

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

RECEIVED

MAR 22 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL SCOTT SIMMONS,

APPELLANT

APPELLATE CASE NO 2016-001975

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT #1 (DVD OF REPORT); STATE'S EXHIBIT #22 (DVD OF
REPORT); STATE'S EXHIBIT #23 (DVD OF REPORT); COURT'S EXHIBIT #4
(HANDWRITTEN LIST)**

CRIMES MAY BE PROVEN BY CIRCUMSTANTIAL EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, HOWEVER, TO THE EXTENT THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, ALL OF THE CIRCUMSTANCES MUST BE CONSISTENT WITH EACH OTHER, AND WHEN TAKEN TOGETHER, POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED BEYOND A REASONABLE DOUBT. IF THESE CIRCUMSTANCES MERELY PORTRAY THE DEFENDANT'S BEHAVIOR AS SUSPICIOUS, THE PROOF HAS FAILED.

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THIS BURDEN RESTS WITH THE STATE REGARDLESS OF WHETHER THE STATE RELIES ON DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE, OR SOME COMBINATION OF THE TWO.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING WHAT THE FACTS ARE IN THIS CASE, YOU, OF NECESSITY, MUST PASS UPON THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED. YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES WHO TOOK THAT WITNESS STAND. CREDIBILITY IN THE LAW MEANS BELIEVABILITY. CAN I BELIEVE THIS WITNESS? IS THIS WITNESS CREDIBLE? THE VALUE AND WEIGHT TO BE GIVEN TO THEIR TESTIMONY IS IN YOUR SOUND DISCRETION. YOU ALONE MUST DECIDE THE FORCE AND EFFECT AND THE TRUTH OF THE TESTIMONY. IN MAKING A DETERMINATION AS TO THE CREDIBILITY OF A WITNESS, THERE ARE MANY FACTORS THAT YOU MAY AND SHOULD TAKE INTO CONSIDERATION, SUCH AS THE APPEARANCE OR MANNER OF THE WITNESS AS HE OR SHE GAVE TESTIMONY FROM THE WITNESS STAND, KNOWN IN THE LAW AS THE Demeanor OF THE WITNESS. DID THE WITNESS HAVE AN INTEREST IN THE OUTCOME OF THIS TRIAL? WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS THE WITNESS'S TESTIMONY CONSISTENT OR DID IT CONTAIN DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO KNOW ABOUT THE FACTS CONCERNING WHICH HE OR SHE GAVE TESTIMONY? DID THE WITNESS HAVE CAUSE OR REASON TO BE BIASED OR PREJUDICED IN FAVOR OF THE TESTIMONY THAT HE OR SHE GAVE? WAS THE TESTIMONY OF THE WITNESS

CORROBORATED AND MADE STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS IT MADE WEAKER AND IMPEACHED BY OTHER TESTIMONY AND EVIDENCE PRESENTED?

AS JURORS, YOU HAVE THE RIGHT TO BELIEVE A SMALL PORTION OF A WITNESS'S TESTIMONY AND DISREGARD THE LARGER PORTION. OR YOU MAY BELIEVE A LARGER PORTION OF A WITNESS'S TESTIMONY AND DISREGARD THE SMALLER PORTION. YOU MAY BELIEVE A WITNESS'S TESTIMONY IN ITS ENTIRETY OR YOU MAY COMPLETELY REJECT A WITNESS'S TESTIMONY IN TOTALITY, NOT DOING THAT ARBITRARILY, BUT IF YOU HAVE SOUND REASON IN THE RECORD FOR DOING SO. YOU MAY BELIEVE THE TESTIMONY OF A SINGLE WITNESS AGAINST THAT OF MANY WITNESSES OR THE MANY WITNESSES AS AGAINST THE ONE. MOST CERTAINLY, YOU DO NOT DETERMINE THE MATTER OF CREDIBILITY OR BELIEVABILITY MERELY BY COUNTING THE NUMBER OF WITNESSES FOR EITHER SIDE. THROUGHOUT THIS ENTIRE PROCESS, YOU HAVE BUT ONE SINGLE OBJECTIVE AND THAT IS TO SEEK THE TRUTH, REGARDLESS OF FROM WHAT SOURCE THAT TRUTH MAY COME.

YOU HAVE HEARD THE TESTIMONY OF A NUMBER OF WITNESSES WHO ARE EMPLOYED AS POLICE OFFICERS. ALTHOUGH THESE WITNESSES, THROUGH TRAINING, EDUCATION, AND EXPERIENCE,

WORK IN THE FIELD OF LAW ENFORCEMENT, THEIR TESTIMONY MUST BE CONSIDERED JUST LIKE THAT OF ANY OTHER WITNESS. YOU MAY ACCEPT OR REJECT THEIR TESTIMONY, OR GIVE IT AS MUCH WEIGHT AS YOU THINK IT DESERVES, BUT YOU MAY NOT ATTACH ANY SIGNIFICANCE TO THE FACT THAT THEY ARE POLICE OFFICERS.

EXPERT WITNESSES

NORMALLY, A PERSON CANNOT GIVE OPINION TESTIMONY. NORMALLY, WHEN A PERSON TESTIFIES THEY MUST TESTIFY AS TO WHAT THEY EITHER SAW, HEARD, OR SENSED BY SMELL, OR SOMETHING OF THAT NATURE. HOWEVER, THERE IS AN EXCEPTION WHEN SOMEONE IS QUALIFIED BECAUSE OF EDUCATION OR EXPERIENCE. THEY ARE PERMITTED TO GIVE THEIR OPINION IN CERTAIN AREAS IF THE COURT QUALIFIES THEM THAT WAY. THE EXPERT WITNESSES WERE QUALIFIED TO GIVE OPINION TESTIMONY; HOWEVER THAT DOES NOT MEAN THAT YOU MUST ACCEPT THE OPINION, BUT IT IS EVIDENCE FOR YOU TO USE IN ANY WAY YOU SEE FIT AND GIVE THE WEIGHT AND CREDIBILITY YOU BELIEVE IS APPROPRIATE.

INTENT

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT

IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. IT IS UP TO YOU TO DETERMINE WHAT THE

DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

THE OFFENSE OF SEXXUAL EXPLOITATAION OF A MINOR IS A SPECIFIC INTENT CRIME.

