

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Newberry County

Honorable G. Thomas Cooper, Circuit Court Judge

HAROLD RUBEN AYTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001887

APPENDIX

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State of South Carolina.,)
)
)
 County of York.)

In the General Sessions
 Court of York

Case No.: 2011-GS-36-00631
 2011-GS-36-00632
 2011-GS-36-00633
 2011-GS-36-00634
 2011-GS-36-00635

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-)
)
 Harold Ruben Ayton.,)
)
 Defendant.)
)

Transcript of Record

December 3, 2012
 Newberry, South Carolina

B E F O R E:

The Honorable Eugene Griffith., Judge., and a jury.

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ORIGINAL

Wanda Nelson, CVR-M
 Official Court Reporter
 To the Honorable John C. Hayes, III

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.

Jimmy Sherrod

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I-N-D-E-X - CON'TE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
St.1	Cell Phone	P.11	
St.2	Incident Report	P.31	
St.3	Search Warrant	P.36	
St.4	Statement Form	P.63	
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Reporter's Note: All Exhibits were signed for and returned to the Attorney General's Office by Attorney General Megan B. Burchstead.

1 (COURT IN SESSION MONDAY, DECEMBER 3, 2012 AT 10:39
2 A.M.)

3 (GRAND JURY DISMISSED AT 10:45 A.M..)

4 (COURT AT EASE AT 10:45 A.M..)

5 (ON THE RECORD AT 11:10 A.M..)

6 THE COURT: All right. You got the caption, we're on
7 the record and ready to go.

8 It's my understanding you have several pretrial
9 matters, motions filed by the defense?

10 MR. VERNER: Yes, Your Honor.

11 THE COURT: So do you have any preference and order
12 you'd like to take up?

13 MR. VERNER: Well my first request, Your Honor, is
14 that the Court because of the sensitive allegations and
15 child identity and the nature of this case, we'd ask to do
16 this in a closed courtroom and certainly closed to the
17 public. The courtroom - I understand the courtrooms are
18 public venues and the Court's got limited jurisdiction in
19 that regard. These are sensitive allegations and
20 identities but we'd just ask the Court to do this case
21 closed. Certainly protect the victim.

22 THE COURT: I'm not gonna do that unless the child
23 comes to testify, at that time I'd reconsider that. I'm
24 not certain I would put her, a young victim, in front of a
25 large audience. There aren't very many people in here

1 anyway. With respect I won't do that.

2 So now, which of your motions would you like to hear
3 first?

4 MR. VERNER: There is no - The most important motion
5 is a motion to suppress. Our understanding is that ----
6 search by law enforcement part of the search we would
7 certainly move to suppress the phone, the video tape was
8 taken from the phone coming in as evidence. That would
9 essentially be the most profound argument. There are also
10 some statements that came in or I believe would be intended
11 to be used by the State.

12 THE COURT: Right.

13 MR. VERNER: I wouldn't characterize them as
14 confessions but they could be kind of incriminating.

15 THE COURT: So it's a quasi motion to suppress
16 evidence received potentially without a search warrant as
17 well as a Jackson v. Denno?

18 MR. VERNER: A Denno hearing would be the next
19 hearing, Your Honor. I believe we talked about the third.
20 I think the State wanted to bring up the mental evaluation
21 or the status of the Defendant's mental condition, Your
22 Honor. I don't want to speak for Ms. Burchstead.

23 THE COURT: Very well. All right, ma'am.

24 Are you prepared to go forward with the suppression
25 motion for the video? Is it a cell phone?

1 MS. BURCHSTEAD: Yes, Your Honor, it's a cell phone
2 video. We are prepared - Let me tell you exactly what we
3 have here to do that. I have the responding officer as
4 well as the officer or the investigator who ultimately
5 obtained the search warrant. I do not have the law witness
6 here in partly because one is in a wheelchair, Your Honor,
7 and we do have those lay witnesses prepared to come before
8 the actual trial.

9 The individual in the wheelchair its very difficult
10 for us to get her transported here and we're still working
11 on that for trial this week but we are doing that. So my
12 intention was for purposes of the suppression hearing put
13 the responding officer up to explain how he got to the
14 scene and what he did with the phone, Your Honor.

15 THE COURT: All right. We'll proceed with that
16 momentarily.

17 Can I ask a question, Mr. Verner? Your client has
18 clothes he can put on when the jury gets here this
19 afternoon?

20 MR. VERNER: We'll make arrangements, Your Honor. If
21 we're inclined to draw a jury this afternoon then over the
22 lunch break I would - I didn't see the reason for the
23 Jackson v. Denno hearing.

24 THE COURT: All right. I don't have a problem him
25 being here but don't want any - any potential jurors seeing

INVESTIGATOR JIMMY SHERROD: DIRECT BY MS. BURCHSTEAD - IN CAMERA -7-

1 him with ---

2 MR. VERNER: Yes, sir.

3 THE COURT: --- plain clothes on.

4 MR. VERNER: And we've already gone into that but for
5 this purpose of the hearing, Your Honor, I am not press the
6 matter.

7 THE COURT: Okay. Very well. All right, sir. Anyway
8 I just wanted to inquire on that. All right.

9 Let's go forward with the suppression hearing.

10 So call your officer.

11 MS. BURCHSTEAD: Thank you, Your Honor.

12 The State calls Officer Sherrod to the stand.

13 ((WHEREUPON, JIMMY SHERROD,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

15 MADAM CLERK: State your name please.

16 MR. SHERROD: Officer James Sherrod Columbia Police
17 Department.

18 DIRECT EXAMINATION - IN CAMERA

19 OFFICER JIMMY SHERROD BY MS. BURCHSTEAD:

20 Q. Good morning.

21 A. Good morning.

22 Q. Officer Sherrod, what is your title?

23 A. I'm a Master Patrol officer with the Columbia Police
24 Department.

25 Q. Columbia Police Department. How long have you been

1 with the Columbia Police Department?

2 A. Six years.

3 Q. Six years. And what is your - Just briefly your
4 background and training in law enforcement?

5 A. Nine weeks in the Criminal Justice Academy. Two
6 months on the job training. As far as when I first
7 started five years of experience basically.

8 Q. All right. And back in June of 2010 were you with the
9 Columbia Police Department then?

10 A. Yes I was.

11 Q. And what were your duties back then?

12 A. Our thing was to basically uphold the law. I wouldn't
13 say I upheld the law basically follow the procedures and
14 stuff basically.

15 Q. Okay. As part of your duties did you respond to
16 calls?

17 A. Yes.

18 Q. All right. And were you on duty June 24th, 2010?

19 A. Yes.

20 Q. And did you respond to [REDACTED] in
21 reference to a report of possible child pornography on a
22 cell phone?

23 A. Yes.

24 Q. All right. And when you responded what did you do?
25 What happened on the scene?

INVESTIGATOR JIMMY SHERROD: DIRECT BY MS. BURCHSTEAD - IN CAMERA -9-

1 A. Well I responded at [REDACTED]. I was the first
2 officer on the scene. I tried to make contact with -
3 Actually it's the girlfriend that's in a wheelchair that I
4 made contact with and said - I can't remember her name the
5 fifteen year old girl. She had a cell phone, she had found
6 a cell phone and she was showing pictures, pictures and the
7 video to everybody around the area. I finally made contact
8 with her and I was able to retrieve the phone from her. I
9 can't remember her name, the one in the wheelchair who was
10 the ex-girlfriend and she gave these papers also stating
11 there his name and the phone.

12 Q. Okay. So let me back you up. You said you made
13 contact with a fifteen year old girl who found a phone?

14 A. Yes. She was the one showing the pictures ---

15 Q. Okay.

16 A. --- around the neighborhood.

17 Q. So was that the first time you had come in contact
18 with the phone in question?

19 A. Yes.

20 Q. All right. And what do you remember her telling you
21 or showing you about the phone?

22 A. That she had found a phone around [REDACTED],
23 around the building or something like that. I can't
24 remember, actually remember.

25 Q. Okay. Did you view any - the videos that she was

INVESTIGATOR JIMMY SHERROD: DIRECT BY MS. BURCHSTEAD - IN CAMERA -10-

1 talking about? The videos or the pictures that she was
2 talking about?

3 A. Yeah. I viewed about one minute of the video.

4 Q. Okay. And I believe you said you talked to an ex-
5 girlfriend who gave you paper.

6 A. Yeah, she's the one who gave me the paper of the
7 individual.

8 Q. Okay. So was there a suspect in the video?

9 A. Yes. It had his picture and his name.

10 Q. Okay. So at that point you had a suspect; is that
11 correct?

12 A. Yes.

13 Q. All right. After you saw the video, what did you do?

14 A. Well I called my supervisor, Corporal Holmes, then she
15 contacted Investigator Bailey.

16 Q. And did Corporal Holmes come out to the scene?

17 A. Yes she was there.

18 Q. She did? Okay. What if anything did you do with the
19 phone at that point?

20 A. We put the phone in the yellow envelop and it was
21 placed into the property room.

22 Q. Okay. Did you fill out any paperwork?

23 A. Also the paperwork that I was given by the ex-
24 girlfriend in the wheelchair was placed in the bag and the
25 paper too.

INVESTIGATOR JIMMY SHERROD: DIRECT BY MS. BURCHSTEAD - IN CAMERA -11-

1 Q. When you took it - Did you take it to headquarters?

2 Is that where it goes?

3 A. Yes.

4 Q. In the evidence there; is that correct?

5 A. Yeah, SLED.

6 Q. Okay. Was there any paperwork that you filled out to

7 ---

8 A. Yes.

9 Q. --- log it in?

10 A. Yes.

11 Q. All right. When you had the phone in your possession,
12 did you do anything else with the phone itself in terms of
13 looking at anything on the phone?

14 A. I just viewed the video, that was it.

15 Q. Did you do anything else with the phone? Did you
16 alter or delete, change anything on the phone?

17 A. No, ma'am.

18 Q. All right.

19 MS. BURCHSTEAD: I beg the Court's indulgence.

20 (PAUSE.)

21 MS. BURCHSTEAD: If I can have this marked for
22 purposes of this hearing?

23 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE PREMARKED FOR
24 IDENTIFICATION.)

25 MS. BURCHSTEAD: In fact 'm just gonna step over here

INVESTIGATOR JIMMY SHERROD: DIRECT BY MS. BURCHSTEAD - IN CAMERA -12-

1 for a minute, Judge.

2 (SIDE BAR BETWEEN ATTORNEYS FOR PLAINTIFF AND
3 DEFENSE.)

4 MS. BURCHSTEAD: If I may approach the witness, Your
5 Honor?

6 THE COURT: Certainly.

7 BY MS. BURCHSTEAD:

8 Q. I'm gonna show you what's been marked State's
9 Exhibit One for identification only for the purposes of the
10 hearing and I'm gonna ask if you recognize it.

11 A. Yes.

12 Q. Okay. And what is that?

13 A. It's the letter - Excuse me, it's the thing I put into
14 evidence. The envelope that I put into evidence. It has
15 my writing also on it.

16 Q. And what's inside of this? Is the phone inside there?

17 A. The phone and the piece of paper.

18 Q. So that's what you actually collected on scene?

19 A. Yes.

20 Q. All right. Okay.

21 MS. BURCHSTEAD: I beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 Q. So just to clarify, when was the first time - When
24 did you see the video on the phone? You said you saw the
25 video for about a minute?

INVESTIGATOR JIMMY SHERROD: DIRECT BY MS. BURCHSTEAD - IN CAMERA -13-

1 A. Yes.

2 Q. Who showed you that or did you look at it yourself?

3 How did you come to see the video?

4 A. It was the - I can't remember her name. It was the
5 ex-girlfriend. I believe it was her cousin or maybe her
6 sister that took the video. It was - The phone was dead
7 and they plugged the phone into the charger. That's when I
8 viewed the video.

9 Q. Okay. So where were you located at that time?

10 A. I was still at [REDACTED]. I was inside my patrol
11 vehicle.

12 Q. Inside your patrol vehicle:

13 A. Yes.

14 Q. Charging the phone?

15 A. Yes.

16 Q. Okay. So where was the girl who had found the phone?

17 A. She was outside by my door.

18 Q. And was the phone in her possession when you saw the
19 video?

20 A. It was in my possession.

21 Q. All right. So how did you actually see the video?

22 Did you know where it was? Did she show it to you?

23 A. Yes she showed it to me and I pressed play.

24 Q. Okay. And just for clarity, at that point is that
25 when you called your corporal?

OFFICER JAMES SHERROD: DIRECT BY MS. BURCHSTEAD - IN CAMERA
CROSS BY MR. VERNER - IN CAMERA

-14-

1 A. Yes after that, yes, I called the corporal.

2 MS. BURCHSTEAD: Your Honor, that's all I have for
3 this witness.

4 THE COURT: Mr. Verner.

5 CROSS-EXAMINATION - IN CAMERA

6 OFFICER JAMES SHERROD BY MR. VERNER:

7 Q. Officer Sherrod, are you associated to the
8 neighborhood that [REDACTED] is on? I don't know if
9 Columbia, do they basically assign you a specific
10 neighborhood?

11 A. Yes. That's my area I'm assigned to.

12 Q. Okay. And just out of curiosity what would that
13 neighborhood be called?

14 A. [REDACTED]

15 Q. Its called what?

16 A. The - - -

17 Q. The over all neighborhood that you're assigned to is
18 called what?

19 A. It doesn't have a area. I mean it's a number that
20 was assigned to but the apartment is called [REDACTED].

21 Q. Okay. But the - But as part of your patrol duties
22 you're basically assigned to one in specific ---

23 A. Yes.

24 Q. --- region of Columbia where you're pretty familiar
25 with the streets and ---

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

-15-

1 A. Yes.

2 Q. --- and the people in that area?

3 A. Okay. And the reason for that is where you become
4 familiar with people who live there?

5 A. Well, we have so many people that stays in that
6 apartment complex.

7 Q. Okay. It would a large --

8 A. Yeah.

9 Q. Okay. The - You were dispatched through the radio or
10 did somebody call you directly to your cell phone?

11 A. Yeah it was dispatch.

12 Q. Okay. And what was announced on the dispatch for the
13 purpose of being sent to [REDACTED]

14 A. If I can recall it was like lost property. Excuse me,
15 found property.

16 Q. Do you - Do you know who made the call into 911?

17 A. I can't recall it's been two years ago I can't
18 remember.

19 Q. Did you produce an incident report as a result of this
20 call?

21 A. Yes.

22 Q. Okay. Are you by yourself in your vehicle?

23 A. Yes.

24 Q. Okay. Do you remember who you were dispatched to
25 visit? Where you assigned to see the cousin or the girl

1 who called in?

2 A. Yeah. The ex-girlfriend, the one that's sitting in
3 the wheelchair.

4 Q. Was it your understanding that she called the police
5 herself?

6 A. I believe so. I mean I wasn't sure. I can't
7 remember.

8 Q. Okay. You indicated just a minute ago that the
9 teenage girl had been showing pictures of the video
10 throughout the neighborhood.

11 A. Yes.

12 Q. Okay. Do you recall how you came - that information,
13 how you came into that information?

14 A. She had told me herself.

15 Q. When she talked to you?

16 A. The teenager, the fifteen year old.

17 Q. Okay. So when you got to [REDACTED] Hope was there
18 in the wheelchair?

19 A. Yes.

20 Q. But who else was there?

21 A. It was Hope, I believe it was her cousin, and I was
22 trying to locate the fifteen year old.

23 Q. Okay. So the cousin is not the one who would have had
24 the phone? The cousin is just somebody who was with her.

25 A. Yes.

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

-17-

1 Q. Okay. But she's not related to finding the phone
2 or anything other than she was just there visiting Hope?

3 A. Yes.

4 Q. Okay. Do you recall the first name of the fifteen
5 year old?

6 A. I can't remember without the incident report.

7 Q. Okay. The - What did Hope tell you when she - when
8 you responded? I assume you responded without lights.

9 A. Yes.

10 Q. Okay. What did Hope tell you?

11 A. If I can recall basically I believe she was getting
12 ready to convict him or something like that. And I'm
13 trying to remember, it's been two years ago, basically I
14 can't remember but she was

15 Q. Okay. But were you familiar with the defendant
16 Harold Ayton prior to this date?

17 A. No.

18 Q. Were you familiar with Hope prior to this date?

19 A. No.

20 Q. All right. Are you aware of whether Harold Ayton
21 had made multiple calls to that address trying to retrieve
22 property?

23 A. No. I don't remember.

24 Q. Okay. And you're not aware of whether the Columbia
25 City Police Department had responded to any of those calls?

1 A. No.

2 Q. Okay. Dispatch said that there was a report of lost
3 property that needs to be retrieved or they said that there
4 was a report of sexually explicit material on the video?

5 A. It was first just found - found property.

6 Q. Well I mean is that something that you ordinarily
7 respond to immediately ---

8 A. Yes, sir.

9 Q. --- to lost property?

10 A. Yes.

11 Q. Okay. It is. So Hope, the first thing she indicated
12 to you was that she was having a problem with trying to
13 evict somebody?

14 A. I believe so. I mean the reason I believe the
15 phone was found because of that lease but I'm not sure.

16 Q. Okay. But somehow there was some talk about kicking
17 him out or evict him or any of that process. Who had the
18 cell phone at that point?

19 A. When I first arrived I believe the mother had the cell
20 phone.

21 Q. And she was not there at that point?

22 A. No. We was trying to locate her.

23 Q. Okay. So you - First you just met with Hope and
24 the cousin?

25 A. Yes.

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

-19-

1 Q. And they indicated to you that the teenager had
2 found the cell phone?

3 A. Yes.

4 Q. And she identified that it was on her ex-boyfriend's
5 cell phone?

6 A. Yes.

7 Q. The paperwork with his name and picture on it, that
8 was given to you by Hope before the cell phone came or was
9 that

10 A. It was about the same time.

11 Q. Did she tell you that there was sexually explicit
12 material on the video?

13 A. No she didn't.

14 Q. On some of them?

15 A. The fifteen year old told me.

16 Q. Well what was the point of tracking down the fifteen
17 year old just to find this cell phone that may or may not
18 have been lost?

19 A. Because of the - I believe that Hope or her cousin
20 had told me something about the pictures and stuff that was
21 on the phone.

22 Q. That there was child ---

23 A. Yeah.

24 Q. --- sexually conduct?

25 A. Yes.

1 Q. Okay.

2 A. Cause the fifteen year old was going around showing
3 people.

4 Q. Right.

5 A. That's how they knew.

6 Q. And in candor you would have not sought out the
7 fifteen year old if she just said I'm trying to evict my
8 boyfriend and here's his cell phone and some fifteen year
9 old has his cell phone? That's not something you would
10 have immediately gone out --

11 A. I mean but different circumstances. I mean you trying
12 to find a lost phone and somebody - We'll try to find a
13 lost phone but I mean it's more --

14 Q. But the reason you were after the phone in this case
15 is because she said there was some sexual video of having
16 sex with a child. Right?

17 A. Yes.

18 Q. Okay. And you were aware of that as soon as you met
19 Hope or shortly after you met Hope?

20 A. Yeah I did.

21 Q. And that was your main concern

22 A. Yes.

23 Q. Okay. And if true that would be certainly a much
24 greater criminal offense than just petit larceny or
25 receiving stolen goods or the lost cell phone?

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

-21-

1 A. Yes.

2 Q. Okay. And there was a concern that the fifteen year
3 old showing people on the neighborhood the pictures?

4 A. Yes.

5 Q. Did Hope tell you how she came to learn that the
6 fifteen year old had the phone?

7 A. She did. I think she just - She didn't really tell
8 me.

9 Q. Okay. She just said the phones out there this kids
10 got it and she's showing it around?

11 A. Yes.

12 Q. Okay. How did you find out how to locate or did -
13 How long did it take you to locate the teenager?

14 A. Uh - Maybe about ten or fifteen minutes. She actually
15 came back to the location.

16 Q. Okay. Did some - Somebody must have called her or
17 she lived in that neighborhood or?

18 A. Yeah. Actually I went to her house and I came back
19 and she was there.

20 Q. All right.

21 A. She lived like about across the street ---

22 Q. All right.

23 A. --- from the location.

24 Q. So Hope would obviously have been able to say
25 she's a neighbor and that's where she lives or she would

1 have pointed you to where ---

2 A. Yes, sir. I mean she was like about a minute away.

3 Walking distance.

4 Q. Okay. But Hope told you were to go to find her
5 family or her house?

6 A. Yes.

7 Q. And you went over there and you said you were looking
8 for her and somebody at that residence called her and told
9 her to come back home?

10 A. I believe so.

11 Q. And you waited about fifteen minutes for her to come
12 back?

13 A. Yeah, about ten or fifteen minutes.

14 Q. Okay. The - Okay. The fifteen year old came back
15 to her house or her apartment?

16 A. Yes.

17 Q. And -

18 MR. VERNER: Ms. Burchstead, what is the name of the
19 witness that you all had identified as - Okay.

20 Q. The name of the fifteen year old is Shantel Thomas.

21 Does that sound like the name of the fifteen year old
22 that you're talking about?

23 A. Yes.

24 Q. Okay. All right.

25 MR. VERNER: Is this his incident report? Okay.

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

-23-

1 Q. Shantel Thomas is who you identified in your Incident
2 Report as the teenager?

3 A. Yes.

4 Q. Okay. What happened when Shantel came back?

5 A. Basically Shantel came back we - We retrieved the
6 phone from her and that's when we --

7 Q. So she had the phone on her?

8 A. Yeah, she had the phone on her yes.

9 Q. And you said we retrieved the phone. Was there
10 another officer with you at that time?

11 A. No. No. It was just me.

12 Q. Okay.

13 A. And it was her - I can't remember her name. Her
14 cousin was with her.

15 Q. Okay. But Shantel came with another teenager?

16 A. Yes.

17 Q. A young lady with her? Okay. And she knew you were
18 there waiting on her cause you had gotten her family member
19 to call and say hey, a police officer wants to talk to you?

20 A. Yes.

21 Q. And I assume you were in uniform at that time?

22 A. Yes.

23 Q. Okay. The - Tell me about your interaction with
24 Shantel.

25 A. As far as I can remember is that basically I retrieved

1 the phone from her. Her cousin - the lady that was in the
2 wheelchair - her cousin was beside me and we took the phone
3 to the car. She actually got to the car before me and I
4 plugged the phone into my car to charge it.

5 Q. Okay.

6 A. And the lady in the wheelchair, her cousin, threatened
7 took the pictures and that's why

8 Q. Okay. Did Shantel tell you how she came into
9 possession of the phone?

10 A. I can't recall.

11 Q. All right. Whether it was abandoned or given to her
12 or stolen, you don't know?

13 A. No.

14 Q. Okay. Did you ask Shantel about what was on the
15 phone before you got it or did you just say turn it over
16 or?

17 A. I didn't ask 'em. Everybody was saying what was on
18 the phone so I took possession of it.

19 Q. Okay. Did you talk to Shantel about the contents of
20 the phone?

21 A. What was that?

22 Q. Did you talk to Shantel about the contents of the
23 phone?

24 A. No.

25 Q. All right. I mean you must have to some extent to

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

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1 say, you know, is this the phone with the child sex? You
2 didn't even --

3 A. No. I mean everybody was pointing - I mean pointing
4 the phone out so I took possession of it.

5 Q. Okay. And was she giving it to you specifically
6 because of the videos on the phone or because it was stolen
7 and needed to be turned over or what reason was she giving
8 it to you?

9 A. Because of the video.

10 Q. Okay. There is no question you took possession of it
11 because there was an allegation of unlawful video tapes on
12 it?

13 A. Yes.

14 Q. And at this point you're still on solo patrol?

15 A. Yes.

16 Q. Okay. Was Harold Ayton present?

17 A. No he wasn't.

18 Q. Okay. Was there any reason for immediate urgency
19 to view the phone at that point as opposed to taking it
20 back to the station?

21 A. Yeah I wanted - Because of the allegations I wanted
22 to view the phone to see what we had so my supervisor made
23 a decision of

24 Q. If the phone did not have the video - improper
25 video on it, you would not have kept the phone or what

1 would you have done?

2 A. I would give the phone back to the owner or try to
3 find the rightful owner.

4 Q. Okay. And again the paperwork that identified Harold
5 Ayton that was turned over to you?

6 A. Yes.

7 Q. That came with the teenager or that came from Hope?

8 A. From Hope.

9 Q. Okay. But she handed it to you about the same time
10 that the teenager came back to you?

11 A. Yes.

12 Q. And they clearly said that the phone belonged to
13 Harold Ayton or who did they say the phone

14 A. Belonged to Harold Ayton.

15 Q. Okay. And what kind of phone is it again that we're
16 talking about?

17 A. I have to look at the phone.

18 Q. Well first let me ask you, are you sure that is the
19 phone that was given to you on that date?

20 A. Yes.

21 Q. Okay. And what kind of phone is it?

22 A. It's a T-Mobile.

23 Q. Okay.

24 A. HTC.

25 Q. The - Is that kind of phone got like an open face

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

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1 pad on it or do you have to fold it over to see it?

2 A. It's an open face.

3 Q. Okay. So you can see the pictures and the phone
4 numbers without having to physically open it up?

5 A. Yes.

6 Q. Yes. Let me see the front of it for a second.

7 Is that a digital phone or has it got digital numbers?

8 It's got digital numbers as opposed to analog phone
9 numbers.

10 What did you have to do to see the video, the video
11 picture?

12 A. Basically it was - the phone was going dead so we
13 had to plug the phone in and we had to press if I remember
14 you had to press the button to play it. I'm not sure what
15 I can remember.

16 Q. But there would have been an icon on the phone like
17 photographs ---

18 A. Yes.

19 Q. --- or pictures? So you would have had to activate
20 that icon?

21 A. Yes.

22 Q. And then I guess you would have to scroll down until
23 you found - Were there other photographs or pictures on the
24 phone?

25 A. I remember another video. I just watched one of 'em.

1 Q. Okay. Well did you find it or did the girl scroll
2 down until she found it and played it for you?

3 A. Well she scrolled down and I hit the play.

4 Q. Okay. Did you do anything to find out how the phone
5 was purchased yourself or did you have any role in this
6 case other than - when you first took possession of the
7 phone?

8 A. I just took possession of the phone.

9 Q. And I turned it over to an investigator?

10 A. Yes after I put it into the evidence room.

11 Q. Okay. You actually took it to station?

12 A. Yes.

13 Q. And filed your report?

14 A. Yes.

15 Q. And then - who did you call from the patrol car?

16 A. Corporal Holmes.

17 Q. He would have been your shift supervisor?

18 A. No, she.

19 Q. She would have been your shift supervisor?

20 A. Yes.

21 Q. What do you recall telling her?

22 A. No I just told her basically what I saw on this
23 phone and she responded to this incident location.

24 Q. Okay.

25 A. As soon as possible.

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA

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1 Q. But at that point the investigation of it would
2 have gone to a different officer than you that would have
3 gone to the investigator or to a different - -

4 A. Yes. She had called ---

5 Q. Okay.

6 A. --- the investigator out.

7 Q. And so you basically took it to the police station
8 and locked it up into the evidence room?

9 A. Yes.

10 Q. Okay. Did you have anything more to do with this
11 case beyond?

12 A. That was it.

13 Q. Okay. Did you meet with the investigator to explain
14 what was on the phone ---

15 A. Yeah.

16 Q. --- you basically issued a report?

17 A. A report.

18 Q. Okay. Was there anything that prevented you from
19 taking the phone to the police station when you had first
20 been in possession of it?

21 A. No.

22 Q. Okay. And it's a fairly generic phone. It wasn't
23 requiring any real training to activate the phone to find
24 the pictures yourself. You wouldn't have needed the third
25 party to do that for you?

OFFICER JIMMY SHERROD: CROSS BY MR. VERNER - IN CAMERA
REDIRECT BY MS. BURCHSTEAD - IN CAMERA

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1 A. No.

2 Q. Okay. I mean if you can do that on any phone you can
3 pretty much do that on that cell phone?

4 A. Yes.

5 Q. Okay. But the girl who made the allegation that
6 there was sex with a child on the phone, and so you watched
7 the video tape to confirm that for a fact?

8 A. Yes.

9 Q. All right. So you are aware of prior to playing the
10 phone that that would have been an allegation of a felony?

11 A. Yes.

12 Q. Okay. Thank you, Officer.

13 Ms. Burchstead may have some more questions.

14 MS. BURCHSTEAD: Just real briefly, Your Honor.

15 REDIRECT EXAMINATION - IN CAMERA

16 OFFICER JAMES SHERROD BY MS. BURCHSTEAD:

17 Q. Officer, after you responded did you prepare a
18 Incident Report?

19 A. Yes I did.

20 Q. And would you have included on the Incident Report
21 names of people that you talked to?

22 A. Yes.

23 Q. So would the name of the fifteen year old girl be on
24 here?

25 A. Yes.

OFFICER JIMMY SHERROD: REDIRECT BY MS. BURCHSTEAD - IN CAMERA -31-

1 Q. And the ex-girlfriend?

2 A. Yes.

3 Q. And if I showed you the report would you - Would that
4 help you remember their names?

5 A. Yes.

6 Q. Okay.

7 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO PREMARKED FOR
8 IDENTIFICATION.)

9 MS. BURCHSTEAD: If I may approach, Your Honor.

10 Q. I'm gonna show you State's Exhibit Two and ask you to
11 take a look at that and see if you recognize it?

12 A. Yes I do.

13 Q. And what is that?

14 A. This is the Incident Report I wrote on June 24th,
15 2010.

16 Q. Okay. What's the suspect's name on there?

17 A. Harold Reuben Ayton.

18 Q. And who are you referring to as the suspect?

19 When you put the suspect down what do you mean by
20 that? Who - Why would you put that name there? Who is the
21 suspect? Why was he a suspect?

22 A. Oh, because of the evidence that I found. Also the
23 paperwork I was given that said he was the owner of the
24 phone.

25 Q. Okay. And are there any other witnesses or

OFFICER JIMMY SHERROD: REDIRECT BY MS. BURCHSTEAD - IN CAMERA -32-

1 individuals listed on that report?

2 A. No.

3 Q. Okay. Not as suspect? Okay.

4 And do you have the name of the people you talked
5 to on there, this fifteen year old girl?

6 A. Yes I did.

7 Q. And who is that?

8 A. Shantel Thomas.

9 Q. Okay. And is there anybody else listed on there that
10 you talked to?

11 A. Hope Jenkins.

12 Q. All right.

13 MS. BURCHSTEAD: Nothing further. Thanks.

14 THE COURT: Anything else, Mr. Verner?

15 MR. VERNER: Nothing else, Your Honor.

16 THE COURT: You can step down.

17 (WITNESS LEAVING WITNESS STAND.)

18 MS. BURCHSTEAD: Your Honor, the State calls
19 Investigator Stephen Narewski.

20 (WHEREUPON, THE WITNESS BEING
21 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 MADAM CLERK: Have a seat and state your name.

23 A. Stephen Thomas Narewski, N-a-r-e-w-s-k-I.

24 DIRECT EXAMINATION - IN CAMERA

25 INVESTIGATOR STEPHEN NAREWSKI BY MS. BURCHSTEAD:

INVESTIGATOR STEPHEN NAREWSKI: DIRECT BY MS. BURCH WRIGHT
IN CAMERA

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1 Q. Good morning. Okay. Is your title Investigator?

2 What's your title?

3 A. Investigator.

4 Q. Okay. And with whom are you employed?

5 A. The city of Columbia Police Department.

6 Q. How long have you been there?

7 A. Almost thirteen years. Thirteen next - Yeah, next
8 month, January.

9 Q. Okay. And how long have you been an investigator?

10 A. Since February of 2006.

11 Q. Okay. And I assume you graduated the South Carolina
12 Academy?

13 A. In 2000.

14 Q. All right. Back in June of 2010, you were an
15 investigator?

16 A. Yes.

17 Q. All right. As an investigator what are your primary
18 duties?

19 A. I work in Special Victim's Unit. I've been there
20 since fall of '06 and we handle sex crimes, domestic
21 violence, internet crimes against children, any
22 miscellaneous things --

23 Q. All right. And did you participate or conduct an
24 investigation of the Defendant Harold Ayton back in June of
25 2010?

INVESTIGATOR STEPHEN NAREWSKI: DIRECT BY MS. BURCH WRIGHT
IN CAMERA

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1 A. Yes.

2 Q. All right. How did you first become involved? What
3 did you first do in that case?

4 A. Thursday night was the night the discovery of the
5 phone. Bailey, one of my associates, he was the on-duty
6 evening investigator. He had come in early that day. He
7 was basically headed - He was living in Aiken at the time
8 so he was headed home which is a good distance away.

9 Q. Uh-huh.

10 A. And when he got the call from North Regent he then
11 called me and ask me for some input because I would be the
12 one working Friday morning. I told him that it goes into
13 evidence, I'll pick it up Friday morning and do a search
14 warrant, contact the Attorney General's Office. Bobby
15 Belton was the technology guy at the time. So I came in
16 Friday morning picked up - I went to evidence had them
17 bring the phone forward to me at the window. It was in a
18 secure location in the back. They brought it to me, I
19 opened it up looked at the identifying sticker inside,
20 copied that information down, returned it to the clerk. At
21 that point went to my office did the search warrant came
22 back picked up the phone after I had called Mr. Belton took
23 it over to the AG's building on Assembly there. Provided
24 Mr. Belton a copy of the search warrant and the phone. I
25 sat while he extracted the data from it and then he

INVESTIGATOR STEPHEN NAREWSKI: DIRECT BY MS. BURCH WRIGHT
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1 provided me with a disc which I took back to my - with the
2 phone and I - it back into the evidence room.

3 Q. Okay. So back up a little bit. You say you went to
4 the evidence at the city of Columbia. And what information
5 exactly did you get from the phone at that point?

6 A. If you take the cover off the back of the phone and
7 remove the battery, underneath that area there is a sticker
8 provided by the manufacturer and it includes the electronic
9 serial number of the phone and the part number of the
10 phone.

11 Q. Okay.

12 MS. BURCHSTEAD: If I may approach, Your Honor.

13 Q. I'm gonna show you what's been marked as State's
14 Exhibit one and ask you if you recognize that item?

15 A. Yes. This would be the phone that I brought here
16 today from the evidence building. But it's also the one if
17 you look right there it's very clearly a sticker and a
18 battery. That sticker provides you identifying
19 characteristics for the phone itself.

20 Q. And when you obtained that serial number did you do
21 anything else with the phone at all?

22 A. No.

23 Q. Okay. And did I understand you to say you got the
24 search warrant so it was signed by a judge. You
25 obtained it --

INVESTIGATOR STEPHEN NAREWSKI: DIRECT BY MS. BURCH WRIGHT
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1 A. One of our ministerial reporter's at the city of
2 Columbia courthouse.

3 Q. All right.

4 MS. BURCHSTEAD: I beg the Court's indulgence, have
5 another exhibit marked.

6 (WHEREUPON, STATE'S EXHIBIT NUMBER THREE, PREMARKED
7 FOR IDENTIFICATION.)

8 MS. BURCHSTEAD: Beg the Court's indulgence.

9 MS. BURCHSTEAD: If I may approach.

10 Q. I'm showing you what's marked State's Exhibit Three
11 for identification. And I'll ask, is that the search
12 warrant?

13 A. It's my search warrant.

14 Q. Okay. So after you got the search warrant, if you'll
15 just tell me again what you did exactly.

16 A. After I obtained the search warrant because I actually
17 clearly identified the object that I would search, ---

18 Q. Right.

19 A. --- so on the face of the search warrant I identified
20 the phone by its serial number. It's IMVI - card number.
21 I then once I got it signed by one of many city recorders I
22 took the search warrant with me over to the evidence room,
23 I then drew out the phone cause I had already coordinated
24 with Mr. Belton to take to him. I then went from - I rode
25 about three blocks away. I went to the AG's building went

INVESTIGATOR STEPHEN NAREWSKI: DIRECT BY MS. BURCH WRIGHT
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1 upstairs with it presented this search warrant and this
2 phone to Mr. Belton and then he hooked it to the machine
3 and then he did an extraction.

4 Q. Okay.

5 A. In my presence.

6 Q. So in your presence the forensic exam was conducted?

7 A. Yes.

8 Q. And what did you see from the exam?

9 A. I saw - There were lots of pictures of videos in
10 there. There were two in particular that were what this is
11 about. One is what is obviously a very young child with
12 braided hair with colored plastic balls in her hair. She
13 was providing oral sex to obviously an adult male. Then
14 the other video shows a large adult male on a bed frame and
15 bed spread and what appears to be a child laying on that
16 bed and then he places some lubricate onto her back side
17 and then mounting her on the bed.

18 Q. Okay. For purposes of this hearing that was more
19 than enough. Thank you. All right. So after the forensic
20 exam was conducted what did you or Bobby do or Mr. Belton
21 do with the phone?

22 A. While we were conducting the exam he had done a hand
23 full of stills for us and included them on the disc with
24 all of the data from the phone.

25 Q. Okay.

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1 A. I then took that disc back to our office area. I had
2 a crime scene guy Buddy Rose take the pictures and sanitize
3 them so the child would not be in there. Clearly are kids.
4 That way we can try to locate or I should say in one of the
5 child's in there but the family member is not in there but
6 then in the other one we the bed the room and the bedspread
7 because of the way it's - - -

8 Q. Okay.

9 A. And so we then we took our entire section which was
10 like six to eight feet at the time and we started looking
11 for Mr. Ayton.

12 Q. Okay. So in terms of the phone after the forensic
13 exam was complete - - -

14 A. The phone goes back into evidence.

15 Q. Yeah. Okay. So prior to obtaining the search
16 warrant did you do anything other than get the serial
17 number with the phone?

18 A. All I got was the serial number and identifying
19 information.

20 Q. Okay. And if you need to refer to State's Three let
21 me know, but the basis for your search warrant was what?

22 A. The basis for my search warrant was the Incident
23 Report. I had a copy of it at that point. My phone call
24 with Bailey the night before where he told me that these
25 were things that he was advised over the phone by the

INVESTIGATOR STEPHEN NAREWSKI: DIRECT BY MS. BURCHSTEAD
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1 responding officers.

2 Q. Okay. And at what point or did you at some point
3 learn the identity of the suspect?

4 A. The identity was on the face of the report. That's
5 how I knew.

6 Q. Okay.

7 MS. BURCHSTEAD: Your Honor, that's all I have at
8 this time.

9 CROSS-EXAMINATION - IN CAMERA

10 INVESTIGATOR STEPHEN NAREWSKI BY MR. VERNER

11 Q. Investigator Narewski? Is that correct?

12 A. Narewski.

13 Q. Narewski?

14 A. Narewski.

15 Q. Okay. The - You were employed as an investigator
16 at the time that you came into possession of the phone.
17 Right?

18 A. That's correct.

19 Q. Okay. It was not the patrol officer who contacted
20 you - I believe you said it was a different person?

21 A. Say again?

22 Q. It was not - Did you ever speak to the patrol officer
23 directly?

24 A. I did not.

25 Q. Okay.

1 A. As I stated earlier in my testimony Investigator
2 Bailey was the night crew. Night crew ends Thursday night
3 so he was already headed home because he had come in
4 earlier that day. Normally he would stay until ten but I
5 don't remember the exact time of the call. I know it was
6 later in the evening probably around eight.

7 Q. But just --

8 A He called me on the phone told me what he had and
9 ask me for the assistance because he was not gonna be in on
10 Friday. He's off Friday, Saturday, Sunday, he rolls in
11 Monday morning. So Friday I came in to work this.

12 Q. Okay. So Bailey is not necessarily a superior and
13 he's just a co --

14 A. He's one of my partners. At the time he and I were
15 the only two that shared a small room, everybody else was
16 out of the office. And part of our duties was to deal with
17 technology crimes.

18 Q. But he wasn't - He wasn't - he's just saying this
19 is what's on our plate, together we have to do --

20 A. He was saying he was headed home and could I take
21 care of it the next day.

22 Q. And I guess you all kind of over laps sometimes ---

23 A. Oh, yes.

24 Q. --- duties on what you all do just depending on
25 what you all do?

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -41-

1 A. Yes.

2 Q. Depending on who was on duty that particular time?

3 So that's basically the reason it's already past my
4 shift, you need to look at it when you come in?

5 A. Right.

6 Q. When your shift starts? All right. But Investigator
7 Bailey's actually the one who would have spoken to the
8 patrol officer?

9 A. My understanding is their communication was by
10 phone cause he was already driving toward his house in
11 Aiken.

12 Q. Okay. But your understanding - Your belief was that
13 he had spoken to the patrol officer directly ---

14 A. That's my understanding.

15 Q. --- even if it's by phone. And you were told
16 beforehand that there was a sexually explicit video
17 involving a child?

18 A. That's what I was told on the phone, yes.

19 Q. Okay. And I believe the Friday - The search warrant
20 was issued on June 25th so that would have been Friday
21 that you came --

22 A. Right.

23 Q. And the phone actually came into possession of the
24 police when?

25 A. It would a been Thursday night.

1 Q. On the 24th?

2 A. Right.

3 Q. Okay. And is that the date that you recall the
4 officer responding to --

5 A. I got my call Thursday evening.

6 Q. The - And your initial encounter with the phone was
7 entirely just to look at the serial number, the VIN number
8 or whatever?

9 A. That's correct. As I showed earlier when the cover
10 and the battery are out of the phone there is a
11 manufacturer placed sticker which identifies the object -

12 Q. Okay. And was the phone intact when you got it other
13 than the charger?

14 A. I believe I was the one that opened it up to look
15 at the serial number, yes.

16 Q. Okay. But the phone that you pulled out of
17 evidence would have been an intact phone?

18 A. Yes.

19 Q. There was no battery or anything, just a phone?

20 A. It was complete, yes.

21 Q. Okay. And who did you believe was the owner of the
22 phone?

23 A. The report indicated that it was a Harold Ayton.

24 Q. Okay. And did you have the paperwork showing the
25 specific identity of Ayton with the phone?

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -43-

1 A. It was in the evidence envelop with the phone. I had
2 a copy of the Incident Report which listed him by name.

3 Q. Okay. And are you the officer who took the search
4 warrant to the magistrate?

5 A. Yes.

6 Q. Okay. Do you recall what magistrate it was that
7 signed the search warrant?

8 A. I do not but if I look at that I may be able to
9 sort it out by looking at her signature.

10 MR. VERNER: May I approach, Your Honor?

11 Q. Just which magistrate. I guess that's how the
12 magistrate in municipal court does.

13 A. Ministerial reporter - I know we had --

14 Q. Okay. But it would have been the city recorder who
15 signed the search warrant?

16 A. That's correct.

17 Q. And the recorder has the duty of the city court judge?

18 A. They listen to us, they review our documents for
19 search warrants and for warrants and then if we have
20 satisfied what they believe is probable cause then they
21 stamp and sign and issue the warrants.

22 Q. Okay. And prior to take the search warrant to the
23 city recorder you had not spoken to anybody other than just
24 very briefly Officer Bailey or Investigator Bailey?

