. The Applicant contends that defense counsel was ineffective for failing to call Wofford as a witness. This Court disagrees.

This Court concludes that defense counsel was not deficient with regard to this issue. As with the immediate prior two allegations, the decision to call or not to call a witness largely belongs to defense counsel. Here, defense counsel felt that he had sufficiently impeached the victim's credibility through her own relatives and that further testimony would not have assisted in the defense. This Court concludes that this explanation for not calling Wofford as a witness is reasonable, and thus does not constitute deficient conduct. Accordingly, this allegation is denied and dismissed.

9. Prejudice: *Cronic* and Cumulative Error

In his Amended Application, the Applicant alleged that defense counsel's deficient performance rose to the level of that set forth in United States v. Cronic, 466 U.S. 648 (1984), which would require a finding of presumed prejudice. Alternatively, the Applicant alleged that the cumulative effect of defense counsel's errors and omissions warranted the grant of a new trial even if no single allegation warranted a new trial.

While this Court has concluded that defense counsel's performance was deficient with regard to several allegations, and has found that defense counsel's deficient performance prejudiced the Applicant, this Court does not conclude that defense counsel's performance was so substandard as to warrant relief pursuant to Cronic. Instead, this Court concludes that the proper inquiry is that outlined by Strickland, which this Court finds the Applicant has met.

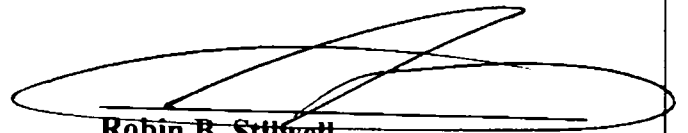
This Court also does not reach the Applicant's cumulative error inquiry. As to each allegation, with the exception of allegations #9 and 10, this Court either finds that defense counsel's performance was deficient and that relief is warranted, or that defense counsel's performance was not deficient. Accordingly, there are no constitutional "errors" committed by defense counsel to aggregate and consider cumulatively.

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**VII.
CONCLUSION**

This Application for Post-Conviction Relief is hereby **GRANTED**. The Applicant's convictions and sentences for criminal sexual conduct and lewd act are vacated, and this matter is remanded to the Spartanburg County Court of General Sessions for a new trial.

IT IS SO ORDERED.



Robin B. Stilwell
Presiding Circuit Court Judge
Seventh Judicial Circuit

This 1 day of FEB, 2014.

GREENVILLE South Carolina.

CLERK
SPARTANBURG COUNTY
2014 FEB -4 PM
M. HOPE CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Anthony Briggs, #342410,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-2674

**MOTION TO ALTER OR AMEND
THE ORDER GRANTING RELIEF
PURSUANT TO RULE 59(e)**

Respondent, by and through undersigned counsel, making its Motion to Alter or Amend, pursuant to Rule 59(e), SCRCP, would respectfully show unto this Court:

1. The matter is before the Court by way of the Applicant's application for post-conviction relief.
2. An evidentiary hearing was convened on November 12, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Jeremy A. Thompson, Esquire. The Respondent was represented by Suzanne H. White of the South Carolina Attorney General's Office.
3. After the evidentiary hearing, the post-conviction relief court issued an order dated February 1, 2014, granting the Applicant's application for post-conviction relief.
4. Respondent moves this Court to reconsider the order granting post-conviction relief due to the following:
 - a. The State asks this Court reverse its earlier decision and deny post-conviction relief where the Applicant failed to meet the Strickland standards and where Counsel's conduct fell within the realm of reasonable representation, specifically in relation to the following:
 - i. Respondent submits that the Court's findings on the bottom of pages 6 and 24, . . . "the effects of defense counsel's errors and omissions were such that the Applicant was denied the effective assistance of counsel at trial," and ". . . there are no constitutional 'errors' committed by

defense counsel to aggregate and consider cumulatively,” imply the use of cumulative error, which the State of South Carolina has not found to be proper in post-conviction relief matters.