SEXUAL EXPLOITAT ION OF A MINOR SECOND DEGREE

Fine with submission by AG

THIRD PARTY GUILT JURY CHARGE

THE DEFENDANT CONTENTS THAT THERE IS EVIDENCE BEFORE YOU INDICATING THAT SOMEONE OTHER THAN HE OR SHE MAY HAVE COMMITTED THE CRIME OR CRIMES, AND THAT EVIDENCE RAISES A REASONABLE DOUBT WITH RESPECT TO THE DEFENDANT'S GUILT. IN THIS REGARD, I CHARGE YOU THAT A DEFENDANT IN A CRIMINAL CASE HAS THE RIGHT TO RELY ON ANY EVIDENCE PRODUCED AT TRIAL THAT HAS A RATIONAL TENDENCY TO RAISE A REASONABLE DOUBT WITH RESPECT TO HIS/HER OWN GUILT. I HAVE PREVIOUSLY CHARGED YOU WITH REGARD TO THE STATE'S BURDEN OF PROOF, WHICH NEVER SHIFTS TO THE DEFENDANT. THE DEFENDANT DOES NOT HAVE TO PRODUCE EVIDENCE THAT PROVES THE GUILT OF ANOTHER, BUT MAY RELY ON EVIDENCE THAT CREATES A REASONABLE DOUBT. IN OTHER WORDS, THERE IS NO REQUIREMENT THAT THIS EVIDENCE PROVES OR EVEN RAISES A STRONG

PROBABILITY THAT SOMEONE OTHER THAN THE DEFENDANT COMMITTED THE CRIME. YOU MUST DECIDE WHETHER THE STATE HAS PROVEN THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, NOT WHETHER THE OTHER PERSON OR PERSONS MAY HAVE COMMITTED THE CRIME(S).

JURY VERDICT

THERE ARE TWELVE POSSIBLE VERDICTS WHICH YOU MAY FIND IN THIS CASE. THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN WHICH I STATE THESE POSSIBLE VERDICTS; IT IS SIMPLY THAT ONE MUST BE STATED FIRST.

LADIES AND GENTLEMEN, YOUR VERDICT MUST BE A UNANIMOUS ONE AS TO EACH CHARGE. MR./MADAM FOREPERSON, WHEN THE JURY AGREES ON THE VERDICT, YOU WILL WRITE THE VERDICT ON THE VERDICT FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE

BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE
DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR
DELIBERATIONS.

Respectfully Submitted,

/s

Defense Team-Michael Simmons

Approved 3/9/15

THIRD PARTY GUILT JURY CHARGE

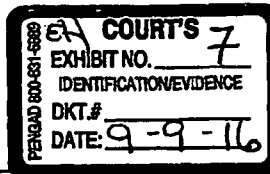
The defendant contends that there is evidence before you indicating that someone other than he or she may have committed the crime or crimes, and that evidence raises a reasonable doubt with respect to the defendant's guilt.

In this regard, I charge you that a defendant in a criminal case has the right to rely on any evidence produced at trial that has a rational tendency to raise a reasonable doubt with respect to his/her own guilt.¹

I have previously charged you with regard to the State's burden of proof, which never shifts to the defendant. The defendant does not have to produce evidence that proves the guilt of another, but may rely on evidence that creates a reasonable doubt. In other words, there is no requirement that this evidence proves or even raises a strong probability that someone other than the defendant committed the crime.² You must decide whether the State has proven the defendant's guilt beyond a reasonable doubt, not whether the other person or persons may have committed the crime(s).

¹ An accused is constitutionally entitled to prove his innocence, or persuade the fact finder of a reasonable doubt about his guilt, by suggesting someone else committed the crime charged. State v. Jiminez, 175 N.J. 475, 486 (2003); see also State v. Koedatich, 112 N.J. 225, 297 (1988), cert. denied, 488 U.S. 1017, 109 S. Ct. 813, 102 L. Ed. 2d 803 (1989). As stated by Chief Justice Weintraub, "[i]t would seem in principle to be sufficient if the proof offered has a rational tendency to engender a reasonable doubt with respect to an essential feature of the State's case." State v. Sturdivant, 31 N.J. 165, 179 (1959), cert. denied, 362 U.S. 956, 80 S. Ct. 873, 4 L. Ed. d 873 (1960).

² To be admissible, evidence of another's guilt need not be conclusive, and it "need not [constitute] substantial proof of a probability that the third person committed the act." Jiminez, supra, 175 N.J. at 486. On the other hand, the theory cannot be speculative. Instead, "[s]omewhere in the total circumstances there must be some thread capable of inducing reasonable men to regard the event as bearing upon the State's case." Sturdivant, supra, 31 N.J. at 179 (quoted with approval in Jiminez, supra, 175 N.J. at 487).



Was the IP address
for a specific device
or for the house location/
wife?

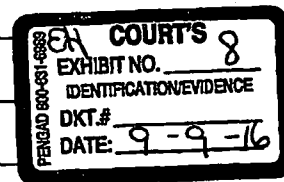
In other words,
was the IP address

I CAN NOT answer
this question. All
factual issues are in
the sole and exclusive
province of the jury.

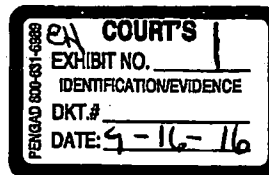
Proff. M. M. M.
Circuit Judge

- CAN we have a
laptop w/ Blue Ray
disc player to view
the discs we were
given?

want to see the
logs.



Geoffrey R. McKee, PhD, ABPP
Forensic Psychological Services
 1728 Main Street, Suite 110
 Columbia, SC 29201
 (803) 251-3499



August 15, 2015

Robert Bank, Esq.
 Richland County Public Defender's Office
 1701 Main St.
 Columbia, SC 29201

Dear Mr. Bank:

Pursuant to your request, below is a summary of my forensic psychological evaluation of **Michael Simmons**, a 28 year old honorably discharged 15-month Iraqi combat male soldier, completed on 8/14/15. Mr. Simmons has been charged with possession and distribution of child pornography. In addition to reviewing numerous witness, police, and legal documents supplied by your office, I collected an extensive personal and sexual history from Mr. Simmons and administered the Information & Orientation Scale (I&O), the Trauma Symptom Inventory (TSI), the Personality Assessment Inventory (PAI), and Multiphasic Sex Inventory-II (MSI-II) scales. Following the evaluation, I scored various measures of sexual recidivism risk: the Static 99-Revised (S99-R), Static 2002-Revised (S2002-R), Minnesota Sex Offender Screening Tool-R (MnSOST-R), Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), and New Jersey Registrant Risk Assessment Scale (NJ-RRAS). I also calculated recidivism measures for non-sexual crimes; that is, his risk of probation violation for general criminal offenses: the U. S. Probation Office's Salient Factor Score (SFS) and SC Department of Probation, Parole, and Pardon Services' Parole Risk Assessment (PRA).