25 A. Just to Bailey; that's correct.

1 Q. All right. The - Did you identify Harold Ayton as
2 the owner of the cell phone in the search warrant?

3 A. I do not remember. I could review the search warrant
4 to tell you. I know I identified the phone very clearly.

5 Q. You wouldn't have the affidavit though it appears
6 you did identify Harold Ayton. This would a been a --

7 A. I can't see that far.

8 Q. Okay. But I mean the affidavit was prepared by you?

9 A. Yes.

10 Q. Okay. I mean if Harold Ayton is listed as the
11 defendant that would have been you that typed that in?

12 A. This is the --

13 Q. That's not the affidavit?

14 A. This is the arrest warrant right here.

15 Q. That's not the affidavit supporting the --

16 A. No. That's the arrest warrant right there. I prepare
17 the actual search warrant which would be the first four
18 pages and that is ---

19 Q. Okay.

20 A. --- all of it yes.

21 Q. So the last page stapled on this is really not part
22 of the search warrant?

23 A. No. That is the arrest warrant ---

24 Q. Okay.

25 A. --- and I prepared it for --

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -45-

1 Q. And is your badge number 13181?

2 A. 1-3-1-8-1; that's correct.

3 Q. So if there's a signature with 13181 that would
4 have been your --

5 A. That's me.

6 Q. Okay. Where do you - Okay. Did you testify to the
7 recorder along with the search warrant or did you pretty
8 much just hand him just the affidavit with the --

9 A. When I hand them the search warrant and I will have
10 conversation with them, if they have questions I answer
11 those questions. I typically give background information
12 on it as I'm giving it to them so that they have an
13 understanding of what we're -

14 Q. Okay. And did you prepare a return to the search
15 warrant?

16 A. I believe there was a return done. I don't know if
17 it's that copy there.

18 Q. Well I will represent to you that this is the return
19 form that's blank.

20 A. Right.

21 Q. Did you at some point prepare a return to the search
22 warrant?

23 A. I believe I did.

24 Q. And so the arrest warrant affidavit that you did
25 that seems to be attached to the - The arrest warrant was

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -46-

1 this administratively stapled onto the paperwork at some
2 later date and probably just keep the paperwork?

3 A. I did not staple that together.

4 Q. Okay. The - When you took the cell phone you had not
5 reviewed the contents of the cell phone at all even at the
6 time you obtained the search warrant?

7 A. That is correct.

8 Q. Prior to going to the Attorney General's Office?

9 A. The only task I did prior to having Mr. Belton hook
10 it up and extract data from it, the only task I
11 accomplished was getting the identifying ---

12 Q. Just the actual ---

13 A. --- factory serial number inside of it.

14 Q. --- serial number off of it?

15 A. Yes.

16 Q. The - And Mr. Belton is he a city of Columbia police
17 officer, investigator, or is he at the Attorney General's
18 Office?

19 A. No. He at the time was employed at the Attorney
20 General's Office as their technology --

21 Q. Computer guy?

22 A. Yes.

23 Q. Okay. Did you - He would have been there personally
24 that you would have delivered the phone to him?

25 A. Yes I did.

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -47-

1 Q. And I guess there would be some pre-telephone calls
2 saying hey, I'm coming over, you need to have --

3 A. I called him up and ask him if I could get an
4 extraction done on that phone ---

5 Q. Okay.

6 A. --- because of the nature what was in it and our
7 desired to get a quick resolution.

8 Q. Did - When you took it to Mr. Belton did you all
9 review what - Was the phone working at the time you took it
10 to Belton or did it have to be charged up?

11 A. He charged it for a few minutes and then hooked it
12 to the machine for a data extraction. But prior to that of
13 course he received my search warrant. He had some Attorney
14 General's paperwork he had to fill out. Then he also had
15 to enter the device into the machine that was gonna do the
16 analysis.

17 Q. Did you manually look at the pictures on the phone
18 prior to him hooking it up to the computer and dumping it?

19 A. No.

20 Q. That was just all done by --

21 A. He did all of the manipulation of the phone.

22 Q. Okay.

23 A. My only task was identified by getting the battery out
24 and looking at the numbers.

25 Q. Okay. Did you have any further role in this

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -48-

1 case after the --

2 A. I was lead investigator on this case from that
3 point on.

4 Q. Okay. So did you ever trace the origins of the phone,
5 the purchase origins of the phone or was that possible?

6 A. I do not know if we sent a search warrant to T-Mobile
7 for a phone number history or not.

8 Q. Okay.

9 A. I mean it's two and a half years or so. Thinking
10 about that I think I'm sure whatever we had was provided to
11 you.

12 Q. Certainly with the unique phone number - Was it a
13 prepaid number or do you know? Or was this a phone with a
14 ongoing billing subscription?

15 A. I have no idea.

16 Q. And if somebody requested T-Mobile to provide the
17 account holder and that type information you're not aware?

18 A. As I stated we provided you with everything that we
19 had in our case jacket. I do not remember if somebody had
20 sent a search warrant looking for a phone history and
21 subscriber information.

22 Q. That may have been done but it was done its two and a
23 half years ago I can't recall?

24 A. That's correct.

25 Q. Okay. And its possible other people had a hand in

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -49-

1 this investigation beyond you?

2 A. Everybody in the section was working on this for
3 about two weeks continuously.

4 Q. And how many people are in your particular section?

5 A. Earlier I stated I can count them off somewhere
6 around six or eight of us at one time.

7 Q. Okay. And to the best of your recall almost all six
8 or eight of 'em would have had some even if it was a minor
9 role in getting some portion of this case?

10 A. Yes.

11 Q. Okay. What became of the phone after you tendered it
12 over to Mr. Belton?

13 A. It never left my viewing area. I went with Mr.
14 Belton from the point that I placed it into his hands with
15 the search warrant. I followed him through his office area
16 as he did the data analysis. He then at the end of it
17 provided me the phone and disc while I was still in the
18 room with him. He provided me the phone and the disc, I
19 returned the phone into the evidence room.

20 Q. What do you mean by disc?

21 A. There is a disc that has the data dumped from the
22 phone.

23 Q. Oh. Okay.

24 A. So it's all of the information that he was able to
25 retrieve at that time.

1 Q. Okay. And - -

2 A. That has been provided. Well I shouldn't say
3 provided certain things to you. It's been provided to the
4 Solicitor's office or the Attorney General's Office. I
5 believe they've let you see parts of it.

6 Q. Okay. And the data dump is that just done by hooking
7 a wire up to one particular end of the phone and hooking it
8 straight into a computer?

9 A. Well it's a - There's a hundred and some adaptors
10 for phones cause there are similar phones. Cellibrite is
11 the piece of machinery that does the data dump. Cellibrite
12 then the adaptor then the phone. Cellibrite goes into a
13 computer.

14 Q. Okay. But basically hooking a wire and maybe one
15 other piece to the phone?

16 A. Hook the wire from the phone to Cellibrite.
17 Cellibrite is already hooked to the computer, its drawn
18 from the phone, through Cellibrite into the computer.

19 Q. And that would be designed to the best of your
20 knowledge to remove all files from the phone?

21 A. Depending on the phone manufacturer they have to
22 enable certain features in order for the extraction machine
23 to get the - Certain phones you can't detach, certain
24 phones you can. It depends one how the manufacturer
25 enables and determines the phone.

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1 Q. Okay. Did you personally have any interaction with
2 Mr. Ayton?

3 A. After he came into custody Monday the next week.

4 Q. Okay. So he was arrested the following Monday?

5 A. Monday he presented himself at the Sheriff's
6 Department. They were aware of our desire to meet him.
7 They placed him in a holding area, called us and I went
8 over there and picked him up and took him back to our
9 building.

10 Q. All right. Are you aware that he had a different
11 phone at the time he was arrested for that?

12 A. Yes I am aware of it.

13 Q. Okay. Did you take possession of that phone?

14 A. That phone - I know that phone was on the table
15 between us during the interview on Monday because I know he
16 accessed it in front of us at some point.

17 Q Okay.

18 A. So I was aware of his additional phone.

19 Q. By access it, you mean calling somebody or took a
20 call or?

21 A. He unlocked it and placed it in a handkerchief and
22 another investigator

23 Q. Did you show him the video tapes at that time on
24 Monday?

25 A. I would never do that.

1 was the contraband - the illegal evidence on the phone;
2 that he had the phone in his possession in the squad car
3 but there are no exigent circumstances beyond --

4 I mean I understand the officer's basically saying
5 somebody's made an allegation of a bad crime, I want to
6 check it out before I actually start the investigation
7 rolling; but there is the allegation that there is a child
8 sex tape on the phone. The phone is tendered into law
9 enforcement's custody. Officer activates the phone,
10 officer then goes into the Icon's to go into the discreet
11 program that has the video tapes and then became aware of
12 the evidence prior to a search warrant.

13 Again, the sole basis for that is the officer's
14 testimony I wanted to check and confirm basically the
15 allegation made on it, but that's not an argument of
16 exigent circumstances. That's an argument of convenience
17 for the officer and I understand diligence and due care,
18 but that is still prior to a search warrant. It's still
19 clearly identified as a private citizen's property and the
20 fact they were given a name and other contact information
21 on the defendant.

22 For the convenience of the officer and for the intent
23 to corroborate I guess the allegation he activated and
24 entered the phone. No question I think its been settled by
25 the higher courts that going into a phone can be a search

1 of a private person's property. There are not -

2 THE COURT: If the control of ownership of the phones
3 are abandoned somehow outside the control of the owner of
4 the phone, how is there an expectation of property at that
5 time?

6 MR. VERNER: Well I agree that the - It still could
7 but it's not an abandoned property situation where an
8 officer comes across property that -

9 THE COURT: Lets suppose the phone is your property.

10 MR. VERNER: Correct.

11 THE COURT: And a young girl got it and she found it
12 on the street and you were in possession of child
13 pornography ---

14 MR. VERNER: If law enforcement - -

15 THE COURT: --- and your client was a participant then
16 why -

17 MR. VERNER: If Officer Sherrod found the phone at the
18 basketball park or wherever he found the phone, did not
19 know whose phone it was, or was even given the phone by the
20 teenager or Hope, and said this was left on our stoop, we
21 don't know whose it is, this was - we found this phone,
22 then I think it would certainly fit an abandoned property
23 argument.

24 In this specific case, Your Honor, and I think part of
25 the case is probably gonna be that a lady put his property

1 out of her house, or its some element of abandoned
2 property, I got this property and put it at the stoop or
3 got it out of my house, but its clear when the office took
4 possession of the phone he was tendered paperwork showing
5 specifically who they believed owned the phone.

6 As he indicated there was some talk about I been
7 trying to evict him or kick him out of the - so this
8 doesn't squarely fit in an abandoned property analogy
9 because law enforcement was aware at the time of who would
10 have owned the phone.

11 So he's not searching the phone to try to find out
12 who the phone belongs to, he's searching the phone because
13 they say there is a video of him having sex with children
14 or a child on that, Your Honor. He's aware, he's an
15 experienced officer. He's aware as he testified that is a
16 substantial felony criminal behavior. He's also aware of
17 the identity of who would be in trouble if this is
18 corroborated, so, off of that basis alone I believe he
19 could have gotten a magistrate or a city recorder to issue
20 a search warrant. Hope Jenkins had turned his phone over
21 to --

22 THE COURT: Take the officer's viewing out, does not
23 the office have enough right there to get a search warrant?

24 MR. VERNER: If --

25 THE COURT: I mean he didn't look at it. "Officer,

1 here's the phone its got some nasty stuff on it" and
2 everything else is the same and he doesn't look at it.

3 MR. VERNER: I think if --

4 THE COURT: What's the difference?

5 MR. VERNER: I think he could have gotten a search
6 warrant at that time.

7 THE COURT: How does that change?

8 MR. VERNER: Well the fact that he could have and
9 didn't actually makes it worse for the State cause that
10 takes the exigent circumstances out of it.

11 And of course the Court's aware if you search private
12 property unlawfully without a search warrant, you find
13 evidence, you cannot then go back and get a search warrant
14 to correct the defective search. I think the officer had
15 grounds to get a search warrant as soon as the phone was
16 delivered to him and saying, you know, there is a video of
17 him. As to my knowledge even if the video having sex with
18 the child was downloaded from the internet, that would
19 still be criminal conduct. I think the officer could have
20 fairly easily either by turning it over to the investigator
21 but more likely than not I suspect a city recorder would
22 have granted a search warrant based on the allegations
23 alone.

24 The fact that he didn't actually in my opinion cuts
25 more against the State than it does the Defendant because

1 to that ground they probably should have - They would have
2 had grounds to know who was in control and what property
3 the contraband was alleged to be on and they had control of
4 the property. And then there was no danger of losing
5 custody or possession of the property so the exigent
6 circumstances are not there.

7 The same as if somebody had brought a locked box to
8 the police officer and said there are drugs or narcotics
9 inside this and a gun and this is my boyfriend's box, if
10 the officer breaks the seal looked at it and finds the
11 drugs knowing whose property it was and going in there for
12 the reason of finding evidence of criminal behavior, that's
13 a search and cannot correct it by - In candor I see no
14 basis to challenge the investigator's search other than it
15 becomes on the heels of what I would consider a warrant-
16 less search and you cannot correct a improper warrant-less
17 search with a proper warrant so we would move to suppress
18 the video tape and everything from the phone.

19 THE COURT: All right. Ms. Burchstead, what you got?

20 MS. BURCHSTEAD: Thank you, Your Honor, in response,
21 initially the government's position is that it was in fact
22 abandoned lost property and you had no expectation of
23 privacy in such property in the first place.

24 Secondly it was an action by a private citizen who
25 found the phone and then the law enforcement was called.

1 Once law enforcement responds the video is shown to the
2 responding officer therefore it is in plain view while he
3 did physically have it near him in his hand, whatever, she
4 actually scrolled down and showed him the video.

5 And in light of that it was due diligence in response
6 to a call to see what the citizen is discussing. You can't
7 just go to a call and take the word of a citizen; you need
8 to look and see what they're actually referring to in order
9 to access and actually handle the situation.

10 Additionally you do have exigent circumstances of -
11 You heard Narewski testify that they started looking for a
12 suspect and the victim, so you have the exigent
13 circumstances and you need to have an affirmed
14 identification of the defendant or the victim and you need
15 to move quickly. But regardless the on-scene officer only
16 saw a portion of the one video, enough to say yes this is
17 what it is it's identified as contraband at that point
18 seized as both, you know, lost property and is contraband
19 and all he did was take it to evidence.

20 He didn't do anything else with the phone. Locked it
21 up and then the next day the search warrant is obtained for
22 further review of the phone and that leads me to my third
23 point which is we do have an inevitable discovery argument
24 here based on the incident Report and the information
25 learned on scene.

1 There may be enough to say that inevitably you're
2 going to get the search warrant. But I believe all three
3 of those cover the State's position. The government did
4 not know that the citizen was finding the phone and
5 searching it and the government certainly didn't ask her to
6 do it. She wasn't doing it on behalf of the government.
7 Lay people found this very disturbing contraband, law
8 enforcement was involved, responded appropriately took the
9 phone to evidence as soon as they knew what it was.

10 MR. VERNER: And not to reargue her point, Your Honor,
11 just on a separate ground. In candor I don't know the
12 answer. As a second ground of course is I would argue the
13 proper return is not made which of course is part of the
14 search warrant requirement then - That there is no question
15 that the State has provided everything that was taken from
16 the phone to me through the discovery process, so I'm not
17 making any allegation whatsoever that anything was hidden
18 or not identified.

19 I do challenge whether a proper return was made and in
20 candor if it was part of the discovery process at a later
21 date it just escapes me, but I would argue that the proper
22 return --

23 THE COURT: It seems to me on the phone itself the
24 phone being in the hands of a private citizen, not the
25 owner of the phone, and he talking it over with at least

1 one other person, the testimony was several showed it
2 around the neighborhoods, seems to me once the other
3 citizen has possession of it, the fifteen year old, Ms.
4 Thomas, I think that's her name, - his expectations, Mr. -

5 Is it Ikon or Ayton?

6 MR. VERNER: Ayton, Your Honor.

7 THE COURT: His expectation of privacy has been gone.

8 Unless you all show me something different that's how
9 I understand the law is. A private citizen not working as
10 an agent for, the pawn with law enforcement, a private
11 citizen discovers something and then turns it over, all
12 that goes out the window as far as the expectation of
13 privacy.

14 And so based on what I've heard I believe the videos
15 on whatever day it was the retrieved from phone can be used
16 by the State in a proper foundation at trial in case in
17 chief.

18 Regarding your return on the search warrant, I haven't
19 heard any testimony of whether a return was filed or not.
20 You did give me a copy of a blank one.

21 MR. VERNER: The copy is clearly blank and that's been
22 attached for the Court's Exhibit, Your Honor. And of
23 course we got the situation where he turns it over to the
24 AG investigator. There is no question a return is part of
25 the search warrant both in the statute and

1 constitutionally. And we're also in a position where I
2 can see lack of prejudice. I believe everything's been
3 turned over as part of this trial. But I do submit that
4 the return is part of the search warrant itself and there
5 needs to be a proper return made before a search warrant
6 becomes effective.

7 THE COURT: All right. Ms. Burchstead, what you
8 got on that?

9 MS. BURCHSTEAD: Yes, Your Honor. I did not realize,
10 I should have realized that the copy we had there did not
11 have the actual return. We do have it here in court and
12 regardless of what piece of paper we actually identified
13 for the Court's Exhibit we did hear testimony he executed
14 it the same day and he did actually do a return, Your
15 Honor.

16 And additionally just add to that a return is
17 ministerial and I have a nice little memo prepared I can
18 pass up on that at any point that I just have on hand with
19 the standard stuff.

20 THE COURT: Okay. There was testimony from Narewski.
21 Is that how you say it? Narewski, Investigator Narewski
22 prepared the search warrant himself he stayed with the
23 phone the entire the time during his analysis by the AG's
24 investigator, it was executed on the same day, he prepared
25 a return and for whatever reason that return is part of

1 your file still or is that a part of Mr. VERNER's
2 discovery?

3 MS. BURCHSTEAD: No. I believe everything's been
4 turned over. Its not part of what I had marked as the
5 Court's Exhibit. Somehow we had a copy, probably the first
6 search warrant I ever had in a case and later - -

7 THE COURT: So we're not sure whether there's a
8 different set of documents you have?

9 MR. VERNER: They may have, Your Honor, but it would
10 have been included in the other.

11 THE COURT: Okay.

12 MR. VERNER: But I cannot verify either way whether
13 I've been provided a return. I certainly been provided all
14 the evidence.

15 THE COURT: Okay.

16 MR. VERNER: But directly myself I cannot
17 specifically.

18 THE COURT: That being a ministerial requirement in
19 the testimony by Investigator Narewski unless you show me
20 something different I'm gonna find for the purposes of this
21 hearing the return was properly filed. Perhaps improperly
22 tendered to you in the discovery but I'll leave that for
23 you to determine.

24 MR. VERNER: Thank you, Your Honor.

25 THE COURT: I will allow that. I will respectfully

1 deny your motion to suppress on that basis for failure to
2 file a return.

3 All right, we're gonna do the Denno hearing before
4 lunch?

5 MR. VERNER: Yes. It's up to the Court.

6 I think if I had just a meeting with the
7 Attorney General we can clarify specifically.

8 THE COURT: I want a brief break. The court reporter
9 may want one also, so we'll take about ten minutes. It's
10 about 12:30. Again we can do that Denno hearing before
11 lunch and the jury is coming at two and I think we may wrap
12 it up unless you all --

13 MS. BURCHSTEAD: Yes, sir. And just so you know, I
14 will have two officers to put up cause they did --

15 THE COURT: I understand.

16 MS. BURCHSTEAD: Thank you.

17 THE COURT: I'll be back in about ten minutes.

18 (COURT IN RECESS AT 12:23 P.M..)

19 (COURT BACK IN SESSION AT 12:55 P.M..)

20 (WHEREUPON, STATE'S EXHIBITS THREE, FOUR, AND FIVE
21 PREMARKED FOR IDENTIFICATION.)

22 THE COURT: You ready for the Denno hearing?

23 MR. VERNER: Yes, sir.

24 THE COURT: Very well. Call your witness.

25 MS. BURCHSTEAD: Thank you, Your Honor.

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1 The State calls Investigator Stephen Narewski.

2 THE COURT: Investigator, you're still under oath from
3 the prior hearing.

4 MR. NAREWSKI: Thank you, Your Honor.

5 DIRECT EXAMINATION - IN CAMERA

6 INVESTIGATOR STEPHEN NAREWSKI BY MS. BURCHSTEAD:

7 Q. Good morning again. Let me get all my pieces of
8 papers together. Okay. And, Investigator, with whom are
9 you employed again?

10 A. City of Columbia Police Department, Special Victim's
11 Unit.

12 Q. All right. And did you have a chance or the
13 opportunity to interview the defendant in this case?

14 A. Yes.

15 Q. As it specifically relates to criminal sexual conduct
16 with a minor and sexual exploitation of a minor?

17 A. Yes.

18 Q. All right. And when did this occur? When did you
19 talk to him?

20 A. That would have been the Monday the 28th of June 2010.

21 Q. Was he a suspect at the time?

22 A. Absolutely.

23 Q. And where did you have the interview?

24 A. It was at the Columbia Police Department as I stated
25 earlier in my testimony. He had presented himself at the

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1 county sheriff's department. Investigator Montgomery and
2 myself went over and picked him up and placed him into
3 my car, transported him back to the Columbia Police
4 Department so he was in custody at that time. He was then
5 taken to the interview room, our end of the second floor of
6 the building, had his rights advised which he acknowledged
7 and then we began the interview.

8 Q. Okay. And so you were present for the interview. Was
9 any other law enforcement present with you?

10 A. . We were basically hot seating it. There were
11 usually two of us in the room at all times. And like if I
12 sat down and maybe Sloan would step in. Montgomery was in
13 for almost all of it I know that. But Bailey would step
14 in, Sergeant Drafts would step in and we would, you know,
15 give Mr. Ayton bathroom breaks and other things like that
16 also.

17 Q. Okay. About how long did law enforcement talk to him?

18 A. Best guess is somewhere around ten hours ---

19 Q. Okay.

20 A. --- the first day I think.

21 Q. And was it always in connection to this case?

22 A. There were other areas that we did entertain but a
23 lot of it was focused specifically on this case and other
24 things that he talked to us about.

25 Q. Okay. And I believe you said he was given Miranda?

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1 A. Yes.

2 Q. Do you remember how that was done?

3 A. The regular form I don't have it in front of me, but
4 if you have it ---

5 Q. I do.

6 A. --- and provide it to me.

7 MS. BURCHSTEAD: I beg the Court's indulgence.

8 May I approach the witness?

9 Q. I'm gonna show you what's marked as State's Exhibit
10 Six. And I'll ask you if that is the Miranda form?

11 A. Yes. This is my writing. I placed his name at the
12 top and his date of birth. Then I tell him where we are,
13 what day it is, what the time is, and then as I read it to
14 him I check off the various lines and paragraphs getting
15 acknowledgment that I have talked about this and he
16 understands it. Then ask him to sign it which he did. I
17 signed it and I believe that's Montgomery's signature
18 witnessing at that time.

19 Montgomery then took it from me and put all of Mr.
20 Ayton's administrative data underneath this. Listening to
21 the recording that I have of the interview I do hear myself
22 giving him the rights advising him at the beginning of the
23 interview. Now he was in the interview room alone while we
24 strategised how to deal with this session for about thirty
25 minutes I think it was.

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1 Q. Okay.

2 A. But when we entered the room we begin the rights
3 advisory almost immediately.

4 Q. All right. And you said - Was it recorded? Did you
5 say?

6 A. Three hours and eighteen minutes of it. That
7 particular recorder was a expensive but not a good
8 recorder.

9 Q. Uh-huh.

10 A. And it used double A's and was a Sony proprietary
11 software and all that so I had to dispose of that. But I
12 believe I provided a copy of that report.

13 Q. Yes. Yes. And it has been turned over to Defense
14 counsel. Okay. So was any - I assume he did speak to you
15 about this?

16 A. Yes.

17 Q. All right. And was any of his oral statement reduced
18 to writing?

19 A. Yes. He provided two written statements. The first
20 one we know was not necessarily accurate in it's
21 declaration of what had transpired and so later in the day
22 we decided to provide a more accurate version.

23 Q. All right. And let me show you --

24 MS. BURCHSTEAD: Let me show Mr. Verner just a
25 minute.

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1 Q. All right, I'm gonna approach and show you State's
2 Exhibit Four and Five and just ask if you recognize
3 them.

4 A. Yes.

5 Q. And what are those?

6 A. The first one does not have a title on the top but it
7 is the statement taken 6/28/2010. It's indicating that
8 it's Mr. Ayton's statement. It's a question and answer. I
9 believe I recognize the question as written as being done
10 by Montgomery and the answer by someone else at hand.

11 Q. Okay. And --

12 A. The second one is timed as beginning at eleven forty-
13 five and its saying that the statements given to Montgomery
14 and I recognize his writing as the question and then
15 someone else is writing the answer.

16 Q. All right. And are those the only written statements
17 that were done?

18 A. Those are the ones that I'm aware of. These were done
19 on Monday. On Tuesday I know he was brought back up for an
20 additional interview. I was not present for that, I was in
21 Newberry dealing with the Newberry PD.

22 Q. All right. Okay. Let me just ask you about the
23 defendant's demeanor while you were dealing with him.

24 You said he waived his Miranda rights. Did he appear
25 to understand the Miranda rights?

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1 A. Yes because we always ask about them about their
2 education ---

3 Q. Right.

4 A. --- I believe he stated he had about a year of
5 college and he was acknowledging his rights as we went
6 along.

7 Q. Okay. So did he actually see the form then?

8 A. The form, I read it to him, it is then turned around
9 so he can see it presented to him and then he is ask to
10 sign it. He's at that point free to read it and view it
11 and ask questions.

12 Q. Okay. Did he appear to have any difficulty reading
13 it?

14 A. It's been two and a half years but I don't remember
15 any difficulty in the interviewing process with the written
16 language.

17 Q. Did you appear to be under the influence of any drugs
18 or alcohol or anything that would make him to be
19 intoxicated?

20 A. He did not appear to be.

21 Q. And did he have any sort of mental disability or
22 impairments which he wouldn't be able to understand?

23 A. Not that I would have recognized.

24 Q. Did he ever ask to stop the interview or take a
25 break?

INVESTIGATOR STEPHEN NAREWSKI: DIRECT BY MS. BURCHSTEAD
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1 A. I know we provided a lunch at some point but we use
2 a full service approach. We try to get 'em to eating and
3 drinking so we got some coffee. And then we always take em
4 to the potty cause that gives 'em a moment to pause to
5 collect their thoughts.

6 Q. All right. Was he ever threatened or coerced or
7 promised anything?

8 A. No.

9 Q. And did you actually write or sign anything on the
10 written statement?

11 A. No. It's - The first one Mr. Ayton signed it saying
12 that he was preparing that statement but it was not
13 notarized. The second one has Mr. Ayton signature again
14 and then it has Montgomery's name at the bottom indicating
15 that he was present for it but it doesn't show it's
16 notarized other than Mr. Ayton acknowledged it and
17 Montgomery prepared it.

18 Q. Are you able to tell us if those statements occurred
19 after Miranda warnings?

20 A. After. Yes, Miranda warnings was done early on. Like
21 I stated he was placed in the room by himself for I guess
22 about thirty minutes. The tape would be a better indicator
23 of that. And then once Montgomery and I entered the room I
24 sat down and I did listen to it Friday, part of it, not all
25 of it, and I do hear myself giving Miranda rights

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1 advisement and we always do that early on because we don't
2 want to complicate the statement.

3 Q. Okay. Did he ever ask to speak to a lawyer?

4 A. Not that I remember..

5 Q. Okay.

6 MS. BURCHSTEAD: That's all I have for this witness,
7 Your Honor.

8 THE COURT: Mr. Verner.

9 CROSS-EXAMINATION - IN CAMERA

10 INVESTIGATOR STEPHEN NAREWSKI BY MR. VERNER:

11 Q. Investigator, am I right to believe that several
12 investigators kind of came in and ask him questions or is
13 it always just one?

14 A. There would be overlapping. In other words if I
15 stepped out to - At one point he had mentioned the name
16 that I was familiar with so I stepped out and I remember
17 that Sloan stepped in so that would be a second body in
18 there. But Montgomery was present for almost the whole
19 process.

20 Q. But at times - But sometimes - But I sometimes call
21 that a good cop back cop routine where different officers
22 come in and it's kind of a prearranged?

23 A. No we don't do that.

24 Q. So -

25 A. I'm always the bad guy.

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1 Q. But it was coordinated where there were different
2 investigators leading --

3 A. They're not coordinated if there was some reason for
4 one of us to step out. Like I stated I know at one point
5 he mentioned a name that I was familiar with on a separate
6 matter.

7 Q. Right.

8 A. I then stood up and stepped out and did research on
9 that while someone else was, you know, I stand at the door.

10 Q. Right.

11 A. We were in a large open bay where all of our
12 investigators are accomplishing other task and I just say,
13 hey, Sloan, come on, have a seat. Sloan slides in,
14 Montgomery remains.

15 Q. Okay. The - Do you recall what time the questioning
16 sessions started?

17 A. I'm looking at the Rights Advisement and it says it
18 is 10:16 in the morning. Now the recording there is about
19 thirty minutes of just noise prior to that attending in the
20 room by himself so that gets you your time frame for when
21 he was placed in the room. And then I believe I give a
22 start time on the interview as I'm giving the rights
23 advisory but I would ask that you listen to the recording
24 to get the times to that.

25 Q. But the entire interview was recorded?

1 A. No. Only three hours and eighteen minutes. As I
2 stated in my previous testimony it was an expensive but not
3 very good recorder and it used triple A's and when the
4 batteries went dead that's all I had, three hours and
5 eighteen minutes.

6 Q. The - Was the interview video recorded?

7 A. The city doesn't waste that kind of money on us.

8 Q. Okay.

9 A. It was my personal recorder is what I'm telling you.

10 Q. Okay. Is there any reason that it could not have
11 been? I understand you're saying money number one, but is
12 there any reason it could not have video recorded?

13 A. I'm sure that if I went to my house and got a personal
14 camera it would not have been an issue but it's a twenty
15 minute ride and I was kind of busy.

16 Q. Have you video recorded interviews before?

17 A. Not through the city because as I stated the city
18 does not provide that to us. I had provided my own audio
19 recorder at that time.

20 Q. Do you recall telling Mr. Ayton that the interview
21 was recorded?

22 A. I didn't think he had an expectation of privacy in
23 my house.

24 Q. So I'm taking that as a no but?

25 A. No I did not.

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -74-

1 Q. Okay. Who is the investigator - Ultimately I would
2 think that there would be one investigator who ultimately
3 would be in charge of this case?

4 A. As I stated earlier this morning I was the lead
5 investigator that makes it me.

6 Q. So you would be the one who ultimately would be
7 what I would consider in charge ---

8 A. Right.

9 Q. --- even if you all are co-equal in rank?

10 A. Right.

11 Q. Okay. And you personally read and prepared the
12 Miranda Rights Advisory Form? May I see that?

13 A. Well I didn't prepare it. It's a preprinted form. I
14 filled it out in his presence and read it to him. And as
15 you can tell by the tick marks along the paragraphs along
16 the right edge, that's acknowledgment to myself that I have
17 read it because I always check them as I'm reading them
18 off. And if you have an opportunity to listen to the
19 recording you can actually hear me read through that.

20 Q. Okay.

21 A. Right.

22 Q. So the tick marks are your marks and not his ---

23 A. Those are mine.

24 Q. --- and initialed or anything?

25 A. Right.

1 Q. Okay. The - And is that your signature as the
2 witness?

3 A. The top one has the one through eight one.

4 Q. Yes, sir.

5 A. And then Montgomery would be the one four number.

6 Q. Okay. You said that there were basically two
7 statements, one not being as accurate or one you didn't
8 believe was accurate? The first one.

9 A. One was patently false.

10 Q. Okay.

11 A. I'll put it that way.

12 Q. Is that one of the two statements that was introduced
13 by you just a minute ago?

14 A. These are the two here. State's Exhibit Number Five
15 is the one that we believe at the time to be absolutely
16 false.

17 Q. And that --

18 A. And then State's Exhibit Number Four, which is only
19 two pages, State's Exhibit Number Four has some technical
20 errors in it we absolutely know are in there but - -

21 Q. If I could approach just one second.

22 Number Five is the one that you believe not to be
23 the truth?

24 A. That is correct.

25 Q. Okay.

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -76-

1 A. That's the one where he states the girl told him she
2 was thirteen.

3 Q. Okay. And then Number Four is the one that ultimately
4 is the more incriminating statement?

5 A. Number Four is the one that deals more with what we
6 at that time knew to have a factual basis.

7 Q. Okay. The - And I believe you testified that
8 Officer Montgomery filled out the questions, the question
9 and answer format?

10 A. Yes.

11 Q. All right. On both forms?

12 A. Based on my familiarization with Montgomery's writing
13 and his name also being at the bottom, yes.

14 Q. You would testify to that based on both your memory
15 and I've seen him write many other forms and that's his
16 style. Okay. Was Mr. Ayton ever alone with any - just one
17 specific officer?

18 A. Over the course of ten hours I'm not sure. I know
19 our goal was to have two people in there all the time. And
20 part of the issue is where we had our interview room at the
21 time was within our work space so if someone were unhappy
22 and wanted to leave it could be a security hazard for all
23 of us. That's why I know we made a real effort that day to
24 make sure that we tried to keep two in there. I can't say
25 that we absolutely did.

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -77-

1 Q. And this was a ten hour interview?

2 A. I know it was like - I said eight to ten. I don't
3 know the total length. I wasn't really focused on that.
4 We had several task we had to deal with that day so I don't
5 know what time he was - transport was called and he was
6 moved to the jail. I do know that the - I know they
7 started about eight that morning and it ended about three
8 thirty the next morning.

9 Q. Okay.

10 A. And so I tried to dock him in some things but it was
11 one continuous long drawn out process all day. As I
12 stated I believe it was eight to ten hours. I'm not sure.

13 Q. Do you know what time the - I'm talking about State's
14 Number Four at this point, what your - The incriminating
15 statement.

16 A. Right.

17 Q. Do you know what time that that was concluded and
18 signed by Mr. Ayton?

19 A. I do not know the time of the end. I know the time at
20 the beginning is indicating 11:45 and if we had started the
21 rights advisory at 10:16 that's an hour and a half later.

22 Q. Right. But it's possible that Mr. Montgomery, Officer
23 Montgomery, or Investigator Montgomery?

24 A. Investigator Montgomery. He's present here.

25 Q. All the questions were preprinted at one time in the

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -78-

1 beginning and then filled in and they were like one
2 question or two questions put in and then there was an
3 answer and then another question would be hand written?

4 A. That would be better addressed by Montgomery yes.

5 Q. So it's possible there could be several hours between
6 when the first question was ask and answered and the last
7 question was ask and answered?

8 A. I can't answer that.

9 Q. What inducements or statements were made to Mr. Ayton
10 to get him to agree to talk to law enforcement?

11 A. He felt the need to lie to us early on and I'll
12 explain it to you. He gave us several locations of where he
13 and this child had been having interaction.

14 Q. I - Before you get to that, did you make any promises
15 or inducements before he said anything to you at all?

16 A. No way.

17 Q. Okay. You just said we want to talk to you about this
18 incident?

19 A. Yeah. It's in the recording that I provided.

20 Q. But no threats.

21 A. After seeing when I'd gone through the search warrant
22 on that phone I'll tell you straight up I didn't need to
23 talk to her. It was just confirmation of what I already
24 snowed.

25 Q. Was any physicality by you or any of the other

1 investigators in your presence toward Mr. Ayton?

2 A. We don't like touch suspects and do certain things.

3 Q. So that's a no?

4 A. No.

5 Q. Nobody struck him in the legs.

6 A. No.

7 Q. Nobody?

8 A. As I stated the first three hours and eighteen minutes
9 would be recorded so that would then give you an
10 understanding of the nature of the process that we do.

11 Q. But your custom by categorically while you were
12 present no officers physically touched Mr. Ayton?

13 A. No. Now if it was to move handcuffs from rear to
14 front to move him so that, you know, we did take pictures
15 of him --

16 Q. That's not the point. My question is in an assault
17 type --

18 A. In an abusive fashion, no, we would not.

19 Q. Were you aware of the identity of the victim at the
20 time of the interview?

21 A. At the time of the interview no. We learned it during
22 the interview.

23 Q. So you didn't even have a name or a nickname of the
24 child?

25 A. During the interview he gives us enough information

INVESTIGATOR STEPHEN NAREWSKI: CROSS BY MR. VERNER - IN CAMERA -80-

1 that we were able to identify the child.

2 Q. All right. But the only thing when the interview
3 started was we have the child that we can see but you
4 weren't able to identify who it was until after he gave you
5 enough information to - How did you know that the child was
6 Child ?

7 A. How did we figure that out later? He gave us a lot of
8 that information during the course of the interview.

9 Q. Okay. Thank you.

10 MR. VERNER: Ms. Burchstead has any questions for you.

11 MS. BURCHSTEAD: Nothing further for Investigator
12 Narweski.

13 THE COURT: You may step down.

14 (WITNESS LEAVING WITNESS STAND.)

15 MS. BURCHSTEAD: Your Honor, did you want me to call
16 Investigator Montgomery?

17 THE COURT: Sure. Let's get done.

18 MS. BURCHSTEAD: The State calls Investigator
19 Montgomery.

20 (WHEREUPON, WAYNE MONTGOMERY,
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 MADAM CLERK: State your name for the record.

23 A. Investigator Wayne H. Montgomery.

24 DIRECT EXAMINATION - IN CAMERA

25 INVESTIGATOR WAYNE MONTGOMERY BY MS. BURCHSTEAD:

INVESTIGATOR WAYNE MONTGOMERY: DIRECT BY MS. BURCHSTEAD
IN CAMERA

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1 Q. Good afternoon. And with whom are you employed,
2 Investigator?

3 A. Currently employed by the city of Columbia Police
4 Department.

5 Q. How long have you been there?

6 A. Been a law enforcement officer sixteen years and the
7 last eleven for the Columbia Police Department.

8 Q. All right. And how long have you been an
9 investigator?

10 A. I been an investigator since 2006.

11 Q. Okay. Did you have an opportunity to interview the
12 defendant in this case?

13 A. Yes, ma'am.

14 Q. And with respect to criminal sexual conduct with a
15 minor and sexual solicitation of a minor?

16 A. Yes, ma'am.

17 Q. Do you recall when you interviewed him?

18 A. It was June 28, 2010.

19 Q. All right. And did he actually speak with you?

20 A. Yes, ma'am.

21 Q. Who else was present during that interview? Were
22 other law enforcement present?

23 A. Yes, ma'am, Investigator Narewski.

24 Q. Okay. And were you - Well let me back up. Was he a
25 suspect at the time?

INVESTIGATOR WAYNE MONTGOMERY: DIRECT BY MS. BURCHSTEAD
IN CAMERA

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1 A. Yes, ma'am, he was detained at the time.

2 Q. And where were you for the interview?

3 A. One Justice Square on the second floor of the Criminal
4 Investigation Center.

5 Q. Were you aware of whether he was given his Miranda
6 warnings?

7 A. Yes, ma'am, I was present during that time.

8 Q. You were present? Okay. Did he appear to understand
9 his warnings?

10 A. Yes, ma'am.

11 Q. Did he have any difficulty - Well let me just show
12 you. I'm showing you State's Six. Do you recognize that?

13 A. Yes, ma'am, I do. This is the Advisement of Rights
14 Form.

15 Q. And did the defendant have any ability or any
16 difficulty understanding that form in your opinion?

17 A. No, ma'am. Also its my common practice to put down
18 particulars of the person that we're interviewing. Also to
19 include what either the victim witnessed or a suspect
20 identifies their years of formal education. I have in
21 parenthesis the number thirteen which would indicate that
22 he indicated to us that he had thirteen years of formal
23 education.

24 Q. Did he appear under the influence of anything
25 like intoxicating liquors or drugs?

INVESTIGATOR WAYNE MONTGOMERY: DIRECT BY MS. BURCHSTEAD
IN CAMERA

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1 A. No, ma'am.

2 Q. Did he appear to have any physical or mental
3 disabilities?

4 A. No, ma'am.

5 Q. And do you recall how long the interview lasted?

6 A. Approximately eight to ten hours from beginning to
7 end.

8 Q. Did he ever ask to stop or take a break?

9 A. Yes, ma'am. We provided breaks for him to go to the
10 restroom. We also provided him with food. Not any other
11 promise or as a common courtesy because we had him for a
12 period of time.

13 Q. Did he ever ask to speak with a lawyer?

14 A. Not at that time.

15 Q. Was he threatened, coerced into making a statement?

16 A. No, ma'am.

17 Q. And did he actually speak with you?

18 A. Yes.

19 Q. Was it recorded audio?

20 A. Yes, ma'am, portions of the interview were recorded.

21 Q. And was it written?

22 A. Yes, ma'am, we reduced portions of the interview to
23 writing. I believe that I wrote all the questions and had
24 Mr. Ayton to in his own handwriting answer the questions.

25 Q. Okay. I'm going to show you State's Exhibit

1 THE COURT: Madam, AG.

2 MS. BURCHSTEAD: Yes, sir.

3 THE COURT: It's twenty minutes after, let's --

4 MS. BURCHSTEAD: Stop here?

5 THE COURT: Stop here and we come back after we get
6 the jury qualified and we'll finish this up.

7 MS. BURCHSTEAD: Yes, sir.

8 THE COURT: The Court's got - I don't mind skipping
9 lunch but I got a court staff that does, so we're gonna
10 take a break.

11 MS. BURCHSTEAD: Yes, sir.

12 THE COURT: The jury will be in here about two so ---

13 MS. BURCHSTEAD: Understood.

14 THE COURT: --- after - we can reconvene after the
15 jury is qualified.

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: All right.

18 (COURT IN LUNCH RECESS AT 01:22 P.M..)

19 (COURT BACK IN SESSION AT 02:15 P.M..)

20 (JURY ROLL CALL AT 02:35 P.M..)

21 (COURT IN SESSION AND ON THE RECORD AT 03:00 P.M..)

22 THE COURT: Good afternoon everybody. Those of you
23 that don't know me my name is Eugene Griffith. I'm a
24 resident judge, I live here in Newberry. This is my
25 favorite place to hold court. I get assigned all over the

1 State, I'm mostly here in the Eighth Circuit. Newberry is
2 my home and I like being here because I'm very close to
3 home and I can eat lunch at home so I like coming back.

4 I was holding court in Chester last week and my law
5 clerk told me, he said, do you know how many people we had
6 coming in for jury summons from Chester last week? I said
7 no sir. He said thirty-four. And I walk in today and I
8 see all of y'all and Chester was not quite the number of
9 this size so thank you all for coming in to report.

10 What we got to do this morning - not this morning -
11 this afternoon is I've got to ask you a list of questions
12 to make certain that you are qualified and eligible to
13 serve as jurors this week. There are certain
14 qualifications that the General Assembly and the Supreme
15 Court makes for you to be able to serve as a juror and so
16 I've got to ask you those questions to see if you are
17 eligible to be a juror for a trial that they call this
18 week.

19 So in order to protect the record and the rights of
20 both the State and anybody that comes to court accused of
21 any type of offense, I have to ask these questions on the
22 record. And what on the record means is you hear people
23 say on the record and off the record, well we don't have
24 off the record in a courtroom unless I say so.

25 The lady seated right here, right there, she's my

1 court reporter, she was assigned to me late Friday, she's
2 not my normal court reporter but she's assigned here to
3 Newberry. Everything I'm saying to you right now she is
4 transcribing onto a stenographer's machine so that if
5 sometime in the future we need to see what was said on the
6 record, she can type it up because she is an officer
7 allowed to transcribe and reprocess what we said on the
8 record. So you will hear that called a lot.