“Even if South Carolina did allow PCR based on the cumulative prejudicial effect of two or more instances of deficient performance, [Applicant] would still have to demonstrate “a reasonable probability that, but for [the cumulation of] counsel's unprofessional errors, the result of the proceeding would have been different. Walker v. State, 397 S.C. 226, 243, 723 S.E.2d 610, 619 (Ct. App. 2012).

- ii. Respondent submits that the Court’s finding that Counsel was ineffective for failing to object to the qualification of Arroyo-Staggs as an expert witness, failing to object to improper vouching by Arroyo-Staggs, and for eliciting improper vouching testimony, is based upon improper consideration of the facts and an error of law.

The Applicant relies predominantly on the Kromah case to support his argument that Counsel was ineffective for failing to object qualification of Arroyo-Staggs and for failing to object to improper vouching. However, Kromah was not decided until 2013, three years following Applicant’s trial. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). Applicant also utilized State v. Jennings, 394 S.C. 473, 716, S.E.2d 91 (2011), which was decided after Applicant’s trial.

Arroyo-Staggs’ testimony did not include any references to the victim’s testimony as “compelling,” but focused on issues with delayed disclosure and evidence of coaching. “As with any witness, the jury is free to accept or reject the testimony of an expert witness.” State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009). The testimony was did not include the introduction of reports confirming the victim’s disclosure or testimony regarding Arroyo-Staggs’ belief

that the victim was truthful, but rather the processes used in an interview, delayed or partial disclosures, and the information that Arroyo-Staggs observed regarding the victim's behavior.

The South Carolina Supreme Court has stated, "[w]e have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial." Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). See also Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993); see also Robinson v. State, 308 S.C. 74, 417 S.E.2d 88 (1992); Arnette v. State, 306 S.C. 556, 413 S.E.2d 803 (1992); Kirkpatrick v. State, 306 S.C. 359, 412 S.E.2d 389 (1991).

Respondent submits that the cases finding Counsel ineffective for failing to object to a forensic interviewers qualification as an expert were decided following the trial of Applicant on these charges. Therefore, Counsel was acting in a reasonable manner when he did not object to Arroyo-Staggs qualification as an expert or to her non-prejudicial testimony.

- iii. Respondent submits that the Court's finding that Counsel was ineffective for failing to request a jury charge regarding expert testimony is based upon an error of law.

On appeal, the appellate court must consider instructions as a whole, and "if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error." State v. Daniels, 27180, 2012 WL 4801526 (S.C. Oct. 10, 2012)(citing State v. Aleksey, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000)).

"As with any witness, the jury is free to accept or reject the testimony of an expert witness." State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009). When reviewing the instructions as a whole, paying particular attention to the charge related to witness credibility, Respondent submits that the jury instructions clearly state how the jury can view witnesses and their credibility, so Counsel cannot be ineffective for failing to object when the instructions are correct as a whole.

5. The State requests a hearing to fully argue the 59(c) motion and address each of the raised issues before this Court.

Respectfully submitted,

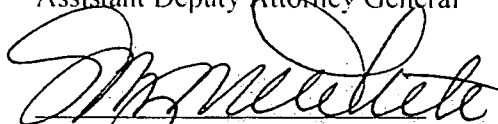
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February 24, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Anthony Briggs, #342410,

Plaintiff,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

**ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND
THE ORDER GRANTING RELIEF
PURSUANT TO RULE 59(e)**

C. A. No.: 2012-CP-42-2674

This matter comes before the Court pursuant to the Respondent's Motion to Alter or Amend the Court's Order dated February 1, 2014, Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. After having had the opportunity to carefully review the Motion, the same is respectfully denied.

AND IT IS SO ORDERED.



ROBIN B. STILWELL

February 28, 2014
Greenville, South Carolina

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SPARTANBURG COUNTY
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