- His clinical presentation, sexual history, and MSI-II scales' results suggested that he does not meet the diagnostic criteria for Pedophilia or Pedophilic Disorder. His scores of 0 (zero) on the test's scales most relevant to the allegations, Child Molest-Deviant Arousal (CM-DA) and Child Molest—Pre-assault (CM-PA) were essentially equivalent to the CM-DA and CM-PA average scores of normal adult males (each ~1) and significantly below the average CM (DA+PA) scores of convicted child molesters (~10). For sex offenders the safest way to avoid detection of deviant impulses is to leave CM scale items unanswered, thus reducing each scale's score. Mr. Simmons answered every CM-DA and CM-PA item and still had scores equal to normal adult males. An MSI-II scale assessing pornography addiction was also within normal limits for adult males.
- His test results on the TSI and PAI did not indicate that he is presently malingering (exaggerating/faking) any psychological or emotional symptoms. On the TSI, he answered all 100 items and the test's three validity scales indicated

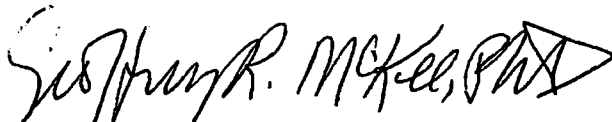
that his results were valid and reliable. All clinical scales were within normal limits: Anxious Arousal, Depression, Anger/Irritability, Intrusive Experiences (recurrent, unwanted thoughts, memories), Defensive Avoidance (blocking out/not thinking about disturbing thoughts/images), Dissociation (feelings of unreality; amnesic experiences from unwanted thoughts/impulses/memories), Impaired Self-Reference (low self-esteem due to guilt, shame), and Tension Reduction Behavior (impulsive acting-out increasing risk of harm to others and self). Most important, two TSI scales relevant to the present allegations were also within normal limits for adult males: Sexual Concerns (sexual distress due to unwanted sexual thoughts, feelings, or behaviors) and Dysfunctional Sexual Behavior (inappropriate, indiscriminate sexual acts and impulses).

- On the PAI, he answered each of its 344 items indicating that he was not being deceptive or avoidant in his responses to the test. All PAI scales were within normal limits for adult males indicating that he was not experiencing clinically significant symptoms of Depression, Mania, Paranoia, Schizophrenia, Borderline Personality Disorder, Antisocial Personality Disorder, Alcohol Problems, Drug Problems, Aggression, Suicidal Ideation, Stress, Nonsupport (in interpersonal relationships), and Dominance (domineering, overbearing, dictatorial attitudes/behavior in relationships with others); a scale measuring empathy and supportiveness towards others (Warmth) was also within normal limits. Only one PAI scale, Stress, was clinically elevated reflecting his current distress and tension about his legal situation and its impact on his daily life. His clinical presentation and test results do not indicate that he has Antisocial Personality Disorder or has Alcohol/Drug Dependence—diagnoses which have been associated with increased risk of sexual and physical harm toward others. His score on the 20-Factor (combinations of scales and subscales) Violence Potential Index (VPI) was also within normal limits indicating that his risk of harm to others is very low. The PAI does not specifically measure sexual deviance or problems, however, the test profile can be matched for statistical similarity (Coefficient of Fit) to various groups of persons with similar patterns (e.g., violent assault history, prisoners, spouse abusers, self-mutilators, etc.). Of most relevance to the current allegations, his PAI test profile did not match the test profile of a sample of sex offenders cited in the PAI test Manual.
- He is capable of understanding the proceedings against him and assisting his attorney in his defense. He did not display any long- or short-term memory difficulties during the evaluation; his intelligence likely falls in the High Average range. He has a factual and rational understanding of the charges against him.
- At the time of the alleged offenses, there is no evidence that he had a severe mental illness that would have impaired his capacity to know the wrongfulness of his behavior or conform his behavior to the requirements of the law.
- Even under an assumption the allegations are true, his scores on the S99-R (2; 12 maximum), S2002-R (3; 16 maximum), RRASOR (0; 6 maximum), and

MnSOST-R (-4; 31 maximum) fell in a low risk category for sexual recidivism: less than 4% of men with similar scores would likely be arrested or charged with another sexual offense within the next 5 to 6 years.

- The NJ-RRAS was developed in New Jersey by a state commission of academics and practitioners. Even under an assumption the allegations are true, his score of 3 (111 maximum) fell in the lowest risk category: the men in the category were *not* required to maintain their names on the state's Sex Offender Registry;
- Even under an assumption the allegations are true, his scores on the SFS (11; 11 best score) and PRA (2; 20-41 High Risk) fell in the category of the best likelihood to complete probation without a violation of supervision for commission of a non-sexual felony. On the PRA, over 92% of SC probationers/parolees with similar scores successfully complete their community supervision—none (0%) had their probation revoked because of the commission of a violent crime.
- Based on my 35+ years of evaluating, treating, and conducting peer-reviewed published research on sex offenders, it is my opinion that Mr. Simmons does *not* meet the state's statutory definition of an SVP.

Please contact me at (803) 251-3499 or at (803) 463-7573 (cell) if you have questions regarding this report or need further information about Mr. Simmons. I have attached a summary of my Curriculum Vitae for your and the Court's review.



Geoffrey R. McKee, PhD, ABPP
Board Certified in Forensic Psychology
Clinical Professor
University of South Carolina School of Medicine &
Medical University of South Carolina

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Curriculum Vitae Summary 2015