9 While I'm asking you the questions on the record if
10 it's appropriate for any of you to stand up and respond to
11 my question, I'll ask you to stand up and let me call on
12 you, and I need to know your name and juror number if you
13 know it. Your name I certainly know, if your jury number
14 if you don't have it my Clerk of Court in front of me she
15 can retrieve that.

16 And then respond to my questions so that we can have
17 the information as to your name and juror number, and your
18 responses, so that the lawyers can keep track of who lives
19 where which was an earlier question about your occupation
20 and home address and what your spouse does. What that
21 information is for is for the lawyers to get to know you a
22 little better. The lawyers from South Carolina during a
23 jury selection process are not allowed to ask questions of
24 you. They can allow the court to ask questions and they
25 can submit questions to the Court for my consideration and

1 whether or not I wish to ask the questions.

2 So the first line of questions are general questions.
3 Then we get to exemptions and then after I qualify the
4 entire panel then if the Solicitor's office is ready to
5 call the case to trial, then my question will become more
6 pointed and detailed as to your knowledge of a particular
7 case or a particular person or a particular set of facts.

8 So in order to begin the questioning I need you as a
9 group to stand and have my Clerk of Court, Ms. Bower,
10 you're the Clerk of Court also, to place you under oath so
11 if you all will stand.

12 MADAM CLERK: Please raise your right hand?

13 (PETIT JURY SWORN AT 03:07
14 P.M..)

15 MADAM CLERK: Thank you.

16 THE COURT: All right, folks, another instruction for
17 you. These questions I ask are not hard, fairly easy, but
18 some questions may be considered by some people are more
19 personal. If you consider them more personal and you do
20 not wish to stand and respond in front of the entire crowd,
21 say I have a limited education because I'm gonna ask you a
22 little bit about your education, if you don't want to
23 stand up in front of the entire crowd and say that, at the
24 very end of the question I'll allow each person to come up,
25 if they wish, and speak to me one on one beside my court

1 reporter so I can have a record of the question and what
2 you wish to tell me personally, so I'll allow that
3 opportunity at the very end. So keep that in mind as I ask
4 these questions.

5 The first question of the entire panel, is there any
6 member of this jury who is not a United States citizen? If
7 you are not a citizen of the United States of America
8 please stand?

9 No one is standing.

10 Is there any member of this jury panel who is not a
11 citizen or resident of Newberry County here in the State of
12 South Carolina? If you do not live in Newberry County I
13 need you to stand up.

14 No one is standing.

15 Is there any member of this jury panel who does not
16 have a valid driver's license, a state ID card, is
17 registered to vote, or, is eligible to get any of those
18 three forms of identification? If you do not have those,
19 any of those three, or cannot get one of those three,
20 please stand?

21 No one is standing.

22 I don't know anybody who wouldn't get that.

23 It's a question they gave me to read and I didn't
24 write this. Is there anybody, member of this jury panel,
25 unable to read, write, speak, or understand the English

1 language please stand?

2 No one is standing.

3 Yes, sir.

4 A. I have a problem with reading.

5 THE COURT: But you understand what I said to you
6 didn't you?

7 A. Yes.

8 THE COURT: Can you understand English?

9 A. I can't hear you?

10 THE COURT: Can you understand English?

11 A. Yeah.

12 THE COURT: Can you understand what I'm saying to you?

13 A. Yeah.

14 THE COURT: You're qualified. Thank you, sir.

15 Does any member of this jury panel who has less than
16 a sixth grade education or it's equivalent? If you have
17 less than a sixth grade education or its equivalent please
18 stand?

19 No one is standing.

20 Is there any member of this jury panel who cannot
21 render efficient jury service because of certain mental or
22 physical infirmities please stand?

23 That's a little more legalese I think so let me
24 explain that question. Does anybody have a problem if you
25 were selected to serve on a jury, general lengths of

1 testimony run from forty-five minutes to an hour, short
2 breaks in between, no heavy lifting, no note taking
3 required, but you would not be able to meet that type of
4 schedule sitting as a juror for those lengths of time? As
5 a matter of fact I allow jurors to stand up and stretch
6 during parts of the trial so as to not let them stiffen up.
7 Anybody cannot meet that schedule and serve as a juror,
8 please stand?

9 No one is standing.

10 Is there any member of this jury panel who has ever
11 been convicted by a guilty plea or trial to a crime which
12 would carry potentially punishment of more than one year in
13 jail? Please remember, magistrate court carries thirty
14 days or less, city court thirty days or less, so if you've
15 ever been to city court or the magistrate's court that
16 doesn't count.

17 No one is standing.

18 Is there any member of this jury panel who has had
19 jury service who was qualified as a juror within the past
20 twelve months, please stand?

21 (WHITE FEMALE STOOD.)

22 A. I was selected -

23 THE COURT: Hang on, ma'am. Let me have your name
24 please.

25 A. It's Wendy Kinzer, Juror Number 89.

1 THE COURT: Ms. Kinder, when were you qualified as
2 a juror?

3 MS. KINDER: Its been the last six months.

4 THE COURT: Here in this courthouse?

5 MS. KINDER: No, sir. It was at the Newberry jail.

6 THE COURT: Oh, magistrate court.

7 MS. KINDER: Yes, sir.

8 THE COURT: That's Magistrate Court. Sorry, it don't
9 count. It has to be in here or in another county in a big
10 courtroom. And you just moved here within the last year.

11 Is there any member of this jury panel who has been a
12 member of Newberry County's Grand Jury within the last
13 several years, if so, please stand?

14 If you are not sure you were on the Grand Jury or not,
15 then you don't know what a Grand Jury does, you weren't on
16 the Grand Jury.

17 No one is standing.

18 Is any member of this jury panel who is a commissioned
19 officer, county officer, any type of commissioned law
20 enforcement officer, or, employed within the walls of any
21 courthouse, please stand?

22 (BLACK MALE STANDS.)

23 THE COURT: Yes, sir, tell me your name.

24 A My name is Kenneth Whitener, Juror 1-6-9. I'm
25 employed with the South Carolina Department of Corrections

1 as a corrections officer. Prior to that - - -

2 THE COURT: You are employed now in that profession?

3 MR. WHITENER: Say again, sir?

4 THE COURT: Are you employed in that profession right
5 now?

6 MR. WHITENER: The Department of Corrections.

7 THE COURT: The next question for you. No need to
8 know any more, that is an exemption you may claim. I
9 haven't gotten to exemption yet but if you wish to claim
10 the exemption and choose not to serve you may do so.

11 MR. WHITENER: I choose so.

12 THE COURT: Thank you for coming.

13 (JUROR NUMBER ONE EIGHTY-NINE EXCUSED.)

14 THE COURT: Now I was getting to the next line of
15 questions. Those are the qualification questions except
16 for the one I ask him and he told me he was a Department of
17 Corrections employee. Those questions if you don't meet
18 the qualification its my responsibility to excuse you from
19 serving on a jury. These next line of questions allow you
20 to make the decision of whether you wish to stay and serve,
21 potentially be selected or choose to be excused.

22 The first question, is there any member of this jury
23 panel who is age sixty-five or older and would like to
24 claim their exemption and choose to not serve on a jury
25 panel this week, you may choose to claim that exemption.

1 If you are sixty-five or older and you wish to serve
2 you don't have to stand up.

3 No one is standing.

4 The same question about the prior jury service. Any
5 member of this jury panel who has served on a jury within
6 the last three years you may claim the exemption and choose
7 not to serve. The earlier question was one year, you're
8 not allowed. Three years, you are allowed, it's your
9 decision. Any takers?

10 No experienced jurors here. No one is standing.

11 Is there any member of this jury panel who is the
12 parent or care giver for a child, or children, under the
13 age of seven and you're the primary care giver for those,
14 that child, or children, such that you cannot make adequate
15 arrangements for the care and well being of those children
16 while meeting the terms of jury service this week, please
17 stand?

18 (WHITE FEMALE STOOD.)

19 THE COURT: Got one. Yes, ma'am. Tell me your name
20 please.

21 A. Courtney Livingston.

22 THE COURT: Courtney Livingston?

23 MS. LIVINGSTON: Uh-huh.

24 THE COURT: Your juror number is -

25 MS. LIVINGSTON: I'm not certain.

1 THE COURT: Ninety-two. Ms. Livingston, how many
2 children do you have?

3 MS. LIVINGSTON: I have three.

4 THE COURT: How old are they?

5 MS. LIVINGSTON: I have a thirteen and a six year old.

6 THE COURT: The six year old, are you the primary care
7 giver for her or his well being and care?

8 MS. LIVINGSTON: Yes, sir.

9 THE COURT: Who is taking care of that child this
10 afternoon?

11 MS. LIVINGSTON: Well right now my momma's gone to get
12 her. She got off work so I could be here. But I usually
13 am at home when she goes to school and get off the bus.
14 Someone has to get her off the bus.

15 THE COURT: And you don't work outside the home?

16 MS. LIVINGSTON: Yeah, I also work. I work after
17 hours.

18 THE COURT: I think that would qualify you to claim
19 this exemption. You may be excused.

20 The same questions for the rest of the panel.
21 Converse though. Is there any member of this jury panel
22 who is the primary care giver for a severely disabled or
23 elderly person and you cannot make arrangements for that
24 elderly person or disabled person's care and well being
25 while meeting the terms of jury service this week, if so,

1 please stand?

2 (BLACK MALE STANDS.)

3 THE COURT: Yes, sir, tell me your name.

4 A. My name is Henry Bouknight.

5 THE COURT: Bouknight?

6 MR. BOUKNIGHT: Yeah. My father --

7 THE COURT: Hang on one second.

8 MR. VERNER: Fifteen, Your Honor.

9 THE COURT: Eighteen?

10 MR. VERNER: Fifteen.

11 THE COURT: Fifteen.

12 MR. BOUKNIGHT: My father was hit by a car and he just
13 came home from the nursing home and I took a leave of
14 absence from work to take care of him, taking him back and
15 forth to the bathroom.

16 THE COURT: Do you work?

17 MR. BOUKNIGHT: Yeah, I work at Allison Hardware and
18 Floor - I work in Clemson.

19 THE COURT: Anderson?

20 MR. BOUKNIGHT: Allison Hardware and Floor.

21 THE COURT: Who watches him while you're at work?

22 MR. BOUKNIGHT: My son took off work to watch him
23 while

24 I had to come down here.

25 THE COURT: What's your normal work schedule?

1 MR. BOUKNIGHT: From 7:00 a.m. to 5:00 p.m.

2 THE COURT: Okay. Unfortunately you being able to
3 hold down a job and stay at work --

4 MR. BOUKNIGHT: I took a leave of absence.

5 THE COURT: Oh, you took a leave of absence.

6 MR. BOUKNIGHT: I did.

7 THE COURT: How long ago did you do that?

8 MR. BOUKNIGHT: I took a leave of absence last week
9 when he got out of the hospital last Saturday, I mean out
10 of the nursing home.

11 THE COURT: So you're not working at all right now?

12 MR. BOUKNIGHT: No.

13 THE COURT: I think that would meet my qualification
14 question. I think you're allowed to be excused.

15 MR. BOUKNIGHT: Thank you.

16 THE COURT: Thank you for coming.

17 THE COURT: Is there any member of this jury panel who
18 is either a student in school or employed in the school
19 district of any capacity? I can transfer you to another
20 week which wouldn't perhaps be more inconvenient than this
21 week.

22 (WHITE FEMALE STOOD.)

23 THE COURT: Yes, ma'am, tell me your name.

24 A. Destinee Parker.

25 THE COURT: Ms. Parker.

1 MS. PARKER: Juror number 115.

2 THE COURT: 115.

3 MS. PARKER: And I'm a student at Piedmont Tech.

4 THE COURT: You're a student at Piedmont Tech?

5 MS. PARKER: Yes, sir.

6 THE COURT: Are you in the middle of exams?

7 MS. PARKER: I am.

8 THE COURT: Would you like to be transferred to a
9 different week?

10 MS. PARKER: Yes, sir.

11 THE COURT: This is one of the worst weeks for exams.

12 I can understand this so I can transfer you to a
13 different week. Unfortunately it may be during your summer
14 break when you're wanting to be on vacation. You'll get
15 another summons in the mail. You can come back then so
16 you're not out of it, you're just deferring it until a
17 little bit later.

18 MS. PARKER: Okay.

19 THE COURT: Fair enough?

20 MS. PARKER: Yes.

21 THE COURT: All right. Thank you for coming.

22 Yes, sir, can I have your name?

23 A. Eugene Workman, Juror 187.

24 THE COURT: Mr. Workman?

25 MR. WORKMAN: Yes, sir.

1 THE COURT: Tell me your situation.

2 MR. WORKMAN: Like I said I got exams, school at
3 Piedmont Tech.

4 THE COURT: All right. Likewise do you want to stay
5 here with me and hope for the best and not get picked or
6 get picked and work around your exams or would you like to
7 be transferred to another week?

8 MR. WORKMAN: Transfer to another week.

9 THE COURT: I can do that. Very well.

10 Okay, Madam Clerk?

11 MADAM CLERK: Yes, sir.

12 THE COURT: All right. You're excused now.

13 Is there any member of this jury panel who
14 performs services for a business, commercial or
15 agricultural enterprise, which your presence is so
16 essential to the operation of that enterprise that if you
17 are required to continue serving on the jury panel this
18 week the enterprise would cease to operate?

19 Does anybody get left out?

20 Are you a lawyer? Most people don't understand that
21 question. All right, here's what it means so you can stand
22 up to the right thing.

23 Sole proprietorship, a one chair barbershop or beauty
24 shop, something of that kind. Just basically a one person
25 show is what I'm looking for and that if your business

1 closed because you walked out to come down here you can
2 claim an exemption.

3 (WHITE MALE STOOD.)

4 So with that explanation, sir, tell me your name.

5 A. Charles Clinton.

6 THE COURT: Mr. Clinton. You're a mechanic?

7 MR. CLINTON: I guess you could call me that yes, sir.

8 THE COURT: Is your business open right now?

9 MR. CLINTON: For this moment it is.

10 THE COURT: All right. If you're continually required
11 to sit on the jury is your business likely to close while
12 you're here and selected as a juror?

13 MR. CLINTON: It will be.

14 THE COURT: While you're down here?

15 MR. CLINTON: Yes, sir.

16 THE COURT: All right. If you will wait I'm gonna
17 allow you to claim that exemption but I need you to sign an
18 affidavit for the Clerk's records ---

19 MR. CLINTON: Okay.

20 THE COURT: --- then we'll excuse you at that time.

21 (JURY NUMBER THIRTY-TWO EXCUSED.)

22 THE COURT: Anybody else?

23 (WHITE MALE STOOD.)

24 THE COURT: Yes, sir, tell me your name.

25 A. My name is Danny Monts, M-o-n-t-s, Juror Number

1 1-0-9.

2 THE COURT: 1-0-9. Mr. Monts, tell me your situation.

3 MR. MONTs: Yeah. I have a lawn and landscaping
4 business and I have one employee who cannot drive my work
5 truck so if I'm not there we don't work.

6 THE COURT: Are you busy this week?

7 MR. MONTs: I'm busy every week. We're not working
8 today.

9 THE COURT: And if you're selected this afternoon or
10 tomorrow on the jury this week will you continue to be
11 closed if you're off?

12 MR. MONTs: That is correct.

13 THE COURT: Very well. The same instructions as I did
14 with Mr. Clinton. You will wait until I finish doing the
15 entire panel and I'll let you come sign an affidavit that
16 will excuse you from jury service.

17 MR. MONTs: Thank you.

18 THE COURT: Very well. Anyone else?

19 (NO ONE STANDS.)

20 THE COURT: All right, this is my question and I wrote
21 this one. That other one was handed to me by people above
22 me.

23 Does any member of the jury panel have a particular
24 personal reason that this week is particularly inconvenient
25 to you and you wish to be transferred to another week which

1 would be less inconvenient? And so I can do that if there
2 is a death in the family yesterday and there's funeral
3 plans to be made, or someone had a bad report and a
4 followup appointment tomorrow, something along those lines
5 I can help you get to a different week but you don't get
6 out of serving you just deferring yet again.

7 (WHITE FEMALE STANDS.)

8 THE COURT: Yes, ma'am, tell me your name?

9 A. My name is Wendy Kinder, Juror Number 89, and I'm
10 going out of town tomorrow night for the rest of the week.

11 THE COURT: Is that a planned vacation?

12 MS. KINDER: It is a planned vacation.

13 THE COURT: And that's actually one of my reasons for
14 transferring people so, yes, ma'am, I'll be glad to
15 transfer you so you will not miss your vacation.

16 MS. KINDER: Thank you.

17 THE COURT: And you'll get another jury summons. Come
18 in then.

19 MS. KINDER: Thank you. So I leave now?

20 THE COURT: Yes, ma'am, you can leave now.

21 (BLACK FEMALE STANDS.)

22 THE COURT: All right. Yes, ma'am.

23 A. I'm Tia Sims, I'm 142, my son was elected to play in
24 the North Carolina game and we're leaving on Wednesday to
25 go to the game.

1 MADAM CLERK: The Defense?

2 MR. VERNER: I ask that you excuse Ms. Davis from
3 this case.

4 MADAM CLERK: You may have a seat, Ms. Davis.
5 Thirty-six, Bruce Crawford.

6 MR. VERNER: Forty-six?

7 (WHITE MALE COMES FORWARD.)

8 MADAM CLERK: Thirty-six:

9 What says the State?

10 MS. BURCHSTEAD: Please present the juror.

11 MADAM CLERK: The Defense?

12 MR. VERNER: Please excuse Mr. Crawford.

13 MADAM CLERK: You're excused, Mr. Crawford. You may
14 have a seat.

15 One Seventy-four, Gerard Williams.

16 (BLACK MALE COMES FORWARD.)

17 MADAM CLERK: What says the State?

18 MS. BURCHSTEAD: I beg the Court's indulgence.

19 (PAUSE.)

20 MS. BURCHSTEAD: Please present the juror.

21 MADAM CLERK: The Defense?

22 MR. VERNER: Please seat the juror.

23 MADAM CLERK: Have a seat in the jury box, Mr.
24 Williams.

25 Fifty-four, John Flynn.

1 (WHITE MALE COMES FORWARD.)

2 MADAM CLERK: What says the State?

3 MS. BURCHSTEAD: Please present the juror.

4 MADAM CLERK: The Defense?

5 MR. VERNER: I want to excuse Mr. Flynn.

6 MADAM CLERK: You're excused, Mr. Flynn.

7 One Twenty-three, Dobson Rowe.

8 (WHITE MALE COMES FORWARD.)

9 MADAM CLERK: What says the State?

10 MS. BURCHSTEAD: I beg the Court's indulgence.

11 (PAUSE.)

12 MS. BURCHSTEAD: Please excuse the juror.

13 MADAM CLERK: You're excused, Mr. Rowe. You're
14 excused. Ninety-five, William Lominick.

15 (WHITE MALE COMES FORWARD.)

16 MADAM CLERK: What says the State?

17 MS. BURCHSTEAD: Your Honor, may we approach?

18 THE COURT: Yes, ma'am.

19 (SIDEBAR CONFERENCE OFF THE RECORD OUT OF THE HEARING
20 OF THE JURY AT 04:17 P.M..)

21 MADAM CLERK: Mr. Dominick, you may have a seat back
22 in the back. Thank you.

23 MR. VERNER: Did the Court strike him for cause?

24 THE COURT: Yes.

25 MADAM CLERK: Yes. Thirty-one, Michael Chapman.

1 (WHITE MALE COMES FORWARD.)
2 MADAM CLERK: What saith the State?
3 MS. BURCHSTEAD: Please present the juror.
4 MADAM CLERK: The Defense?
5 MR. VERNER: Please seat him.
6 MADAM CLERK: Have a seat in the jury box please, sir.
7 Twenty-three, Jennifer Brooks.
8 (WHITE FEMALE COMES FORWARD.)
9 MADAM CLERK: What says the State?
10 MS. BURCHSTEAD: Please present the juror.
11 MADAM CLERK: The Defense?
12 MR. VERNER: I'll excuse Ms. Brooks.
13 MADAM CLERK: You're excused, Ms. Brooks.
14 Twenty-five, Willie Brown.
15 (WHITE MALE COMES FORWARD.)
16 MR. VERNER: Is that Twenty-five?
17 MADAM CLERK: Twenty-five, Willie Brown.
18 What says the State?
19 MS. BURCHSTEAD: Please present the juror.
20 MADAM CLERK: The Defense?
21 MR. VERNER: I will excuse Mr. Brown from this case.
22 MADAM CLERK: You're excused, Mr. Brown.
23 One Thirty-three, Morgan Sease.
24 (WHITE MALE COMES FORWARD.)
25 MS. BURCHSTEAD: Can you -

1 MADAM CLERK: One Thirty-three.
2 MS. BURCHSTEAD: I beg the Court's indulgence.
3 Please present the juror.
4 MADAM CLERK: Defense?
5 MR. VERNER: From this case I'm gonna excuse Mr.
6 Sease.
7 MADAM CLERK: You're excused, Mr. Sease.
8 One Fourteen, Harvey Owner.
9 MR. VERNER: One Fourteen?
10 MADAM CLERK: One fourteen, Harvey Owner.
11 (WHITE MALE COMES FORWARD.)
12 MADAM CLERK: What says the State?
13 MS. BURCHSTEAD: I beg the Court's indulgence.
14 Please present the juror.
15 MADAM CLERK: The Defense?
16 MR. VERNER: Please seat Mr. Owner.
17 MADAM CLERK: Have a seat in the box please, sir.
18 Eighty-seven, Harold Joyner.
19 (WHITE MALE COMES FORWARD.)
20 MADAM CLERK: What says the State?
21 MS. BURCHSTEAD: Please present the juror.
22 MADAM CLERK: The Defense?
23 MR. VERNER: Please seat Mr. Joyner.
24 MADAM CLERK: Have a seat in the box please, sir.
25 One seventy-three, Cadeedra Williams.

1 (BLACK FEMALE COMES FORWARD.)
2 MADAM CLERK: What says the State?
3 MS. BURCHSTEAD: I beg the Court's indulgence.
4 Please present the juror.
5 MADAM CLERK: The Defense?
6 MR. VERNER: Please seat the juror.
7 MADAM CLERK: Have a seat in the box please.
8 Eighty, Robert Holmes.
9 (WHITE MALE COMES FORWARD.)
10 MADAM CLERK: What says the State?
11 MR. VERNER: Ms. Jackie, what number was this please?
12 MADAM CLERK: Eighty.
13 MR. VERNER: Eighty?
14 MS. BURCHSTEAD: Please present the juror.
15 MADAM CLERK: Defense?
16 MR. VERNER: Please seat Mr. Holmes.
17 MADAM CLERK: Have a seat please.
18 Forty-eight, Patrick Eigner.
19 (BLACK MALE COMES FORWARD.)
20 MR. VERNER: I'm sorry, Ms. Jackie, what number?
21 MADAM CLERK: Forty-eight. What says the State?
22 MS. BURCHSTEAD: I beg the Court's indulgence.
23 Please excuse the juror.
24 MADAM CLERK: You're excused, Mr. Eigner.
25 One fifty-nine, Debra Trinidad.

1 (WHITE FEMALE COMES FORWARD.)
2 MS. BURCHSTEAD: Can we have her number again?
3 MADAM CLERK: One fifty-nine.
4 MS. BURCHSTEAD: Thank you. Please seat the jury.
5 MADAM CLERK: I'm sorry.
6 MS. BURCHSTEAD: Please present the juror.
7 MADAM CLERK: The Defense?
8 MR. VERNER: From this case I'm gonna excuse Ms.
9 Trinidad.
10 MADAM CLERK: You're excused.
11 Seventeen, Connie Bowers.
12 (BLACK FEMALE COMES FORWARD.)
13 MADAM CLERK: What says the State?
14 MS. BURCHSTEAD: Please excuse the juror.
15 MADAM CLERK: You're excused, Ms. Bowers.
16 Ninety-six, Terry Longshore.
17 (WHITE MALE COMES FORWARD.)
18 MADAM CLERK: What says the State?
19 MS. BURCHSTEAD: Please present the juror.
20 MADAM CLERK: The Defense?
21 MR. VERNER: From this case I'd like to excuse Mr.
22 Longshore.
23 MADAM CLERK: You're excused, Mr. Longshore.
24 Sixty-two, Mary Gilliam.
25 (BLACK FEMALE COMES FORWARD.)

1 MADAM CLERK: What says the State?

2 MS. BURCHSTEAD: Please present the juror.

3 MADAM CLERK: The Defense?

4 MR. VERNER: Please seat Ms. Gilliam.

5 MADAM CLERK: Have a seat in the box please, ma'am.

6 Twenty-nine, Chris McJunkins- Campos.

7 (HISPANIC MALE COMES FORWARD.)

8 MR. VERNER: Twenty-nine?

9 MADAM CLERK: Twenty-nine. Twenty-nine.

10 MS. BURCHSTEAD: Twenty-nine?

11 MR. VERNER: I think it's out of order. Its between
12 ninety-eight and 1-0-4.

13 MS. BURCHSTEAD: What? Oh. Okay. I beg the Court's
14 indulgence.

15 (PAUSE.)

16 MS. BURCHSTEAD: Please present the juror.

17 MADAM CLERK: The Defense?

18 MR. VERNER: Please seat him in the jury box.

19 MADAM CLERK: Have a seat in the jury box please.

20 One fifty-one, Lorraine Stockman.

21 (WHITE FEMALE COMES FORWARD.)

22 MADAM CLERK: What says the State?

23 MS. BURCHSTEAD: Please present the juror.

24 MADAM CLERK: The Defense?

25 MR. VERNER: From this case I'm gonna excuse Ms.

1 Stockman.

2 MADAM CLERK: You're excused. Ninety-seven, Debby
3 Lyles.

4 (BLACK MALE COMES FORWARD.)

5 MADAM CLERK: What says the State?

6 MS. BURCHSTEAD: Beg the Court's indulgence.
7 Please present the juror.

8 MADAM CLERK: The Defense?

9 MR. VERNER: Please seat Mr. Lyles.

10 MADAM CLERK: Have a seat in the box please.
11 One fifty-eight, Carla Trainor.

12 (WHITE FEMALE COMES FORWARD.)

13 MADAM CLERK: What says the State?

14 MS. BURCHSTEAD: Please present the juror.

15 MADAM CLERK: Defense?

16 MR. VERNER: Please seat Ms. Trainor.

17 MADAM CLERK: Have a seat please.

18 Eleven, Michelle Black.

19 (WHITE FEMALE COMES FORWARD.)

20 MADAM CLERK: What says the State?

21 MS. BURCHSTEAD: Please present the juror.

22 MADAM CLERK: Defense?

23 MR. VERNER: Please seat Ms. Black.

24 MADAM CLERK: Have a seat please.

25 One sixty-two, Stanford Vanhoeck.

1 (WHITE MALE COMES FORWARD.)
2 MADAM CLERK: What says the State?
3 MS. BURCHSTEAD: Please present the juror.
4 MADAM CLERK: Defense?
5 MR. VERNER: From this case I'm gonna excuse Mr.
6 Vanhoeck.
7 MADAM CLERK: You're excused, Mr. Vanhoeck.
8 One seventy-six, Solomon Williams.
9 (BLACK MALE COMES FORWARD.)
10 MADAM CLERK: What says the State?
11 MS. BURCHSTEAD: Please excuse the juror.
12 MADAM CLERK: You're excused, Mr. Williams.
13 One eighty-one, Sue Wingard.
14 (WHITE FEMALE COMES FORWARD.)
15 MADAM CLERK: What says the State?
16 MS. BURCHSTEAD: Please present the juror.
17 MADAM CLERK: Any challenge for cause by the Defense?
18 MR. VERNER: Seat Ms. Wingard.
19 MADAM CLERK: Have a seat please, ma'am.
20 One sixty, Kenneth Tucker.
21 (BLACK MALE COMES FORWARD.)
22 MADAM CLERK: What says the State?
23 MS. BURCHSTEAD: Please present the juror.
24 MADAM CLERK: Defense?
25 MR. VERNER: Is this the alternate? Please seat Mr.

1 Tucker.

2 MADAM CLERK: Have a seat please, sir.

3 THE COURT: All right. Regarding the selection
4 process employed and on the composition of the jury does
5 either the State or the Defense have a matter of the law
6 for the Court to take up?

7 MS. BURCHSTEAD: The State does not, Your Honor.

8 THE COURT: Mr. Verner?

9 MR. VERNER: No, sir.

10 THE COURT: Very well. All right.

11 All right, ladies and gentlemen, seated here, if you
12 all will step in the jury room briefly I'm gonna speak to
13 this group and give them instructions then I'll get you all
14 back out and give you instructions so you all go in here
15 and Ms. Wardlaw will give you something to drink or use the
16 restroom. That's your's to use and your comfort.

17 (PETIT JURY EXITS COURTROOM AT 04:36 P.M..)

18 THE COURT: All right, if I can see the attorneys
19 briefly.

20 (SIDEBAR CONFERENCE OFF THE RECORD AT 04:37 P.M..)

21 THE COURT: You all who were not able to be selected,
22 I ask if you have a juror information card that has the
23 Clerk of Court's phone number? If you don't have one of
24 these get one they are important. Should be one in your
25 summons. The Clerk has more and I have a stack up here.

1 This number is Ms. Bowers' card numbers, down stairs
2 office number, you as a group has been excused until
3 tomorrow evening and to call back that number and listen to
4 the recording. The recording will be available for you to
5 listen to after six.

6 Now this is important, don't call at five o'clock or
7 four thirty please. Three of Ms. Bowers' eight staff
8 members are up here and they are the three that know
9 whether you need to come back or not. There's not a phone
10 up here. There's a phone down stairs but those girls have
11 no idea what the Court's doing cause Ms. Bowers keeps these
12 there here in the courtroom while the court's going on. So
13 if you call early and speak to one of the girls downstairs
14 they're gonna say we don't know we're not upstairs.

15 Well that happens a lot and Ms. Bower's phone will
16 ring off the hook and the answer's the same, I'm not sure,
17 I'm not upstairs. These ladies are the ones that will have
18 that knowledge when I give it to them and it will be
19 tomorrow afternoon late and Ms. Bowers will record that for
20 you all's listening and enjoyment at six. Call after six.

21 Now, the recording will say one of several things.
22 Call back tomorrow night after six, come in in the morning
23 at 9:30 or ten, or thank you for your service we're done
24 for the week. I doubt it will say that but it could.

25 So call back tomorrow, follow the instructions. If it

1 says call back, call back. If it says come in see you
2 then. Thank you for your patience today. Does everybody
3 have a card? If anybody needs one we'll get it to 'em.
4 Everybody got one? Thank you for your service today.

5 (JURY DISMISSED AT 04:40 P.M..)

6 THE COURT: Have much more do we have left on the
7 Denno hearing? You got several more questions and Mr.
8 Verner gets to cross.

9 MS. BURCHSTEAD: Right.

10 THE COURT: We gonna be able to get through that today
11 or do you want to do it in the morning and tell this jury
12 to come back a little later in the morning?

13 MS. BURCHSTEAD: I think we could get to it but
14 however you want to handle it, Judge. I will tell you this
15 witness is the one who actually wrote the statement ---

16 THE COURT: All right.

17 MS. BURCHSTEAD: --- so we'll go through the
18 statement.

19 THE COURT: Okay. And Mr. Verner's gonna give a ample
20 opportunity to cross it.

21 MS. BURCHSTEAD: Whatever you want to do.

22 MR. VERNER: We're here until the Court says so.

23 MS. BURCHSTEAD: Right.

24 THE COURT: All right, let's --

25 MR. VERNER: I do - He will testify I do anticipate Mr.

1 Ayton will testify at the Jackson v. Denno hearing. I
2 don't think it's gonna be probably about an hour.

3 THE COURT: All right, let's tell the jury to come
4 back in the morning at eleven. You all can do it I can
5 give some opening instructions you all can open at eleven
6 go to lunch and call the first witness after lunch. It's
7 gonna be an hour we won't get through it today cause it's a
8 few minutes till five now. This will take a few minutes,
9 we go to 5:30 or so you still got an hour of that and we
10 can start at 9:00, 9:30 in the morning. I mean that's not
11 counting how much testimony is left.

12 MS. BURCHSTEAD: Right.

13 THE COURT: On hers.

14 MR. VERNER: Yes, sir.

15 THE COURT: All right, let's say eleven.

16 MS. BURCHSTEAD: And we do have just a few other
17 minimal items to put on the record.

18 THE COURT: Okay.

19 MS. BURCHSTEAD: Plea offer and mental health and that
20 stuff.

21 THE COURT: Very good, that will help.

22 All right, let's get the jury in.

23 (PETIT JURY ENTERS COURTROOM AT 04:42 P.M..)

24 THE COURT: All right, there's some preliminary
25 instructions, I'm gonna give you some instructions and I'm

1 gonna send you all home for the evening and come back
2 tomorrow and we're gonna start this trial.

3 The lawyers have some preliminary matters that I need
4 to address but don't need your help sitting here listening
5 to some things that they want me to hear that deals with
6 some preliminary matters, trying to lay out the ground
7 rules for the trial, how to proceed, the order of
8 witnesses' and that sort of thing.

9 What I want you to do is be back in this jury room or
10 downstairs. We want Mr. Johnson the gentleman at the metal
11 detector, he'll tell you where to go. Ms. Wardlaw or one
12 of the bailiffs if you all need something you all coming in
13 and out of the courthouse they can help you find whatever
14 it is you need, show you were to sit, get the jury in, how
15 to get in and out in the back there and to help you and
16 they can talk to you.

17 Ask in the Clerk's office the lawyers and the
18 potential witnesses' can't talk to you so they're gonna be
19 stand offish other than good morning, coming in the
20 courthouse, it might be all you get from one to the
21 person's involved in the trial and that's intentional so
22 they don't try to influence you one way or the other,
23 exercise one side or the other. The bailiff don't have
24 that problem, they work for the court and they're gonna
25 make sure you're comfortable so wear your jury stickers

1 tomorrow so when you come in and out there won't be a
2 mistake made by any of the witnesses around here. I read
3 off a bunch of witnesses and they might know you, speak to
4 you, this tells 'em I'm a juror, I'm going to the jury room
5 you got coffee whatever Ms. Byers got back there for you.

6 Now it's important that you as a group decide this
7 case based upon testimony heard in this courtroom under my
8 supervision as a judge from the witness stand and the
9 evidence that is submitted into the record and the court
10 reporter listing and transcribing everything. This day and
11 time all the information is out there on the internet and
12 all the social media, anything on the internet, you all
13 don't need any of that.

14 And I'm instructing you not to go home and Google
15 anything because that has nothing to do with this case.
16 What the law might be in South Carolina, the law might have
17 changed yesterday and what you need to determine is what
18 you need and hear under oath with all of you at the same
19 time and listening at the same thing.

20 And I point this out to you because if someone sends
21 out an email and some of you all read the email, some of
22 you all will go to the barbershop and hear the same thing
23 said, the one in the barbershop and the one in the email
24 you all might take something totally different from them
25 what you heard from different places and different times.

1 Well you know what I heard was such and such. But that's
2 such of importance in a courtroom or court of law when a
3 trial is going on what a person a person under oath with
4 all of you at the same time hearing the same questions so
5 you all need to hear the same thing. You all listen to the
6 trial and the testimony and the evidence as it comes and
7 goes but you can't make up your minds or discuss the case
8 even with each other until the very end when is say okay
9 it's time to deliberate.

10 Until then and every break including tonight I'm gonna
11 say you may not begin discussing the case with anyone and I
12 mean anyone. You can tell your families I got picked as a
13 juror. Now Judge Griffith says don't discuss the case
14 that's a whole conversation. Blame it on me but don't go
15 home and tell them anything because it's not important.
16 It's really up to my instructions. And I know if any you
17 all do Face book or My space or any of that nonsense, don't
18 put anything on Face book that I'm a juror because there's
19 a lot of people outside the courtroom they know something
20 about this case they may communicate with you and I know I
21 told you all not to ---- anything about it and they may
22 think it's okay. You all don't do that.

23 Stay off Facebook don't go on Facebook. Don't even
24 put in there that my hair is kind of gray, don't go on
25 Facebook for anything about any of the court's. Stay clear

1 of that. As judges of law and clerks and clerk's of court
2 we have to find the exception the Supreme Court told us not
3 to ever go on it when we're in court when we're doing our
4 jobs. I can't release you but if I find out here in a
5 small community and it come back to me like that I promise
6 you I'll talk to you about it and we'll address it. In
7 order to make certain everybody gets a fair trial it's so
8 much easier not to do it. So those are my preliminary
9 instructions. Stay off social media, stay off the
10 internet, you can use media to read sports or ball game
11 schedule or whatever it is. Do that all your life.

12 You tell somebody your on the jury the judge said
13 don't talk about the case. And those are your
14 instructions now. I want you all back in this jury room or
15 wherever the bailiffs tell you to get and the reason I said
16 that if we're in the middle of something and I got a
17 witness up here that's testifying in a unrelated matter,
18 got expect me to hear that door open and close and you all
19 start looking around until I get to a stopping point I
20 might not let you come back. They may be back in the hall
21 for a few minutes or somewhere on a break they'll have
22 something back there for you and you all help yourself to
23 that. Any questions? Now you all simply go shown now how
24 to go out the back stairs. Okay.

25 All right, I'm gonna ask this question. None of you

1 all brought your cell phones inside the courthouse? Is it
2 an imposition to be a juror and I appreciate your service.
3 I sometimes at my discretion will allow a jurors to bring
4 their phones on the courthouse if they only use it during
5 breaks. Can you all do that? If you can't leave it in the
6 car. I'm gonna talk to Mr. Johnson and see if I can with
7 your jury badge come in with a phone. But here's the
8 problem with it.

9 When you're out here and it goes off I take it and I
10 require a donation to your favorite charity to get it back.
11 Don't bring it in if anybody the lawyers phones go off I
12 take it and they won't get it back for a fifty dollar
13 donation to their favorite charity.

14 Let's tell you what let's do. You all are not gonna
15 have near the problem you all had today. I'm gonna let you
16 all leave your phones in the car and give you an extra long
17 break to kind of walk downstairs and make the call you need
18 to make. It won't be near the problem parking because of
19 the congestion of the extra people in the Grand Jury and
20 that sort of thing so leave it in your cars.

21 That may be asking for more trouble than I need to
22 deal with so you all leave it there. I'll give you an
23 extra long break to talk to anybody about your personal
24 business or whatever you all have to do. Okay. All right,
25 you all are excused for the evening. I'm sorry, eleven

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1 o'clock bring the jury back.

2 (JURY EXITS COURTROOM AT 04:50 P.M..)

3 THE COURT: All right, stand at ease for a couple of
4 minutes.

5 (COURT AT EASE AT 04:52 P.M..)

6 THE COURT: All right, Mr. Verner, are you all ready?

7 MR. VERNER: We're ready, Your Honor.

8 Are we just finishing up this one witness or are we
9 gonna do the whole --

10 THE COURT: No. We're gonna go to 5:30 and that's
11 when we'll stop and start back at nine.

12 MS. BURCHSTEAD: So do we want to continue with the
13 Denno and then the other matters we put on the record in
14 the morning ? Is that what we're saying? Okay.

15 THE COURT: We'll go to 5:30 unless we're at the
16 stopping point but let's go to 5:30 and stop and resume at
17 nine and start right back up.

18 MS. BURCHSTEAD: Yes, sir. Thank you.

19 So I'm gonna recall Investigator Montgomery to the
20 stand, Your Honor.

21 THE COURT: Investigator, remember you're still under
22 oath.

23 DIRECT EXAMINATION - IN CAMERA

24 INVESTIGATOR WAYNE MONTGOMERY BY MS. BURCHSTEAD:

25 Q. So, Investigator, I can't recall exactly where we were

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1 but I'm gonna ask the Court reporter for the exhibits,
2 Four, Five and Six.

3 Thanks. Okay. I'm gonna approach and show you
4 State's Exhibit Six again. And I believe we were
5 discussing whether the defendant had waived his Miranda
6 warnings. So do you recognize the exhibit in front of you,
7 Exhibit Six?

8 A. Yes, ma'am.

9 Q. Okay. And what is that?

10 A. This is the Advisement of Rights Form read to the
11 suspect Mr. Harold Ayton.

12 Q. Okay. And are there any special notations on there?

13 A. Yes, ma'am. Besides the top portion Investigator
14 Narewski wrote his name and date of birth and also placed
15 the - also he noted as he went over each particular right
16 he marked the signature also. I wrote personally the
17 identifying information as told to me by Mr. Ayton. And
18 also to include date of birth, address and social security
19 number. But we indicated he was from and also spent some
20 significant time and in parenthesis number thirteen which
21 indicated the level of education which Mr. Ayton stated he
22 had.

23 Q. Okay. And does it give any sort of indication as to
24 when the time of day that the Miranda warnings were given?

25 A. Yes, ma'am. It indicates 10:16.

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1 Q. Okay.

2 A. Which we started.

3 Q. All right. And were you present when the Miranda
4 warnings were given?

5 A. Yes, ma'am.

6 Q. Okay. And did he appear to understand the warnings?

7 A. Yes, ma'am.

8 Q. And did he appear to be able to read the Miranda Form?

9 A. Yes, ma'am.

10 Q. Did he appear to be under the influence of any
11 intoxicating liquors or drugs?

12 A. No, ma'am.

13 Q. Did he appear to have any physical or mental
14 disability preventing him from understanding?

15 A. No, ma'am.

16 Q. Did he - Did he ever stop the interview?

17 A. No, ma'am, he did not.

18 Q. Okay.

19 A. Excuse me. Well with respect to asking for something
20 to eat or the bathroom or just to stop and ask for an
21 attorney.

22 Q. Well, yeah, I'll be more specific. Did he ever stop
23 to ask to speak to a lawyer?

24 A. No, ma'am, he did not.

25 Q. All right. And with regard to asking to take a

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1 break generally, did he ask to just take a pause for a
2 restroom or something like that?

3 A. Yes, ma'am.

4 Q. Okay. And was that accommodated?

5 A. Yes, ma'am.

6 Q. And how well did you accommodate him? Did he just
7 go one time or what?

8 A. Throughout the day he went several times or he went
9 to the restroom. Provided water or something to eat due to
10 the amount of time we were talking to him.

11 Q. And along those same lines do you recall how long you
12 talked with him?

13 A. Approximately from eight to ten hours total.

14 Q. And during the course of that was he coerced into
15 talking to you?

16 A. No, ma'am. In addition in the Waiver of Rights
17 section it does indicate that he understands and knows what
18 he's doing and no promises or threats have been made and no
19 pressure or coercion of any kind is being made.

20 Q. Let me ask you this. What's - I think you've already
21 answer this but I just can't remember where we were.

22 Was the audio, was there audio, was it recorded?

23 A. Yes, ma'am, that portion of the interview was
24 recorded.

25 Q. Okay. And was any portion of his statement put in

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1 writing?

2 A. Yes, ma'am. After a period of time what we believed
3 to be the pertinent questions were reduced to writing but
4 we generally with me writing all the questions and Mr.
5 Ayton answering in his own penmanship.

6 Q. Now you said the interview lasted a number of hours.
7 Was it always in reference to the victim in the two
8 videos?

9 A. No. There was some general conversation. It takes a
10 period of time to speak with someone and after a period of
11 time we were ready to get on the topic and at that time Mr.
12 Ayton wished to talk about other things and we did such.
13 But we eventually came back to the subject matter.

14 Q. Okay. All right. And I'm gonna show you State's
15 Exhibit Four. I'll ask you to take a look at that and see
16 if you recognize it.

17 A. Yes, ma'am, this is the statement taken on 6/28/2010.

18 At the top it indicates 11:45 which would be a.m., and
19 the place indicated is One Justice Square which is the city
20 of Columbia Police Department.

21 Q. Okay.

22 A. In Columbia, South Carolina.

23 Q. All right. So did the defendant have the opportunity
24 to review this statement?

25 A. Yes, ma'am. And he also signed at the bottom twice

1 indicating it was a true statement and the second one that
2 he received a copy.

3 Q. And would you tell us the format, did he write the
4 statement himself?

5 A. No. I wrote all of the questions. And please excuse
6 any grammatical errors if you should find any. The
7 questions I ask were specifically to the incident and he
8 would answer the question in his own penmanship. After
9 completing the section indicating A on the Q for question
10 and I would ask a question, and then A then he would
11 indicate his answer.

12 Q. So did he have a chance to make any changes he wanted
13 to?

14 A. Yes, ma'am. Upon him reviewing the statement then he
15 showed that he was comfortable with what he indicated he
16 said and then he would -

17 Q. I'm gonna show you State's Exhibit Five and ask if you
18 recognize this?

19 A. Yes, ma'am.

20 Q. And what is it?

21 A. This is the statement taken prior to the same
22 interview with Mr. Ayton. He provided some information
23 that we found to be inconsistent. And after a period of
24 time he indicated he wanted to clarify some things so we
25 went over to the second statement which he indicated was a

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1 clarification of what he may have indicated some deception
2 prior.

3 Q. Okay. And with regard to State's Exhibit Five, did
4 Mr. Ayton have the ability to review the statement and make
5 any changes if necessary?

6 A. Yes, ma'am, he did. And he also signed this
7 particular statement twice indicating it was the truth and
8 that he received a copy as well.

9 Q. Were these statements given freely and voluntarily
10 by him?

11 A. Yes, ma'am.

12 Q. And if you would read out State's Exhibit Five. Read
13 the question and then answer.

14 A. The first question, "Did you operate slash video by
15 sexting with a young girl in the video?"

16 And I indicated - At this time he indicated the victim
17 as Linda Starr and in parenthesis he indicated the answer
18 "Yes."

19 The second question "Do you know how old she is?"

20 His answer was, "No, she said she was thirteen."

21 The next question, "Who was the girl in the photo?"

22 The answer was "Don't know."

23 Question: "Who filmed her?"

24 His answer was "David Wilson".

25 Second page. Question was "Who is David Wilson?"

1 His answer was "David is a friend of a family of
2 my aunt Jen Marie. He was staying in . That's an
3 apartment."

4 "Where did the filming take place" and he indicated
5 "at her house". "Did she perform oral sex on you?"

6 He indicated "No, she wanted to."

7 Q. Is that the extent of substance of this statement?

8 A. Yes, ma'am, that was the portion that was reduced to
9 writing at that time.

10 Q. Okay. And I believe it was your statement that that
11 was the first written statement he gave?

12 A. Yes, ma'am.

13 Q. Is that correct? Okay. Let me direct your attention
14 to State's Exhibit Four now. And I'll ask if you'll do the
15 same, if you'll publish the statement to the Court.

16 A. At the top he gave identifying information the date
17 and time. It's located at the top. Also -

18 MR. VERNER: Just respectfully, Your Honor, I think
19 Four is what they're saying was an inaccurate in their
20 version statement. The Court's got the statement in
21 evidence. I would object. The Court has it and I don't
22 see any relevance in publishing it.

23 MS. BURCHSTEAD: Actually we're saying Five is
24 inconsistent and right now they've only been in for
25 identification. If the Court will allow them as evidence

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1 and just to review them then we are asking for the whole
2 entire statement as written to be presented at trial.

3 THE COURT: How about this? For purposes of this
4 hearing they'll be proffered as an exhibit for purposes of
5 the record as if they were read and give it to the court
6 reporter. And whether they're admitted or not I haven't
7 determined that yet.

8 MS. BURCHSTEAD: Yes, sir.

9 THE COURT: How about that?

10 MR. VERNER: Yes, sir. Just to speed it up a little
11 bit.

12 THE COURT: Fair enough?

13 MS. BURCHSTEAD: Yes. As I said, admitted into
14 evidence I meant for the purposes of this hearing only. So
15 if we don't need to have it read out then -

16 THE COURT: You don't need to publish it. They're
17 proffered in as if they were read. The court reporter has
18 Five and Four.

19 Five is the inconsistent one and Four is the
20 consistent one?

21 MS. BURCHSTEAD: Correct. I probably should have had
22 them marked first but yes that's correct.

23 THE COURT: All right.

24 MR. VERNER: Yes, sir.

25 MS. BURCHSTEAD: Yes. That's all I have.

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1 THE COURT: All right, Mr. Verner.

2 CROSS-EXAMINATION - IN CAMERA

3 INVESTIGATOR WAYNE MONTGOMERY BY MR. VERNER:

4 Q. Okay. Is it Investigator Montgomery?

5 A. Yes, sir.

6 Q. Okay.

7 A. Good afternoon.

8 Q. And you would be essentially the same or equivalent
9 position as Investigator Narweski?

10 A. Yes, sir, we cover the same rank and rank structure at
11 the Columbia Police Department.

12 Q. And are you also an investigator in SVU?

13 A. At that time yes, sir, I was.

14 Q. Do you have any further role in this case other than
15 the interview?

16 A. I assisted at the residence when we did the search
17 warrant.

18 Q. Okay.

19 A. However I do not believe that I assisted in the
20 return. That was assisted --

21 Q. That's the residence in Newberry County?

22 A. No, sir.

23 Q. That's Hope's house?

24 A. I don't have the particular address in front of me and
25 I don't want to be inaccurate but it was a residence from

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1 which from my understanding Mr. Ayton had a former live-in
2 paramour as an address.

3 Q. But that would be on a different case but the same
4 defendant? That would be on the Columbia victim or?

5 A. At that time it was the same case.

6 Q. Okay. Okay.

7 A. Yes, sir.

8 Q. I'm sorry, you said you participated - personally
9 participated in the search warrant execution at the home?

10 A. Yes.

11 Q. And you assisted in the interrogation of the
12 defendant?

13 A. Yes, sir.

14 Q. And any other role in this case?

15 A. That was my primary role in the case, sir.

16 Q. Okay. Just out of curiosity, how long have you been
17 disassociated from the active prosecution of this case?

18 How long has it been since you've been involved in
19 this case?

20 A. After the arrest. I'm not sure exactly the date of
21 the search warrant. I had after those particulars and
22 since I was not involved in obtaining of any warrants or
23 anything of that nature.

24 Q. Okay. Were you present for the entire stay of Mr.
25 Ayton at the city police of the interrogation?

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1 A. I was in and out of the interview room as indicated
2 and testified earlier to by Investigator Narewski. We
3 generally have two investigators in the interview room at
4 the same time for various reasons to include officer's
5 safety. So I was in and out of the room but primarily
6 during the whole interview with Mr. Ayton.

7 Q. And it would have run about eight to ten hours from
8 your recollection?

9 A. Yes, sir, I believe so.

10 Q. Okay. And did you know Mr. Ayton prior to this
11 arrest?

12 A. No, sir.

13 Q. Okay. Do you recall how long that the officers
14 coordinated prior to conducting the interview?

15 A. I'm sorry. Say again.

16 Q. Did you all have like a meeting before you started
17 interviewing Mr. Ayton to determine basically a course of
18 strategy on how your interview was gonna be conducted?

19 A. If you could call it such. Surely once an individual
20 is transported we ask them to sit down and relax
21 themselves. We extend to them any courtesies that we could
22 regarding the restroom and order of such. We speak briefly
23 about the case and then we begin an interview.

24 Q. When you say we, you're talking about the
25 investigators?

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1 A. Yes, sir, or the supervisor as well.

2 Q. But so it may not last a long time but there'
3 generally some coordination about what our approach is
4 gonna be or what we're looking for?

5 A. Yes, sir. Our job would be to identify collect and
6 preserve any evidence and if that would be a part of what's
7 not.

8 Q. What items did you all have in your possession at
9 the time of the interview? The evidence in this case, did
10 you have the phone?

11 A. At that time the phone was recovered yes, sir.

12 Q. Was it part of the interview with Mr. Ayton?

13 A. Which phone, sir?

14 Q. The phone in this case, the T-Mobile phone?

15 A. Well I don't want to be inaccurate. There were
16 multiple phones in this case.

17 Q. Well the one with the contraband. It's all on one
18 phone. Right?

19 A. I believe so yes, sir.

20 Q. The T-Mobile phone we're talking about?

21 A. I can't say exactly which one, sir.

22 Q. But do you recall this having the phone itself where
23 the video was supposed to be taken from in this case during
24 the interview?

25 A. Okay. If I'm understanding correctly the phone with

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1 the evidence.

2 Q. Right.

3 A. In the interview room?

4 Q. Right.

5 A. No, sir.

6 Q. Had you seen it prior to the interview?

7 A. Yes, sir. No, no, no I didn't see it in the
8 interview. The evidence then at that time. No.

9 Q. Were you aware of the name of the young lady, the
10 child, at the time of the interview?

11 A. During the course of the interview the name we were
12 able to identify the victim.

13 Q. From Mr. Ayton's statements to you?

14 A. From a telephone that he had inside the interview that
15 he allowed us to look at.

16 Q. Well elaborate on that please. He came with a cell
17 phone already in his possession?

18 A. Yes he had a phone in his possession.

19 Q. Had he not been already booked into the Richland
20 County Detention Center?

21 A. That I cannot speak for. We picked him up from the
22 Richland County Sheriff's Department.

23 Q. Was he in plain clothes or was he in jail issued?

24 A. Sir, I cannot remember that.

25 Q. But you do remember him coming with his cell phone?

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1 A. He had his cell phone yes, sir.

2 Q. Okay. And then he - You're testifying he gave you the
3 cell phone to go through?

4 A. During the course of the interview I ask him could I
5 look at his telephone that he had and he indicated yes, so
6 I indicated could I look through the context. He
7 manipulated the phone because I believe there were some -
8 there was a specific way, I'm not sure exactly, so I opened
9 the phone but none the less he had the contacts so I
10 scrolled through the contacts and I saw a photograph of a
11 young female.

12 Q. Would that be - The individual contacts had their
13 photograph in the index or?

14 A. From what I understand particular ones had a
15 photograph attached to 'em.

16 Q. Some of them did?

17 A. Yes, from what I can recall yes, sir.

18 Q. And the child victim had her picture associated with a
19 phone number?

20 A. The defendant had a picture of a child on his phone.

21 Q. Yeah. But you're saying that's in the index of phone
22 numbers or contacts.

23 A. The contacts. He had a photograph associated with --

24 Q. Names?

25 A. Yes and the telephone.

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1 Q. And the child was specifically associated with a phone
2 number?

3 A. It was a picture that was identified with a phone
4 number. So if you went up and scrolled and you saw a name
5 or a number, I can't recall what that name or number was,
6 it was a photograph of a young female.

7 Q. So that was not like an individual picture he had
8 taken with his phone? That was actually some type of
9 contact link where he had Brianna's name associated I
10 assume with Linda Rigole's phone number?

11 A. I assume so, sir.

12 MS. BURCHSTEAD: Your Honor, I'm gonna object. I was
13 waiting to see if this was in response, I just don't see
14 how it relates to voluntariness which is the purpose of the
15 Denno hearing.

16 MR. VERNER: Well he's talking about searching the
17 phone of the defendant. Now I understand it's not closely
18 related but it's the context of the interview where he's
19 searching the man's phone to find the contact name with the
20 defendant and I'm just trying to find - -

21 THE COURT: The victim, right?

22 MR. VERNER: I'm sorry, Your Honor.

23 THE COURT: The name of the victim, right?

24 MR. VERNER: The name of the victim.

25 THE COURT: Okay. You said the defendant. I'm sorry.

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1 I knew him if cause that's who he's interviewing.

2 MR. VERNER: And in candor, Your Honor, it is news to
3 me, this is the first time I heard this, I was curious how
4 they got - My question is how they got the identity of the
5 child.

6 THE COURT: Well basically --

7 MR. VERNER: So on that point I think it's directly
8 relevant, Your Honor.

9 THE COURT: Well ask him that question.

10 BY MR. VERNER:

11 Q. And just - Do you understand the point of my question
12 is the photograph you found of the child, you found a
13 photograph of a child on his phone?

14 A. Yes, sir.

15 Q. That he brought into the station for the interview?

16 A. Yes, sir.

17 Q. And you were familiar with that picture from having
18 seen the video beforehand?

19 A. No. It was a young female in the photograph. I
20 alerted Investigator Narewski on the photograph inside the
21 phone.

22 Q. Okay. Were you aware that that was the victim in this
23 case or it was just a young female that you thought might
24 have been a possible victim?

25 A. At the time it was a young female inside of his phone.

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1 Q. Okay. So - And then you ask him the identity of that
2 person in that photograph?

3 A. Yes, sir. During the time of the interview he
4 indicated that was Linda's daughter.

5 Q. Okay. And were you aware of the identity of Linda
6 at the time he said that?

7 A. No, sir. I believe that some later time he indicated
8 that was a former girlfriend. However who she was I never
9 spoke with her.

10 Q. Okay. Was he already under arrest when he was
11 brought over for this crime or for other crimes when he
12 came over to talk to you?

13 A. He was already detained, picked up by the Richland
14 County Sheriff's Department.

15 Q. Okay. On your warrants?

16 A. That I can't recall, sir. I never signed any
17 warrant against --

18 Q. I mean by your I mean your department's warrants?

19 A. I would have to defer to Investigator Narwenski on
20 that, sir.

21 Q. Did you make any promises to him that if he went
22 ahead and owned up or admitted to these charges that you
23 all would work out a plea deal for him?

24 A. Never specifically indicated those words no, sir.

25 Q. You didn't specifically? What did you recall? Did

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1 you even bring up the possible charges or working with him?

2 A. What, a dismissal of some sort?

3 Q. Well did you have some kind of inducement that if you
4 help us, cooperate, we will do something for you?

5 A. No.

6 Q. Okay. You didn't indicate that you would help him
7 out if he cooperated?

8 A. That is not up to me, sir.

9 Q. Is that not something you all would - that would come
10 up often at one of these interviews?

11 A. Not on my end no, sir.

12 Q. Okay. Did you see any of the other officers touch
13 him?

14 A. Other than to transport him.

15 Q. And in an assaulted way?

16 A. Oh no, sir. No, sir.

17 Q. Were you aware of whether or not he had a hurt leg?

18 A. I do believe he slit his foot. I'm not sure how or
19 when he was injured or if he was injured recently.

20 Q. Did you see an officer press down with his fist
21 against his leg or knee?

22 A. No, sir, I never seen any of 'em.

23 Q. And you didn't see an officer strike him on the leg?

24 A. No, sir.

25 Q. Okay. Was there a security code on the phone that he

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1 handed to you that you had to enter a password to get
2 access to the phone?

3 A. The best I can recall he opened the phone, that there
4 was a security code of some type with his finger.

5 Q. You don't recall the other officer, Officer Narewski
6 indicating that if he didn't type in the password then you
7 all had a computer guy who could find out what the password
8 is and access the phone?

9 A. The question you ask me to testify to something
10 Investigator Narewski did in the case.

11 Q. Well I'm asking you if you saw or heard it out of
12 your own --

13 A. No, sir.

14 Q. Okay. So you're saying he freely and voluntarily
15 turned over the phone or did he turn over the phone because
16 you said you were gonna take it anyway and you had people
17 who could go ahead and get into it?

18 A. I don't recall ever saying that to him.

19 Q. Okay. Were you the one who personally ask him for the
20 phone or was that a different investigator?

21 A. I personally ask him to look through the phone.

22 Q. Okay. And then it was - Were you the only officer
23 who went through the phone?

24 A. I cannot recall.

25 Q. Okay. But you clearly recall you were the first

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1 officer to take it?

2 A. I looked through the contacts yes, sir.

3 Q. The - Do you recall Officer - This was Officer
4 Narewski's primary case even though you all were in the
5 same type position this was still - He would be the leading
6 investigator, kind of called the shots; is that a correct
7 assessment?

8 A. Yes, sir, he would be the individual to dictate the
9 method involved in an investigation.

10 Q. Okay. And the - Do you recall him informing you that
11 you were not allowed to let Mr. Ayton use the phone or
12 access the phone to make calls or any others?

13 A. At the time he was detained so it's not normal
14 practice for us to allow an individual to use the telephone
15 so not at that time he wouldn't have used the phone.

16 Q. Did you - Do you recall whether the phone came with
17 him directly or whether it came into a personal possession
18 bag?

19 A. I can't recall that, sir.

20 Q. Okay. After the interview was the phone taken into
21 your possession? The second phone I'm talking about, the
22 one he brought into the interview.

23 A. I believe it was placed into evidence.

24 Q. Okay. The - Did you indicate that if he did not hand
25 the phone over to you that you would go ahead and take it

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1 and just have the judge give you a search warrant to go
2 through it?

3 A. I cannot recall specifically those words, sir.

4 Q. Okay. And again, he was also being interviewed about,
5 I believe, some charges leveled against him from Richland
6 County too. It wasn't just this Newberry case but there
7 were other charges you all were investigating?

8 A. There was another incident that we was looking into
9 yes, sir.

10 Q. Was this - But this interview was about everything
11 or just about the Newberry charges?

12 A. Well at the time the jurisdiction was not determined
13 ---

14 Q. Okay.

15 A. --- so we was just interviewing him based off the
16 information that we received. Later it was determined
17 where the actual jurisdiction was during the interview.
18 There was an additional matter that we were interviewing
19 that was within the city limits of Columbia jurisdiction.

20 Q. So at the time the interview started you didn't know
21 the identity of the victim? The child victim.

22 A. That's correct, sir.

23 Q. Nor her family members?

24 A. I did not, sir.

25 Q. Nor where she was from?

INVESTIGATOR WAYNE MONTGOMERY: CROSS BY MR. VERNER
IN CAMERA

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1 A. That's correct. I did not know where the incident
2 location actually took place.

3 Q. Okay. So without him volunteering that information
4 you may have found it, but essentially his admission to it
5 was how you all identified the victim. I think you've
6 already answered that. And you didn't induce, make any
7 kind of promise or seen Narewski or any of the other
8 investigators make any kind of promise about cooperation?

9 A. No, sir.

10 Q. Okay. And you didn't see anybody threaten him or use
11 physical force of him?

12 A. No, sir. If anything we were overly complimentary for
13 the young man, provided him snacks and breaks and food
14 during the interview to keep him comfortable.

15 Q. And the day you interviewed him was the same day he
16 was taken into custody?

17 A. By the Columbia Police Department.

18 Q. Right. And he turned himself in?

19 A. He was at the Richland County Sheriff's Department
20 where we made contact with him.

21 Q. Now he was clearly sober at the time you interviewed
22 him?

23 A. Yes, sir.

24 Q. Okay. You didn't have anything to do with the
25 case until the - basically the interview. I guess you were

INVESTIGATOR WAYNE MONTGOMERY: CROSS BY MR. VERNER - IN CAMERA
REDIRECT BY MS. BURCHSTEAD

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1 to come into the case after Mr. Narewski?

2 A. I was brought in when he went to pick up Mr. Ayton
3 from the Sheriff's Department to transported him to the
4 headquarters and do the interview.

5 Q. So June 28th was largely the first day you had any
6 active involvement in the case at all?

7 A. Yes, sir.

8 Q. Okay.

9 MR. VERNER: Okay, Investigator. The Attorney
10 General has any questions for you.

11 MS. BURCHSTEAD: Briefly, Your Honor.

12 REDIRECT EXAMINATION - IN CAMERA

13 INVESTIGATOR WAYNE MONTGOMERY BY MS. BURCHSTEAD:

14 Q. Investigator, did you see anybody law enforcement
15 related strike him, touch or abuse the defendant during the
16 course of his statement?

17 A. No, ma'am.

18 Q. Oral or written during any portion of the interview?

19 A. No, ma'am.

20 Q. Did he complain to you or are you aware of him
21 complaining to anybody that he was hit or injured?

22 A. No, ma'am.

23 Q. Or kicked or bruised or anything like that?

24 A. No, ma'am.

25 Q. Okay. Was he denied the right to call an attorney?

1 A. No, ma'am. He never ask for an attorney.

2 MS. BURCHSTEAD: Nothing further, Your Honor.

3 THE COURT: Anything, Mr. Verner?

4 MR. VERNER: No, sir.

5 THE COURT: All right, you may step down.

6 (WITNESS LEAVING WITNESS STAND.)

7 THE COURT: Mr. Verner, how long is your client gonna
8 be? You want to try to get it today or do you want to
9 break for today? It's y'all's choice.

10 MR. VERNER: Probably thirty minutes, Your Honor.

11 THE COURT: All right, let's start in the morning give
12 everybody a chance to be fully prepared. I want to start
13 at nine o'clock.

14 MS. BURCHSTEAD: Yes, sir.

15 THE COURT: All right. Good enough. All right, see
16 you in the morning. I'll be here probably shortly after
17 eight if you need me at that point.

18 MS. BURCHSTEAD: Thank you, Judge.

19 (COURT IN RECESS AT 05:30 P.M..)

20 (COURT BACK IN SESSION TUESDAY, DECEMBER 4, 2012 AT
21 11:19 A.M..)

22 THE COURT: Be seated please. All right.

23 Madam Attorney General.

24 MS. BURCHSTEAD: Thank you, Your Honor, may it please
25 the court. Standing before you for a guilty plea is Harold

1 Ayton represented by Charles Verner of the Public
2 Defender's Office. He's pleading guilty to four counts.

3 Indictments 2011-GS-36-0631, 632, 633 and 634.

4 Two counts of criminal sexual conduct with a minor in
5 the first degree. Two counts of sexual exploitation of a
6 minor in the first degree. In return for his plea the
7 State is noll proding an additional charge, Indictment
8 6-3-5 criminal sexual conduct with a minor in the first
9 degree.

10 This is a straight up plea. Also in return for his
11 plea the State will recommend concurrent sentencing should
12 he choose to resolve his charges that are pending in
13 Richland County. We would most likely do a lewd act on
14 those charges, Your Honor, but we have not confirmed that
15 as yet. I would need to talk to the victims in that case
16 before I can make that a final promise but we will
17 certainly recommend concurrent time at the moment on those.

18 THE COURT: All right, you are Harold Reuben - Is it
19 Aton?

20 MR. AYTON: Ayton.

21 THE COURT: Ayton. Mr. Ayton, I'm gonna publish the
22 three indictments. I'm sorry, four indictments. It's
23 2011-GS-36-631. That indictment reads in part that on or
24 about May 23rd, 2010 you while being in Newberry County did
25 commit the act of criminal sexual conduct first being over

1 eighteen and engaging in sexual battery in violation of
2 Code Section 16-3-651 with a victim under the age of eleven
3 in violation of Code Section 16-3-655 Sub-part (a)(1).

4 Its my understanding you wish to plead guilty on that
5 indictment.

6 MR. AYTON: Yes, sir.

7 THE COURT: All right, now make sure you speak up so
8 I can hear your answers.

9 MR. AYTON: Yes, sir.

10 THE COURT: The court reporter here's got to hear you
11 also so we can make a full and complete record.

12 2011-GS-36-632 sexual exploitation of a minor in the
13 first degree and that indictment reads in part that you
14 while in Newberry County on the 23rd day of May, 2010 you
15 knowingly commit the crime of sexual exploitation of a
16 minor in the first degree in that you produced material to
17 obtain a visual representation of a minor child engaged in
18 sexual activity in violation of the provisions of 16-15-
19 4-0-5.

20 Its my understanding you wish to plead guilty on that.

21 MR. AYTON: Yes, sir.

22 THE COURT: Also indictment 2011-GS-36-633 indictment
23 for criminal sexual conduct first degree and that
24 indictment provides in part that you while in Newberry
25 County on or about the 31st day of March, 2010 commit the

1 offense of criminal sexual conduct with a minor in the
2 first degree and that you by being over the age of eighteen
3 engaged in sexual battery on a victim under the age of
4 eleven and this being in violation of the provisions of
5 16-3-655 Sub-part (1). It's my understanding you wish to
6 plead guilty on that indictment likewise.

7 MR. AYTON: Yes, sir.

8 THE COURT: Indictment 11-GS-36-634 for sexual
9 exploitation of a minor in the first degree and that
10 indictment reads in part that you while in Newberry County
11 on or about the 31st day of March of '11 - of '10 commit
12 the offense of sexual exploitation of minor in that you
13 produced material containing a visual representation of a
14 minor engaged in sexual activity in violation of provision
15 16-15-4-0-5. And it's my understanding that you wish to
16 plead guilty on that indictment.

17 MR. AYTON: Yes, sir.

18 THE COURT: Mr. Verner, you represent Mr. Ayton?

19 MR. VERNER: I do, Your Honor.

20 THE COURT: Have you explained to him the elements of
21 these four offenses and the potential punishment he's
22 facing?

23 MR. VERNER: I have.

24 THE COURT: You have gone over the discovery provided
25 to you by the State, conducted any investigation which you

1 deem appropriate, and after examining the discovery
2 provided and performing your own investigation, consulted
3 with your client, do you believe that if your client were
4 to stand trial he probably not be convicted?

5 MR. VERNER: Yes, sir.

6 THE COURT: And do you agree with his decision to
7 enter this plea?

8 MR. VERNER: I do.

9 THE COURT: All right, Mr. Ayton, I'm gonna have you
10 placed under oath by the Clerk.

11 MADAM CLERK: Raise your right hand.

12 (WHEREUPON, HAROLD AYTON,
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 THE COURT: All right, Mr. Ayton, I heard some
15 comments made by some of the investigating officers about
16 your educational background. Can you tell me, first of all
17 today in the last twenty-four hours have you had any drugs,
18 alcohol, medications?

19 MR. AYTON: No, sir, I havent' used any medications
20 and
21 no drugs and no alcohol, sir.

22 THE COURT: Are you clear headed right now?

23 MR. AYTON: Pretty much so.

24 THE COURT: Do you have any type of mental, physical,
25 or emotional, or handicap or condition which would affect

1 you ability to understand what's going on here today?

2 MR. AYTON: I understand clearly, sir.

3 THE COURT: You understand what I'm saying to you?

4 MR. AYTON: Yes, sir.

5 THE COURT: Tell me how far you went in school.

6 MR. AYTON: I went through the seventh grade.

7 THE COURT: You went to school through the seventh
8 grade?

9 MR. AYTON: Like I said I understand what's going on
10 yes, sir.

11 THE COURT: Can you read and write?

12 MR. AYTON: Yes, sir.

13 THE COURT: Well when - Since I heard something
14 different a comment was made that you may have had some
15 technical school or college.

16 MR. AYTON: That was just courses.

17 THE COURT: Okay.

18 MR. AYTON: That's all.

19 THE COURT: Did you take those?

20 MR. AYTON: Still taking 'em today, sir.

21 THE COURT: Okay. And did you acquire a high school
22 diploma?

23 MR. AYTON: No, sir.

24 THE COURT: You did not? But you can read and write?

25 MR. AYTON: Yes, sir.

1 THE COURT: Now, regarding these four offenses, it
2 would be my understanding you could request that the cases
3 be tried separately; prosecuted and try 'em together. If
4 you had one trial, two trials, it wouldn't make any
5 difference regarding your rights, you got to waive the same
6 rights you would waive in order for me to accept your plea
7 of guilt. Do you understand that?

8 MR. AYTON: Yes, sir.

9 THE COURT: If you were to plead not guilty, which
10 earlier you had and you've changed that plea, if you plead
11 not guilty it would be the State's responsibility for
12 proving your guilt beyond a reasonable doubt during a trial
13 which we were about to take up shortly, ---

14 MR. AYTON: Yes, sir.

15 THE COURT: --- and you understand it's the State's
16 responsibility in calling all the witnesses and providing
17 all the testimony and evidence for the jury to consider
18 your guilt or innocence?

19 MR. AYTON: I do.

20 THE COURT: You have nothing to prove or disprove.
21 Do you understand that?

22 MR. AYTON: Yes, sir.

23 THE COURT: It's the State's responsibility to prove
24 you guilty.

25 MR. AYTON: Yes, sir.

1 THE COURT: And they've got to do that beyond a
2 reasonable doubt and convince twelve jurors unanimously of
3 your guilt.

4 MR. AYTON: Yes, sir.

5 THE COURT: Do you understand that?

6 MR. AYTON: Yes, sir.

7 THE COURT: And Mr. Verner's allowed, and Ms. Nelson
8 if she assist him in this trial, to cross-examine any
9 witnesses the State calls, to challenging the introduction
10 of the evidence the State tries to introduce, and even
11 presenting defenses that the statutes may allow you to have
12 to be presented to the Court such as your challenges to the
13 search warrant and to the acquisition of the video's off
14 the phone. You challenged those yesterday and the Court
15 made a ruling. Do you understand when you waive your right
16 to a jury trial likewise you will give up all those rights
17 to a trial and any defenses you have? Do you understand
18 that?

19 MR. AYTON: Yes, sir.

20 THE COURT: Do you understand that during a trial you
21 have the absolute right to remain silent? You can sit
22 there at that table like you were yesterday and you don't
23 have to say a word. Ms. Burchstead cannot call you as a
24 witness and Ms. Hall can't call you as a witness. They
25 can't comment on your silence in the presence of the jury

1 in any manner whatsoever. In their closing argument they
2 can't mention the fact that you didn't testify. And during
3 my closing instructions to the jury I will tell the jury
4 should you decide not to testify, and we talked about that
5 briefly yesterday whether you would or you wouldn't, Mr.
6 Verner said you might; if you did testify, I would tell the
7 jury that they cannot discuss the fact that you didn't
8 testify in their deliberations, that their decision of
9 whether you are guilty or not guilty it would have to be
10 confined to the evidence presented by the State and not
11 your silence. Do you understand your right to remain
12 silent?

13 MR. AYTON: Yes, sir.

14 THE COURT: Understanding your right to a trial, your
15 right to confront your accusers, and your right to remain
16 silent, ---

17 MR. AYTON: Yes, sir.

18 THE COURT: --- is it your decision today to waive
19 those rights in order to enter this plea to these four
20 charges?

21 MR. AYTON: Yes, sir.

22 THE COURT: You're giving up your rights to a trial
23 ---

24 MR. AYTON: Yes, sir.

25 THE COURT: --- freely and voluntarily?

1 MR. AYTON: Yes, sir.

2 THE COURT: Have you had enough time to discuss these
3 rights yesterday afternoon and this morning with Mr.
4 Verner?

5 MR. AYTON: Yes, sir. As far as I know we already
6 discussed that and he's in agreement - - -

7 THE COURT: Wait a minute. If I ask you a question
8 that you don't understand, you have an opportunity to talk
9 and speak with him and Ms. Nelson right now, okay?

10 MR. AYTON: Yes, sir.

11 THE COURT: I don't think I've gone over anything yet
12 you haven't understood but if you do and you need to speak
13 with him you got that right. Do you understand?

14 MR. AYTON: Yes, sir. Can I have a word real quick
15 with him one minute?

16 THE COURT: Sure. Go ahead.

17 (SIDE BAR BETWEEN DEFENDANT AND HIS COUNSEL AT 11:30
18 A.M..)

19 THE COURT: Okay. You good?

20 MR. AYTON: Yes, sir.

21 THE COURT: All right. I want you to listen carefully
22 as Ms. Burchstead or Ms. Hall, I don't know which one,
23 provides me a summary of the facts which support these four
24 please, okay.

25 MR. AYTON: Yes, sir.

1 THE COURT: Listen carefully and I'm gonna come back
2 and ask you if that's an accurate representation of what
3 you believe would be presented at trial.

4 Ms. Burchstead.

5 MS. BURCHSTEAD: Thank you, Your Honor. I'll provide
6 the factual basis and at the appropriate time Ms. Hall will
7 probably comment more extensively as to sentencing.

8 The factual basis is really pretty straight forward,
9 Your Honor. In March - March 23rd of 2010 - actually March
10 31st of 2010 and May 23rd of 2010, Mr. Ayton engaged in sex
11 acts with a minor victim six years old at the time. He was
12 approximately thirty at the time.

13 He also recorded those sex acts. I believe Your Honor
14 has seen those two videos and one video I don't feel it
15 would be too graphic on the record especially since you
16 have seen them, Your Honor, but let me just say one video
17 was the child performing oral sex on him of approximately
18 two to two and a half minutes length for the video. And
19 the other video was what appears to be anal sex, Your
20 Honor, and the video is approximately four and a half
21 minutes long.

22 I believe Your Honor could also see from the videos it
23 is apparent the child was, in the State's opinion, used to
24 this type of behavior. It appeared that this was not the
25 first time it happened. And the State was prepared to go

1 forward and put the child on the stand and enter other
2 evidence to show that the sex acts of a similar nature had
3 occurred on prior dates to this.

4 That's - Those are the facts. I don't know that I
5 need to be any more graphic at this point. Of course it
6 all occurred in Newberry County.

7 THE COURT: All right. Mr. Atyon, ---

8 MR. AYTON: Yes, sir.

9 THE COURT: --- when we had a chambers conference,
10 when you and your lawyers were in chambers with me, I ask
11 all the attorneys whether or not I could view the videos
12 before the plea, it was agreed to I could and I did view
13 them.

14 The State's made comments toward those videos that I
15 watched. Did you have an opportunity to see them
16 yesterday?

17 MR. AYTON: Yes, sir.

18 THE COURT: On those videos, is that what you did, the
19 video taping of the sex acts and the sex acts themselves,
20 is that what you're pleading guilty to?

21 MR. AYTON: Yes, sir.

22 THE COURT: And the summary provided by Ms. Burchstead
23 of what happened that occurred in Newberry County, those
24 were accurate, back in March?

25 MS. BURCHSTEAD: March and May of 2010.

1 THE COURT: May 2010. Is that right?

2 MR. AYTON: Yes, sir.

3 THE COURT: And it's my understanding that the
4 negotiations in this case are as follows: Is it you plead
5 to two counts of CSC first; two counts of sexual
6 exploitation of a minor first, and one count of CSC first
7 to be noll prosed, and, if you plead in Richland County at
8 some date in the future to some charges perhaps reduced the
9 State would not object at all to any concurrent time on the
10 Richland County cases to whatever sentence you receive here
11 in Newberry County.

12 MR. AYTON: Yes, sir.

13 THE COURT: Aside from that plea, the plea to four;
14 dismiss one, and concurrent time from Richland County, were
15 any other promises made to you that would induce you into
16 pleading guilty in front of me today?

17 MR. AYTON: No, sir.

18 THE COURT: You been threatened, coerced by anybody to
19 get you to plead guilty?

20 MR. AYTON: No, sir.

21 THE COURT: You pleading guilty freely and
22 voluntarily?

23 MR. AYTON: Yes, sir.

24 THE COURT: Do you understand that the entering of
25 these pleas to CSC first puts you in a category considered

1 a most serious offenses and violent offenses? And by that
2 these convictions today would be considered - doesn't
3 matter if its one or two - if you have a most serious
4 conviction on your record, and after today's date you will
5 have a plea on a singular day to two most serious offenses,
6 you need one most serious offense to have the possibility
7 of a future conviction of a second most serious offense. If
8 there were the case the prior most serious and a pending
9 most serious charge the State can give you notice that they
10 would tend to seek life without the possibility of a parole
11 as a sentence ---

12 MR. AYTON: Yes, sir.

13 THE COURT: --- later. Do you understand that?

14 MR. AYTON: Yes, sir.

15 THE COURT: This conviction once I accept it will be
16 considered a big strike in the two strikes you're out -
17 Life without parole scenario. Did Mr. Verner explain that
18 to you as three strikes two striked?

19 MR. AYTON: He didn't explain the three but he
20 explained the two.

21 THE COURT: The way I understand it is this, a most
22 serious and big strike, serious or little strikes, you need
23 two serious and one most serious to be in a position with
24 life without parole.

25 MR. AYTON: Yes, sir.

1 THE COURT: You're getting a big strike today. Do you
2 understand that?

3 MR. AYTON: Yes, sir.

4 THE COURT: But these two count as one cause it's a
5 plea on the same day.

6 MR. AYTON: Yes, sir. I understand that, sir.

7 THE COURT: You also understand that whatever sentence
8 I impose upon you, sicne this is a violent offense and the
9 definition of the law is whatever sentence I impose you
10 will not be eligible for any parole on that sentence.

11 Do you understand that?

12 MR. AYTON: I'm aware of that, Yes, sir.

13 THE COURT: And you're aware that whatever sentence I
14 impose you have to serve no less than eighty-five percent
15 of that sentence?

16 MR. AYTON: Yes, sir, I understand that, sir.

17 THE COURT: Upon serving eighty-five percent you may
18 be eligible for a community supervision type of release.

19 Do you understand that?

20 MR. AYTON: Yes, I was told that, sir. I'm aware
21 of it.

22 THE COURT: And then if you're ever released and
23 you're on community supervision you will be monitored by a
24 leg monitor for the balance of your life.

25 It's a mandatory GPS for life is it not?

1 MR. VERNER: It's for life. Your Honor, there is an
2 option that the Court can remove it after ten years. But
3 the presumption is for life when he's released.

4 THE COURT: All right. For the purposes of this plea
5 when you're released you'll have a leg monitor and you'll
6 wear that for the balance of your life. Correct?

7 And there a possibility of you getting off earlier but
8 that's not within my control today. That's in your control
9 later perhaps. It's kind of like being eligible for early
10 release. That's not the case. Do you understand that?

11 MR. AYTON: I understand it yeah.

12 THE COURT: And understanding that you're being
13 monitored on GPS upon your release from the Department of
14 Corrections do you still want to plead guilty?

15 MR. AYTON: Yes, sir.

16 THE COURT: And even considering that you're eighty-
17 five percent of whatever sentence the court is going to
18 impose you still want to plead guilty?

19 MR. AYTON: Yes, sir.

20 THE COURT: And considering you're gonna have a most
21 serious conviction or a big strike on your record after I
22 accept this plea do you still want to plead guilty?

23 MR. AYTON: Yes, sir.

24 THE COURT: And do you understand that there is a
25 potential in that the State just prior to your release can

1 move under a civil code section to have you declared a
2 sexually violent predator that could be indicative of some
3 further counseling. You would be required to withstand
4 before you would be released back into the community. Do
5 you understand that?

6 MR. AYTON: Yes I was told that, sir.

7 THE COURT: Understanding that do you still wish to
8 plead guilty?

9 MR. AYTON: Yes, sir.

10 THE COURT: I'm gonna ask you again, have you had
11 enough time to discuss these matters, the ancillary
12 punishments, the no parole, the most serious conviction,
13 the GPS monitoring, the declaration of the sexually violent
14 predator, have you discussed all those issues with Mr.
15 Verner? Have you had enough time to talk with him about
16 it?

17 MR. AYTON: Now that part there about the sexual
18 predator act and all that, that, we didn't discuss that
19 with him.

20 MR. VERNER: That's the psychologist right before - -

21 MR. AYTON: Oh. Okay. All right. Yes.

22 THE COURT: Okay.

23 MR. AYTON: It's been discussed yes, sir.

24 THE COURT: They will evaluate you to some degree.

25 The State has a system where they try or allow a trial

1 to have you declared a violent predator and then additional
2 counseling or conditions upon your release or not released
3 can be imposed in addition to the incarceration. Do you
4 understand that?

5 MR. AYTON: Yes, sir.

6 THE COURT: You got any complaints against the South
7 Carolina Attorney General's Office, the Eighth Circuit
8 Solicitor's Office, Newberry County Law Enforcement,
9 Newberry City Law Enforcement or Richland - I'm sorry,
10 Columbia Police Department in their handling of the
11 investigation and or prosecution of this case against you?

12 MR. AYTON: No, sir.

13 THE COURT: You need any additional time with Mr.
14 Verner or Ms. Nelson or both?

15 (SIDE BAR CONFERENCE BETWEEN DEFENDANT AND HIS
16 ATTORNEY.)

17 MR. AYTON: Yeah.

18 MR. VERNER: And just for the record, Your Honor, just
19 because she's been mentioned, Ms. Nelson has been good
20 enough to come down and help but she's not technically a
21 part of the case and couldn't show up.

22 THE COURT: Somebody told me thirty minutes ago that
23 she come to the courthouse and I shouldn't assume but I
24 assumed that she counseled with you briefly.

25 MR. VERNER: She's been giving me advice on the case

1 but would not actually be --

2 MS. NELSON: I'm mainly here for moral support, Judge.

3 THE COURT: All right. Well Mr. Verner's been your
4 lawyer for a good number of months has he not?

5 MR. AYTON: Not just basically assigned to my case.

6 MR. VERNER: Mr. Gross and I had jointly represented
7 Mr. Ayton when he was in Columbia. Mr. Gross of course as
8 my senior would obviously be a lead attorney but I
9 primarily do very candidly so I'd call it joint
10 representation. Mr. Gross of course has gone into private
11 practice and so I took it over completely at that point but
12 it started as joint representation with Mr. Gross because
13 of the severity of the charge agree to help.

14 THE COURT: Now, Mr. Ayton, in your conversations
15 discussed with the case the duties and responsibilities of
16 the State and any defenses that you all represent going
17 over all the evidence the state provided to you in
18 discovery has the State turned over a large part of their
19 investigation file for you all to review, Mr. Verner, Mr.
20 Gross, whoever, you've gone over that discovery with Mr.
21 Verner have you not?

22 MR. AYTON: I haven't. I have not. I understand
23 about that. Against myself basically.

24 THE COURT: Was there anything that you know of out
25 there that was a long interview that you had some videos

1 some photographs that were retrieved from the video, you've
2 seen those?

3 MR. AYTON: Yes, sir.

4 THE COURT: You've seen the two statements you were
5 challenging yesterday. We were in a hearing as to whether
6 or not those statements you gave to the investigators would
7 be allowed into the court and I never made a ruling yet
8 because I haven't fully heard all of the testimony
9 regarding the issues and whether those statements were
10 voluntarily given by you and whether they were given
11 properly after the advice of your rights to you.

12 I have yet to address that issue so in order for you
13 to plead guilty you've got to waive that challenge to the
14 admissibility of those two statements.

15 MR. AYTON: I know, Your Honor.

16 THE COURT: All right, now, is there anything that you
17 need to discuss with Mr. Verner before we go forward?

18 MR. AYTON: No, sir.

19 THE COURT: Have you understood your conversations
20 with him regarding your defenses to this case?

21 MR. AYTON: Yes, sir.

22 THE COURT: He's explained things and answered
23 questions so that you understand?

24 MR. AYTON: Yes, sir.

25 THE COURT: Now are you pleading guilty today because

1 you are in fact guilty in doing exactly what Ms Burchstead
2 said?

3 MR. AYTON: I am.

4 THE COURT: Are you pleading guilty freely and
5 voluntarily?

6 MR. AYTON: Freely.

7 THE COURT: Now you understand that once I accept the
8 plea you have a limited number of days from which - during
9 which to file an appeal. To appeal these guilty pleas you
10 can do that.