- Board-certified in Forensic Psychology, American Board of Professional Psychology (ABPP)
- Clinical Professor, Department of Neuropsychiatry, U. of South Carolina School of Medicine (pro bono). 2007 Chairman's Award for Outstanding Contributions to Forensic Psychiatry Training Program
- Clinical Professor, Department of Psychiatry, Medical University of South Carolina (Pro bono)
- Private practice in criminal and domestic Forensic Psychology since 1976; licensed psychologist in AZ (1972-80), ND (1981-85), MN (1984-85), NC (1996-99; 2011-2012), and SC since 1985
- Chief Psychologist, Division of Forensic Evaluation Services, SCDMH 1998-2011.
- SCDMH member to Multidisciplinary Team of SC Sexually Violent Predator Act 1998-2011
- Chief Psychologist, Forensic Psychiatry Division, Hall Psychiatric Institute, 1986-98. Director of Training, Forensic Psychology Rotation, APA-approved clinical psychology internship
- Consultations/evaluations to state and county child protection services agencies on issues of child sexual assault (victims and perpetrators) in AZ, ND, and SC since 1976
- Child custody and parenting capacity evaluations and expert testimony for Family Courts in AZ, ND, and SC since 1976
- Forensic psychological evaluations in over 500 murder cases at state and federal level including gang- related homicides as well as other major felonies.
- Retained by defense or prosecution for evaluation, consultation, and expert testimony in state and federal courts in over 200 criminal and 30 death penalty trials or appeals in SC, AZ, ND, IN, NC, CA, and KY.
- Expert testimony before the SC Supreme Court twice.
- Past President, American Academy of Forensic Psychology, 1992-94
- Founder & President, ISA Metrics, LLC. Visual technology products to aid forensic mental health sciences investigations and training
- Invited Continuing Legal Education lectures to State Bar, Family Court judges, and public defenders associations in VA, WI, and SC and law students in SC and NY.
- Former Consulting Faculty, National Advocacy Center, US Department of Justice
- Former Consulting Faculty, National Advocacy Center, National District Attorneys Association
- Author, Why Mothers Kill: A Forensic Psychologist's Casebook (2006; Oxford University Press). www.whymotherskill.com
- Publications in peer-reviewed journals and book chapters on maternal filicide, juveniles' trial competency, homicidal and violent adolescents, MMPI/MMPI-2 profiles of adult criminal defendants/sex offenders, and criminal forensic psychology practice.
- Peer-reviewed research presentations/workshops on homicide, violent crimes, and sex offenders
- Case analyst/commentator on "Wicked Attractions" television series, 2009-final episode (2012)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	INDICTMENT NOS. 2014-GS-40-06677;
	)	2016-GS-40-01720 thru 2016-GS-40-01724
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	RESPONSE TO DEFENDANT'S MOTION IN
	)	LIMINE TO FIND S.C. CODE ANN.
	)	§ 16-15-405 UNCONSTITUTIONAL
MICHAEL SCOTT SIMMONS,	)	
Defendant.	)	
_____	)	

In response to the Defendant's Motion in Limine asking this Court to find S.C. Code Ann. § 16-15-405 unconstitutional because it infringes on the First Amendment right to free speech, the State of South Carolina argues the Section 16-15-405 is constitutional because it does not infringe on protected speech, and it is neither vague nor overbroad.

The offense of Second Degree Sexual Exploitation of a Minor provides:

A) An individual commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

- (1) records, photographs, films, develops, duplicates, produces, or creates digital electronic file material that contains a visual representation of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation; or
- (2) distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.

S.C. Code Ann. § 16-15-405(A) (Supp. 2010). Minor is defined in S.C. Code Ann. § 16-15-375(3) as

an individual who is less than eighteen years old.

Material is defined in S.C. Code Ann. § 16-15-375(2) as pictures, drawings, video recordings, films, digital electronic files, or other visual depictions or representations but not material consisting entirely of written words.

A sexual activity is defined in S.C. Code Ann. § 16-15-375 as:

- (a) masturbation, whether done alone or with another human or animal;
- (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;
- (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female;
- (d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;
- (e) excretory functions;
- (f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

S.C. Code Ann. § 16-15-375(5) (Supp. 2010).

Sexually explicit nudity is defined in S.C. Code Ann. § 16-15-375 as:

- (a) uncovered, or less than opaquely covered human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast; or

(b) covered human male genitals in a discernibly turgid state.

S.C. Code Ann. § 16-15-375(6) (Supp. 2010).

Overbreadth

Defendant contends the sexual exploitation of a minor, second degree, statute, section 16-15-405, is overbroad because it “ensnares” protected speech, and because there are thirty-five possible activities that could result in prosecution. The statute is specifically targeted to criminalize conduct which in no way impedes, proscribes, or ensnares protected speech.

The First Amendment commands, “Congress shall make no law ... abridging the freedom of speech.” “The Constitution gives significant protection from overbroad laws that chill speech within the First Amendment’s vast and privileged sphere. Under this principle, [a statute] is unconstitutional on its face if it prohibits a substantial amount of protected expression.” Ashcroft v. Free Speech Coal., 535 U.S. 234, 244 (2002) (citing Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973)). “The overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.” Ashcroft, 535 U.S. at 255. “Because of the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct may be punished despite the First Amendment, we have recognized that the overbreadth doctrine is ‘strong medicine’ and have employed it with hesitation, and then ‘only as a last resort.’” New York v. Ferber, 458 U.S. 747, 769 (1982) (citing Broadrick, 413 U.S. at 613).

The United States Supreme Court has unquestionably found child pornography “to be without the protections of the First Amendment.” Id. 458 U.S. at 764, 102 S.Ct. at 3358. However, the United States Supreme Court has struck down laws which outlaw “virtual” child pornography. See Ashcroft, 535 U.S. 234, 241, 122 S.Ct. 1389, 1397. In finding “virtual” child pornography protected speech

under the United States Constitution, the Court focused on the method of production of the material depicting “minors” and whether or not a crime is committed as a result of the material’s production. See Id. at 535 U.S. at 249-256, 122 S.Ct. at 1401-1405.

South Carolina’s laws concerning the production, distribution and possession of “child pornography” are modeled after the laws in North Carolina. See N.C. Gen. Stat. §§ 14-190.16, 14-190.17 & 14-190.17A (Supp. 2016). In 2005, the North Carolina Court of Appeals found these statutes to be constitutional. See State v. Howell, 609 S.E. 417, 169 N.C.App. 58 (2005). The only distinction between the North Carolina and South Carolina statutes as they now exist is additional language added in the South Carolina Code in 2014 which expands material to include that which contains a visual representation of a minor “appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.” See S.C. Code Ann. §§ 16-15-395, 16-15-405 & 16-15-410 (Supp. 2016).

In applying the standards derived from Ferber and its progeny, the language added by the 2014 amendment to S.C. Code Ann. § 16-15-405(A) lawfully expands the material that is child pornography and not protected speech. Material which is produced to show a minor “appearing in a state of sexually explicit nudity” requires an actual minor to be subjected to sexual abuse through the manner in which they appear and in which they are required to pose. This material focuses on the genital regions of the minors and requires they pose in a sexually provocative manner. These requirements in the statute distinguish material produced in which minors may be the focus of the material, but are depicted involved in regular daily activity or as members of communities supporting a naturist concept.

For all these reasons, S.C. Code Ann. § 16-15-405(A) continues to be constitutional as the

material deemed unlawful is not protected speech, requires an actual minor to be abused in its production, and is not overbroad to encompass protected speech.

Vagueness

Defendant next contends the statute is vague and violates his right to Due Process. The statute as written provides fair notice and the proper standards for adjudication. Therefore, it is not unconstitutionally vague.