11 MR. AYTON: Yes I understand up to ten days.

12 THE COURT: Ten days to provide notice of intent to
13 appeal. The appeal may take longer than that but you got
14 to raise your hand and file some sort of paperwork with the
15 clerk of court here.

16 MR. AYTON: Yes, sir.

17 THE COURT: To appeal this plea. If you believe
18 something procedurally has been incorrectly.

19 MR. AYTON: Yes, sir.

20 THE COURT: Do you understand that?

21 MR. AYTON: Yes, sir.

22 THE COURT: Are you satisfied with the advice and
23 counsel Mr. Verner has given you in regard to his
24 representation of these five matters?

25 MR. AYTON: To the best of my understanding yes, sir.

1 THE COURT: Regarding Indictment 11-GS-36-631, 632,
2 633 and 634 I find that Harold Reuben Ayton has made a
3 free, knowing and intelligently plea of guilt two counts of
4 criminal sexual conduct with a minor first degree and two
5 counts of criminal sexual exploitation of a minor in the
6 first degree. He's entered these four pleas with the
7 advice of counsel an attorney who while under oath he's
8 satisfied. I also find the State provided good discovery
9 for the Court's review and ample evidence upon which to
10 base these four pleas.

11 All right, before we go into mitigation, tell me who
12 wants to go first. Do you want to go first or do you want
13 me to go first?

14 MR. VERNER: Your Honor, I prefer when the State puts
15 it all out there including the victim's statements and then
16 just a brief chance to speak on his behalf and let him
17 elucidate if he'd like to and then just to have the court
18 but we're at the court's convenience.

19 THE COURT: All right. Any objection to my accepting
20 the plea and listen to the mitigation and bring the jury
21 out so that they can see what we been doing?

22 MR. VERNER: I think if the Court's accepted the plea
23 the - I think my understanding is - I'm not a hundred
24 percent sure but the victims might want to address or at
25 least the victim witness.

1 MS. BURCHSTEAD: The victim's grandparents are going
2 to address the court at the appropriate time. The victim
3 was in here but she has since stepped out.

4 THE COURT: All right. I saw her when she stepped
5 out. Any objection to bringing the jury and I'm gonna
6 accept the plea?

7 MS. BURCHSTEAD: No objection.

8 THE COURT: All right. I accept the plea.

9 Before we begin mitigation, Ms. Wardlaw, please bring
10 the jury in.

11 (JURY REENTERS COURTROOM AT 11:45 A.M..)

12 THE COURT: All right, ladies and gentlemen, I'm gonna
13 - You all have not been sworn yet, but I wanted you all to
14 come in and see what we been doing. You all have been
15 sitting back there a little longer than forty-five minutes
16 and so to bring you up to speed, the case that was called
17 for trial, the gentleman accused agreed to plead guilty to
18 four of the indictments to which he was accused out of five
19 that you all were told by.

20 I have gone through all of his legal rights regarding
21 the waiver of his rights to a trial and appear in front of
22 you as a jury. I've done that and I've accepted his plea.
23 What's left to do is to hear the mitigating facts from the
24 victim and the defendant before sentence is imposed.

25 And I thought it would be - I thought you all may want

1 to sit out here and hear that. All right. You all sit
2 right there while we continue the plea.

3 MR. VERNER: Judge, the names may be sensitive to the
4 victim so that's the only - I don't have any --

5 MS. BURCHSTEAD: We intend to call her by her first
6 name only, Your Honor, and give her no other identifiers.

7 THE COURT: You all manage that for me.

8 MS. BURCHSTEAD: Yes, sir. We will, Your Honor.

9 THE COURT: All right. Understanding Mr. Verner's
10 going last I'll hear from you Ms. Hall and or Ms.
11 Burchstead.

12 MS. BURCHSTEAD: Thank you, Your Honor. I will turn
13 it over to Ms. Hall in just one second. I wanted to ask
14 first, the CD provided to the Court, if we can make that a
15 sealed Court's Exhibit?

16 THE COURT: Yes, ma'am.

17 MS. BURCHSTEAD: Thank you. And in addition to that
18 just let me give the Court the defendant's prior record.

19 His records stems from Florida, Your Honor. Back in
20 1999 he was sentenced to what would be the equivalent of a
21 lewd act in South Carolina. He had four years, seven
22 months on that. And then he had a conviction for first a
23 degree misdemeanor battery, six days on that. That was
24 also 1999. And then a couple of months later also in 1999
25 he received five years and probation on an aggravated

1 battery. He's had another arrest but no conviction for
2 CDV. And it looks like a petit larceny from 2007.

3 Of course with the lewd act he's a prior sex offender
4 and given the prior record and the egregious nature of this
5 case we do believe a significant incarceration is merited.
6 While recognizing that he did not make the victim testify
7 or make us show videos to the jury, we do believe that the
8 crimes and his record are significant enough to merit
9 significant incarceration.

10 I'm gonna turn it over to Ms. Hall at this point.

11 MS. HALL: Your Honor, just briefly. Indictment 631
12 carries twenty-five to life. 632 carries a mandatory
13 minimum of three up to twenty years. 633 again twenty-five
14 to life. And 634 again a mandatory minimum of three a
15 maximum of twenty.

16 Your Honor, this victim, date of birth '03, was
17 six years old and living with her mother at

18 , when these assaults began. As a
19 result of these assaults she now lives with her
20 grandparents Ollie and Sandra Bowers who will address the
21 court at the appropriate time.

22 This young victim, Your Honor, is doing well in
23 school. She's at Elementary School and is
24 doing much better but this has profoundly affected her.
25 The young child is now nine years old, Your Honor, and a

1 nine year old cannot walk into court and be prepared to
2 testify to the extent that she would need to. Because this
3 defendant waited such a long time to accept responsibility,
4 she has had to tell her story with prosecutors, with law
5 enforcement, with court advocates again and again to get
6 her ready for court. We've also had to work extensively
7 with her family to get them ready for court, talk to them
8 about things that they don't want to talk about.

9 Your Honor, the State walks out of this courtroom
10 today, the attorneys walk out of this courtroom today, you
11 walk out of this court and we all do, and this is behind
12 us, but this child is gonna live with this for the rest of
13 her life. What happened to her affected her physically.
14 She had to have a medical examination which is quite
15 evasive at the ARC. She had to have a forensic interview
16 done at the ARC. She's had to talk about this, she will
17 probably need to continue to talk about this.

18 Your Honor, we do ask for an extensive sentence. We
19 believe that what happened to her was the worst thing that
20 could happen to a child and it happened to her not once,
21 not twice, but multiple times. We appreciate the fact that
22 Mr. Ayton is preventing her from having to testify and
23 preventing this jury from having to watch these videos, but
24 that does not change what happened to this child and what's
25 going to happen to her for the rest of her life.

1 And at this time, Your Honor, we'd ask that you hear
2 from Ollie and Sandra Bowers.

3 THE COURT: All right.

4 MS. BURCHSTEAD: And while they're coming if I may
5 make one statement. I believe the statute actually reads
6 twenty-five or life. Not twenty-five to life.

7 MR. VERNER: Ms. Nelson says the Supreme Court made it
8 clear that that's a sentencing range.

9 MS. NELSON: That's my understanding.

10 MS. BURCHSTEAD: Okay.

11 THE COURT: I can't imagine it being in another range.

12 MS. BURCHSTEAD: And it makes the most sense the
13 actual word in the statute is or.

14 MS. NELSON: I don't know if it's the Supreme Court
15 opinion. My understanding just in practice is that that is
16 a range.

17 THE COURT: I think it is a range. I'm gonna treat it
18 as a range.

19 MS. BURCHSTEAD: Your Honor, this is Ollie Bowers.
20 This is Brianna's paternal grandfather one of the two
21 grandparents who has custody. I'm gonna let him just speak
22 into the microphone and tell Your Honor what he wants to
23 say.

24 MR. BOWERS: My name is Ollie Bowers Brianna's
25 grandfather. When I found out about this it really hurt me

1 to how someone could do that to a young child. And like
2 you said she's only nine years old, the rest of her life is
3 gonna be her life. He'll probably forget about it the next
4 couple of weeks about it. It will bother her for the rest
5 of her life and bother her family for the rest of their
6 lives. I just wish you would give him all the maximum you
7 can give him and give him. That's all I have to say.

8 MS. BURCHSTEAD: I beg the Court's indulgence.

9 MS. BOWERS: Sandra Bowers and I'm her grandmother.

10 It really hurt seeing what he did to my little girl.

11 He really needs to get the maximum so no other little
12 girl will have to go through that. I'm sorry.

13 THE COURT: That's quite all right.

14 MS. BOWERS: I ask that he won't have to do this to no
15 other little girl cause he don't' realize what he do to a
16 little girl's life when he does that to her. That will be
17 with her for the rest of her life. Sometimes they don't
18 want to get help and it affects their relationships with
19 other men. I just want her to grow up and be a special
20 little girl and shield her from what he done to her. He
21 needs to get the maximum.

22 MS. BURCHSTEAD: Your Honor, that's everything from
23 the State unless law enforcement wishes to address the
24 Court.

25 Your Honor, Captain Kevin Atkins, Newberry Police

1 Department.

2 CAPTAIN ATKINS: Yes, Your Honor. This family is
3 afforded very little opprotuntty for closure. I think the
4 video speaks for itself in what you've seen and heard but
5 the video alone I think is enough for an extensive
6 sentence. And because the family is offered no closure
7 this is with them for the rest of their life. I think what
8 you can provide through your sentencing does provide them
9 some type of closure to know that he can't do this to her
10 again or to anybody else. And I think that's about all
11 they can get out of this is an extensive sentence.

12 THE COURT: Thank you.

13 MS. BURCHSTEAD: Thank you, Your Honor. That's all
14 from the State.

15 THE COURT: All right. Mr. Verner.

16 MR. VERNER: Your Honor, may it please the Court.

17 Harold is thirty-two years old. He of course has been
18 in jail since June 28th of 2010. As the officers indicated
19 he turned himself in. He was born in New Orleans and
20 that's where his family still lives. In mitigation but
21 when he was five he also was sexually molested by his
22 father. The sex offense prior - he does have a lewd act
23 equivalent type charge from Florida, that he was fourteen
24 years old when he was found guilty and then he was I guess
25 Florida's systems are a little bit different but he

1 matriculated from Juvenile Justice into the Youthful
2 Offender type facility in Florida.

3 Then he's got an aggravated assault from 2000. No
4 criminal history since then other than of course what we're
5 here for today. I will say, Your Honor, he's a real
6 courteous client. Most people I talk to tend to be
7 courteous to me given their circumstances but he
8 exceedingly so. Good behavior at the Detention Center
9 since he's been there. The jail staff was telling me that.

10 The Captain kind of remarked he considered him
11 institutionalized which is, you know, he doesn't disobey
12 the rules. It may not necessarily be great behavior but
13 doesn't get infractions either, just does what he's told,
14 so he's been in jail over two years. In candor although I
15 have been shown a copy of the video sometime back, but
16 because of the nature of the video it's been under the
17 tight control of the Attorney General's Office and their
18 law enforcement agencies.

19 THE COURT: Well they're not allowed to provide you
20 a copy because of the nature of it.

21 MR. VERNER: Yes, sir. But in - The first time that
22 particular evidence was made available to him was this week
23 where he could actually see what he had done and what the
24 proof was and he obviously offered a guilty plea the
25 following day. And, you know, to some extent that he was

1 held in Richland County before he even came to Newberry he
2 had already been in jail probably a year and a half or so.

3 I don't think he - Obviously he would be aware the
4 counter offer is, he knew what he did, but in candor of
5 actually being shown, you know, the hard evidence in this
6 case is the video tape and he has tendered up a plea, you
7 know, within a day of actually seeing everything that is
8 the case so I don't think he has tried to gain the system
9 in terms of getting a better plea. I think he is just
10 because there are two counties and kind of being caught
11 between the law enforcement jurisdictions that there has
12 been some delay but I don't see where he's gained the
13 system or tried to get an unfair advantage. I think that's
14 just the nature of the beast.

15 The mandatory minimum sentence is twenty-five years in
16 prison, that is non-parolable. Your Honor, I understand
17 and he understands there is at least a three year
18 consecutive sentence for putting it on video tape also non-
19 parolable, so he's got a mandatory minimum of twenty-eight
20 years which is in the nature of how we had all I think
21 hoped to resolve it short of putting everybody to the
22 burden of - Prior to him being released of course he has to
23 one he would be on life time electronic monitoring whenever
24 he comes out. He comes out on regardless the two year
25 community supervision and of course - then of course is the

1 - when he comes out he's under the SVP, the sexual predator
2 laws where the doctor's have to find he's not a danger or a
3 low danger to reoffend before he gets released at all, so
4 I've did some bad things, Your Honor.

5 He's had a - He was also - He came to South Carolina
6 as part of the Katrina disaster, the hurricane was how he
7 actually relocated to South Carolina when he was in his
8 early twenties. His family moved back after the storm and
9 relocated; he stayed, did a bad thing. At a minimum he's
10 got to get twenty-eight years with no early release and he
11 understands that. We'd ask the court to consider a
12 sentence in that range. I think that's how we could have
13 worked it out. After he saw the video he ended the case
14 and resolved it so we are hoping a sentence that will give
15 him a chance as a much older man to come out.

16 Also, Your Honor, I'm going to attach, because of the
17 nature of his charges, the CSC with a minor. The - He has
18 to be kept segregated from some people in the detention
19 center and we are attaching to the sentence sheet a list of
20 names of people that the Department of Corrections should
21 try to isolate him from, the members of the Blood. He's
22 not a member of a gang but he's had death threats just
23 because of what he's charged with. So I mean that's a
24 housing issue too but we spoke to the Department of
25 Corrections today and we're gonna attach a list of some

1 names of some people who have made death threats towards
2 him.

3 THE COURT: Mr. Ayton.

4 MR. AYTON: Yes, sir.

5 THE COURT: Anything you'd like to say?

6 MR. AYTON: Basically that's what I want to say that
7 was in chambers but I chose not to speak in chambers and I
8 chose to speak out here. I recognize what I have done and
9 I was wrong. I wish I could take back for what I done but
10 I can't. The person you see in that video is not who I am.
11 I'm really a good person but I just made bad mistakes in my
12 life. And the only thing I'm just basically asking you if
13 it please the Court to be lenient with me and that you have
14 mercy on me. Even though the victim's, the family doesn't
15 think I deserve no sympathy. Basically I'm just asking the
16 victim's and the family to forgive me for what I have done
17 and that I tried to change because this has been a major
18 change in my life.

19 I have no hard feelings toward anyone now. I have no
20 memories and I'm accepting responsibility for what I have
21 done. The only thing I can do is learn from this mistake
22 and be a better person and that's all I'm basically asking.
23 While I'm in the Department of Corrections I'm going in to
24 take counseling other educational programs, alcohol
25 anonymous and all the drug programs as well cause I know I

1 had that problem as well but I'm not using that as a
2 defense and I'm not asking anybody to hold that against me
3 cause that's a mistake that I have also made and I have to
4 learn from that. I'm just basically asking the Court to
5 forgive me and put this behind me and I'm saying that I'm
6 sorry. That's all I'm asking for and that you have mercy
7 on me, Your Honor.

8 MR. VERNER: I apologize, but just for the record I
9 wanted to add, as a child he was hit with a baseball bat
10 and it has knocked his left eye out. Had a head injury and
11 no question in my mind of competence both at the time and
12 as of today he's acted very bright. But he did have a
13 substantial head injury but for the record I've seen
14 nothing where he wouldn't be legally competent.

15 And again as he indicates it appears that the child's
16 mother and he, boyfriend girlfriend, drug use would be the
17 common reason for maybe not as good controls but the
18 history of drug abuse is in this case from the beginning.
19 I join in his request that the court take his total
20 situation in mind and try to fashion something that just
21 ends the case where we can all move away from it.

22 He also has one child, two children, Your Honor, I'm
23 sorry.

24 THE COURT: Where are they?

25 MR. VERNER: Probably Florida?

1 MR. AYTON: No. My kids are in Florida.

2 MR. VERNER: In Florida, Your Honor.

3 MS. BURCHSTEAD: Your Honor, can I possibly just make
4 one point for clarification?

5 THE COURT: Yes, ma'am.

6 MS. BURCHSTEAD: As I understand it Mr. Ayton did not
7 turn himself in on these charges. He did voluntarily go to
8 law enforcement as it related to providing an address or
9 something like that so he's been cooperative. And of
10 course we do know he talked with law enforcement. I just
11 wanted to clarify that. Thank you.

12 MR. VERNER: May I pass this up, Your Honor?

13 We ask for it to staple that or to attach that to the
14 sentencing.

15 THE COURT: Be glad to.

16 All right, anything else from the State regarding
17 mitigation?

18 MS. BURCHSTEAD: No, Your Honor.

19 THE COURT: Mr. Verner?

20 MR. VERNER: No, Your Honor.

21 THE COURT: All right. Regarding Indictments 11-GS-
22 36-631 and 633, of being the two CSC first charges, the
23 sentence of the Court is that Mr. Ayton be confined for
24 thirty-five years in the Department of Corrections and give
25 him credit for the days he's served since June 28th, 2010.

1 On Indictments 11-GS-36-632 and 634, sexual
2 exploitation of a minor first, the sentences on those two
3 charges are five years each running concurrently to one
4 another but consecutively to the CSC's.

5 Any questions?

6 MR. VERNER: No, Your Honor.

7 THE COURT: All right.

8 MS. BURCHSTEAD: Thank you, Your Honor.

9 MR. VERNER: Did the Court put the sentence start date
10 at June 28?

11 THE COURT: On all of 'em.

12 MR. VERNER: Yes, sir.

13 THE COURT: All right.

14 MS. BURCHSTEAD: The CSC's are concurrent?

15 THE COURT: Yes, ma'am.

16 MS. BURCHSTEAD: Thank you.

17 THE COURT: You all can go back in the jury room.

18 (JURY EXITS COURTROOM AT 12:10 P.M..)

19 (COURT AT EASE 12:20 P.M..)

20 (END OF TRANSCRIPT OF RECORD.)

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 3rd and 4th days of December, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: April 17 / 2015

196 LEGAL MAIL

2015CP3400021

NAROLD AYTON #353371
BRCI LAKE MURRAY 287
4460 BROAD RIVER Rd
Columbia, SC 29210

1-6-15

CLERK OF COURT
P.O. DRAWER 10
Newberry, SC 29108

Re: Filing PCR Application

FILED
NEWBERRY COUNTY
2015 JAN 13 AM 11 07
JACKIE S. BARNES
CLERK OF COURT

Honorable Clerk,

Please find enclosed an application for Post-Conviction Relief to filed in your office. I would like to have a stamped clocked filed copy returned to me with the name of the attorney that is assigned to handle the above said PCR application. I have enclosed a self addressed envelope to be used for this purpose. Thank you in advanced for your time and consideration in this matter.

Sincerely,

Narold Ayton
NAROLD AYTON
Applicant

SWORN TO AND SUBSCRIBED before me this 9th
Day of January, 2015

[Signature]
NOTARY PUBLIC

My Commission Expires: NOV. 24, 2024

FORM 5

STATE OF SOUTH CAROLINA)

County of Newberry)Harold Ayton #353371)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015CP3600021

APPLICATION FOR

POST-CONVICTION RELIEF

2015 JAN 13 PM 11:47

FILED
NEWBERRY COUNTY**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
4460 Broad River Road Columbia, SC 29210
2. Name and location of Court which imposed sentence: Newberry County
Courthouse General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-36-0631 Criminal Sexual Conduct on a minor
 - (b) 2011-GS-36-0632 - Exploitation on a minor

- (c) 2011-65-36-0633 + 2011-65-36-0634 + 2011-65-36-0635
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) December 4, 2012
- (b) 40 years sentence
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal was Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 18, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellant Failure to provide a proof of service
- ii. showing timely service of the notice of appeal.
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Plea-Trial Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment Sheets
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

LEGAL MAIL

Attachment 11(a) Ineffective Assistance of Counsel

- 1) Counsel ineffective for failing to disclose and explain discovery material to Petitioner.
- 2) Counsel ineffective for failing to prepare for Petitioner's case by not investigating the evidence, facts and the circumstances of the case.
- 3) Counsel ineffective for not subjecting the prosecution's case to meaningful adversarial testing.
- 4) Counsel failed to visit and inform petitioner of any developments in case.
- 5) Counsel failed to go over or even consider possible defense with Petitioner.
- 6) Counsel failed to get petitioner independent medical and mental evaluation.
- 7) Counsel ineffective for coercing and threatening Petitioner into plea instead of trial.
- 8) Counsel failed to inform Petitioner of his right to appeal his plea decision and file for 'Notice to Appeal plea decision.'
- 9) Counsel improperly advised Petitioner to accept plea which was not in his best interest.
- 10) Counsel failed to advocate the petitioner case.
- 11) Counsel failed to contact, interview, and subpoena potential witnesses.
- 12) Counsel failed to motion for a new trial on the grounds that evidence was insufficient to support conviction.
- 13) Counsel failed to get Petitioner mental health test for criminal responsibility relating to the time of the alleged offense.
- 14) Counsel failed to get Petitioner mental health test for competency to stand trial before the court for trial or plea.
- 15) Counsel failed to present, submit into evidence and argue favorable evidence during plea and closing arguments.
- 16) Counsel failed to object to hearsay testimony.
- 17) Counsel failed to obtain defense expert witness.
- 18) Counsel failed to prepare and present mitigating evidence at plea and or sentencing.

FILED
NEBBERRY COUNTY
2015 JUN 13 AM 11:08
JACQUE S. OBERG
CLERK

- 19) Counsel failed to impeach witness and victim.
- 20) Counsel ineffective for not filing a pre-trial motion for the protection of persons and property act!
- 21) Counsel failed to file for appeal, Notice of Appeal after plea.
- 22) Trial-Plea Counsel ineffective for not filing a appeal when petitioner told counsel that he wanted to appeal his conviction and sentence.
- 23) Counsel failed to present mitigating social history evidence good character evidence and good character witnesses.
- 24) Counsel failed to ask for a continuance when he knew he was not ready for court.
- 25) Counsel failed to call expert witness that were subpoena to testify.
- 26) Counsel failed to present favorable evidence in support of defense.
- 27) Counsel failed to investigate background of the victim.
- 28) Counsel failed to investigate and test evidence.
- 29) Counsel failed to file for a DNA test for the petitioner
- 30) Counsel failed to give the petitioner a discovery.

*(I, petitioner, respectfully reserve the right to amend application for further issues)

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) See Attachment Sheets
 (b) N/A
 (c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes (Plea Only)
 (b) your trial, if any? N/A
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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. Newberry Public Defender, Charles Verner
1219 Boyce St
 ii. P.O. Box 484
Newberry, SC 29108
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Charles Verner, Plea, and Sentencing
 ii. _____
 iii. _____

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

FOR CONVICTION AND SENTENCES VACATED AND TO BE RELEASE
FROM CUSTODY

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

NO

PETITIONER BELIEVES HE HAS ADDITIONAL CLAIMS FOR POSTCONVICTION RELIEF,
BUT DOES NOT YET HAVE COLLATERAL COUNSEL, ACCESS TO THE DISCOVERY
PROCESS, OR FUNDS FOR EXPERT SERVICES TO INVESTIGATE THESE CLAIMS,
AS SUCH I, THE PETITIONER, WOULD RESPECTFULLY RESERVE THE RIGHT TO
AMEND APPLICATION FOR FURTHER ISSUES.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of NEWBERRY)

I, HAROLD AYTON #353371, 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.

Harold Ayton

SWORN to and subscribed before me this 9th
day of January, 2018.

[Signature] (L.S.)
Notary Public

My Commission Expires: NOV 24, 2024

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
2015 JAN 13 PM 11 08

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

I, HAROLD AYTON #353371, 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.

Harold Ayton
Applicant

SWORN or affirmed to and subscribed before me this
9th day of January, 2015.

Richard P. [Signature]
Notary Public

My Commission Expires: Nov. 24, 2024

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
2015 JAN 13 AM 11 08

2015-CP-36-00021

Memorandum

CLERK OF COURT'S OFFICE, NEWBERRY COUNTY

Jackie S. Bowers, Clerk of Court
Post Office Drawer 10
Newberry, S.C.

TO: Harold Ayton

DATE: December 18, 2015

FROM: Elizabeth P. Folk
Chief Deputy Clerk of Court

Enclosed is a copy of the motion which you sent to be filed in your General Sessions case and a copy of a letter which was mailed to you informing you that Ms Laura Saunders will be representing you in your PCR case. If you have any more questions concerning your cases, you need to contact Ms Saunders at the address on the enclosed letter.

BROAD RIVER CORR INSTITUTION
 HAROLD AYTON #353371
 4460 BROAD RIVER RD
 COLUMBIA, SC 29210

NEWBERRY CLERK OF COURT
 P.O. DRAWER 10
 NEWBERRY, SC 29108

11-2-15

To whom it may concern:

I am writing this letter see if Public Defender Charles Verner
 has Filed For a Discovery From the Attorney General Office.
 May you please send me this information.

Thank you for your time.

With kindest regards

FILED
 NEWBERRY COUNTY
 2015 NOV 4 PM 12 03
 JACKIE S. BOWERS
 CLERK OF COURT

Sincerely

Harold Ayton

LEGAL MAIL

BROAD River CORR Institution
Harold Ayton #353371
4460 Broad River RD
Columbia, SC 29210

Clerk of Court
P.O. Drawer 10
Newberry SC 29108

11-2-15

To whom it may concern:

May you please clock stamp this motion and put
it on file and may you please send me a copy of this
clock stamped motion.

Thank you for your time

With kindest regards

FILED
NEWBERRY COUNTY
2015 NOV 4 PM 12 04
JACKIE S. BOWERS
CLERK OF COURT

LEGAL MAIL

STATE OF SOUTH CAROLINA

County of Newberry

Harold Ayton

Petitioner

v.

State of South Carolina

Respondent

IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH CIRCUIT COURT

RULE 5/BRADY MOTION FOR DISCOVERY

FILED
NEWBERRY COUNTY
2015 NOV 4 PM 12 04
JACKIE S. BOWERS
CLERK OF COURT

The Defendant respectfully Requests that the produce or otherwise make available to the Defendant, Statements of the Defendant, the Defendant's Indictments, Audio-Video Disc, the Grand Jury Impaneling Document for September 8, 2011, all documents, tangible objects, reports of examinations or tests, Forensic Analysts report, Witness statements, Physical evidence and any other information subject to disclosure pursuant to Rule 5 and 6 of the South Carolina Criminal Rules of Procedure.

The Defendant further request the State to produce all evidence favorable to the Defendant subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitney, 514 U.S. 419 (1995), and their progeny. This includes all information that may tend to exculpate the Defendant and that may tend to mitigate any punishment should he be found guilty.

This request is a continuing Request for all such discoverable information as it becomes known to the prosecution or any prosecution agents or that by the exercise of due diligence may become known to the prosecution.

LEGAL MAIL

The Defendant hereby asserts his 5th Amendment Right to Remain Silent and does not wish to be questioned in the absence of counsel, pursuant to *McNeil v. Wisconsin*, 111 S.Ct. 220 (1991) and *EDWARDS v. ARIZONA*, 451 U.S. 477 (1981)

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, the Defendant also requests all reports of all person within the Chain of Custody of all physical evidence and all transcript from the Grand Jury and all hearing as well plea hearings due to the Supreme Court of Ohio stated in *State ex rel. Heller v. Miller*, 61 Ohio St. 206, 9 (1980). The United States Supreme Court has given rather significant procedural guarantees in criminal cases, including the right to counsel and a transcript at public expense for appeals as of right. The right to a transcript for indigents was established in *Griffin v. Illinois* (1956), 351 U.S. 12, where the court, at page 18, stated that although a right of appeal was not required by the due process clause, once a state gave that right in a criminal case it could not effectively deny it to indigents by requiring that they pay for a transcript they could not afford. The court held broadly that there could be no equal justice where the kind of trial received depended on the ability to pay. The same rationale was used in *Douglas v. California* (1963), 372 U.S. 353, when the court ruled that denial to indigent of counsel at public expense for an appeal of right was as invidious as denial of a transcript and violated the requirement of equality found in the 14th Amendment.

Respectfully Submitted

SWORN or Affirmed before me this
2nd Day of November 2015
Susan H. Jye
Notary Public

Harold Apton
Harold Apton #553371
4460 Broad River RD
Columbia, SC 29210

My Commission Expires _____ My Commission Expires
March 5, 2018

LEGAL MAIL

PROOF OF SERVICE TO RULE 5/BRADY

The State of South Carolina
In The Court of Appeals
In The Supreme Court

BRADY FROM NEWBERRY COUNTY
Court of Common Pleas

EUGENE C. GRIFFITH, JR., Circuit Court Judge

Case No. 2015-CP-36-00021

FILED
NEWBERRY COUNTY
2015 NOV 4 PM 12 04
JACKIE S. BOWERS
CLERK OF COURT

The STATE OF SOUTH CAROLINA
Respondent,

v.

HAROLD AYTON

APPELLANT.

PROOF OF SERVICE

I certify that I have served the Rule 5/Brady Motion For Discovery on the South Carolina Attorney General's Office by depositing a copy of it in the United States Mail, postage prepaid, on November 2, 2015, addressed to the Attorney General Office of Record PO Box 11549 Columbia, SC 29211 [by personally delivering a copy of it to the Newberry Clerk of Court of Record

LEGAL MAIL

Beth P. Folk, Post Office Drawer 10, Newberry, SC 29108 by depositing
a copy of it in the United States Mail, postage prepaid, on November
, 2015.]

November 2, 2015

Harold Ayton
Harold Ayton #353371
4460 Broad River Rd
Columbia, SC 29210

SWORN OR AFFIRMED before me this
2nd day of November 2015
Susan H. Frye
Notary Public

My Commission Expires: _____ My Commission Expires
March 5, 2018

LEGAL MAIL

HAROLD AYTON #353371
BRI Lake Murray 287
4460 Broad River RD
Columbia SC 29216

NEWBERRY CLERK OF COURT
P.O. Drawer 10
Newberry, SC 29108

FILED
NEWBERRY COUNTY
2015 NOV 4 PM 12 04

JACKIE S. DOWERS
CLERK OF COURT

RECEIVED

NOV 02 2015

BR
MAIL OM

LEGAL MAIL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
	)	2014-CP-36-00021
Harold R. Ayton,	)	
S.C.D.C. No. 353371,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In making its Return to the application for post-conviction relief (PCR) filed by Harold Ayton (Applicant) on January 13, 2015, Respondent would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted by the Newberry County Grand Jury for three counts of criminal sexual conduct with a minor (first degree) (2011-GS-36-631, -633, -635) and two counts of sexual exploitation of a minor (first degree) (2011-GS-36-632, -634). Applicant was represented by Charles Verner, Esquire. On December 4, 2012, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted.¹ Applicant was sentenced to concurrent terms of thirty-five years imprisonment for each charge of criminal sexual conduct (2011-GS-36-631, -633), to run consecutively to the two charges of sexual exploitation. Applicant was sentenced to concurrent terms of five years imprisonment for each charge of sexual exploitation of a minor (2011-GS-36-632, -634), to run consecutively to the two charges of criminal sexual conduct.

¹ Indictment 2011-GS-36-635 was nolle prossed.

On July 19, 2013, the Office of the Attorney General received a notice of appeal and proof of service from Applicant appealing the convictions and sentences in question. The proof of service was dated July 17, 2013. By Order filed September 18, 2013, the South Carolina Court of Appeals dismissed the appeal based upon Applicant's failure to provide a proof of service showing timely service of the notice of appeal. The remittitur was issued on October 8, 2013.

Applicant subsequently filed a Motion for Rehearing and to Reinstate the Appeal. The Court of Appeals subsequently issued an Order recalling the remittitur. By document dated November 12, 2013, Applicant again forwarded a proof of service for the notice of appeal dated July 17, 2013. Respondent filed a Return. By Order filed February 26, 2014, the Court of Appeals denied Applicant's Motion for Rehearing. The Remittitur was sent April 9, 2014.

II.

In his current application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a) Failure to disclose and explain discovery material
- b) Failure to prepare and investigate
- c) Failure to subject case to meaningful adversarial testing
- d) Failure to visit and inform Applicant of any developments in his case
- e) Failure to go over or even consider possible defense
- f) Failure to get Applicant an independent medical and mental evaluation
- g) Coercing and threatening Applicant into plea instead of trial
- h) Failure to inform Applicant of his right to appeal his plea decision and file a Notice of Appeal
- i) Improperly advising Applicant to accept the plea which was not in his best interest
- j) Failure to advocate
- k) Failure to contact, interview, and subpoena potential witnesses
- l) Failure to motion for a new trial on the grounds that the evidence was insufficient to support a conviction
- m) Failure to get Applicant mental health testing for criminal responsibility relating to the time of the alleged offense
- n) Failure to get Applicant mental health test for competency to stand trial or plead

- o) Failure to present, submit into evidence and argue favorable evidence during plea and closing arguments
- p) Failure to object to hearsay testimony
- q) Failure to obtain defense expert witness
- r) Failure to prepare and present mitigating evidence at plea
- s) Failure to impeach witness and victim
- t) Failure to file a pre-trial motion for the Protection of Persons and Property Act
- u) Failure to file a notice of appeal after plea
- v) Failure to file an appeal when Applicant told counsel that he wanted to appeal his conviction and sentence
- w) Failure to present mitigating social history evidence good character evidence and good character witnesses.
- x) Failure to ask for a continuance when he knew he was not ready for court
- y) Failure to call expert witness that were subpoena to testify
- z) Failure to present favorable evidence in support of defense
- aa) Failure to investigate background of the victim
- bb) Failure to investigate and test evidence
- cc) Failure to file for a DNA test for Applicant
- dd) Failure to give Applicant discovery

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

III.

Respondent contends that Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, 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 ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. 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, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

Applicant further alleges his guilty plea was not voluntarily made. Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective

assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

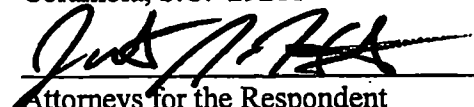
JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

Columbia, South Carolina
may 3, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
	)	2014-CP-36-0021
HAROLD R. AYTON, #353371	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Laura M. Saunders, Esquire
 PO Box 731
 Laurens, SC 29360

DATED this 3RD day of May, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

Perry Correctional Inst
 Harold Ayton # 35337104A220
 430 Oaklawn Rd
 Peizer, SC 29869

Newberry Clerk of Court

10-18-16

P.O. Drawer 10

Newberry, SC 29108

2015-CP-36-00021

Dear Clerk

I'm writing this letter in regards of me finding if im
 on the court docket for the month of October for PCR or anytime
 soon? May you please let me know when i am schedule for PCR
 Court?

Thank you for your time on this matter

With kindest regards

Sincerely

Harold Ayton

FILED
 NEWBERRY, SC
 2016 OCT 24 PM 11 52
 JACQUELINE
 CLERK OF COURT

Perry Correctional Institution
Harold Ayton #35337104A220
430 Oaklawn Rd
Pelzer, SC 29669

GREENVILLE
 SC 296
 20 OCT '16
 PM 1 L

Newberry County Clerk of Court
P.O. Drawer 10
Newberry, SC 29608

RECEIVED
 OCT 24 AM 11 52
 2016
 CLERK

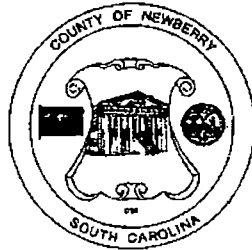
29108-001010

RECEIVED
 OCT 19 2016
 PO: McPherson
 LEGAL MAIL

OFFICE OF CLERK OF COURT
COUNTY OF NEWBERRY

Jackie S. Bowers
Clerk of Court

P.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111



October 25, 2016

Harold Ayton #353371Q4A220
Perry Correctional Institution
430 Oakland Rd.
Pelzer, SC 29669

2015-CP-36-00021

Mr. Ayton,

I am responding to your letter I received October 24, 2016 requesting information about your case being on a PCR docket. Mr., Ayton we do not prepare those dockets that is done by the Attorney General's Office. You may contact them at PO Box 11549 Columbia, SC 2921. Please let me know if you have any other questions.

Sincerely,

Janeen Toby
Deputy Clerk Common Pleas
Newberry County
jtoby@newberrycounty.net

SCA...

Perry Correctional Inst
 Harold Ayton #353371Q4A220
 430 Oaklawn Rd
 Pelzer, SC 29669

Newberry Clerk of Court
 P.O. Drawer 10
 Newberry, SC 29108

1-8-17

2015-CP-36-00021

FILED
 NEWBERRY COUNTY
 2017 JAN -9 PM 11:02
 JACKIE S. JOWEN
 CLERK OF COURT

Re: Filing Summary Judgment Pursuant to Rule 56 SCRCivP

Dear Clerk,

Please find enclosed an Motion For Summary Judgment to Filed in your Office. I would like for you to please serve a copy to the Attorney General because Perry Corr Inst doesn't make copy of hand written motions. So, may you please send a copy to the Attorney Generals Office and i would like to have a clock stamped Filed copy returned to me. I have enclosed a self addressed envelope to be used for the returned file copy.

With Kindest regards

Sincerely

Harold Ayton

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

COUNTY OF NEWBERRY

CASE NO: 2015 CP-36-00021

Harold Ayton
Petitioner
v.MOTION AND ORDER INFORMATION
FORM AND COVERSHEETState of South Carolina
Respondant.FILED
NEWBERRY COUNTY
2017 JUN -9 PM 11:02
JACKIE S. BOWEN
CLERK OF COURT

Plaintiff's Attorney:

Bar No. _____
Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Bar No. _____
Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS 1 and 2)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS 2 and 3)
☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS 2 and 3)

SECTION 1: HEARING INFORMATION

Nature of Motion: Rule 56 Summary Judgment & CRCP

Estimated Time Needed: 45 mins

Court Reporter Needed: Yes

SECTION 2: Motion / Order Type

- ☒ Written Motion attached
☐ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant1-3-17
Date Submitted

SECTION 3: Motion Fee

☐ PAID-AMOUNT: \$ _____☒ EXEMPT:

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☒ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post Conviction Relief
☐ Motion For Stay in Bankruptcy
☐ Motion For Publication ☐ Motion For Execution (Rule 69, SCRP)
☐ Proposed Order submitted at request of the court or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be Paid upon Filing of the attached
ORDER.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED-AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

County of Newberry

Harold Ayton
Petitioner

v.

State of South Carolina
RespondentIN THE COURT OF COMMON PLEAS
FOR THE EIGHTH CIRCUIT COURT

2015-CP-36-00021

AFFIDAVIT AND MOTION FOR
SUMMARY JUDGMENT UNDER
S.C. RULES CIV. PROC. RULE 56FILED
NEWBERRY COUNTY
CLERK OF COURT
2017 JAN -9 PM 11:02
JACKIE S. BOWEN

Comes now Harold Ayton #33371 with the above entitled petition for a Affidavit and Motion for Summary Judgment pursuant to South Carolina Rules of Civil Procedure Rule 56 to challenge the Fraudulent Nullity Judgment, Fraudulent Conviction, and the Fraudulent Sentence Commitment Order concerning the Unindicted Indictments #2011-GS-36-0631 through 0634. Petitioner maintains that he has no other remedy available to him, and that he is being held illegally in custody False Imprisoned, Conversion, Trespass, Replevin and Detinue pursuant to a Sham Legal Process Fraudulent Judgment, Fraudulent Void Conviction and a Fraudulent Void Sentence Commitment Order Contract due to the fact the Newberry County Court of General Sessions lacked jurisdiction to hear Petitioner case due to Unindicted Indictments that haven't been before a legal proper Impanel Grand Jury, and hasn't been indicted in ninety (90) days pursuant to Rule 3 (c), SCRCrimP.

SUMMARY JUDGMENT STANDARD

Summary Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party has the burden of proving that Summary Judgment is appropriate. Once the moving party makes the showing, however, the opposing party must respond to the motion with specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56 (e). When no genuine issue of any material fact exists, Summary Judgment is appropriate. See Shealy v. Winston, 929 F.2d 1069-1071 (4th Cir. 1991). The facts and inferences to be drawn from the evidence must

be viewed in the light most favorable to the non-moving party.

However, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. *Id.* (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)).

Once the moving party has met its burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show there is a genuine issue for trial. Baber v. Hosp. Corp. of Am., 977 F.2d 872, 874-75 (4th Cir. 1992).

The nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. See *id.*; Doyle v. Sentry, Inc., 877 F.Supp. 1002, 1005 (E.D. Va. 1995). Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits, depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. See Fed. R. Civ. P. 56(c), (e); Baber, 977 F.2d 875 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)). Moreover, the nonmovant's proof must meet the substantive evidentiary standard of proof that would apply at a trial on the merits. Mitchell v. Data Gen. Corp., 12 F.3d 1310, 1316 (4th Cir. 1993); DeLeon v. St. Joseph Hosp., Inc., 871 F.2d 1229, 1223 (4th Cir. 1989).

STATEMENT OF FACT

Petitioner contends that he cannot challenge the Null, and Void Conviction in Administrative Law Court because the ALC only has authority to review non-collateral matter (i.e. cases involving the challenging of issues not involving a conviction or sentence). Al-Shabazz v. State, 527 S.e.2d 742, 749-50 (2000).

Petitioner cannot challenge this issue on direct appeal because it was not preserved for appeal in the court because the basis of any objection was purposefully hidden by the solicitor. Petitioner contends that he cannot challenge this issue in a motion for new trial based on after discovered evidence, under Rule 29(b) of the S.C.R. Crim. P., because the fact that the Court lacked jurisdiction is not evidence going to guilt or innocence. Hayden v. State, 299 S.e.2d 854 (1983). Moreover, Petitioner cannot even be given a new trial under the facts of this case because the state cannot proceed with a future trial based on the past bogus fraudulent unindicted indictments, and it is too late at this date to obtain a legitimate indictment because the Statute of Limitation would prevent it and petitioner has already

been illegally convicted when he was never lawfully indicted by a proper legal impanel grand jury and wasn't indicted within 90 days in accordance with Rule 3(c) of the S.C.R.Crim.P.

Petitioner would show this Honorable Court the following facts.

Petitioner's 5th Amendment of the United States Constitution has been violated due to the fact, the petitioner's Due Process Rights to be lawfully indicted by a legal proper impanel grand jury were denied him because the solicitor utilized an illegal grand jury outside of South Carolina Statute Code 14-5-730, which voids the unindicted indictments and judgment and conviction and constitutes Perjury, Conspiracy, Obstruction of Justice and amounts to Prosecutorial Misconduct, Subornation of Perjury and Fraud upon the court.

The 5th Amendment guarantees that prosecutions for serious crime may only be instituted by indictment. U.S.C.A. Const. Amendment 5.

Indictment has as its chief purposes apprising accused of charges against him, so that he may adequately prepare his defense, and describing crime charged with sufficient specificity to enable him to protect against future jeopardy for the same offense.

U.S.C.A. Const. Amendment 5.

The grand jury is interposed by the 5th Amendment to afford safeguard against oppressive actions of prosecution or court. U.S.C.A. Const. Amendment 5. See also Gaither v. U.S., 413 F.2d 1061

Thus, no court in South Carolina disagrees with the binding rules founded within our constitution that requires a valid indictment by a properly impaneled grand jury, prior to trial or guilty plea for felony offenses. See Brown v. State, 343 S.C. 342 (2001); and State v. Gentry, 363 S.C. 610 (2005). Wherefore, the petitioner posits here, consistently with the above holding in Odom and Tilley; the lack of such a valid indictment whenever or wherever discovered, deprives any court for this state of jurisdiction. A fact which can be adequately asked and answered and must be, anytime such jurisdiction is in question. Or, such refusal to hear petitioner's claim on jurisdictional grounds runs the risk of constituting a Gross Miscarriage of Justice. See Alice v. State, 409 S.e.2d 394.

Petitioner contends that the State knowingly committed Fraud by a Sham Illegal Process because the State employed the use of an Sham Fraudulent Unlawful Procedure for the return and publication of its alleged True Billed indictments when no Court of General Sessions convened on September 2, 2011. The State unlawfully impowered its Sham Grand Jury outside the jurisdiction of the Court of General Sessions and the Statutory Mandated Code 14-5-730 and then willfully caused False and Misleading Information to be printed in its Fraudulent Unindicted Indictments and constituting Prosecutorial Misconduct, and Fraud Upon the Courts at the highest level of State Government because by a mode of procedure that the State had no lawful authority to adopt resulting in depriving the petitioners right to a lawful True Bill Indictment before standing trial or plea. The States Egregious Conduct and Fraudulent practices victimized the court as well as the petitioner.

Petitioner contends that the Solicitors Office failed to comply with Statutory Law, jurisdictional in nature, specifying the manner and means for lawfully returning a True Bill Indictment, which effectively deprives the petitioner of Due Process of Law and also Life, Liberty and Property. The jurisdiction of a court over subject matter of a proceeding is determined by the Constitution the Laws of the State, and is Fundamental. State v. Heyward, 504 S.e.2d 379 (2002) (citing Anderson v. Anderson, 382 S.e.2d 897, 900 (1989)). A court acquires jurisdiction to hear a criminal case by way of a legally sufficient indictment or a valid waiver thereof. A Grand Jury jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry. See State v. McGuire, 279 S.C. 432, 289 S.e.2d 158 (S.C. 1982) and State v. Funderburk, 259 S.C. 256, 191 S.e.2d 520 (1972); also State v. Wheeler, 259 S.C. 571, 193 S.e.2d 515 (1972).

Petitioner contends that South Carolina Statute Code 14-9-210 requires that the County Solicitor prepare and submit bills of indictment through the presiding judge of the Court of General Sessions to a Grand Jury impaneled under the authority of the Court of General Sessions. No EXCEPTIONS.

South Carolina Statute Code 14-9-210 statutory terms are clear, unambiguous, must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation and are jurisdiction in nature, and it requires that all criminal indictments must be issued through a legal Grand Jury impaneled before the Court of General Sessions, and the States

NON-compliance with mandatory indictment procedures, and willful acts of Fraud have Nugatory, Void and rendered all judicial proceedings invalid, Nugatory, Void and it's Un-indicted Indictment null.

It is a cardinal rule of Statutory Constitution that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.e.2d 578 (2000); State v. Martin, 293 S.C. 46, 358 S.e.2d 697 (1987)

When a statute terms are clear and unambiguous of their face, there is no room for Statutory Construction and a court must apply the Statute according to its literal meaning. See Carolina Power and Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.e.2d 177, 179 (1994).

South Carolina Const. Art. 5 sec 22

S.C. Statute Code 17-19-10 (2003)

No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a Grand jury.) A criminal defendant has a State Constitutional Right to have the indictment issued by a legally constituted Grand jury. State v. Means, O.P. No. 26105 (S.C. Supreme Court Filed February 6, 2006) Evans v. States, 611 S.e.2d 510 (2005); State v. Williams, 210 S.e.2d 298, 301 (1974).

U.S.C.A. Const. Amendment 14 sec 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of Life, Liberty, or Property, without Due Process of Law; Nor deny to any person within its jurisdiction the Equal Protection of the Laws.

Federal Rules of Criminal Proc. 7(c)

Specifically provides that an offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment.

Thus, in Ex parte Wilson, 114 U.S. 417, 429, 5 S.Ct. 935, 941, the Court stated that the District Court, in holding the petitioner to answer for such a crime without indictment or presentment by a

GRAND jury, exceeded its jurisdiction, and he is therefore entitled to be discharged.

An indictment returned by a GRAND jury when no Court of General Sessions was in sessions is VOID and NUGATORY, which of necessity makes the judgement, conviction and sentence VOID
U.S.C.A. Const. Amend. 14

The Act of Maryland passed 11-3-1722

Provides that from and after the publication hereof no Attorney General, or Clerk of the peace, or of indictment shall exhibit any bill or bills of indictment to any GRAND jury against any person whatsoever unless the GRAND jury find or make a presentment of the offence of their own knowledge. The statute was apparently intended to protect the accused from having his case prejudiced by having unauthorized persons come before the GRAND jury with predrafted indictments.

Federal Rules of Criminal Proc. Rule 6(D)

Requires the GRAND jury as a body to pass on the actual terms of an indictment. An indictment signed by GRAND jury foreman but was not submitted to a body of the GRAND jury, petitioner is entitled to dismissal of indictment. See Gaither v. U.S., 413 F.2d 1061
 This error would deprive the defendant of the basic protection which the guaranty of the invention of a GRAND jury was designed to secure.

The Evidence In This Case

However, here, the evidence will establish that the State Malfeasance unlawfully impaneled its Sham Illegal Fraudulent Grand Jury outside the jurisdiction of the Court of General Sessions and then willfully committed Fraud and Perjury by willfully printed and published false and misleading information in its Unindicted Fraudulent Indictment in order to keep secret its violation of Statutory Law and the fact that the State did Fraud a De Facto Court with Unindicted Indictments that haven't been before a legal proper GRAND jury. In this instant case at bar, the bill of indictment prints that it was returned at a Court of General Sessions that convened on September 2, 2011 in Newberry County present upon their oath. The UNINDICTED indictment is signed and sealed with a True Bill Stamp. Further, the title page of the

States UNINDICTED indictment prints that it was published at a Court of General Sessions term as convened on September 2, 2011 on the alleged indictment numbers: 2011-GS-36-0631 through 0634. (See: Attached Exhibit The Four UNINDICTED indictments)

The S.C. Statute Code 14-5-730 Terms of Court in the Eighth Circuit For Newberry County Court of General Sessions states: The Court of General Sessions For Newberry County shall be held in Newberry on the third Monday in September for one week.

According to S.C. Statute Code 14-5-730, the legal convene date is September 19th to September 23rd.

But the State had convened an Fraudulent Nugatory Void Sham Illegal Pleading hearing that was dated for September 2, 2011 which fell on a Friday at the end and the beginning of the month.

By this violation Petitioner's Federal Equal Protection Rights, State Constitutional Rights, and Statutory Rights to be lawfully indicted by a legal proper Grand jury were denied him because the Solicitor utilized a Fraudulent, Nugatory, Void, Sham Pleading Illegal Grand Jury outside the jurisdiction of the Court of General Sessions and S.C. Statute Code 14-5-730, which deprived the De Facto Court of jurisdiction and Nugatory and voids the UNINDICTED Fraudulent Indictments, Void Nugatory Conviction and the Void Nugatory Illegal Sentence and constitutes Perjury, Conspiracy, Miscarriage of Justice and Fraud upon the Court, Prosecutorial Misconduct and deprive the petitioner of Life, Liberty and Property, without Due Process of Law. (See: Attached Exhibit S.C. Statute Code 14-5-730)

A letter from the Newberry County Clerk of Court very clearly establishes that no Court of General Sessions convened on September 2, 2011, but convened on September 6, 2011. (See: Attached Exhibit The Clerk's Letter)

Moreover, a letter from the South Carolina Court of Administration as well the Judicial Department Circuit Court Calendar for the County of Newberry in the month of September proves beyond doubt that no Court of General Sessions convened on September 2, 2011 as falsely alleged in Petitioner's Nullity Nugatory Void and Fraudulent UNINDICTED Indictments. (See: Attached Exhibit The Letter and the Judicial Department Circuit Court Calendar)

If there were no Court of General Sessions that convened on September 2, 2011, then it would be physically impossible for a lawful Grand jury to have been impaneled on that date. In other words, if the Grand jury conducted business outside the scope and authority of the Court of General Sessions, then their Sham Pleading actions is Malfeasance, Nullity, Nugatory and Void and there can be no waiver of a Nugatory Void Fraudulent UNINDICTED Indictments that haven't been before a legal proper Grand jury because they lacked jurisdiction to True Bill any indictment and any future actions on such an indictment, including a Trial, Conviction or Sentence would likewise be a Nullity and Nugatory. Accordingly, Petitioner must be released from custody immediately

ARREST WARRANT

I-009309

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

THE STATE

against

HAROLD RUBEN AYTON

Address:

Phone: _____ SSN: _____
 Sex: M Race: B Height: 6-2 Weight: 235
 DL State: SC DL#: _____
 DOB: _____ Agency OR#: SC0360100
 Prosecuting Agency: CITY OF NEWBERRY
 Prosecuting Officer: DET. K. ATKINS
 Offense: CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE Offense Code: 0385
 Code/Ordinance Sec. 16-03-0655(A)(1), 0656

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

_____ The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

RETURN

Copy of this arrest warrant was delivered to
 defendant HAROLD RUBEN AYTON

03-14-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 NEWBERRY MUNICIPAL COURT
 1507 NANCE STREET
 NEWBERRY, SC 29108
 (803) 321-1010

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 NEWBERRY

Personally appeared before me the affiant DET. K. ATKINS who
 being duly sworn deposes and says that defendant HAROLD RUBEN AYTON
 did within this county and state on 05/23/2010 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY)
 in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0655(A)(1), 0656 / CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MAY 23, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF CRIMINAL
 SEXUAL CONDUCT IN THE FIRST DEGREE, IN THAT THE DEFENDANT DID ENGAGE IN SEXUAL BATTERY WITH A VICTIM
 THAT WAS UNDER THE AGE OF ELEVEN. DURING THIS INCIDENT, THE DEFENDANT USED HIS PENIS TO PENETRATE THE
 JUVENILE VICTIM'S VAGINA AND ANUS. THE DEFENDANT WAS POSITIVELY IDENTIFIED AS THE CULPRIT WHO COMMITTED
 THIS CRIME AFTER THE INCIDENT WAS CAPTURED ON VIDEO, AND THE DEFENDANT HAS PROVIDED LAW ENFORCEMENT
 WITH A WRITTEN CONFESSION TO THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST. APARTMENT
 WHICH IS LOCATED WITHIN THE CITY LIMITS OF NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE
 OF LAWS 1976 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 NEWBERRY

Affiant's Address 1507 NANCE ST.
NEWBERRY SC 29108
 Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 05/23/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR OR ATTEMPT - VICTIM
UNDER 11 YRS OF AGE - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
 to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 05/30/2010

(L.S.)

BARRY S. MOON

Judge Code: 231

Judge's Address 1507 NANCE STREET
NEWBERRY SC 29108

Judge's Telephone 803-321-1010

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

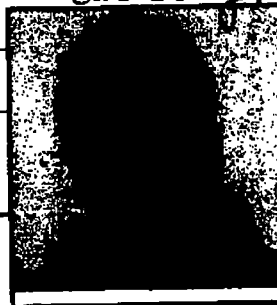
Case: 2010-05837

ORIGINAL

AFFIDAVIT

FILED
NEWBERRY COUNTY

Not Approved by
 S.C. Attorney General
 July 28, 1990
 SCSA 615



STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF NEWBERRY)

CRIMINAL SEXUAL CONDUCT
WITH A MNOR IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or about the date of May 23, 2010, did willfully and knowingly commit the crime of Criminal Sexual Conduct With a Minor In the First Degree. To wit: Harold R. Ayton, a person eighteen years of age or older, did engage in sexual battery, as defined in Section 16-3-651(h), with a victim under the age of eleven within the County of Newberry, State of South Carolina. This is in direct violation of Section 16-3-655(A)(1), 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 (MBW)
ATTORNEY GENERAL

FILED
NEWBERRY COUNTY

2011 SEP 2 10 00 AM

CLERK OF COURT
NEWBERRY COUNTY

WITNESSES

Det. K. Atkins.- Newberry Police Dept.

ARREST WARRANT NUMBER

I-009309

ACTION OF GRAND JURY

TRUE BILL

Cindy O. Chian

Foreperson of Grand Jury

Date: *9/21/2011*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-36-0631

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON
D.O.B. 03/16/1980

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE**

S.C. CODE §16-15-655(A)(1)
CDR Code: 0385

FILED
NEWBERRY COUNTY

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury. 2011-9-21 11:03

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.

Exhibit (A)

235

STATE OF SOUTH CAROLINA

COUNTY OF Newberry

STATE VS.

AKA: Harold Ruben Ayton

Race: B Sex: M Age: 32

DOB: SS#:

Address:

City, State, Zip: Columbia, SC 29203

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First de

in violation of § 16-03-0655(A) of the S.C. Code of Laws, bearing CDR Code # 0385

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

ATTEST:

Prosecutor, Special

71716
SC Bar#Ayton, Harold
DefendantCharles J. Finner
Attorney for Defendant10033
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 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. [2011 GS 36-633]☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS 36-632 + 634
☒ 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. Since June 28, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (SCCA Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$39.00
TOTAL	\$	\$1339.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS36-0631

A/W#: 1009309

Date of Offense: 5/23/2010

S.C. Code § : 16-03-0655(A)

CDR Code #: 0385

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,
47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
2154
12-4-12

ARREST WARRANT

I-009310

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

THE STATE

against

HAROLD RUBEN AYTON

Address:

COLUMBIA SC 29203

Phone: _____ SSN: _____

Sex: M Race: B Height: 6-2 Weight: 235DL State: SC DL#: _____DOB: _____ Agency ORI#: SC0360100Prosecuting Agency: CITY OF NEWBERRYProsecuting Officer: DET. K. ATKINSOffense: SEXUAL EXPLOITATION OF A MINOR - FIRST DEGREE Offense Code: 0379Code/Ordinance Sec. 16-15-0395 (A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

_____ The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant HAROLD RUBEN AYTON

on 05-14-2010

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

NEWBERRY MUNICIPAL COURT

1507 NANCE STREET

NEWBERRY, SC 29108

(803) 321-1010

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

AFFIDAVIT

Personally appeared before me the affiant DET. K. ATKINS whobeing duly sworn deposes and says that defendant HAROLD RUBEN AYTONdid within this county and state on 05/23/2010 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-15-0395 (A) / SEXUAL EXPLOITATION OF A MINOR - FIRST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MAY 23, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF SEXUAL EXPLOITATION OF A MINOR IN THE FIRST DEGREE, IN THAT THE DEFENDANT RECORDED, PHOTOGRAPHED, AND FILMED A CHILD UNDER THE AGE ELEVEN ENGAGED IN SEXUAL ACTIVITY. DURING THIS INCIDENT, THE DEFENDANT FILMED HIMSELF HAVING SEXUAL INTERCOURSE WITH A SIX YEAR OLD FEMALE. THE DEFENDANT HAS PROVIDED LAW ENFORCEMENT WITH A WRITTEN CONFESSION TO THE CRIME AND HE HAS BEEN POSITIVELY IDENTIFIED AS THE CULPRIT WHO COMMITTED THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST. APT. WHICH IS LOCATED WITHIN THE CITY LIMITS OF NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 1976 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

Affiant's Address 1507 NANCE ST.NEWBERRY SC 29108Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/23/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:DESCRIPTION OF OFFENSE: SEX / SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/30/2010

BARRY S. KOON

Judge Code: 231Judge's Address 1507 NANCE STREETNEWBERRY SC 29108Judge's Telephone 803-321-1010Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

ORIGINAL

Case: 2010-05837

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF NEWBERRY

SEXUAL EXPLOITATION OF A MINOR IN THE
FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or March 31, 2010, did willfully and knowingly commit
the crime of Sexual Exploitation of a Minor in the First Degree. To wit: Harold R. Ayton,
a person eighteen years of age or older, while located in the County of Newberry, State
of South Carolina, did produce material containing a visual representation of a minor
child engaged in sexual activity, as defined in Section 16-15-375. This is in direct
violation of Section 16-15-0405 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 (MBW)
ATTORNEY GENERAL

DOCKET NO. 2011-GS-36-0632

WITNESSES

Det. K. Atkins - Newberry Police Dept.

The State of South Carolina

County of Newberry

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

Defendant

COURT OF GENERAL SESSIONS

September 2011 TERM

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

ARREST WARRANT NUMBER

I-009310

THE STATE

vs.

Defendant

Witness:

ACTION OF GRAND JURY

HAROLD R. AYTON
D.O.B. 1980

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

TRUE BILL

Cudjia L. Oriskany
Foreperson of Grand Jury
Date: 9/8/2011

VERDICT

Indictment for

**SEXUAL EXPLOITATION OF A MINOR
IN THE FIRST DEGREE**

S.C. CODE §16-15-0395
CDR Code: 0379

Foreperson of Petit Jury
Date:

Exhibit (A)

239

STATE OF SOUTH CAROLINA

COUNTY OF Newberry
 STATE VS.
Harold Ruben Ayton

AKA:

Race: B Sex: M Age: 32DOB: 1 SS#: 9

Address:

City, State, Zip: Columbia, SC 29203DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Sex / Sexual exploitation of a minor, First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS36-0632A/W#: I009310Date of Offense: 5/23/2010S.C. Code §: 16-15-0395(D)CDR Code #: 0379

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Buckhead
Prosecutor, Special7/7/10
SC Bar#ayton Harold
DefendantCharles Kerner
Attorney for Defendant10033
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or, ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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. 12011GS36-634☒ CONCURRENT ☒ CONSECUTIVE to sentence on: 2011GS36-631 + 633☒ 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. Since June 28, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(I) (Vehicle Assessment)

Proviso 90.5 (SCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	<u>100.00</u>
\$	<u>100.00</u>
\$	<u>12.00</u>
\$	<u>25.00</u>
\$	<u>500.00</u>
\$	<u>25.00</u>
\$	<u>150.00</u>
\$	<u>50.00</u>
\$	<u>40.00</u>
\$	<u>5.00</u>
\$	<u>3.75</u>
\$	<u>133.75</u>

Clerk of Court/ Deputy Clerk Elyse Ruth P. HallCourt Reporter: Theresa P. Platon

SCCA/217 (03/2011)

Presiding Judge SCAJudge Code: 2154Sentence Date: 12-4-12

ARREST WARRANT

I-009311

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

THE STATE

against



HAROLD RUBEN AYTON

Address:

COLUMBIA SC 29203

Phone: _____ SSN: _____

Sex: M Race: B Ht: _____ Weight: 235DL State: SC DL#: _____DOB: _____ Agency OR#: SC0360100Prosecuting Agency: CITY OF NEWBERRYProsecuting Officer: DET. K. ATKINSOffense: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE Offense Code: 0385Code/Ordinance Sec: 16-03-0655(A)(1), 0656

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

_____ The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant HAROLD RUBEN AYTON
on 03-14-2011

Major L. L. L.
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
NEWBERRY MUNICIPAL COURT
1507 NANCE STREET
NEWBERRY, SC 29108
(803) 321-1010

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

Personally appeared before me the affiant DET. K. ATKINS who
being duly sworn deposes and says that defendant HAROLD RUBEN AYTON
did within this county and state on 03/31/2010 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY)
in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0655(A)(1), 0656 / CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MARCH 31, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IN THAT THE DEFENDANT DID ENGAGE IN SEXUAL BATTERY WITH A VICTIM THAT WAS UNDER THE AGE OF ELEVEN. DURING THIS INCIDENT, THE DEFENDANT INSERTED HIS PENIS INTO THE MOUTH OF A SIX YEAR OLD FEMALE, WHO THEN PERFORMED FELLATIO ON THE DEFENDANT. THE DEFENDANT WAS POSITIVELY IDENTIFIED AS THE CULPRIT WHO COMMITTED THIS CRIME AFTER THE INCIDENT WAS CAPTURED ON VIDEO, AND THE DEFENDANT HAS PROVIDED LAW ENFORCEMENT WITH A WRITTEN CONFESSION TO THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST. WHICH IS LOCATED WITHIN THE CITY LIMITS OF NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 1978 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

Affiant's Address 1507 NANCE ST.NEWBERRY SC 29108Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/31/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR OR ATTEMPT - VICTIM UNDER 11 YRS OF AGE - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/30/2010

(L.S.)

BARRY S. KOON

Judge Code: 231Judge's Address 1507 NANCE STREETNEWBERRY SC 29108Judge's Telephone 803-321-1010Issuing Court: ☐ Magistrate☐ Municipal☒ Circuit

Case: 2010-05837

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF NEWBERRY)

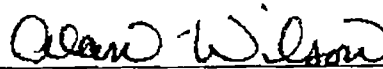
CRIMINAL SEXUAL CONDUCT
WITH A MNOR IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or about the date of March 31, 2010, did willfully and knowingly commit the crime of Criminal Sexual Conduct With a Minor in the First Degree. To wit: Harold R. Ayton, a person eighteen years of age or older, did engage in sexual battery, as defined in Section 16-3-651(h), with a victim under the age of eleven within the County of Newberry, State of South Carolina. This is in direct violation of Section 16-3-655(A)(1), 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 (MBW)
ATTORNEY GENERAL

FILED
SEP 11 2011
CLERK OF COURT
NEWBERRY COUNTY
SOUTH CAROLINA

DOCKET NO. 2011-GS-36-0633

WITNESSES

Det. K. Atkins.—Newberry Police Dept.

The State of South Carolina

County of Newberry

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

Defendant

COURT OF GENERAL SESSIONS

September 2011 TERM

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

ARREST WARRANT NUMBER

I-009311

THE STATE

vs.

Defendant

Witness:

ACTION OF GRAND JURY

HAROLD R. AYTON
D.O.B. 0 1980

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

TRUE BILL

Cindy C. Chisholm
Foreperson of Grand Jury
Date: 9/2/2011

VERDICT

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE**

S.C. CODE §16-15-655(A)(1)
CDR Code: 0385

Foreperson of Petit Jury
Date:

Exhibit (A)

243

STATE OF SOUTH CAROLINA

COUNTY OF Newberry
 STATE VS.
Harold Ruben Ayton
 AKA:
 Race: B Sex: M Age: 32
 DOB: SS#:
 Address:
 City, State, Zip: Columbia, SC 29203
 DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First de

in violation of § 16-03-0655(A) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

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

ATTEST:

Prosecutor, Special 71716 SC Bar# Ayton Harold Defendant Charles J. J. 10033 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 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 (2011 GS 36-631)

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS 36-632 + 634
☒ 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. Since June 28, 2010

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$ <u>4</u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>05</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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, 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2154
12-4-12

ARREST WARRANT

I-009312

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

THE STATE

against

HAROLD RUBEN AYTON

Address:

COLUMBIA SC 29203

Phone:

SSN:

Sex: M Race: B Height: 6-2 Weight: 235

DL State: SC DL#:

DOB: Agency DR#: SC0360100

Prosecuting Agency: CITY OF NEWBERRY

Prosecuting Officer: DET. K. ATKINS

Offense: SEXUAL EXPLOITATION OF A MINOR -

FIRST DEGREE Offense Code: 0379

Code/Ordinance Sec. 16-15-0395(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

_____ The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant HAROLD RUBEN AYTON

on 03-14-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

NEWBERRY MUNICIPAL COURT

1507 NANCE STREET

NEWBERRY, SC 29108

(803) 321-1010

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

AFFIDAVIT

Personally appeared before me the affiant DET. K. ATKINS who

being duly sworn deposes and says that defendant HAROLD RUBEN AYTON

did within this county and state on 03/31/2010 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY)

in the following particulars:

DESCRIPTION OF OFFENSE: 16-15-0395(A) / SEXUAL EXPLOITATION OF A MINOR - FIRST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MAY 23, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF SEXUAL
EXPLOITATION OF A MINOR IN THE FIRST DEGREE, IN THAT THE DEFENDANT RECORDED, PHOTOGRAPHED, AND FILMED
A CHILD UNDER THE AGE ELEVEN ENGAGED IN SEXUAL ACTIVITY. DURING THIS INCIDENT, THE DEFENDANT FILMED
HIMSELF HAVING ORAL SEX WITH A SIX YEAR OLD FEMALE. THE DEFENDANT HAS PROVIDED LAW ENFORCEMENT WITH
A WRITTEN CONFESSION TO THE CRIME AND HE HAS BEEN POSITIVELY IDENTIFIED AS THE CULPRIT WHO COMMITTED
THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST. APT. WHICH IS LOCATED WITHIN THE CITY LIMITS OF
NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 1976 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

Affiant's Address 1507 NANCE ST.

NEWBERRY SC 29108

Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/31/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: SEX / SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/30/2010

BARRY E. KOON

Judge Code: 231

Judge's Address 1507 NANCE STREET

NEWBERRY SC 29108

Judge's Telephone 803-321-1010

Issuing Court: ☐ Magistrate☐ Municipal☒ Circuit

ORIGINAL

Case: 2010-05837

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF NEWBERRY)

SEXUAL EXPLOITATION OF A MINOR IN THE
FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or May 23, 2010, did willfully and knowingly commit the
crime of Sexual Exploitation of a Minor in the First Degree. To wit: Harold R. Ayton, a
person eighteen years of age or older, while located in the County of Newberry, State of
South Carolina, did produce material containing a visual representation of a minor child
engaged in sexual activity, as defined in Section 16-15-375. This is in direct violation of
Section 16-15-0405 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 (MBW)
ATTORNEY GENERAL

FILED
NEWBERRY COUNTY

SEP 13 2011

CLERK OF COURT

WITNESSES

Det. K. Atkins - Newberry Police Dept.

777 777-77 7777 77

777 777-77 7777 77

ARREST WARRANT NUMBER

1-009312

ACTION OF GRAND JURY

TRUE BILL

Cindy Ch. Chish
Foreperson of Grand Jury
Date: *9/2/2011*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-36-0634

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON
D.O.B. '1980

Indictment for

**SEXUAL EXPLOITATION OF A MINOR
IN THE FIRST DEGREE**

S.C. CODE §16-15-0395
CDR Code: 0379

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.

Exhibit (A)

247

STATE OF SOUTH CAROLINA

COUNTY OF Newberry
 STATE VS.
Harold Ruben Ayton

AKA: _____
 Race: B Sex: M Age: 32
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: Columbia, SC 29203
 DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
 TO: Sex / Sexual exploitation of a minor, First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS36-0634
 A/W#: 1009312
 Date of Offense: 3/31/2010
 S.C. Code § : 16-15-0395(D)
 CDR Code #: 0379

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST:

Wanda Nelson 70714 Ayton Harold Charles J. Hester 10033
 Prosecutor, Special SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 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 (2011 GS36-632)

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS36-631-633
☒ 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. Since June 28, 2010

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.3 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

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,
 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Elizabeth O'Hall

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge S. Alth

Judge Code: 2154

Sentence Date: 12-4-12

CIRCUIT COURTS

§ 14-5-740

for the county shall be held at Abbeville on the Monday following the fourth Monday in March, the fourth Monday in June, the second Monday in October, and the second Monday in December, in each case for one week.

(2) *Greenwood County*.—The court of general sessions for Greenwood County shall be held at Greenwood for a one-week term on the second Monday in February, the second Monday in April, the second Monday in May and the second Monday in September. The court of common pleas for the county shall be held at Greenwood for a two-week term beginning on the second Monday in January, for a one-week term beginning the second Monday in March, the third Monday in April, the first Monday in June, and for a two-week term beginning the second Monday in November.

(3) *Laurens County*.—The court of general sessions for Laurens County shall be held at Laurens on the fourth Monday in February, the fourth Monday in May, and for a two-weeks term beginning the fourth Monday in September. The court of common pleas for the county shall be held at Laurens on the third Monday in March for two weeks, the second Monday in June for one week, and the fourth Monday in October for two weeks.

(4) *Newberry County*.—The court of general sessions for Newberry County shall be held at Newberry on the third Monday in February, the third Monday in May, the third Monday in September and the fourth Monday in November, in each case for one week. The court of common pleas for the county shall be held at Newberry on the fourth Monday in January, the fourth Monday in April, the third Monday in June, the third Monday in October, and the first Monday in December, in each case for one week.

HISTORY: 1962 Code § 15-277; 1952 Code § 15-277; 1942 Code § 58; 1932 Code § 58; Civ. P. '22 § 56; Civ. P. '12 § 25; Civ. P. '02 §§ 24, 25; 1889 (20) 360; 1891 (20) 1113; 1896 (22) 26; 1899 (23) 37; 1900 (23) 314; 1901 (23) 629; 1910 (26) 538; 1916 (29) 696; 1919 (31) 113; 1920 (31) 807; 1922 (32) 1039; 1925 (34) 277; 1928 (35) 1152; 1932 (37) 1390; 1934 (38) 1446; 1939 (41) 485; 1941 (42) 118, 129; 1947 (45) 521; 1951 (47) 292; 1953 (48) 311; 1954 (48) 1538; 1955 (49) 137; 1961 (52) 71, 578; 1963 (53) 543; 1967 (55) 210; 1969 (56) 739; 1970 (56) 1912.

§ 14-5-740. Terms of court in ninth circuit.

The courts of the ninth judicial circuit shall be held as hereinafter provided.

(1) *Berkeley County*.—The court of general sessions for Berkeley County shall be held at Moncks Corner on the second Monday in May and on the second Monday in October, in each case for one week. The court of common pleas for the county shall be held

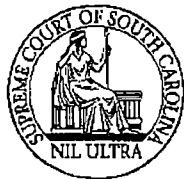
CLERK OF COURT'S OFFICE, NEWBERRY COUNTY
Jackie S. Bowers, Clerk of Court
Post Office Drawer 10
Newberry, S.C.

DATE: September 24, 2015

FROM: Elizabeth P. Folk
Chief Deputy Clerk of Court

I received your letter concerning a term of court for September 8, 2011. The date of the court was September 6, 2011 and the presiding judge was the Honorable Eugene C. Griffith Jr. After checking our records, I find that you plead guilty on December 4, 2012. I have attached copies of your sentence sheets. As I wrote you in a previous letter, Lauren Saunders is representing you and you need to contact her for any other information concerning your PCR. Her address is PO Box 731 Laurens SC 29360.

1990	1991	1992
1993	1994	1995
1996	1997	1998
1999	2000	2001
2002	2003	2004
2005	2006	2007
2008	2009	2010
2011	2012	2013
2014	2015	2016
2017	2018	2019
2020	2021	2022
2023	2024	2025
2026	2027	2028
2029	2030	2031
2032	2033	2034
2035	2036	2037
2038	2039	2040
2041	2042	2043
2044	2045	2046
2047	2048	2049
2050	2051	2052
2053	2054	2055
2056	2057	2058
2059	2060	2061
2062	2063	2064
2065	2066	2067
2068	2069	2070
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2089	2090	2091
2092	2093	2094
2095	2096	2097
2098	2099	2100
2101	2102	2103
2104	2105	2106
2107	2108	2109
2110	2111	2112
2113	2114	2115
2116	2117	2118
2119	2120	2121
2122	2123	2124
2125	2126	2127
2128	2129	2130
2131	2132	2133
2134	2135	2136
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South Carolina Court Administration

South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

August 21, 2015

Harold Ayton, #353371
BRCI Lake Murray 287
4460 Broad River Road
Columbia, South Carolina 29210

Re: Your correspondence received August 19, 2015

Dear Mr. Ayton:

Your letter dated August 17, 2015, has been received by this office and forwarded to this section for response. Per your request, we have enclosed the terms of court for the 8th Judicial Circuit for the month of September 2011.

Please be advised that all terms of court dating back to 2002 are available on our website at www.sccourts.org. If you are not able to access this information yourself, you may have someone do so on your behalf.

Sincerely,

Staff Attorney Section/tr

Enclosure

Quick Link
Records Search

Labor Day				
Circuit Number	9/5/2011	9/12/2011	9/19/2011	9/26/2011
8	Common Pleas Non-Jury Addy, Frank <u>NO CR NEEDED</u> 5, 6 am <u>AMBROZIAK</u> 6 pm <u>VIZER</u> 7, 8, 9 General Sessions Newberry Griffith, Eugene <u>NO CR NEEDED</u> 5 <u>VIZER</u> 6 <u>HOLSTON</u> 7, 8, 9	General Sessions Abbeville Addy, Frank <u>RICE</u> Common Pleas Laurens Griffith, Eugene <u>HUDGINS</u>	General Sessions Greenwood Addy, Frank <u>HOLSTON</u> General Sessions Laurens Griffith, Eugene <u>HUDGINS</u> 19, 20, 21, 22 pm <u>HUDGINS</u> 23	

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Switch View

The State of South Carolina VS Harold Ruben Ayton					
Case Number:	I009309	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600631	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
 Ayton, Harold Ruben	29203 : Columbia SC	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
 Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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The State of South Carolina VS Harold Ruben Ayton					
Case Number:	1009310	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600632	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds							
Click the  icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
 Ayton, Harold Ruben	29203 Columbia SC	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
 Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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The State of South Carolina VS Harold Ruben Ayton					
Case Number:	I009311	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600633	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
Ayton, Harold Ruben	29203 Columbia SC	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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The State of South Carolina VS Harold Ruben Ayton					
Case Number:	1009312	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600634	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds							
Click the  icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
 Ayton, Harold Ruben	29203 Columbia SC	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
 Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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S.C. Const. Art. 5 sec. 4

OF OUR CONSTITUTION provides in pertinent part; The Supreme Court shall make rules governing the administration of courts of this state, subject to Statutory Law, the supreme court rules governing the practice and procedure in all such courts. Otherwise, it would be Unconstitutional and Nullity, being without binding legal effect.

The Federal Courts have come to the same conclusion, finding that a Grand Jury's actions taken outside the scope of its Statutory authority deprives the Court of jurisdiction. A Grand Jury is a creature of statute. In RE MILLS, 135 U.S. 263, 267 (1890) and there can be no such thing as a De Facto Grand Jury. U.S. v. McKay, 75 F. Supp. 1007, 1015 (1942). The failure to follow statutes governing Grand juries is not a mere defect in the institution of the prosecution, but amounts to lack of jurisdiction.

Moreover, no local rule, administrative order, policy or other practice can take precedent over Statutory Law which is always controlling. See S.C. Const. Art. 1 and 4 and State v. Cottenham, 77 S.e.2d 897 (1953) (Statutes override rules of court if in conflict) State v. Duncan, 264 S.e.2d 421 (1980) (Circuit Court rule promulgated by individual judicial circuit was unconstitutional and void).

A judge has no authority to conduct a Grand Jury proceeding on his own initiative outside the bounds of the Court of General Sessions. because under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term. See State v. Best 186 S.e.2d 272 (1972); State v. Rinheart, 430 S.e.2d 536 (1993).

Criminal Charges of Perjury

Furthermore, SLED, the Department of Justice, or one of the courts of this State, should initiate an investigation into this misconduct and criminal violations of law. Because the State knowingly, willfully, and corruptly to impede the courts with a Unindicted Fraudulent Indictment that never has been before a legal proper Grand jury. But the State committed Perjury when their Malfeasance know that no Grand jury convened on September 2, 2011. Perjury is whoever under oath or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of Title 28 United States Code in any proceeding before or ancillary to any court or Grand jury of the United States, knowingly make any false material declaration or makes

OR USES ANY OTHER INFORMATION, INCLUDING ANY BOOK, PAPER DOCUMENT, RECORD, RECORDING, OR OTHER MATERIAL KNOWING THE SAME TO CONTAIN ANY FALSE MATERIAL DECLARATION SHALL BE FINED UNDER Title 18 § 1623(a) OR IMPRISONED NOT MORE THAN 5 YEARS OR BOTH.

Essentially anything that could influence or mislead trial court or jury is considered to be material, for purposes of perjury prosecution. U.S. v. Whimpy, C.A.5 (GA) 1976, 531 F.2d 768. AND perjury UNDER S.C. Statute Code § 16-9-10 occurs when a person gives false information in a document required by the laws of this State and through his own act, consent or agreement confirms the false information. The Solicitor committed perjury when they signed the alleged fraudulent unindicted indictments and provided false and misleading information that a Court of General Sessions was convened on September 2, 2011 when the S.C. Court of Administration stated their was none on September 2, 2011.

Criminal Charge Conspiracy

UNDER S.C. Statute Code § 16-17-410 requires two or more persons to combine to accomplish an unlawful object, or a lawful object by unlawful means. Here, the Solicitor, Grand Jury Foreman, Clerk of Court, and Judge conspired to make effective an illegal fraudulent unindicted indictment. Their NONFEASANCE AND MALFEASANCE DONE OF AN ACT WHICH IS WRONGFUL AND UNLAWFUL TO SEEK A TRUE BILL indictment by unlawful means. Not following Statutory and Constitutional provisions for obtaining a legitimate indictment. A conspiracy is very evident here, because unless the Solicitor is willing to admit that acting alone, he/she forged the illegal unindicted fraudulent indictment, including the Grand Jury Foreman's signature, it would have taken the combined effort of the above listed judicial officials all working in concert to establish scheduling, to ORER and impanel the Sham Pleading Illegal Grand Jury during a time when no Court of General Sessions was convened, to meet and execute the return of the illegal True Bill, to report and publish the illegal fraudulent unindicted indictment as well file it into the court records and conduct a Sham Pleading De Facto Criminal Illegal Trial Pen hearing resulting in Petitioner's NUGATORY CONVICTION AND SENTENCE DUE TO THE STATE MALFEASANCE AND THEIR Sham Illegal process, the proceeding was NUGATORY because the De Facto Court had no jurisdiction to hear, convict and sentence petitioner which constitutes False Imprisonment, Obstruction of Justice, Conspiracy to the unlawful imprisonment of the petitioner.

Bottom Line.

Next the above referenced officials further conspired with SCOC to all for petitioners kidnapping and illegal imprisonment in a cell for 40 years without any lawful indictment, sentence, conviction, commitment order or lawful judicial authority.

For the reasons shown herein, Petitioner moves that this court initiate an official investigation into the misconduct and criminal violations of law; or in the alternative vacate the illegal nugatory conviction and sentence and also vacate the charges and order Petitioner immediate release.

According to U.S. v. Russell, 411 US 423, 432 (1973) Courts will dismiss indictments for government misconduct outside the indictment process on due process grounds if such conduct is so outrageous that it violates Fundamental Fairness or is shocking to the universal sense of justice. also see State v. Funderburk, 191 S.e.2d 520 (1972) Acts of a court with respect to a matter as to which it has no jurisdiction are void. The court being without jurisdiction, the indictment in this case was a nullity. The Grand Jury being coextensive with the criminal jurisdiction of the court, the indictment was a nullity and the conviction was required to be vacated. See S.C. Const. Art. 1 sec 11.

Criminal Charge Fraud

Whoever, in any matter within the jurisdiction of any dept or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than \$10000 or imprisoned not more than 5 years, or both. An act of perjury or concealment of a document coupled with an intentional scheme to defraud the court justifies the setting aside of a judgement due to extrinsic fraud. Ray v. Ray, 374 S.C. 79, 647 S.e.2d 237. (S.C. 2007)

Extrinsic fraud warranting equitable relief from judgment induces a person not to present a case or deprives a person of the opportunity to be heard and of a fair hearing or the opportunity to present its case. Jamison v. Ford Motor Co., 373 S.C. 248, 644 S.e.2d 755 (S.C. App 2007)

Fraud upon the court is a narrow and invidious species of fraud that subverts the integrity of the court itself, so that the judicial machinery can not perform in the

USUAL MANNER ITS IMPARTIAL TASK OF ADJUDICATING CASES THAT ARE PRESENTED FOR ADJUDICATION.
PERRY V. HEIRS AT LAW OF GOOSDEN, 357 S.C. 42, 590 S.E.2d 502 (S.C. App. 2003)

S.C. Rule 3 (c), SCR Crim P.

IN ACCORDANCE WITH RULE 3(b) AND RULE (3)(c) OF THE S.C. RULES OF CRIMINAL PROCEDURE, AN ARREST WARRANT MUST BE TRANSFERRED TO THE SOLICITOR WITHIN 2 DAYS FROM RECEIPT FROM THE ISSUING OFFICIAL AND THE ACCUSED MUST BE INDICTED WITHIN 90 DAYS OF A WARRANT BEING ISSUED. PETITIONER WAS SERVED WITH THE WARRANTS ON MARCH 14, 2011 AND THE UNINDICTED FRAUDULENT INDICTMENT WHICH WAS NOT SERVED WITHIN 90 DAYS BUT HAS BEEN ILLEGALLY TRUE BILL 172 DAYS LATER AND THEREFORE, THE INDICTMENTS SHOULD HAVE BEEN DISMISSED. ALSO SEE STATE V. JANE BLACKWELL, GREENWOOD COUNTY COURT OF GENERAL SESSIONS ORDER OF JUDGE WYATT T. SAUNDERS DATED MARCH 3, 2008, DISMISSING CHARGE BECAUSE THE STATE FAILED TO COMPLY WITH RULE 3(c) OF THE CRIMINAL PRACTICE WHICH DICTATES THE STATE HAS 90 DAYS TO INDICT ONCE A WARRANT IS ISSUED.

EXCEPTIONAL CIRCUMSTANCES EXIST BECAUSE THIS COURT SHOULD CONSIDER THE CASE OF STATE V. JANE BLACKWELL GREENWOOD COUNTY COURT OF GENERAL SESSIONS ORDER EQUAL PROTECTION OF THE LAW.

THE STATES WRONGFUL CONDUCT AND ERROR SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS. ALSO, THE STATES STRUCTURAL DISCOVERY ERROR OCCUR WHEN THE GOVERNMENT WITHHOLDS MATERIAL EVIDENCE THAT WAS FAVORABLE TO THE PETITIONER. BRADY V. MARYLAND, 373 U.S. 83, 87 (1963); SEE ALSO U.S. V. BAGLEY, 473 U.S. 667, 682 (1985). EVIDENCE IS MATERIAL AND REQUIRES REVERSAL OF CONVICTION WHEN THERE IS A REASONABLE PROBABILITY THAT DISCLOSURE WOULD HAVE ALTERED THE RESULT OF THE TRIAL.

AFFIRMATIVE DEFENSES

PETITIONER'S CONVICTIONS AND SENTENCES CAN NEVER BE MADE VALID, BECAUSE THEY WERE OBTAINED BY THE USE OF CRIMINAL ACTS ON THE PART OF THE SOLICITOR AND OTHER JUDICIAL OFFICIALS WHO ACTED IN CONCERT TO KEEP THESE FRAUDULENT ACTIONS HIDDEN. THE FACT THAT THEIR BEHAVIOR WAS ONLY RECENTLY DISCOVERED, SHOULD NOT ACT AS A WAIVER NOR A PASS TO THEM FOR THEIR UNLAWFULNESS.

ADDITIONAL ARGUMENT UNDER AFFIRMATIVE DEFENSES

ADDITIONAL ARGUMENT UNDER
AFFIRMATIVE DEFENSES CONT.

Petitioner's Guilty plea was not knowingly and voluntarily enter because petitioner did not know the State had failed to obtain a legitimate indictment, and he would not have plead Guilty had he known the De Facto Court lacked jurisdiction due to the States unlawful conduct. So, petitioner did not knowingly and voluntarily enter a plea of Guilty.