Statutes are to be construed in favor of constitutionality; the Court will presume a legislative act is constitutionally valid unless a clear showing to the contrary is made. State v. Brown, 317 S.C. 55, 451 S.E.2d 888 (1994). "The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication." Curtis v. State, 345 S.C. 557, 571, 549 S.E.2d 591, 598 (2001), cert. denied 77 535 U.S. 926 (2002). "A law is unconstitutionally vague if it forbids or requires the doing of an act in terms so vague that a person of common intelligence must necessarily guess as to its meaning and differ as to its application." State v. Michau, 355 S.C. 73, 77, 583 S.E.2d 756, 758 (2003).

Section 16-15-405 is not vague. It provides exactly what actions by the Defendant are prohibited and what actions the statute criminalizes. The statute is written sufficiently precise to give a person of ordinary intelligence fair notice as to what is permitted and what is prohibited and to prevent arbitrary and discriminatory enforcement. See Grayned v. City of Rockford, 408 U.S. 104, 108 (1972) (observing that fair warning and the prevention of arbitrary enforcement are two of the most important values offended by vague laws).

While every term of the statute is not specifically defined, the terms which are not defined have common every day meanings and are easily understood by a person of ordinary intelligence.

The statute makes it clear the distribution or duplication of material depicting minors engaging in sexual activity or appearing in a state of sexual activity subjects the person to criminal penalties. There is no basis for a person to guess regarding whether his actions would constitute a crime under the statute; the statute specifically sets out what actions are required. The activities or crimes are sufficiently described and defined in their respective statutes. A person of ordinary intelligence seeking to obey the law will know, and is sufficiently warned of, the conduct the statute makes criminal. See Curtis, 345 S.C. at 572, 549 S.E.2d at 598. As a result, the statute is not unconstitutionally vague.

Respectfully Submitted,

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September 6, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	INDICTMENT NOS. 2014-GS-40-06677;
	)	2016-GS-40-01720 thru 2016-GS-40-01724
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	RESPONSE TO DEFENDANT'S MOTION IN
	)	LIMINE TO SUPPRESS EVIDENCE BASED
	)	THE STALENESS OF THE SEARCH
MICHAEL SCOTT SIMMONS,	)	WARRANT
Defendant.	)	
_____	)	

In response to the Defendant's Motion in Limine to suppress evidence based on the staleness of information used to establish probable cause for the issuance of the June 13, 2014 search warrant, the State of South Carolina argues the search warrant sufficiently stated probable cause because the information stated with particularity when the crime occurred, where it was alleged to have occurred and sought devices where a real probability existed to contain evidence of the crimes.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Likewise, the South Carolina Constitution similarly protects our citizens from "unreasonable searches and seizures and unreasonable invasions of privacy[.]" S.C. Const. art. I, § 10. Significantly, based on the plain language of the state and federal constitutional provisions regarding searches and seizures, the touchstone of those provisions is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) ("The touchstone of the Fourth Amendment is reasonableness."). As a result, only unreasonable searches and seizures are constitutionally prohibited, and law enforcement officers are not required to be perfect or mistake-free in order to be in compliance with the constitutional requirements regarding

searches and seizures. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”); see also Heien v. North Carolina, 574 U.S. ___, 135 S. Ct. 530, 536 (2014) (“To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’ ” (citation omitted)).

In South Carolina, an affiant seeking to obtain a search warrant must present a sworn affidavit to a judge presenting grounds sufficient to establish probable cause in order to justify the issuance of the warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348-349 (1999); see S.C. Code Ann. § 17-13-140 (“A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant.”); see also Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as “a fair probability that contraband or evidence of a crime will be found”). In State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974), the South Carolina Supreme Court explained probable cause as it relates to the issuance of a search warrant:

In order to justify the issuance of a search warrant, probable cause must be shown, but the term ‘probable cause’ does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(citation omitted).

In deciding whether to issue a search warrant, the issuing judge must “make a practical,

common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Gates, 462 U.S. at 238. In making the probable cause determination, “[issuing judges] are concerned with probabilities and not certainties.” State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976). Importantly, the issuing judge must view the search warrant affidavit in a common-sense and realistic fashion and give consideration to the fact such affidavits are typically prepared by non-lawyers in the haste of criminal investigations. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995).

When reviewing a decision to issue a search warrant, the reviewing court should decide whether the issuing judge had a substantial basis for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the issuing judge, the court should base its determination on the totality of the circumstances. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003); see United States v. Woosley, 361 F.3d 924, 926 (6th Cir. 2004) (“The affidavit should be reviewed in a commonsense – rather than a hypertechnical – manner, and the court should consider whether the totality of the circumstances supports a finding of probable cause, rather than engaging in line-by-line scrutiny.” (emphasis added)); Henson v. State, 440 S.W.3d 732, 740 (Tex. App. 2013) (“[I]t is impermissible to employ a ‘divide-and-conquer’ or ‘piecemeal’ approach to analyzing the information upon which the magistrate found probable cause to exist.”). The issuing judge’s probable cause determination should be afforded great deference on appeal. State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007). Significantly, “[s]earches based on warrants will be given judicial deference to the extent that an otherwise marginal

search may be justified if it meets a realistic standard of probable cause.” Id. “Suppression is appropriate in only a few situations, including when an affidavit is ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’ ” State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (citation omitted).

Concerning staleness of information in a search warrant as it pertains to investigations involving material depicting minors engaging in sexual activity and computers, the State would rely on United States v. Richardson, 607 F.3d 357 (4th Cir. 2010) and United States v. Johnson, 865 F.Supp.2d 702 (D. Md. 2012).

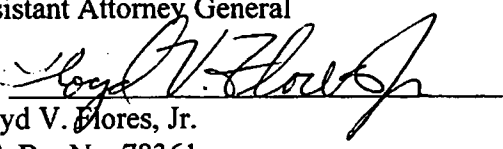
In the instant case, Investigator Stephan Narewski of the City of Columbia Police Department stated to the magistrate, under oath, that he “has received information in the form of an affidavit and a data disk containing several files that depict children engaging in sexual acts including penetration.” Further, he testified that based on “training and experience gained investigating Internet Crimes Against Children (ICAC) as a member of the South Carolina ICAC Task Force for more than four years” that computer records and file structures would be present and available on computer equipment at the location specified by Det. Murphy. Based upon the totality of circumstances presented to the magistrate at the time of the issuance of the search warrant, there existed a real probability that evidence of the distribution of child pornography would be found on devices present at the location to be searched.

[signature block on following page]

Respectfully Submitted,

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Assistant Attorney General

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September 6, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	INDICTMENT NOS. 2014-GS-40-06677;
	)	2016-GS-40-01720 thru 2016-GS-40-01724
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	RESPONSE TO DEFENDANT'S MOTION IN
	)	LIMINE TO PREVENT THE
	)	STATE TO REFERENCE OTHER DIGITAL
MICHAEL SCOTT SIMMONS,	)	ELECTRONIC FILES FOUND ON
Defendant.	)	COMPUTERS THAT WERE NOT INDICTED
	)	

In response to the Defendant's Motion in Limine to prevent the State from referencing other digital electronic files found on computers or computer related equipment that the Defendant has not been charged with possessing, the State of South Carolina argues the other digital electronic files that were found on the Defendant's external hard drive that are similar in character and content to those indicted by the State are admissible as they form the *res gestae* of the case and are also admissible pursuant to Rule 401, SCRE and Rule 404(b), SCRE.

Res gestae

Evidence of prior bad acts is admissible when it furnishes part of the context of the crime or is necessary to a full presentation of the case. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Fletcher, 363 S.C. 221, 246, 609 S.E.2d 572, 585 (Ct. App. 2005). "The *res gestae* theory recognizes that evidence of other bad acts may be an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred." Fletcher, 363 S.C. at 246, 609 S.E.2d at 585 (citing State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. Wood, 362 S.C. 520, 608 S.E.2d 435

(Ct. App. 2004).

This evidence of other crimes is admissible:

when such evidence “furnishes part of the context of the crime” or is necessary to a “full presentation” of the case, or is so intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘res gestae’ ” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other ... ‘[and is thus] part of the res gestae of the crime charged.’ And where evidence is admissible to provide this ‘full presentation’ of the offense,” [t]here is no reason to fragmentize the event under inquiry” by suppressing parts of the “res gestae.”

State v. Adams, 322 S.C. at 122, 470 S.E.2d at 370-71 (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir.1980) (citations omitted)). Under this theory, it is important that the temporal proximity of the prior bad act be closely related to the charged crime. State v. Owens, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001).

The other files in this case were located on an external hard drive that was seized from the bedroom occupied by the Defendant. The videos are located in a “Recycle Bin” folder that was placed on the device around May 2013. Photographs of the Defendant are also found on the hard drive but were placed on the device after May 2013. The presence of these 8 additional videos on a hard drive exclusively controlled by the Defendant and present before other files transferred to the hard drive indicate the Defendant had knowledge of the existence of material depicting minors engaging in sexual activity on devices he owned. Further, information obtained by the forensic examiner links the usage of the external hard drive to the computer where files downloaded and shared.

While the State could have indicted the Defendant with an additional 8 counts of Third Degree Sexual Exploitation of a Minor, the State selected to proceed on the 6 files distributed to Det. Lt. Murphy for ease of presentment to the jury. All of these digital electronic files form the context of the Defendant's crime and the jury should be permitted to see their locations to understand the indicted files are not isolated digital electronic files. As such, these files form part of the *res gestae* of the crime.

Rule 401 and Rule 404(b)

Additionally, even if not part of the *res gestae* of the crime, these digital electronic files are admissible under Rule 404(b), SCRE. These files, as evidence of other bad acts, demonstrated an absence of mistake or accident. Further, they are properly admitted as part of a common scheme or plan. Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. See Rule 404(b), SCRE; State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). Even if the evidence is clear and convincing and falls within a Lyle exception, the trial judge must exclude the evidence if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant. State v. Wallace, 384 S.C. 428, 435, 683 S.E.2d 275, 278-279 (2009).

Absence of Mistake or Accident

At trial, the State intends to show the 6 digital electronic files for which the Defendant has been indicted were distributed from the Defendant's computers without an accident or mistake but were intentionally possessed and distributed from the computer through the use of file-sharing software. The State intends to show where the files existed on the hard drive and why files found in a recycle bin would be relevant to the distribution of the 6 indicted files.

As a result, the testimony to the number of additional videos and their locations will rebut any argument made by the Defendant that they were mistakenly downloaded or were unintentionally downloaded while attempting to download other materials or were obtained by mistake. Accordingly, the trial court should admit the testimony and evidence to demonstrate an absence of mistake or accident.

Common Scheme or Plan

Furthermore, the unindicted digital electronic files also demonstrate a common scheme or plan to distribute and possess material depicting minors engaged in sexual activity. "When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)." Wallace, 384 S.C. at 433, 683 S.E.2d at 277-278.

The digital electronic files all depict minors engaging in sexual activity. The files are similar in nature to the files distributed to Det. Lt. Murphy and show the Defendant would download and delete the files on numerous occasions so as to avoid detection. These files were specifically sought out, downloaded, and then deleted. The fact these additional unindicted files exist in a recycle bin support the State's contention that the Defendant knew what he was doing and followed a plan to avoid detection.

The similarities in this case demonstrate a common scheme or plan to solicit, receive, distribute and possess explicit images of sexual exploitation of a minor on the part of the Defendant. Accordingly, the trial court should permit testimony concerning the additional 8 digital electronic files as admissible under the common scheme or plan exception to Rule 404(b).

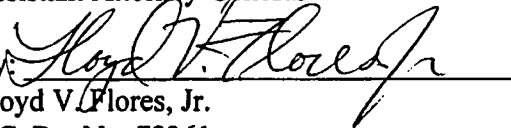
Prejudicial Impact

Concerning any prejudicial impact from admitting testimony and exhibits containing the additional digital electronic files found on the Defendant's external hard drive, the prejudicial impact does not substantial outweigh the probative value of the additional testimony and evidence. The State has indicted the Defendant on 6 counts of Second Degree Sexual Exploitation of a Minor, which encompass 6 digital electronic files. The indictments presented include the specific names of the digital electronic files for which the Defendant has been charged. These files contain explicit conduct found on the 6 digital electronic files. The fact the jury will be told of an additional 8 digital electronic files of a similar nature which exist on these computer will not substantially prejudice the Defendant, especially in light of the probative value of demonstrating his knowledge of the files as well as the lack of accident or mistake in the files being on his computers and computer related equipment.

Respectfully Submitted,

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September 6, 2016
Columbia, South Carolina

WITNESSES

Inv. Brian Hudak, City of Columbia Police
Department

ARREST WARRANT NUMBER

2014A4021601603

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 022092014

VERDICT

DOCKET NO. 2014-GS-40- DL677

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

October 2014 TERM

THE STATE

vs.