In the case sub-judice, the colloquy amounted to nothing more than a pro forma answers to pro forma questions. The judge never informed Petitioner that the State must obtain a lawful True Bill indictment according to the State Statutes and the State Constitution and they have failed to do so thus depriving the De Facto Court of jurisdiction. Had Petitioner been informed of this by his non appointed lawyer or the judge he would never have plead Guilty but would have demanded that the State first obtain jurisdiction by obtaining a lawful indictment. Petitioner acted reasonably in believing that the Solicitor was trustworthy and had obtained a lawful indictment. Petitioner had no prior reason for doubting the indictment was lawfully obtained and could not have known about the indictments at the time of the Sham Pleading Trial and Plea because of the Solicitors Fraud, Perjury, and Conspiracy designed to keep these bogus UNINDICTED FRAUDULENT INDICTMENTS hidden from the Petitioner when he never had access to the Solicitor's File.

In other words, Petitioner's Guilty plea was not an intelligent choice among the alternatives available to him, because he could have plead not Guilty and the court would have lacked jurisdiction to put Petitioner on trial. Since the relevant information was hidden from Petitioner due to the States Malfeasance of Perjury, Conspiracy and Fraud upon the court which Petitioner was prevented from considering it in making the decision to plead Guilty which he did not have full understanding of consequences of his plea and charges against him as well his Guilty plea was not knowingly, voluntarily or intelligently entered.

Absence of an indictment is a jurisdictional defect which deprives the court of its power to act, and such defect cannot be waived by a defendant, even by a plea of Guilty.

See 360 U.S. 10, 79 S.Ct. 1997

Petitioner was under DURESS by his non appointed attorney because the attorney kept influence the petitioner to stop the trial and take a plea because we do not have a defense and we are going to lose the trial. The petitioner was

Force to enter into a transaction under the influence of such fear as precludes the petitioner from exercising free will and judgment.

Petitioner never waived presentment to a grand jury according to S.C. Statute Code 17-23-140, and the signing of the sentencing sheet does not contain a written waiver of presentment. So, the sentencing sheet is insufficient and void. See State v. Madore, 2004 WL 6251073. Because under S.C. Statute Code 17-23-140 requires a waiver of presentment to be in writing and the petitioner oral waiver is also insufficient to bestow jurisdiction.

And the act of a court with respect to a matter as to which it has no jurisdiction are void. See City of Fort Mill v. Fitzgerald Court of Appeal of S.C. December 23, 2014. 2014 WL 7339453. See also State v. Guthrie, 352 S.C. 103, 107, 572 S.e.2d 309, 312 (Ct. App. 2002)

CONCLUSION

Petitioner further request that the Court agree to GRANT Petitioner's relief on the grounds that the De Facto Court in Newberry County lacked jurisdiction and that the Solicitor presented Fraudulent Testimony in case #2011-65-36-0631 through 0634 that a Grand jury was held on September 2, 2011 and when the Court of Administration shows it wasn't none. The Solicitor's Fraud on the court tacit shall be a prima facie evidence by tacit agreement that no such authority or documentation exist. As to the above entitled case and that Fraud continuous void ab initio as to the ongoing UNLAWFUL imprisonment of petitioner and is without authority of law and all damages caused by officers and agents of the State of South Carolina. Fraudulent seizure and UNLAWFUL imprisonment of petitioner are set by Trezvant v. City of Tampa, 741 F.2d 336 (11th Cir. 1984) via Tort Claim and are due and payable immediately. Silence can only be equated with fraud where there is a legal and moral duty to speak where an inquiry is left unanswered would be intentionally misleading U.S. v. Tweel 550 F.2d 297-300 (1977)

The Petitioner was grievously prejudiced by the Solicitor's negligence and fraudulent conduct because they did not indict Petitioner period neither by a legal Grand jury nor indict petitioner in 90 days according to Rule 3(c) of the South Carolina Rules Criminal Procedure. But committed Fraud on the court for Petitioner's illegal void Nugatory conviction and sentence and False Imprisonment.

For the reason stated, this Court should vacate the Nugatory void judgement, conviction sentence, charges and order Petitioner immediately release.

Respectfully submitted,

Harold Ayton
Harold Ayton #353371
430 Oaklawn Rd
Pelzer, SC 29669

Date: 1-3-2017

STATE OF SOUTH CAROLINA

County of Newberry

Harold Ayton
Petitioner

v.

South Carolina
RespondantIN THE COURT OF COMMON PLEAS
FOR THE EIGHTH CIRCUIT COURT

Case No: 2015-CP-36-00021

Certificate of Service

I Harold Ayton hereby certify that i have served upon the Newberry Clerk of Court Court of Common Pleas at P.O. Drawer 10 Newberry, SC 29108, the Summary Judgment pursuant to S.C. Rules of Civil Procedure, Rule 56, by mailing it in the United States mail First class postaged prepaid addressed as follows. Also, I certify that i have served the Attorney General Office by depositing a copy of it in the United States mail, postage prepaid, on January 3, 2017, addressed to the Attorney General Office Dennis Building P.O. Box 11549, Columbia, SC 29211

January 3, 2017
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2017 JAN -9 AM 11:00
JACKIE S. BOWER
CLERK OF COURT

Harold Ayton ✓
Harold Ayton
Perry Corr Inst
430 Oaklawn Rd
Pelzer, SC 29669

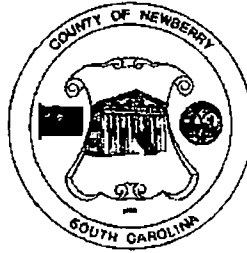
Sworn to and subscribed before me this 4th
day of January 2017
Nancy C. Murchant
Notary Public

My Commission Expires: 1-23-2020

OFFICE OF CLERK OF COURT
COUNTY OF NEWBERRY

Elizabeth P. Folk
Clerk of Court

P.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111



January 11, 2017

Harold Ayton #353371
Perry Correctional Inst Q4-A-220
430 Oaklawn Rd
Pelzer, SC 29669

Re: 2015CP3600021 Motion for Summary Judgment

Mr. Ayton

I have enclosed two stamped copies of the documents you filed with our office. One copy is for your records. You had requested in your letter that we serve a copy to the Attorney General's office. I have enclosed a second copy to allow you serve them if you wish to do so.

Sincerely,

Janeen Toby
Deputy Clerk Common Pleas
Newberry County
803-321-2110
jtoby@newberrycounty.net

Perry Correctional Inst
 Harold Ayton #353371
 430 Oaklawn Rd
 Pelzer, SC 29664

Newberry Clerk of Court
 P.O. Drawer 10
 Newberry, SC 29108

1-17-17

2015-CP-36-00021

2017 JAN 20 AM 10 47
 CLERK OF COURT
 NEWBERRY, SC

Dear Janeen Tobyn,

I am sending you this letter in reference to my Motion of Summary Judgment that was sent to you dated on January 4, 2017. I have asked for you to serve the Attorney General Office and return a clock stamped copy to me which I did enclosed a returned address envelope with the motion. It's now been almost 2 weeks and I haven't received my return copy or heard about the disposition on my motion.

May you please return a clock stamped copy of my Summary Judgment Motion and please let me know the disposition on my motion as well please serve a copy to the Attorney General because Perry Correctional doesn't make copies of handwritten motion.

With kindest regards

Sincerely

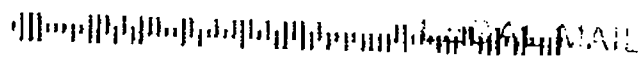
Harold Ayton

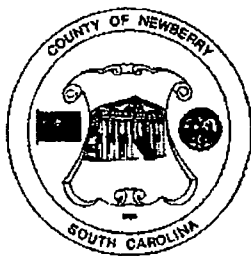
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Newberry, SC 29108

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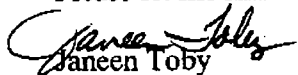
OFFICE OF CLERK OF COURT
COUNTY OF NEWBERRYJackie S. Bowers
Clerk of CourtP.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111Harold Ayton #353371
Perry Correctional Inst Q4-A-220
430 Oaklawn Rd
Pelzer, SC 29669

RE: 2015CP3600021 Harold Ayton #353371 vs. State of South Carolina

Mr. Ayton,

This is in response to your letter received in this office January 20, 2017 requesting information about the Motion for Summary Judgement you sent to be filed in this office. Please note the attached copy of a letter that was sent to you January 11, 2017. As far as your question pertaining to disposition of your motion, it will be heard during a PCR term and that roster is prepared by the Attorney General's Office.

Please let me know if you have any further questions.

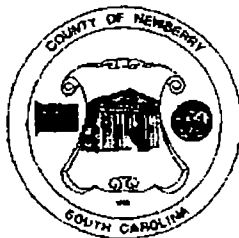

Janeen TobyDeputy Clerk Common Pleas
Newberry County
jtoby@newberrycounty.net

mailed 1/20/17

OFFICE OF CLERK OF COURT
COUNTY OF NEWBERRY

Elizabeth P. Folk
Clerk of Court

P.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111



January 11, 2017

Harold Ayton #353371
Perry Correctional Inst Q4-A-220
430 Oaklawn Rd
Pelzer, SC 29669

Re: 2015CP3600021 Motion for Summary Judgment

Mr. Ayton

I have enclosed two stamped copies of the documents you filed with our office. One copy is for your records. You had requested in your letter that we serve a copy to the Attorney General's office. I have enclosed a second copy to allow you serve them if you wish to do so.

Sincerely,

Janeen Toby
Deputy Clerk Common Pleas
Newberry County
803-321-2110
jtoby@newberrycounty.net



ALAN WILSON
ATTORNEY GENERAL

January 26, 2017

The Honorable Elizabeth P. Folk
Clerk of Court, Newberry County
PO Drawer 10
Newberry, SC 29108-0010

FILED
NEWBERRY COUNTY
2017 JAN 30 AM 11 23
JACKIE S. BOWERS
CLERK OF COURT

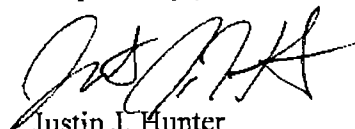
Re: Harold Ayton, #353371 v. State of South Carolina
2015-CP-36-0021

Dear Ms. Folk:

I received the attached document in the aforementioned matter on January 26, 2017. Please be advised that Rule 11 of the South Carolina Rules of Civil Procedure requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant @ Rule 11, SCRPC.

Therefore, the State does not consider this document part of this action. According to our records, Inmate Harold Ayton, is represented by Laura M. Saunders, Esquire. By copy of this letter, I am notifying counsel of the State's position.

Respectfully yours,


Justin J. Hunter
Assistant Attorney General

JJH/jyb

cc: Laura M. Saunders, Esquire

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH CIRCUIT COURT

COUNTY OF NEWBERRY

HAROLD AYTON
PETITIONER

CASE No: 2015-CP-36-00021

v.

CERTIFICATE OF SERVICE

State of South Carolina
RESPONDANT

I Harold Ayton hereby certify that I have served upon the Attorney General at the Dennis Building P.O. Box 11549, Columbia, SC 29211, the Summary Judgment pursuant to S.C. Rules of Civil Procedure, Rule 56, by depositing a copy of it in the United States mail, postage prepaid, on January 18, 2017. Also, I certify that I have already served the Newberry Clerk of Court of Common Pleas at P.O. Drawer 10, Newberry, SC 29108, the Summary Judgment pursuant to S.C. Rules of Civil Procedure, Rule 56, by depositing a copy of it in the United States mail, postage prepaid on January 3, 2017.

January 18, 2017

Harold Ayton ✓
Harold Ayton #353371

Perry Core Inst

430 Oakwood Rd

Peezer, SC 29669

ATTORNEY GENERAL'S OFFICE

RECEIVED

ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN _____ END
 HAVE _____ COPIES MADE
 ROUTE TO _____
 ORDER: _____ TRANSCRIPT
 PEN RECORDS _____ CLERK RECORDS
 OTHER: _____

Sworn to and subscribed before me this

18th day of January, 2017

Nancy C. Moulton
Notary Public

My Commission Expires: 1-23-2023

RECEIVED

JAN 25 2017

 Referred to L. Hunter / PB
 Answered _____

Perry Correctional Inst
 Harold Ayton #53371Q4A220
 430 Oaklawn Rd.
 Pelzer, SC 29669

Newberry Clerk of Court
 P.O. Drawer 10
 Newberry, SC 29108

1-8-17

2015-CP-36-00021

JACKIE S. BOWERS
 CLERK OF COURT

2017 JAN -9 AM 11:02

FILED
 NEWBERRY COUNTY

Re: FILING Summary Judgment Pursuant to Rule 56 SCRCIVP.

Dear Clerk,

Please find enclosed an Motion For Summary Judgment to Filed in your office. I would like for you to please serve a copy to the Attorney General because Perry Corr Inst doesn't make copy of hand written motions. So, may you please send a copy to the Attorney Generals Office and i would like to have a clock stamped Filed copy returned to me. I have enclosed a self addressed envelope to be used for the returned file copy.

With kindest regards

Sincerely

Harold Ayton

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

COUNTY OF NEWBERRY

CASE NO: 2015 CP-36-00021

Harold Ayton
Petitioner,

v.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEETState of South Carolina
Respondant.FILED
NEWBERRY COUNTY
2017 JAN -9 AM 11:02
JACKIE S. BOWERS
CLERK OF COURT

Plaintiff's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS 1 AND 2)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS 2 AND 3)
☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS 2 AND 3)

SECTION 1: HEARING INFORMATION

Nature of Motion: RULE 56 Summary Judgment SCRCVP

Estimated Time Needed: 45 mins

Court Reporter Needed: Yes

SECTION 2: Motion / Order Type

- ☒ Written motion attached
☐ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Harold AytonSIGNATURE OF ATTORNEY FOR ☒ PLAINTIFF / ☐ DEFENDANT1-3-17
Date Submitted

SECTION 3: Motion Fee

☐ PAID-AMOUNT: \$ _____☒ EXEMPT:

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☒ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post Conviction Relief
☐ Motion For Stay in Bankruptcy
☐ Motion For Publication ☐ Motion For Execution (Rule 69, SCRCVP)
☐ Proposed Order submitted at request of the court or
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED-AMOUNT DUE: \$ _____

be viewed in the light most favorable to the non-moving party.

However, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. *Id.* (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)).

Once the moving party has met its burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show there is a genuine issue for trial. Baber v. Hosp. Corp. of Am., 977 F.2d 872, 874-75 (4th Cir. 1992).

The nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. See *id.*; Doyle v. Sentry, Inc., 877 F.Supp. 1002, 1005 (E.D. Va. 1995). Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits, depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. See Fed. R. Civ. P. 56(c), (e); Baber, 977 F.2d 875 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986)). Moreover, the nonmovant's proof must meet the substantive evidentiary standard of proof that would apply at a trial on the merits. Mitchell v. Data Gen. Corp., 12 F.3d 1310, 1316 (4th Cir. 1993); DeLeon v. St. Joseph Hosp., Inc., 871 F.2d 1229, 1223 (4th Cir. 1989).

STATEMENT OF FACT

Petitioner contends that he cannot challenge the Null, and Void Conviction in Administrative Law Court because the ALC only has authority to review non-collateral matter (i.e. cases involving the challenging of issues not involving a conviction or sentence). Al-Shabazz v. State, 527 S.e.2d 742, 749-50 (2000).

Petitioner cannot challenge this issue on direct appeal because it was not preserved for appeal in the court because the basis of any objection was purposefully hidden by the solicitor. Petitioner contends that he cannot challenge this issue in a motion for new trial based on after discovered evidence, under Rule 29(b) of the S.D. Crim. P., because the fact that the Court lacked jurisdiction is not evidence going to guilt or innocence. Hayden v. State, 299 S.e.2d 854 (1983). Moreover, Petitioner cannot even be given a new trial under the facts of this case because the state cannot proceed with a future trial based on the past bogus fraudulent unindicted indictments, and it is too late at this date to obtain a legitimate indictment because the Statute of Limitation would prevent it and petitioner has already

been illegally convicted when he was never lawfully indicted by a proper legal impanel grand jury and wasn't indicted within 90 days in accordance with Rule 3(c) of the S.C.R.Crim.P.

Petitioner would show this Honorable Court the following facts.

Petitioner's 5th Amendment of the United States Constitution has been violated due to the fact, the petitioner's Due Process Rights to be lawfully indicted by a legal proper impanel grand jury were denied him because the solicitor utilized an illegal grand jury outside of South Carolina Statute Code 14-5-730, which voids the un-indicted indictments and judgment and conviction and constitutes Perjury, Conspiracy, Obstruction of Justice and amounts to Prosecutorial Misconduct, Subornation of Perjury and Fraud upon the Court.

The 5th Amendment guarantees that prosecutions for serious crime may only be instituted by indictment. U.S.C.A. Const. Amendment 5.

Indictment has as its chief purposes apprising accused of charges against him, so that he may adequately prepare his defense, and describing crime charged with sufficient specificity to enable him to protect against future jeopardy for the same offense. U.S.C.A. Const. Amendment 5.

The grand jury is interposed by the 5th Amendment to afford safeguard against oppressive actions of prosecution or court. U.S.C.A. Const. Amendment 5. See also Gaither v. U.S., 413 F.2d 1061

Thus, no court in South Carolina disagrees with the binding rules founded within our constitution that requires a valid indictment by a properly impaneled grand jury, prior to trial or guilty plea for felony offenses. See Brown v. State, 343 S.C. 342 (2001); and State v. Gentry, 363 S.C. 610 (2005). Wherefore, the petitioner posits here, consistently with the above holding in Odom and Tilley; the lack of such a valid indictment whenever or wherever discovered, deprives any court for this state of jurisdiction. A fact which can be adequately asked and answered and must be, anytime such jurisdiction is in question. Or, such refusal to hear petitioner's claim on jurisdictional grounds runs the risk of constituting a Gross Miscarriage of Justice. See Aice v. State, 409 S.e.2d 394.

Petitioner contends that the State knowingly committed Fraud by a Sham /Illegal Process because the State employed the use of an Sham Fraudulent Unlawful Procedure for the return an publication of its alleged True Billed indictments when no Court of General Sessions convened on September 2, 2011. The State unlawfully impaneled its Sham Grand Jury outside the jurisdiction of the Court of General Sessions and the Statutory Mandated Code 14-5-730 and then willfully caused false and misleading information to be printed in its Fraudulent Unindicted Indictments and constituting Prosecutorial Misconduct, and Fraud Upon the Courts at the highest level of State Government because by a mode of procedure that the State had no lawful authority to adopt resulting in depriving the petitioners right to a lawful True Bill Indictment before standing trial or plea. The States Egregious Conduct and Fraudulent practices victimized the court as well as the petitioner.

Petitioner contends that the Solicitors Office failed to comply with Statutory Law, jurisdictional in nature, specifying the manner and means for lawfully returning a True Bill Indictment. Which effectively deprives the petitioner of Due Process of Law and also Life, Liberty and Property. The jurisdiction of a court over subject matter of a proceeding is determined by the Constitution the Laws of the State, and is Fundamental. State v. Heyward, 504 S.e.2d 379 (2002) (citing Anderson v. Anderson, 382 S.e.2d 871, 900 (1989)). A court acquires jurisdiction to hear a criminal case by way of a legally sufficient indictment or a valid waiver thereof. A Grand Jury jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry. See State v. McClure, 277 S.C. 432, 289 S.e.2d 158 (S.C. 1982) and State v. Funderburk, 259 S.C. 256, 191 S.e.2d 520 (1972); also State v. Wheeler, 259 S.C. 571, 193 S.e.2d 515 (1972)

Petitioner contends that South Carolina Statute Code 14-9-210 requires that the County Solicitor prepare and submit bills of indictment through the presiding judge of the Court of General Sessions to a Grand Jury impaneled under the authority of the Court of General Sessions. No EXCEPTIONS.

South Carolina Statute Code 14-9-210 statutory terms are clear, unambiguous, must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation and are jurisdiction in nature, and it requires that all criminal indictments must be issued through a legal Grand Jury impaneled before the Court of General Sessions, and the States

NON-COMPLIANCE with mandatory indictment procedures, AND WILLFUL acts OF Fraud have Nugatory, Void AND RENDERED all judicial proceedings invalid, Nugatory, Void AND it's Un-indicted Indictment NULL.

It is a cardinal rule of Statutory Constitution that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. HOOGES v. Rainey, 341 S.C. 79, 85, 533 S.e.2d 578 (2000); State v. Martin, 293 S.C. 46, 358 S.e.2d 697 (1987)

When a statute terms are clear and unambiguous on their face, there is no room for Statutory Construction and a court must apply the Statute according to its literal meaning. See CAROLINA POWER AND LIGHT CO. v. City of BENNETTSVILLE, 314 S.C. 137, 442 S.e.2d 177, 179 (1994).

South Carolina Const. Art. 5 sec 22

S.C. Statute Code 17-19-10 (2003)

No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a Grand jury.) A criminal defendant has a State Constitutional Right to have the indictment issued by a legally constituted Grand jury. State v. Means, O.P. No. 26105 (S.C. Supreme Court Filed February 6, 2006); Evans v. States, 611 S.e.2d 510 (2005); State v. Williams, 210 S.e.2d 298, 301 (1974).

U.S.C.A. Const. Amendment. 14 sec 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of Life, Liberty, or Property, without Due Process of Law; Nor deny to any person within its jurisdiction the Equal Protection of the Laws.

Federal Rules of Criminal Proc. 7(c)

Specifically provides that an offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment.

Thus, in Ex parte Wilson, 114 U.S. 417, 429, 5 S.Ct. 935, 941, the Court stated that the District Court, in holding the petitioner to answer for such a crime without indictment or presentment by a

GRAND jury, exceeded its jurisdiction, and he is therefore entitled to be discharged.

AN indictment returned by a GRAND jury when NO COURT OF GENERAL SESSIONS was in sessions is VOID AND NUGATORY, which of necessity makes the judgement, conviction and sentence VOID
U.S.C.A. CONST. AMEND. 14

The Act of Maryland passed 11-3-1722

Provides that from and after the publication hereof NO Attorney General, or Clerk of the peace, or of indictment shall exhibit any bill or bills of indictment to any GRAND jury against any person whatsoever unless the GRAND jury find or make a presentment of the offence of their own knowledge. The statute was apparently intended to protect the accused from having his case prejudiced by having unauthorized persons come before the GRAND jury with predrafted indictments.

FEDERAL RULES OF CRIMINAL PROC. RULE 6(D)

Requires the GRAND jury as a body to pass on the actual terms of an indictment. An indictment signed by GRAND jury foreman but was not submitted to a body of the GRAND jury, petitioner is entitled to dismissal of indictment. See Gaither v. U.S., 413 F.2d 1061. This error would deprive the defendant of the basic protection which the guaranty of the invention of a GRAND jury was designed to secure.

The Evidence In This Case

However, here, the evidence will establish that the State Malfeasance unlawfully impaneled its Sham Illegal Fraudulent Grand Jury outside the jurisdiction of the Court of General Sessions and then willfully committed Fraud and Perjury by willfully printed and published false and misleading information in its Unindicted Fraudulent Indictment in order to keep secret its violation of Statutory Law and the fact that the State did Fraud a De Facto Court with Unindicted Indictments that haven't been before a legal proper GRAND jury. In this instant case at bar, the bill of indictment prints that it was returned at a Court of General Sessions that convened on September 2, 2011 in Newberry County present upon their oath. The unindicted indictment is signed and sealed with a True Bill Stamp. Further, the title page of the

States UNINDICTED indictment prints that it was published at a Court of General Sessions term as convened on September 2, 2011 on the alleged indictment numbers: 2011-GS-36-0631 through 0634. (See: Attached Exhibit The FOUR UNINDICTED INDICTMENTS)

The S.C. Statute Code 14-5-730 Terms of Court in the Eighth Circuit For Newberry County Court of General Sessions states: The Court of General Sessions For Newberry County shall be held in Newberry on the third Monday in September for one week.

According to S.C. Statute Code 14-5-730, the legal convene date is September 19th to September 23rd.

But the State had convened an Fraudulent Nugatory Void Sham Illegal Pleading hearing that was dated for September 2, 2011 which fell on a Friday at the end and the beginning of the month.

By this violation Petitioner's Federal Equal Protection Rights, State Constitutional Rights, and Statutory Rights to be lawfully indicted by a legal proper Grand jury were denied him because the Solicitor utilized a Fraudulent, Nugatory, Void, Sham Pleading Illegal Grand Jury outside the jurisdiction of the Court of General Sessions and S.C. Statute Code 14-5-730, which deprived the De Facto Court of jurisdiction and Nugatory and Voids the Unindicted Fraudulent Indictments, Void Nugatory Conviction and the Void Nugatory Illegal Sentence and constitutes Perjury, Conspiracy, Miscarriage of Justice and Fraud upon the Court, Prosecutorial Misconduct, and deprive the petitioner of Life, Liberty and Property, without Due Process of Law. (See: Attached Exhibit S.C. Statute Code 14-5-730)

A letter from the Newberry County Clerk of Court very clearly establishes that no Court of General Sessions convened on September 2, 2011, but convened on September 6, 2011. (See: Attached Exhibit The Clerk's Letter)

Moreover, a letter from the South Carolina Court of Administration as well the Judicial Department Circuit Court Calendar for the County of Newberry in the month of September proves beyond doubt that no Court of General Sessions convened on September 2, 2011 as falsely alleged in Petitioner's Nullity Nugatory Void and Fraudulent Unindicted Indictments. (See: Attached Exhibit The Letter and the Judicial Department Circuit Court Calendar)

If there were no Court of General Sessions that convened on September 2, 2011, then it would be physically impossible for a lawful Grand jury to have been impaneled on that date. In other words, if the Grand jury conducted business outside the scope and authority of the Court of General Sessions, then their Sham Pleading actions is Malfeasance, Nullity, Nugatory and Void and there can be no waiver of a Nugatory Void Fraudulent Unindicted Indictments that haven't been before a legal proper Grand jury because they lacked jurisdiction to True Bill any indictment and any future actions on such an indictment, including a Trial, Conviction or Sentence would likewise be a Nullity and Nugatory. Accordingly, Petitioner must be released from custody immediately

ARREST WARRANT

1-009309

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
NEWBERRY

THE STATE

against



HAROLD RUBEN AYTON

Address: 2200 LIBERTY ST.

COLUMBIA SC 29203

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 6-2 Weight: 235

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency OR#: SC0360100

Prosecuting Agency: CITY OF NEWBERRY

Prosecuting Officer: DET. K. ATKINS

Offense: CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE

Offense Code: 0385

Code/Ordinance Sec. 16-03-0655(A)(1), 0656

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

Copy of this arrest warrant was delivered to
defendant HAROLD RUBEN AYTON

03-14-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
NEWBERRY MUNICIPAL COURT
1507 NANCE STREET
NEWBERRY, SC 29108
(803) 321-1010

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
NEWBERRY

Personally appeared before me the affiant DET. K. ATKINS who
being duly sworn deposes and says that defendant HAROLD RUBEN AYTON did within this county and state on 05/23/2010 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY) in the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0655(A)(1), 0656 / CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MAY 23, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IN THAT THE DEFENDANT DID ENGAGE IN SEXUAL BATTERY WITH A VICTIM THAT WAS UNDER THE AGE OF ELEVEN. DURING THIS INCIDENT, THE DEFENDANT USED HIS PENIS TO PENETRATE THE JUVENILE VICTIM'S VAGINA AND ANUS. THE DEFENDANT WAS POSITIVELY IDENTIFIED AS THE CULPRIT WHO COMMITTED THIS CRIME AFTER THE INCIDENT WAS CAPTURED ON VIDEO, AND THE DEFENDANT HAS PROVIDED LAW ENFORCEMENT WITH A WRITTEN CONFESSION TO THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST., WHICH IS LOCATED WITHIN THE CITY LIMITS OF NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 1976 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
NEWBERRY

Affiant's Address 1507 NANCE ST.

NEWBERRY SC 29108

Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 05/23/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR OR ATTEMPT - VICTIM UNDER 11 YRS OF AGE - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 05/30/2010

BARRY S. MOON (L.S.)

Judge Code: 231

Judge's Address 1507 NANCE STREET

NEWBERRY SC 29108

Judge's Telephone 803-321-1010

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 2010-05837

ORIGINAL

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF NEWBERRY

CRIMINAL SEXUAL CONDUCT
WITH A MNOR IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or about the date of May 23, 2010, did wilfully and knowingly commit the crime of Criminal Sexual Conduct With a Minor in the First Degree. To wit: Harold R. Ayton, a person eighteen years of age or older, did engage in sexual battery, as defined in Section 16-3-651(h), with a victim under the age of eleven within the County of Newberry, State of South Carolina. This is in direct violation of Section 16-3-655(A)(1), 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 (MBW)
ATTORNEY GENERAL

FILED
NEWBERRY COUNTY

2017 JUN -9 AM 11:03

JACKIE S. BOWERS
CLERK OF COURT

WITNESSES

Det. K. Atkins. - Newberry Police Dept.

ARREST WARRANT NUMBER

I-009309

ACTION OF GRAND JURY

TRUE BILL

Cindy L. O'Neil
Foreperson of Grand Jury
Date: *9/21/2011*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-36-0631

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON
D.O.B. 1980

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE**

S.C. CODE §16-15-655(A)(1)
CDR Code: 0385

FILED
NEWBERRY COUNTY

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury. 2017 JAN -9 AM 11:03

Defendant

JACKIE S. BOWERS
CLERK OF COURT

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.

Exhibit (A)

282

STATE OF SOUTH CAROLINA

COUNTY OF Newberry
STATE VS.
Harold Ruben AytonAKA: Harold Ruben Ayton
Race: B Sex: M Age: 32
DOB: [REDACTED] SS#: [REDACTED]Address: 2200 Liberty StCity, State, Zip: Columbia, SC 29203DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First de

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS36-0631A/W#: 1009309Date of Offense: 5/23/2010S.C. Code §: 16-03-0655(A)CDR Code #: 0385

SENTENCE SHEET

in violation of § 16-03-0655(A) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Megan Buckland 7176 Ayton Harold Charles J. Finner 10033
Prosecutor, Special SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 days/months/years ☐ 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. 2011 GS 36-632☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS 36-632 + 634
☒ 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. Since June 28, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

PTUP _____
_____ days/hours Public Service EmploymentObtain 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,
47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge JEAPMJudge Code: 2154Sentence Date: 12-4-12

ARREST WARRANT

I-009310

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

THE STATE

against

HAROLD RUBEN AYTON

Address:

COLUMBIA SC 29203

Phone:

SSN:

Sex: M Race: B Height: 6-2 Weight: 235

DL State: SC

DL#:

DOB: Agency OR#: SC0360100

Prosecuting Agency: CITY OF NEWBERRY

Prosecuting Officer: DET. K. ATKINS

Offense: SEXUAL EXPLOITATION OF A MINOR -

FIRST DEGREE Offense Code: 0379

Code/Ordinance Sec. 16-15-0395(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant HAROLD RUBEN AYTON

on 03-14-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

NEWBERRY MUNICIPAL COURT

1507 NANCE STREET

NEWBERRY, SC 29108

(803) 321-1010

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

Personally appeared before me the affiant DET. K. ATKINS

being duly sworn deposes and says that defendant HAROLD RUBEN AYTON

did within this county and state on 05/23/2010

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY) who
in the following particulars: violate the criminal laws of theDESCRIPTION OF OFFENSE: 16-15-0395(A) / SEXUAL EXPLOITATION OF A MINOR - FIRST
DEGREEI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THAT ON OR ABOUT MAY 23, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF SEXUAL
EXPLOITATION OF A MINOR IN THE FIRST DEGREE, IN THAT THE DEFENDANT RECORDED, PHOTOGRAPHED, AND FILMED
A CHILD UNDER THE AGE ELEVEN ENGAGED IN SEXUAL ACTIVITY. DURING THIS INCIDENT, THE DEFENDANT FILMED
HIMSELF HAVING SEXUAL INTERCOURSE WITH A SIX YEAR OLD FEMALE. THE DEFENDANT HAS PROVIDED LAW
ENFORCEMENT WITH A WRITTEN CONFESSION TO THE CRIME AND HE HAS BEEN POSITIVELY IDENTIFIED AS THE
CULPRIT WHO COMMITTED THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST. APT. WHICH IS LOCATED
WITHIN THE CITY LIMITS OF NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 1976 AS
AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

Affiant's Address 1507 NANCE ST.

NEWBERRY SC 29108

Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/23/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: SEX / SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered
to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/30/2010

BARRY G. KOON

Judge Code: 231

Judge's Address 1507 NANCE STREET

NEWBERRY SC 29108

Judge's Telephone 803-321-1010

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

ORIGINAL

Case: 2010-05837

FILED
NEWBERRY COUNTY
Form Approved by
S.C. Attorney General
July 27, 2007
10-1-0011

2017 JAN 9 11:04

JACKIE S. BOWEN
CLERK OF COURT

284

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF NEWBERRY

SEXUAL EXPLOITATION OF A MINOR IN THE
FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or March 31, 2010, did willfully and knowingly commit
the crime of Sexual Exploitation of a Minor in the First Degree. To wit: Harold R. Ayton,
a person eighteen years of age or older, while located in the County of Newberry, State
of South Carolina, did produce material containing a visual representation of a minor
child engaged in sexual activity, as defined in Section 16-15-375. This is in direct
violation of Section 16-15-0405 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.

FILED
NEWBERRY COUNTY

2011 JUN -9 AM 11:04

JACKIE S. BOYERS
CLERK OF COURT

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (MBW)
ATTORNEY GENERAL

DOCKET NO. 2011-GS-36-0632

FILED
WITNESSES NEWBERRY COUNTY

Det. K. Atkins - Newberry Police Dept.

2017 JAN -9 AM 11:04

JACKIE S. DOWNS
CLERK OF COURT

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

ARREST WARRANT NUMBER

1-009310

THE STATE

vs.

HAROLD R. AYTON
D.O.B. 1980

ACTION OF GRAND JURY

TRUE BILL

Cudziolovich
Foreperson of Grand Jury
Date: 9/8/2011

VERDICT

Foreperson of Petit Jury
Date:

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.

Indictment for

SEXUAL EXPLOITATION OF A MINOR
IN THE FIRST DEGREE

S.C. CODE §16-15-0395
CDR Code: 0379

286
Exhibit (A)

STATE OF SOUTH CAROLINA

COUNTY OF Newberry
STATE VS.Harold Ruben Ayton

AKA:

Race: B Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Columbia, SC 29203DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Sexual exploitation of a minor, First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS36-0632A/W#: I009310Date of Offense: 5/23/2010S.C. Code §: 16-15-0395(D)CDR Code #: 0379

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-0395(D) of the S.C. Code of Laws, bearing CDR Code # 0379☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Prosecutor, Special71716
SC Bar#DefendantAttorney for Defendant10033
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or, ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$ plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Pardon and Pardon Services standard conditions of probation which are incorporated by reference. 12011GS36-634☒ CONCURRENT ☒ CONSECUTIVE to sentence on: 2011GS36-631 + 633☒ 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. Since June 28, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	<u>00</u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	<u>\$100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	<u>\$</u>
§ 56-5-2995 (DUI Assessment)	\$12	<u>\$</u>
§ 56-1-286 (DUI Breath Test)	\$25	<u>\$</u>
Proviso 47.9 (Public Def/Prob)	\$500	<u>\$</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	<u>\$25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	<u>\$</u>
§ 50-21-114 (BUI Breath Test Fee)	\$30	<u>\$</u>
§ 56-5-2942(j) (Vehicle Assessment)	\$40/ea	<u>\$</u>
Proviso 90.5 (SCCA Surcharge)	\$5	<u>\$5.00</u>
3% to County (if paid in installments)	\$	<u>\$39.00</u>
TOTAL	\$	<u>\$133.00</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2154Sentence Date: 12-4-12

ARREST WARRANT

I-009311

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 NEWBERRY

THE STATE
 against



HAROLD RUBEN AYTON

Address: COLUMBIA SC 29203
 Phone: SSN: [REDACTED]
 Sex: M Race: B Height: 6-2 Weight: 235
 DL State: SC DL#: [REDACTED]
 OOB: [REDACTED] Agency ORI#: SC036010
 Prosecuting Agency: CITY OF NEWBERRY
 Prosecuting Officer: DET. K. ATKINS
 Offense: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE
 Offense Code: 0385
 Code/Ordinance Sec. 16-03-0655(A)(1), 0656

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
 defendant HAROLD RUBEN AYTON
 on 03-14-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
 NEWBERRY MUNICIPAL COURT
 1507 NANCE STREET
 NEWBERRY, SC 29108
 (803) 321-1010

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 NEWBERRY

Personally appeared before me the affiant DET. K. ATKINS who
 being duly sworn deposes and says that defendant HAROLD RUBEN AYTON -9 15:11:00
 did within this county and state on 03/31/2010 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY)
 In the following particulars:

DESCRIPTION OF OFFENSE: 16-03-0655(A)(1), 0656 CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MARCH 31, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IN THAT THE DEFENDANT DID ENGAGE IN SEXUAL BATTERY WITH A VICTIM THAT WAS UNDER THE AGE OF ELEVEN. DURING THIS INCIDENT, THE DEFENDANT INSERTED HIS PENIS INTO THE MOUTH OF A SIX YEAR OLD FEMALE, WHO THEN PERFORMED FELLATIO ON THE DEFENDANT. THE DEFENDANT WAS POSITIVELY IDENTIFIED AS THE CULPRIT WHO COMMITTED THIS CRIME AFTER THE INCIDENT WAS CAPTURED ON VIDEO, AND THE DEFENDANT HAS PROVIDED LAW ENFORCEMENT WITH A WRITTEN CONFESSION TO THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST., WHICH IS LOCATED WITHIN THE CITY LIMITS OF NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 1976 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
 NEWBERRY

Affiant's Address 1507 NANCE ST.
 NEWBERRY SC 29108
 Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 03/31/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR OR ATTEMPT - VICTIM UNDER 11 YRS OF AGE - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
 on 06/30/2010

Signature of Judge (L.S.)
 BARRY S. KOON

Judge Code: 231

Judge's Address 1507 NANCE STREET
 NEWBERRY SC 29108
 Judge's Telephone 803-321-1010

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

ORIGINAL

Case: 2010-05837

1
 AFFIDAVIT FILED
 NEWBERRY COUNTY

Form Approved by
 S.C. Attorney General
 July 16, 1990
 822a-518

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF NEWBERRY

CRIMINAL SEXUAL CONDUCT
WITH A MNOR IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or about the date of March 31, 2010, did willfully and knowingly commit the crime of Criminal Sexual Conduct With a Minor in the First Degree. To wit: Harold R. Ayton, a person eighteen years of age or older, did engage in sexual battery, as defined in Section 16-3-651(h), with a victim under the age of eleven within the County of Newberry, State of South Carolina. This is in direct violation of Section 16-3-655(A)(1), 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 (MBW)
ATTORNEY GENERAL

FILED
NEWBERRY COUNTY

2017 JAN -9 AM 11:04

JACKIE S. BOWERS
CLERK OF COURT

FILED
WITNESSES NEWBERRY COUNTY

Det. K. Atkins.- Newberry Police Dept.

2517 JAN -9 AM 11:00

JACKIE S. POWERS
CLERK OF COURT

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

ARREST WARRANT NUMBER

I-009311

THE STATE

vs.

HAROLD R. AYTON
D.O.B. 1980

ACTION OF GRAND JURY

TRUE BILL

Cindy Clonahan
Foreperson of Grand Jury

Date: 9/21/2011

VERDICT:

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE

S.C. CODE §16-15-655(A)(1)
CDR Code: 0385

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.

Foreperson of Petit Jury
Date:

290
Exhibit (A)

STATE OF SOUTH CAROLINA

COUNTY OF Newberry
 STATE VS.
Harold Ruben Ayton

AKA:

Race: B Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Columbia, SC 29203DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First de

in violation of § 16-03-0655(A) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 717/6 [Signature] [Signature] 10033
 Prosecutor, Special SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 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. (2011 GS 36-63)☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS 36-632 + 634☒ 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. Since June 28, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	<u>4</u>
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	<u>\$100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	<u>\$</u>
§ 56-5-2995 (DUI Assessment)	\$12	<u>\$</u>
§ 56-1-286 (DUI Breath Test)	\$25	<u>\$</u>
Proviso 47.9 (Public Def/Prob)	\$500	<u>\$</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	<u>\$25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	<u>\$</u>
§ 50-21-114 (DUI Breath Test Fee)	\$50	<u>\$</u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	<u>\$</u>
Proviso 90.5 (SCCA Surcharge)	\$5	<u>\$5</u>
3% to County (if paid in installments)	\$	<u>\$ 3.90</u>
TOTAL	\$	<u>\$ 133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11GS36-0633A/W#: 1009311Date of Offense: 3/31/2010S.C. Code § : 16-03-0655(A)CDR Code #: 0385

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 717/6 [Signature] [Signature] 10033
 Prosecutor, Special SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 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. (2011 GS 36-63)☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS 36-632 + 634☒ 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. Since June 28, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)
 § 14-1-211(A)(1) (Conv. Surcharge) \$100
 § 14-1-211(A)(2) (DUI Surcharge) \$100
 § 56-5-2995 (DUI Assessment) \$12
 § 56-1-286 (DUI Breath Test) \$25
 Proviso 47.9 (Public Def/Prob) \$500
 § 14-1-212 (Law Enforce. Funding) \$25
 § 14-1-213 (Drug Court Surcharge) \$150
 § 50-21-114 (DUI Breath Test Fee) \$50
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea
 Proviso 90.5 (SCCA Surcharge) \$5
 3% to County (if paid in installments)
 TOTAL

☐ Appointed PD or appointed other counsel,
 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date:

[Signature] 2154
12-4-12

ARREST WARRANT

I-009312

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

THE STATE

against

HAROLD RUBEN AYTON

Address: COLUMBIA SC 29203

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 6-2 Weight: 235

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency OR#: SC0360100

Prosecuting Agency: CITY OF NEWBERRY

Prosecuting Officer: DET. K. ATKINS

Offense: SEXUAL EXPLOITATION OF A MINOR -

FIRST DEGREE Offense Code: 0379

Code/Ordinance Sec. 16-15-0395 (A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant HAROLD RUBEN AYTON
on 03-14-2011

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
NEWBERRY MUNICIPAL COURT
1507 NANCE STREET
NEWBERRY, SC 29108
(803) 321-1010

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

AFFIDAVIT

Personally appeared before me the affiant DET. K. ATKINS

being duly sworn deposes and says that defendant HAROLD RUBEN AYTON

did within this county and state on 03/31/2010

violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of NEWBERRY)

In the following particulars:

DESCRIPTION OF OFFENSE: 16-15-0395 (A) / SEXUAL EXPLOITATION OF A MINOR - FIRST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON OR ABOUT MAY 23, 2010, THE DEFENDANT, HAROLD RUBEN AYTON, DID COMMIT THE OFFENSE OF SEXUAL EXPLOITATION OF A MINOR IN THE FIRST DEGREE, IN THAT THE DEFENDANT RECORDED, PHOTOGRAPHED, AND FILMED A CHILD UNDER THE AGE ELEVEN ENGAGED IN SEXUAL ACTIVITY. DURING THIS INCIDENT, THE DEFENDANT FILMED HIMSELF HAVING ORAL SEX WITH A SIX YEAR OLD FEMALE. THE DEFENDANT HAS PROVIDED LAW ENFORCEMENT WITH A WRITTEN CONFESSION TO THE CRIME AND HE HAS BEEN POSITIVELY IDENTIFIED AS THE CULPRIT WHO COMMITTED THIS CRIME. THIS OFFENSE TOOK PLACE AT DRAYTON ST. APT. WHICH IS LOCATED WITHIN THE CITY LIMITS OF NEWBERRY, SC. THIS BEING IN VIOLATION OF SOUTH CAROLINA CODE OF LAWS 1976 AS AMENDED.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

NEWBERRY

Affiant's Address 1507 NANCE ST.