MICHAEL SCOTT SIMMONS

D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)

CDR Code: 0380

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

Defendant

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

Defendant

Witness:

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

532

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF RICHLAND)

INDICTMENT

SEXUAL EXPLOITATION OF A MINOR,
 SECOND DEGREE

At a Court of General Sessions, convened on October 8, 2014, the
 Grand Jurors of Richland County present upon their oath:

That Michael Scott Simmons, on or about November 22, 2013, did willfully and knowingly, commit the crime of Sexual Exploitation of a Minor, Second Degree. To wit: Michael Scott Simmons did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Richland, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL

Alan Wilson
 ALAN WILSON (LVF)
 ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

Michael Scott Simmons

AKA:

Race: W Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Columbia, South Carolina 29223

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sexual Exploitation of a Minor, Second Degree

In violation of § 16-15-0405(A) of the S.C. Code of Laws, bearing CDR Code # 0380

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 78361

Assistant Attorney General SC Bar #

Defendant

Attorney for Defendant

10/1/12 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine: \$ _____

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly

§14-1-206 (Assessments 107.5%) \$ _____

pmts. of \$ _____ Beginning _____

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

\$ _____ Paid to Public Defender Fund

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

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ _____

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

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

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

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk [Signature]

Court Reporter: [Signature]

Presiding Judge [Signature]

Judge Code: [Signature]

Sentence Date 10/3/12

535

WITNESSES

Special Agent Brian Hudak, South Carolina Law
Enforcement Division

ARREST WARRANT NUMBER

2014A4021601602

**ACTION OF GRAND JURY
TRUE BILL**

Zandra P. Jeffery
Foreperson of Grand Jury
Date: MAR 18 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-01720

**The State of South Carolina
County of Richland**

COURT OF GENERAL SESSIONS

March 2016 TERM
AG

THE STATE

vs.

MICHAEL SCOTT SIMMONS
D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)
CDR Code: 0380

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

Defendant

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

Defendant

Witness:

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

CANNED

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on March 16, 2016, the
Grand Jurors of Richland County present upon their oath:

That Michael Scott Simmons, on or about November 22, 2013, did willfully and knowingly, commit the crime of Sexual Exploitation of a Minor, Second Degree. To wit: Michael Scott Simmons did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file entitled "R@ygold_sucktime1.mpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Richland, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL



ALAN WILSON (LVF)
ATTORNEY GENERAL

2-10 year
Sex Offender Registry 537

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

Michael Scott Simmons

AKA:

Race: W

Sex: M

Age: 29

DOB:

SS#:

Address:

City, State, Zip: Columbia, South Carolina 29223

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2016-GS-40 -01720

AW#: 2014A4021601602

Date of Offense: November 22, 2013

S.C. Code §: 16-15-0405(A)

CDR Code #: 0380

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Sexual Exploitation of a Minor, Second Degree

☐ CONVICTED OF or ☐ PLEADS

In violation of § 16-15-0405(A) of the S.C. Code of Laws, bearing CDR Code # 0380

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

[Signature]
Assistant Attorney General

78361
SC Bar #

[Signature]
Defendant

[Signature]
Attorney for Defendant

101117
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

[Signature]
Harris

Presiding Judge

Judge Code:

Sentence Date

[Signature]
16 Sept 16

SCCA/217 (07/2016)

SEX OFFENDER REGISTRY

ORIGINAL

WITNESSES

Special Agent Brian Hudak, South Carolina Law
Enforcement Division

ARREST WARRANT NUMBER

2014A4021601604

ACTION OF GRAND JURY

TRUE BILL

Zandra P. Jolley McFadden
Foreperson of Grand Jury

Date:

MAR 18 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40- 01721

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

March 2016 TERM

AB

THE STATE

vs.

MICHAEL SCOTT SIMMONS

D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)

CDR Code: 0380

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

Defendant

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

Defendant

Witness:

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

SCANNED

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF RICHLAND)

INDICTMENT
 SEXUAL EXPLOITATION OF A MINOR,
 SECOND DEGREE

At a Court of General Sessions, convened on March 16, 2016, the
 Grand Jurors of Richland County present upon their oath:

That Michael Scott Simmons, on or about November 22, 2013, did willfully and knowingly, commit the crime of Sexual Exploitation of a Minor, Second Degree. To wit: Michael Scott Simmons did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file entitled "R@ygold_1gassmania2.mpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Richland, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL

Alan Wilson
 ALAN WILSON (LVF)
 ATTORNEY GENERAL

2-10 years
Sex Offender Registry

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

INDICTMENT/CASE#: 2016-GS-40 -01721

AW#: 2014A4021601604

Date of Offense: November 22, 2013

S.C. Code §: 16-15-0405(A)

CDR Code #: 0380

SENTENCE SHEET

Michael Scott Simmons

AKA:

Race: W Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Columbia, South Carolina 29223

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sexual Exploitation of a Minor, Second Degree☐ CONVICTED OF or ☐ PLEADS

In violation of § 16-15-0405(A) of the S.C. Code of Laws, bearing CDR Code # 0380

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Assistant Attorney General SC Bar # 78361

Defendant

Attorney for Defendant

SC Bar # 101112

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 61.6 (Public Def/Probation)	\$500	\$ _____
\$14-1-212 (Law Enforce. Funding)	\$25	\$ _____
\$14-1-213 (Drug Court Surcharge)	\$150	\$ _____
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	\$	_____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

TOTAL

Clerk of Court/Deputy Clerk
Court Reporter: Jeanette McBride

Presiding Judge

Judge Code: 245

Sentence Date: 16 Sept 16

Sex Offender Registry

ORIGINAL

541

WITNESSES

Special Agent Brian Hudak, South Carolina Law
Enforcement Division

ARREST WARRANT NUMBER

2014A4021601606

ACTION OF GRAND JURY

TRUE BILL

Zandra P. Jeffery Mcadden
Foreperson of Grand Jury
Date: **MAR 18 2016**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40- *01722*

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

March 2016 TERM

AG

THE STATE

vs.

MICHAEL SCOTT SIMMONS
D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: **16-15-405(A)**
CDR Code: **0380**

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

Defendant

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

Defendant

Witness:

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

SCANNED

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

INDICTMENT

SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on March 16, 2016, the
Grand Jurors of Richland County present upon their oath:

That Michael Scott Simmons, on or about November 22, 2013, did willfully and knowingly, commit the crime of Sexual Exploitation of a Minor, Second Degree. To wit: Michael Scott Simmons did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file entitled "R@ygold_mexicangirl1.mpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Richland, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL



ALAN WILSON (LVF)
ATTORNEY GENERAL

2-1 years
Sex Offender Registry

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

Michael Scott Simmons

AKA:

Race:

W

Sex:

M

Age:

29

DOB:

SS#:

Address:

City, State, Zip:

Columbia, South Carolina 29223

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Sexual Exploitation of a Minor, Second Degree

INDICTMENT/CASE#: 2016-GS-40 -01722

AW#: 2014A4021601606

Date of Offense: November 22, 2013

S.C. Code §: 16-15-0405(A)

CDR Code #: 0380

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

In violation of § 16-15-0405(A) of the S.C. Code of Laws, bearing CDR Code # 0380

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Assistant Attorney General SC Bar # 78361

Defendant

Attorney for Defendant

SC Bar # 101112

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine: _____ \$

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ Beginning
\$ _____ Paid to Public Defender Fund

§14-1-206 (Assessments 107.5%) \$

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

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

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

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

§14-1-213 (Drug Court Surcharge) \$150 \$

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

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

3% to County (if paid in installments) \$

TOTAL \$

Clerk of Court/Deputy Clerk _____

Court Reporter: _____

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge _____

Judge Code: _____

Sentence Date: 10/16/16

SEX OFFENDER REGISTRY

GINA

WITNESSES

Special Agent Brian Hudak, South Carolina Law
Enforcement Division

ARREST WARRANT NUMBER

2014A4021601607

ACTION OF GRAND JURY

TRUE BILL

Zandra L. Jeffery McJadden
Foreperson of Grand Jury
Date: **MAR 18 2016**

VERDICT

DOCKET NO. 2016-GS-40- *01723*

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

March 2016 TERM
AG

THE STATE

vs.

MICHAEL SCOTT SIMMONS
D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)
CDR Code: 0380

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

Defendant

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

Defendant

Witness:

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

544

Foreperson of Petit Jury
Date:

SCANNED

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF RICHLAND)

INDICTMENT

SEXUAL EXPLOITATION OF A MINOR,
 SECOND DEGREE

At a Court of General Sessions, convened on March 16, 2016, the
 Grand Jurors of Richland County present upon their oath:

That Michael Scott Simmons, on or about November 22, 2013, did willfully and knowingly, commit the crime of Sexual Exploitation of a Minor, Second Degree. To wit: Michael Scott Simmons did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file entitled "R@ygold_mexicangirl12.mpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Richland, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL

Alan Wilson
 ALAN WILSON (LVF)
 ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF

Richland

STATE

VS.

Michael Scott Simmons

AKA:

Race: W Sex: M Age: 29

DOB: SS#:

Address:

City, State, Zip: Columbia, South Carolina 29223

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sexual Exploitation of a Minor, Second Degree

In violation of § 16-15-0405(A) of the S.C. Code of Laws, bearing CDR Code # 0380

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Assistant Attorney General SC Bar # 78361

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$
 §14-1-206 (Assessments 107.5%) \$
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$
 §56-5-2995 (DUI Assessment) \$12 \$
 §56-1-286 (DUI Breath Test) \$25 \$
 Proviso 61.6 (Public Def/Probation) \$500 \$
 §14-1-212 (Law Enforce. Funding) \$25 \$
 §14-1-213 (Drug Court Surcharge) \$150 \$
 §50-21-114 (BUI Breath Test Fee) \$50 \$
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$

TOTAL

Clerk of Court/Deputy Clerk
Court Reporter:

Scarlett McBride
James

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016-GS-40 -01723

AW#: 2014A4021601607

Date of Offense: November 22, 2013

S.C. Code §: 16-15-0405(A)

CDR Code #: 0380

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning
Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal consecutive weekly/monthly
 pmts. of \$ Beginning
 \$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge
 Judge Code:
 Sentence Date

SEX OFFENDER REGISTRY ORIGINAL

547

WITNESSES

Special Agent Brian Hudak, South Carolina Law
Enforcement Division

ARREST WARRANT NUMBER

2014A4021601605

ACTION OF GRAND JURY

TRUE BILL

Gandra P. Jeffery Mc Gadden
Foreperson of Grand Jury
Date: MAR 18 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-

01724

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

March
AG

2016 TERM

THE STATE

vs.

MICHAEL SCOTT SIMMONS

D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE**

SC Code: 16-15-405(A)

CDR Code: 0380

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

Defendant

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

Defendant

Witness:

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

CANNED

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

INDICTMENT

SEXUAL EXPLOITATION OF A MINOR,
SECOND DEGREE

At a Court of General Sessions, convened on March 16, 2016, the
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That Michael Scott Simmons, on or about November 22, 2013, did willfully and knowingly, commit the crime of Sexual Exploitation of a Minor, Second Degree. To wit: Michael Scott Simmons did knowingly distribute, transport, exhibit, receive, sell, purchase, exchange, and/or solicit material in the file entitled "R@ygold_TheFamily1.mpg" that contains a visual representation of a minor engaged in sexual activity, as defined by Section 16-15-375(5) of the South Carolina Code of Laws. This incident occurred within the County of Richland, State of South Carolina, and is in direct violation of Section 16-15-405(A) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (LVF)
ATTORNEY GENERAL

2-10 year

Sex Offender Registry 549

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Richland

STATE

VS.

Michael Scott Simmons

AKA:

Race:

W

Sex:

M

Age:

29

DOB:

SS#:

Address:

City, State, Zip: Columbia, South Carolina 29223

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2016-GS-40 -01724

AW#: 2014A4021601605

Date of Offense: November 22, 2013

S.C. Code §: 16-15-0405(A)

CDR Code #: 0380

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Sexual Exploitation of a Minor, Second Degree

☐ CONVICTED OF or ☐ PLEADS

In violation of § 16-15-0405(A) of the S.C. Code of Laws, bearing CDR Code # 0380

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Assistant Attorney General SC Bar # 78361

Defendant

Attorney for Defendant

SC Bar # 101112

WHEREFORE, the defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$: provided that upon the service of days/months/years and or payment
of \$: plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp:

Recipient:

May serve W/E beginning:

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100
\$14-1-211 (A)(2)(DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
\$14-1-212 (Law Enforce. Funding)	\$25
\$14-1-213 (Drug Court Surcharge)	\$150
\$50-21-114 (BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea.
3% to County (if paid in installments)	\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:

Presiding Judge:

Judge Code:

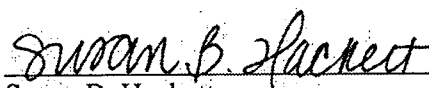
Sentence Date:

SEX OFFENDER REGISTRY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

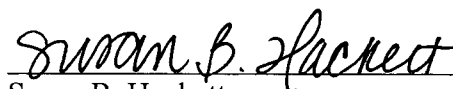
ATTORNEY FOR APPELLANT

This 22nd day of March, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of March, 2018.

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SC Court of Appeals