NEWBERRY SC 29108

Affiant's Telephone 803-321-1010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/31/2010 defendant HAROLD RUBEN AYTON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of NEWBERRY) as set forth below:

DESCRIPTION OF OFFENSE: SEX / SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)

on 06/30/2010)

BARRY S. KOON (L.S.)

Judge Code: 231

Judge's Address 1507 NANCE STREET

NEWBERRY SC 29108

Judge's Telephone 803-321-1010

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

Case: 2010-05937

ORIGINAL

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF NEWBERRY)

SEXUAL EXPLOITATION OF A MINOR IN THE
FIRST DEGREE

At a Court of General Sessions, convened on September 2 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or May 23, 2010, did willfully and knowingly commit the
crime of Sexual Exploitation of a Minor in the First Degree. To wit: Harold R. Ayton, a
person eighteen years of age or older, while located in the County of Newberry, State of
South Carolina, did produce material containing a visual representation of a minor child
engaged in sexual activity, as defined in Section 16-15-375. This is in direct violation of
Section 16-15-0405 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 (MBW)
ATTORNEY GENERAL

FILED
NEWBERRY COUNTY

2017 JUN -9 10:11:04

JACKIE S. BOWERS
CLERK OF COURT

DOCKET NO. 2011-GS-36-0634

The State of South Carolina
County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON
D.O.B. 1980

Indictment for

**SEXUAL EXPLOITATION OF A MINOR
IN THE FIRST DEGREE**

S.C. CODE §16-15-0395
CDR Code: 0379

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.

WITNESSES

Det. K. Atkins - Newberry Police Dept.

2017 JAN -9 AM 11:04

JACKIE S. BOWERS
CLERK OF COURT

ARREST WARRANT NUMBER

I-009312

ACTION OF GRAND JURY

TRUE BILL

Cindy P. Smith
Foreperson of Grand Jury
Date: 9/2/2011

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Newberry
STATE VS.Harold Ruben Ayton

AKA:

Race: B Sex: M Age: 32DOB: [REDACTED] SS#: [REDACTED]Address: 2200 Liberty StCity, State, Zip: Columbia, SC 29203DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Sexual exploitation of a minor, First degreeINDICTMENT/CASE#: 11GS36-0634A/W#: 1009312Date of Offense: 3/31/2010S.C. Code §: 16-15-0395(D)CDR Code #: 0379

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-0395(D) of the S.C. Code of Laws, hearing CDR Code # 0379☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Prosser, Special 70714 ayton Harold Charles Jerner 10033
Prosecutor, Special SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 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 (2011 GS 36-632)☒ CONCURRENT (or ☐ CONSECUTIVE to sentence on: 2011 GS 36-631-633☒ 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. Since June 28, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 27.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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, 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

S. Alt 2154
12-4-12

CIRCUIT COURTS

§ 14-5-740

for the county shall be held at Abbeville on the Monday following the fourth Monday in March, the fourth Monday in June, the second Monday in October, and the second Monday in December, in each case for one week.

(2) *Greenwood County*.—The court of general sessions for Greenwood County shall be held at Greenwood for a one-week term on the second Monday in February, the second Monday in April, the second Monday in May and the second Monday in September. The court of common pleas for the county shall be held at Greenwood for a two-week term beginning on the second Monday in January, for a one-week term beginning the second Monday in March, the third Monday in April, the first Monday in June, and for a two-week term beginning the second Monday in November.

(3) *Laurens County*.—The court of general sessions for Laurens County shall be held at Laurens on the fourth Monday in February, the fourth Monday in May, and for a two-weeks term beginning the fourth Monday in September. The court of common pleas for the county shall be held at Laurens on the third Monday in March for two weeks, the second Monday in June for one week, and the fourth Monday in October for two weeks.

(4) *Newberry County*.—The court of general sessions for Newberry County shall be held at Newberry on the third Monday in February, the third Monday in May, the third Monday in September and the fourth Monday in November, in each case for one week. The court of common pleas for the county shall be held at Newberry on the fourth Monday in January, the fourth Monday in April, the third Monday in June, the third Monday in October, and the first Monday in December, in each case for one week.

HISTORY: 1962 Code § 15-277; 1952 Code § 15-277; 1942 Code § 58; 1932 Code § 58; Civ. P. '22 § 56; Civ. P. '12 § 25; Civ. P. '02 §§ 24, 25; 1889 (20) 360; 1891 (20) 1113; 1896 (22) 26; 1899 (23) 37; 1900 (23) 314; 1901 (23) 629; 1910 (26) 538; 1916 (29) 696; 1919 (31) 113; 1920 (31) 807; 1922 (32) 1039; 1925 (34) 277; 1928 (35) 1152; 1932 (37) 1390; 1934 (38) 1446; 1939 (41) 485; 1941 (42) 118, 129; 1947 (45) 521; 1951 (47) 292; 1953 (48) 311; 1954 (48) 1538; 1955 (49) 137; 1961 (52) 71, 578; 1963 (53) 543; 1967 (55) 210; 1969 (56) 739; 1970 (56) 1912.

§ 14-5-740. Terms of court in ninth circuit.

The courts of the ninth judicial circuit shall be held as hereinafter provided.

(1) *Berkeley County*.—The court of general sessions for Berkeley County shall be held at Moncks Corner on the second Monday in May and on the second Monday in October, in each case for one week. The court of common pleas for the county shall be held

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2017 JAN -9

JACKIE S. COOPER
CLERK OF COURT

Memorandum

CLERK OF COURT'S OFFICE, NEWBERRY COUNTY

Jackie S. Bowers, Clerk of Court

Post Office Drawer 10

Newberry, S.C.

TO: Harold Ayton

DATE: September 24, 2015

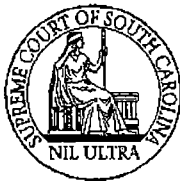
FROM: Elizabeth P. Folk *epf*
Chief Deputy Clerk of Court

I received your letter concerning a term of court for September 8, 2011. The date of the court was September 6, 2011 and the presiding judge was the Honorable Eugene C. Griffith Jr. After checking our records, I find that you plead guilty on December 4, 2012. I have attached copies of your sentence sheets. As I wrote you in a previous letter, Lauren Saunders is representing you and you need to contact her for any other information concerning your PCR. Her address is PO Box 731 Laurens SC 29360.

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JACKIE S. BOWERS
CLERK OF COURT



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1015 SUMTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

August 21, 2015

Harold Ayton, #353371
BRCI Lake Murray 287
4460 Broad River Road
Columbia, South Carolina 29210

Re: Your correspondence received August 19, 2015

Dear Mr. Ayton:

Your letter dated August 17, 2015, has been received by this office and forwarded to this section for response. Per your request, we have enclosed the terms of court for the 8th Judicial Circuit for the month of September 2011.

Please be advised that all terms of court dating back to 2002 are available on our website at www.sccourts.org. If you are not able to access this information yourself, you may have someone do so on your behalf.

Sincerely,

Staff Attorney Section/tr

Enclosure

Quick Link
Records Search

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NEWBERRY COUNTY
JAN 17 2016

Labor Day

Circuit Number	9/5/2011	9/12/2011	9/19/2011	9/26/2011
8	Common Pleas Non-Jury Addy, Frank <u>NO CR NEEDED</u> 5, 6 am <u>AMBROZIAK</u> 6 pm <u>VIZER</u> 7, 8, 9 General Sessions Newberry Griffith, Eugene <u>NO CR NEEDED</u> 5 <u>VIZER</u> 6 <u>HOLSTON</u> 7, 8, 9	General Sessions Abbeville Addy, Frank <u>RICE</u> Common Pleas Laurens Griffith, Eugene <u>HUDGINS</u>	General Sessions Greenwood Addy, Frank <u>HOLSTON</u> General Sessions Laurens Griffith, Eugene <u>HUDGINS</u> 19, 20, 21, 22 pm <u>HUDGINS</u> 23	

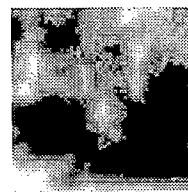
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2017 JAN -9 AM 11:03

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CLERK OF COURT



Newberry County Eighth Judicial Circuit Public Index



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[SC.GOV Home Page](#)

Switch View

The State of South Carolina VS Harold Ruben Ayton					
Case Number:	I009309	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600631	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
Ayton, Harold Ruben	St Columbia SC 29203	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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Switch View

The State of South Carolina VS Harold Ruben Ayton					
Case Number:	I009310	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600632	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds							
Click the  icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
Ayton, Harold Ruben	29203 : Columbia SC	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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Switch View

The State of South Carolina VS Harold Ruben Ayton					
Case Number:	ID09311	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600633	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Click the  icon to show associated parties.

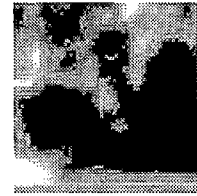
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
 Ayton, Harold Ruben	29203 Columbia SC	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
 Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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The State of South Carolina VS Harold Ruben Ayton					
Case Number:	I009312	Court Agency:	General Sessions	Filed Date:	03/14/2011
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Griffith, Eugene C. Jr.
Disposition:	Pled Guilty				
Disposition Date:	12/04/2012	Date Received:	03/14/2011	Arrest Date:	03/14/2011
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2011GS3600634	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds							
Click the  icon to show associated parties.							
Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Atkins, Kevin	1507 Nance Street Newberry SC 29108				Officer		03/14/2011
 Ayton, Harold Ruben	29203 Columbia SC	Black	M	1980	Defendant		12/04/2012
Burchstead, Megan Burleson	PO Box 11549 Columbia SC 29211				Solicitor		12/04/2012
Nelson, Wanda S.	P.O. Box 749 York SC 297451662				Court Reporter		12/04/2012
 Verner, Charles Vermeule	PO Box 484 Newberry SC 29108				Public Defender		12/04/2012

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S.C. Const. Art. 5 sec. 4

OF OUR CONSTITUTION provides in pertinent part; The Supreme Court shall make RULES GOVERNING the administration of courts of this state, subject to Statutory Law, the SUPREME COURT RULES GOVERNING the practice and procedure in all such courts. Otherwise, it would be UNCONSTITUTIONAL and NULLITY, being without binding legal effect.

The Federal Courts have come to the same conclusion, finding that a Grand Juries actions taken outside the scope of its Statutory authority deprives the Court of jurisdiction. A Grand Jury is a creature of statute. In RE MILLS, 135 U.S. 263, 267 (1890) and there can be no such thing as a De Facto Grand Jury. U.S. v. McKay, 45 F. Supp. 1007, 1015 (1942). The Failure to follow statutes governing Grand juries is not a mere defect in the institution of the prosecution, but amounts to lack of jurisdiction.

Moreover, no local rule, administrative order, policy or other practice can take precedent over Statutory Law which is always controlling. See S.C. Const. Art. 1 and 4 and State v. Cottinham, 77 S.e.2d 897 (1953) (Statutes override rules of court if in conflict) State v. Duncan, 264 S.e.2d 421 (1980) (Circuit Court rule promulgated by individual judicial circuit was UNCONSTITUTIONAL and VOID).

A judge has no authority to conduct a Grand Jury proceeding on his own initiative outside the bounds of the Court of General Sessions. because under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term. See State v. Best 186 S.e.2d 272 (1972); State v. Rinheart, 430 S.e.2d 536 (1993).

Criminal Charges of Perjury

Furthermore, SLED, the Department of Justice, or one of the courts of this State, should initiate an investigation into this misconduct and criminal violations of Law. Because the State knowingly, willfully, and corruptly to impede the courts with a Unindicted Fraudulent Indictment that never has been before a legal proper Grand jury. But the State committed Perjury when their MALFEASANCE know that no Grand jury convened on September 2, 2011. Perjury is whoever under oath or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of Title 28 United States Code in any proceeding before or ancillary to any court or Grand jury of the United States, knowingly make any false material declaration or makes

OR USES ANY OTHER INFORMATION, INCLUDING ANY BOOK, PAPER DOCUMENT, RECORD, RECORDING, OR OTHER MATERIAL KNOWING THE SAME TO CONTAIN ANY FALSE MATERIAL DECLARATION SHALL BE FINED UNDER Titile 18 § 1623(a) OR IMPRISONED NOT MORE THAN 5 YEARS OR BOTH.

Essentially anything that could influence or mislead trial court or jury is considered to be material, for purposes of perjury prosecution. U.S. v. Whimpy, C.A.5 (GA) 1976, 531 F.2d 768. AND perjury UNDER S.C. Statute Code § 16-9-10 occurs when a person gives false information in a document required by the laws of this State and through his own act, consent or agreement confirms the false information. The Solicitor committed perjury when they signed the alleged Fraudulent Unindicted Indictments and provided false and misleading information that a Court of General Sessions was convened on September 2, 2011 when the S.C. Court of Administration stated there was none on September 2, 2011.

Criminal Charge Conspiracy

Under S.C. Statute Code § 16-17-410 requires two or more persons to combine to accomplish an unlawful object, or a lawful object by unlawful means. Here, the Solicitor, Grand Jury Foreman, Clerk of Court, and Judge conspired to make effective an illegal Fraudulent Unindicted indictment. Their Nonfeasance and Malfeasance doing of an act which is wrongful and unlawful to seek a True Bill indictment by unlawful means. Not following Statutory and Constitutional provisions for obtaining a legitimate indictment. A conspiracy is very evident here, because unless the Solicitor is willing to admit that acting alone, he/she forged the illegal unindicted Fraudulent indictment, including the Grand Jury Foreman's signature, it would have taken the combined effort of the above listed judicial officials all working in concert to establish scheduling, to order and impanel the Sham Pleading Illegal Grand Jury during a time when no Court of General Sessions was convened, to meet and execute the return of the illegal True Bill, to report and publish the illegal Fraudulent Unindicted indictment as well file it into the court records and conduct a Sham Pleading De Facto Criminal Illegal Trial Plea hearing resulting in Petitioner's Nugatory Conviction and Sentence due to the State malfeasance and their Sham Illegal process, the proceeding was Nugatory because the De Facto Court had no jurisdiction to hear, convict and sentence petitioner which constitutes False Imprisonment, Obstruction of Justice, Conspiracy to the unlawful imprisonment of the petitioner.

Bottom Line.

Next the above referenced officials further conspired with SCDC to all for petitioners Kidnapping and illegal imprisonment in a cell for 40 years without any lawful indictment, sentence, conviction, commitment order or lawful judicial authority.

For the reasons shown herein, Petitioner moves that this court initiate an official investigation into the misconduct and criminal violations of law, or in the alternative vacate the illegal nugatory conviction and sentence and also vacate the charges and order Petitioner immediate release.

According to U.S. v. Russell, 411 US 423, 432 (1973) Courts will dismiss indictments for government misconduct outside the indictment process on due process grounds if such conduct is so outrageous that it violates Fundamental Fairness or is shocking to the universal sense of justice. also see State v. Funderburk, 191 S.e.2d 520 (1972) Acts of a court with respect to a matter as to which it has no jurisdiction are void. The court being without jurisdiction, the indictment in this case was a nullity. The Grand Jury being coextensive with the criminal jurisdiction of the court, the indictment was a nullity and the conviction was required to be vacated. See S.C. Const. Art. I sec II.

Criminal Charge Fraud

Whoever, in any matter within the jurisdiction of any Dept or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than \$10000 or imprisoned not more than 5 years, or both. An act of perjury or concealment of a document coupled with an intentional scheme to defraud the court justifies the setting aside of a judgement due to extrinsic fraud. Roy v. Roy, 374 S.C. 79, 647 S.e.2d 237. (S.C. 2007)

Extrinsic fraud warranting equitable relief from judgement involves a person not to present a case or deprives a person of the opportunity to be heard and of a fair hearing or the opportunity to present its case. Jamison v. Ford Motor Co., 373 S.C. 248, 644 S.e.2d 755 (S.C. App 2007)

Fraud upon the court is a narrow and invidious species of fraud that subverts the integrity of the court itself, so that the judicial machinery can not perform in the

USUAL MANNER its impartial task of adjudging cases that are presented for adjudication.
Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 590 S.e.2d 502 (S.C. App. 2003)

S.C. Rule 3 (c), SCRCrimP.

IN ACCORDANCE WITH RULE 3(b) AND RULE (3)(c) OF THE S.C. RULES OF CRIMINAL PROCEDURE, AN ARREST WARRANT MUST BE TRANSFERRED TO THE SOLICITOR WITHIN 2 DAYS FROM RECEIPT FROM THE ISSUING OFFICIAL AND THE ACCUSED MUST BE INDICTED WITHIN 90 DAYS OF A WARRANT BEING ISSUED. PETITIONER WAS SERVED WITH THE WARRANTS ON MARCH 14, 2011 AND THE UNINDICTED FRAUDULENT INDICTMENT WHICH WAS NOT SERVED WITHIN 90 DAYS BUT HAS BEEN ILLEGALLY TRUE BILL 172 DAYS LATER AND THEREFORE, THE INDICTMENTS SHOULD HAVE BEEN DISMISSED. ALSO SEE State v. Jane Blackwell, Greenwood County Court of General Sessions ORDER OF JUDGE WYATT T. SAUNDERS DATED MARCH 3, 2008, DISMISSING CHARGE BECAUSE THE STATE FAILED TO COMPLY WITH RULE 3(c) OF THE CRIMINAL PRACTICE WHICH DICTATES THE STATE HAS 90 DAYS TO INDICT ONCE A WARRANT IS ISSUED.

Exceptional circumstances exist because this Court should consider the case of State v. Jane Blackwell Greenwood County Court of General Sessions ORDER Equal Protection of the Law.

THE STATES WRONGFUL CONDUCT AND ERROR SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS. ALSO, THE STATES STRUCTURAL DISCOVERY ERROR OCCUR WHEN THE GOVERNMENT WITHHELD MATERIAL EVIDENCE THAT WAS FAVORABLE TO THE PETITIONER. BRADY v. MARYLAND, 373 U.S. 83, 87 (1963); SEE ALSO U.S. v. Bagley, 473 U.S. 667, 682 (1985). EVIDENCE IS MATERIAL AND REQUIRES REVERSAL OF CONVICTION WHEN THERE IS A REASONABLE PROBABILITY THAT DISCLOSURE WOULD HAVE ALTERED THE RESULT OF THE TRIAL.

AFFIRMATIVE DEFENSES

PETITIONER'S CONVICTIONS AND SENTENCES CAN NEVER BE MADE VALID, BECAUSE THEY WERE OBTAINED BY THE USE OF CRIMINAL ACTS ON THE PART OF THE SOLICITOR AND OTHER JUDICIAL OFFICIALS WHO ACTED IN CONCERT TO KEEP THESE FRAUDULENT ACTIONS HIDDEN. THE FACT THAT THEIR BEHAVIOR WAS ONLY RECENTLY DISCOVERED, SHOULD NOT ACT AS A WAIVER NOR A PASS TO THEM FOR THEIR UNLAWFULNESS.

ADDITIONAL ARGUMENT UNDER
AFFIRMATIVE DEFENSES

ADDITIONAL ARGUMENT UNDER
AFFIRMATIVE DEFENSES CONT.

Petitioner's Guilty plea was not knowingly and voluntarily enter because petitioner did not know the State had failed to obtain a legitimate indictment, and he would not have plead guilty had he known the De Facto Court lacked jurisdiction due to the States unlawful conduct. So, petitioner did not knowingly and voluntarily enter a plea of guilty.

In the case sub-judice, the colloquy amounted to nothing more than a pro forma answers to proforma questions. The judge never informed Petitioner that the State must obtain a lawful True Bill indictment according to the State Statutes and the State Constitution and they have failed to do so thus depriving the De Facto Court of jurisdiction. Had Petitioner been informed of this by his non appointed lawyer or the judge he would never have plead guilty but would have demanded that the State first obtain jurisdiction by obtaining a lawful indictment. Petitioner acted reasonably in believing that the Solicitor was trustworthy and had obtained a lawful indictment. Petitioner had no prior reason for doubting the indictments was lawfully obtained and could not have known about the indictments at the time of the Sham Pleading Trial and Plea because of the Solicitors Fraud, Perjury, and Conspiracy designed to keep these bogus unindicted fraudulent indictments hidden from the Petitioner when he never had access to the Solicitors' File.

In other words, Petitioner's Guilty plea was not an intelligent choice among the alternatives available to him, because he could have plead not guilty and the court would have lacked jurisdiction to put Petitioner on trial. Since the relevant information was hidden from Petitioner due to the States Maltreatment of Perjury, Conspiracy and Fraud upon the court which Petitioner was prevented from considering it in making the decision to plead guilty which he did not have full understanding of consequences of his plea and charges against him as well his Guilty plea was not knowingly, voluntarily or intelligently entered.

Absence of an indictment is a jurisdictional defect which deprives the court of its power to act, and such defect cannot be waived by a defendant, even by a plea of guilty.

See 360 U.S. 10, 79 S.Ct. 1997

Petitioner was under duress by his non appointed attorney because the attorney kept influence the petitioner to stop the trial and take a plea because we do not have a defense and we are going to lose the trial. The petitioner was

Force to enter into a transaction under the influence of such fear as precludes the petitioner from exercising free will and judgment.

Petitioner never waived presentment to a grand jury according to S.C. Statute Code 17-23-140, and the signing of the sentencing sheet does not contain a written waiver of presentment. So, the sentencing sheet is insufficient and void. See State v. Maddox, 2004 WL 6251073. Because under S.C. Statute Code 17-23-140 requires a waiver of presentment to be in writing and the petitioner oral waiver is also insufficient to bestow jurisdiction.

And the act of a court with respect to a matter as to which it has no jurisdiction are void. See City of Fort Mill v. Fitzgerald Court of Appeal of S.C. December 23, 2014. 2014 WL 7339453, See also State v. Guthrie, 352 S.C. 103, 107, 572 S.e.2d 309, 312 (Ct. App. 2002)

CONCLUSION

Petitioner further request that the Court agree to GRANT Petitioner's relief on the grounds that the De Facto Court in Newberry County lacked jurisdiction and that the Solicitor presented Fraudulent Testimony in case #2011-GS-36-0631 through 0634 that a Grand jury was held on September 2, 2011 and when the Court of Administration shows it wasn't none. The Solicitor's Fraud on the court tacit shall be a prima facie evidence by tacit agreement that no such authority or documentation exist. As to the above entitled case and that Fraud continuous void ab initio as to the ongoing unlawful imprisonment of petitioner and is without authority of law and all damages caused by officers and agents of the State of South Carolina fraudulent seizure and unlawful imprisonment of petitioner are set by Teezvant v. City of Tampa, 741 F.2d 336 (11th Cir. 1984) via Tort Claim and are due and payable immediately. Silence can only be equated with fraud where there is a legal and moral duty to speak where an inquiry is left unanswered would be intentionally misleading U.S. v. Tweel 550 F.2d 297-300 (1977)

The Petitioner was grievously prejudiced by the Solicitor's negligence and fraudulent conduct because they did not indict Petitioner period neither by a legal grand jury nor indict petitioner in 90 days according to Rule 3(c) of the South Carolina Rules Criminal Procedure. But committed Fraud on the court for Petitioner's illegal void Nugatory conviction and sentence and False Imprisonment. For the reason stated, this Court should vacate the Nugatory void judgment, conviction sentence, charges and order Petitioner immediately release.

Respectfully submitted,

Harold Ayton

HAROLD AYTON #353371

430 Oaklawn Rd

Pelzer, SC 29669

Date: 1-3-2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH CIRCUIT COURT

County of Newberry

Harold Ayton
Petitioner

Case No: 2015-CP-36-00021

v.

Certificate of Service

South Carolina
Respondant

I Harold Ayton hereby certify that I have served upon the Newberry Clerk of Court Court of Common Pleas at P.O. Drawer 10 Newberry, SC 29608, the Summary Judgment pursuant to S.C. Rules of Civil Procedure, Rule 56, by mailing it in the United States mail First class postaged prepaid addressed as follows. Also, I certify that I have served the Attorney General Office by depositing a copy of it in the United States mail, postage prepaid, on January 3, 2017, addressed to the Attorney General Office Dennis Building P.O. Box 11549, Columbia, SC 29211

January 3, 2017

FILED
NEWBERRY COUNTY

2017 JAN -9 AM 11:00

JACKIE S. BOWER
CLERK OF COURTHarold Ayton ✓Harold Ayton
Perry Corr Inst
430 Oaklawn Rd
Pulzer, SC 29669

Sworn to and subscribed before me this 4th

day of January 2017

Nancy C. Murchant
Notary Public

My Commission Expires: 1-23-2023

State of South Carolina)
) Court of Common Pleas
 County of Newberry)
 Post Conviction Relief

2015-CP-36-00021

Harold Ruben Ayton)
) vs.) Transcript of Record
)
)
 State of South Carolina)
 Defendant)

June 5, 2017
 Laurens, South Carolina

B E F O R E:

Honorable G. Thomas Cooper, Judge

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

Judah N. VanSyckel
 Attorney for the State

Laura Saunders, Esq.
 Attorney for the Applicant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(AW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(AW) Harold Ayton

Direct examination by Ms. Saunders: 5

Cross-examination by Mr. VanSyckel: 17

(AW) Charles Verner

Direct examination by Ms. Saunders: 22

Cross-examination by Mr. VanSyckel: 33

Certificate of Reporter 43

EXHIBITS

(No exhibits were introduced.)

1 THE COURT: Is the State ready to proceed?

2 MR. VANSYCKEL: Yes, Your Honor.

3 THE COURT: Is the Defense ready to proceed?

4 MS. SAUNDERS: Yes, Your Honor.

5 THE COURT: All right, Mr. Attorney General.

6 MR. VANSYCKEL: May it please the Court. This is
7 Harold R. Ayton, SCDC number 3533871, versus the State of
8 South Carolina. Procedural history is that the Applicant
9 is presently confined to the South Carolina Department of
10 Corrections pursuant to orders of the Newberry County
11 Clerk of Court. The Applicant was indicted by the
12 Newberry County Grand Jury for three counts of criminal
13 sexual conduct with a minor and two counts of sexual
14 exploitation of a minor. The Applicant was represented by
15 Charles Verner. On December 4th, 2012 the Applicant
16 appeared before the Honorable Eugene C. Griffith, Jr. and
17 plead guilty as indicted. The Applicant was sentenced to
18 concurrent terms of 35 years imprisonment for each charge
19 of criminal sexual conduct to run consecutively to the two
20 charges of sexual exploitation. The Applicant was
21 sentenced to concurrent terms of 5 years imprisonment for
22 each charge of sexual exploitation of a minor to run
23 consecutively to the two charges of criminal sexual
24 conduct. On July 19th of 2013 the Office of the Attorney
25 General received a notice of appeal and proof of service

1 from the Applicant appealing convictions and sentences in
2 question. Proof of service was dated July 17th, 2013. By
3 order filed September 18th, 2013 the South Carolina Court
4 of Appeals dismissed the appeal based on Applicant's
5 failure to provide proof of service showing time and
6 service of the notice of appeal. Remittitur was issued on
7 October the 8th of 2013. The Applicant subsequently filed
8 a motion for a hearing and to reinstate the appeal. The
9 Court of Appeals subsequently issued an order recalling
10 the remittitur by a document dated November the 12th of
11 2013. The Applicant again forwarded a proof of service
12 for the notice of appeal dated July 17th, 2013, Respondent
13 filed a return by order filed February 26th, 2014 and the
14 Court of Appeals denied the Applicant's motion for a
15 hearing. The remittitur was sent April 9th of 2014.

16 THE COURT: All right. Ms. Saunders.

17 MS. SAUNDERS: Thank you, Your Honor, I call Harold
18 Ayton to the stand.

19 HAROLD AYTON, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 By Ms. Saunders:

23 Q Mr. Ayton, would you state your name for the record?

24 A My name is Harold Ayton.

25 Q And where are you from originally?

1 A Boise, Louisiana.

2 Q Where are you currently incarcerated?

3 A Perry Correctional in Pelzer, South Carolina,
4 Greenville County.

5 Q Okay. And you told me when the Solicitor, excuse me,
6 when the Attorney General was stating the nature of your
7 incarceration, were there some errors that you wanted to
8 clarify?

9 A Yes, ma'am.

10 Q Okay, tell the Court what you want to clarify?

11 A Well, if it please the Court.

12 THE COURT: Yes, sir.

13 A If it please the Court. I also will state that and
14 preserve for the record that the State is in basically in
15 default because due to the fact that I have been put in my
16 application for a PCR and that according to the law of
17 South Carolina statute, 17-27-78, states that they have 30
18 days to file a return. Mind you they have not asked for
19 an extension, has not informed to me of any extension and
20 they have not requested for a extension. And that the
21 State has also in default due to the fact, if was me, the
22 shoe was on the other foot, that the State would have to
23 do the same thing. They would be screaming the same
24 thing. They have the same rules and laws to abide by as
25 where I do.

1 Q Let me go over--

2 THE COURT: Let me just understand that. When did
3 you file your PCR application.

4 A Okay. My PCR was filed January 13th, 2015, sir, at
5 11:07. And they just filed the return of last year, last
6 month of this year.

7 THE COURT: Okay. I understand.

8 Q Now that we have clarified that point. Let's go
9 through a couple of things. Did you come to Newberry from
10 Richland County?

11 A Yes, ma'am. I have sit in Alvin S. Glenn Detention
12 Center waiting to be transferred to Newberry County.

13 Q So you came to Newberry. Did you ever fill out an
14 application for a Public Defender?

15 A No, ma'am.

16 Q And right before we began this hearing you handed me
17 two sheets of paper, some correspondence from the Clerk of
18 Court's office. Do you know what those are?

19 A Those are the letters that I received from the Clerk
20 of Court in Newberry, from the Chief Deputy Clerk of
21 Court, Ms. Beth P. Folk.

22 Q And what do those say?

23 A The first letter that was received was dated
24 September 30th, 2013 stating, enclosed are the copies of
25 your sentencing sheet indictments which you requested. I

1 also check for any appointments concerning your
2 appointments of the Public Defender. You may wish to
3 contact the Public Defender concerning your appointments
4 because I am not showing where you applied. The second
5 one also was saying, after checking our files, again, this
6 was dated March 6th, 2015. I did not find anything
7 concerning the appointments for the Public Defender.

8 Q So, you are telling the Court that you never filled
9 out an application for a Public Defender?

10 A No ma'am, I have been sitting, once I was transferred
11 into the Newberry County jail I had been placed in lockup
12 which is max unit. I have been sitting there, nobody
13 hasn't come to see me, not even my lawyer. My lawyer that
14 was appointed to my case was Mr. Grose.

15 Q So did you ever meet with Mr. Grose?

16 A I met with Mr. Grose only once.

17 Q And he was a Public Defender at the time?

18 A To my knowledge he was supposed to be the Public
19 Defender for Greenwood, something like that.

20 Q All right. So, then after that you met with Mr.
21 Verner how many times?

22 A Just once.

23 Q Just once. You never met with him again before trial
24 or anything like that?

25 A That was, that was on the day of court.

1 Q Okay. So at that point when you met with him did you
2 ever tell him, look, I don't want you to be my lawyer or
3 did you ever object to him being your attorney or
4 anything, just tell the Court if there is any
5 communication like that?

6 A Basically at the time he wasn't but Mr. Grose was my
7 attorney.

8 Q Okay. Did you tell Mr. Verner when you met with him
9 that you didn't want to speak with him or did he explain
10 to you that Mr. Grose was not an attorney for the Public
11 Defender's office any more?

12 A He told me that Mr. Grose had stopped taking practice
13 and that was during sentencing phase when I was being
14 sentenced.

15 Q Can you please tell me, say that again, I am sorry.

16 A He has informed of me that Mr. Grose was no longer
17 taking practice. And that was during the sentencing phase
18 when I was being sentenced by Mr. Eugene Griffith,
19 Honorable Judge.

20 Q So your case is getting called to trial, right?

21 A Yes.

22 Q And Mr. Verner came to meet with you?

23 A Right.

24 Q And y'all started getting ready for the trial, is
25 that correct?

1 A No, it was not at the trial phase. We was doing,
2 that was during the sentencing phase after we had
3 basically stopped to take a plea. And that is when he
4 informed the Judge that Mr. Grose had stopped taking
5 practice.

6 Q I understand what you are saying, I think. So, but
7 your case is from a plea, not a trial?

8 A Right. We had already picked the jury and then from
9 there, during the course of picking a jury then that is
10 when we was informed to talk about taking a plea.

11 Q So when you went through that process of picking a
12 jury and deciding to plea did you have adequate
13 opportunities to meet with Mr. Verner. Did you ever tell
14 him that you weren't ready to go to trial or that you did
15 not want to plea, anything like that?

16 A Well, would I have known, what I didn't know then,
17 what I would have known now from there, I was not actually
18 ready for trial because there was a short period of time
19 of him basically being on my case. Because if I had of
20 known that Mr. Grose was basically no longer my attorney,
21 because I was never informed it, that Mr. Grose was no
22 longer taking practice and that I would have a new
23 attorney. And so I would have never have done, went all
24 the way with the proceedings.

25 Q Okay. So did you ever go over discovery with Mr.

1 Verner?

2 A I never received a discovery.

3 Q You never received any discovery material?

4 A I just, just basically sat in the county jail and
5 right in lockup. Nobody hasn't come see me or attorney
6 wise, only a person come, I don't quite remember the
7 fellow's name and say the State has sent him down here to
8 ask me did I want to take a plea or go to trial. And I
9 spoke with him and I said, where is my lawyer. And he
10 said, I am not down here for that. Are you going to take
11 a plea. I said I cannot plea because I never received a
12 discovery. I don't know what you have against me. He
13 said, I take that as a no.

14 Q Who was that that you are referencing you were
15 speaking with?

16 A It was some short fellow, like I say, I don't quite
17 remember his name. He has come and said the State has
18 sent him down to ask me did I want to plea or go to trial.

19 Q So he worked for the State, not for Mr. Verner?

20 A I didn't know who he was working for.

21 Q Okay. What did you tell him?

22 A I had spoken with him. I said, how can I take a plea
23 when I don't know what you have against me. I never
24 received a discovery. And I said, where is my lawyer. He
25 said, I am not down here for that, I am just down here to

1 ask you, are you going to plea today or are you going to
2 take a trial. You are scheduled to appear in front of
3 Judge Honorable Griffith Monday.

4 Q Okay. Did you ever get a plea offer during that
5 time?

6 A No, no ma'am.

7 Q You never got a 25 year offer of any sort?

8 A No, ma'am.

9 Q Okay. So you didn't review discovery. Did you ever
10 receive anything with regards to any type of video
11 evidence that the State had or anything like that?

12 A A video was shown to me on a day that I basically had
13 pled. That was the first time.

14 Q That was the first time you had ever seen it?

15 A That was the first time I had ever seen it.

16 Q But did you know it was out there?

17 A No, I did not.

18 Q Did you ever see the indictments or the warrants?

19 A Never seen anything. All of that wind up taking
20 place. I started to see my indictments and warrants after
21 I was already incarcerated within SCDC, after I had filed
22 for a motion for discovery myself.

23 Q Okay. So did you ever receive those materials after
24 you filed that motion?

25 A When I filed them it took several months for me to

1 get everything which I never have received by actual
2 video. And then, if it pleases the Court, once I received
3 those, looked up at everything and it shows that I
4 supposedly had been indicted on September the 2nd of 2011
5 when the Grand Jury had convened. But if it also please
6 the Court, after more research, that there was no Grand
7 Jury that had convened on September 2nd.

8 Q Okay. So, you started going to trial on your case.
9 I am switching gears now again. You started to go to
10 trial on the case, y'all had some pretrial motions or
11 picked a jury and then had some pretrial motions. Is that
12 true or not true?

13 A We did had picked the jury.

14 Q Okay. Did Mr. Verner try to get some of the evidence
15 seized as part of the search warrant suppressed. Do you
16 remember that?

17 A We went through two hearings before we ever basically
18 went and picked the jury. And I think one was called a
19 Jackson versus Denno.

20 Q Okay, you are about right. Jackson v. Denno. So
21 were those motions successful through your case or not
22 successful?

23 A No, they were not successful.

24 Q Okay. So, I am switching gears again. Now you
25 mentioned in your meetings with me that you got evaluated

1 at some point by a lady. Can you tell the Court a little
2 bit about that?

3 A The visit during the period of my being in the County
4 was by a psychiatric, name is Donna Swartzner, came to, I
5 can't pronounce her name. She has come to see me while I
6 was at Newberry County jail and then she supposedly wind
7 up showing up to court to speak on my behalf. She was
8 never called.

9 Q So how long did you meet with her?

10 A I only met with her once and it was by, it was
11 roughly about 40 minutes.

12 Q Did she tell you she was going to draw up a report
13 about you or anything like that?

14 A Yes, ma'am.

15 Q Did you ever receive a copy of that report?

16 A No, ma'am.

17 Q Who allegedly asked for that report, was it Mr. Grose
18 or Mr. Verner?

19 A Mr. Grose.

20 Q So Mr. Grose asked for it back when he represented
21 you?

22 A Yes, ma'am. This was one letter that I did receive
23 from him when he was basically telling me that he still
24 planning on to get me a better way. But I never even seen
25 him.

1 Q But you don't know the results of that evaluation?

2 A Actually I really don't because she did tell me she
3 was going to come to the court and speak on my behalf.
4 That is as far as I remember.

5 Q Okay. So if the evaluation was on, not be favorable
6 you wouldn't know?

7 A No, ma'am.

8 Q But if it happened to be favorable or helpful to your
9 case you wouldn't know that either?

10 A No.

11 Q Okay. Do you have any witnesses in your case that
12 you needed to interview, that you needed your attorney to
13 interview before you went to trial?

14 A I had two witnesses but there was no call.

15 Q Okay. And you say you never received a copy or video
16 of your discovery?

17 A No, ma'am.

18 Q So this is your opportunity in court on your PCR, on
19 your post conviction relief application, do you have
20 anything else you want to tell the Court or express to the
21 Court before I turn you over to Mr. Hunter?

22 A Like I said, I have did a lot of reviewing of my case
23 and I understand what the Attorney General is speaking on,
24 that basically they say I have been indicted. I have the
25 Circuit Court calendar proving beyond a shadow of a doubt

1 that on September 2nd there was no court of General
2 Sessions for a Grand Jury to convene on September 2nd.
3 Also I have the statute, the South Carolina Code Statute,
4 14-5-740, for Newberry County. Also states that the court
5 of General Sessions for the Newberry County shall be held
6 in Newberry for the month of September, shall be on the
7 third Monday. I also have a letter, another letter from
8 the Clerk of Courts of Newberry, where they are basically
9 saying that the date was September the 6th and the
10 presiding Judge was Honorable Judge Eugene C. Griffith.
11 So, and that basically being the case that I have
12 basically been indicted then it must have been a special
13 term ordered by the Supreme Court Judge.

14 Q Okay. Mr. Ayton, let me redirect you here. Remember
15 that you started the trial but then you decided to plead
16 guilty. Okay. So, and did you read the trial transcript
17 that I provided to you?

18 A The transcripts that you have provided to me was
19 missing a couple of pages.

20 Q Okay. But the end of it contains a copy of your plea
21 transcript. Right?

22 A Well, I wouldn't know about that because I say it was
23 missing a couple of pages.

24 Q Well, that was a copier problem. I will try to put
25 those back in your packet if you tell me which pages are

1 missing. But you read that you plead guilty, right. You
2 recall that you plead guilty?

3 A Yes, ma'am.

4 Q Okay. So, what made you decide to plead guilty?

5 A Well, Mr. Verner basically has encouraged me to plead
6 guilty due to the fact that I didn't have a defense. And
7 by that, counsel keep forcing me to plead guilty to a
8 charge that basically was absurd. I do understand him
9 being a lawyer but as my lawyer you supposedly receive
10 into the investigations, that is for you and the best way
11 for your client. Mr. Verner didn't have my best interest.

12 Q Okay. So what you are saying is you, you gave your
13 plea involuntarily?

14 A Yes. And if I had of known the Court never had
15 jurisdiction to entertain to hear my case and known that
16 they had to have a legitimate indictment, I would have
17 never had went on the advice of my lawyer.

18 Q Okay. I am going to let you answer any questions Mr.
19 Hunter has for you.

20 CROSS-EXAMINATION

21 By Mr. VanSyckel:

22 Q Mr. Ayton, very briefly. Just so I understand, I
23 believe, did you just say that you were never presented a
24 warrant before you went to trial. Am I correct on that?

25 A I was never presented anything.

1 Q Okay. And so you wouldn't have signed those
2 warrants?

3 A March 14th--

4 Q Did you ever sign the warrants?

5 A On March 14th when I came from the Alvin S. Glenn,
6 Newberry Police Department has picked me up and brought me
7 up to the courtroom and they just served me with a paper.
8 But that is the only day I signed it, was never gone in
9 front of no Judge or anything. They had me sign the paper
10 and took me back to Alvin S. Glenn.

11 Q Okay. But you were presented with a warrant on that
12 day?

13 A No, not on the trial date.

14 Q No, on the day they brought you to Newberry?

15 A That was basically, I was not transferred from
16 Newberry. I was just coming up for court.

17 Q Now, you said that you did not meet with Mr. Verner
18 except when, the day of the--

19 A --hearing.

20 Q And that was, are you saying, now help me understand
21 here. But you are saying you met him for the very first
22 time the day you got together to do a trial?

23 A That was on the hearing. Jackson versus Denno, the
24 day of the trial.

25 Q And he forced you into pleading guilty?

1 A Been, the whole entire time for me to plead guilty
2 due to the fact I didn't have a defense.

3 Q Did you have a defense?

4 A To my knowledge, yes, I did.

5 Q Okay. So, when you told the Judge that you were
6 satisfied with the advices of counsel Mr. Verner has given
7 you, in regard to his representation of these five
8 matters. When you told the Judge that you were satisfied,
9 were you lying or were you telling the truth?

10 A Well, at that day I was lying because they say I was
11 reading off a piece of paper that Mr. Verner has typed up.
12 It was due to the fact when we took a break and that was
13 after the hearing, we went into his office upstairs. And
14 then basically went on the computer and then typed
15 everything that was needed to say which is basically what
16 I have read, that I have no enemies. That was read. I
17 can't remember exactly the words, everything that I said.
18 But that was basically what he typed up.

19 Q But you were under oath, correct?

20 A Well, I was saying it in front--

21 Q -- in front of the Judge?

22 A Right, in front of the Judge.

23 Q And you were sworn to tell the truth?

24 A Right. And I was sworn to tell the truth.

25 Q Okay. And so when you were standing there and you

1 told the Judge that you were satisfied--

2 A That was everything I read on the paper. It was not
3 basically in my own words.

4 Q Okay.

5 MR. VANSYCKEL: Beg the Court's indulgence.

6 Q Now, you were under oath when you were standing in
7 front of the Judge, right?

8 A Yes.

9 Q Okay. And do you remember telling the Judge you
10 recognize what you have done and you were wrong?

11 A That was read off a piece of paper, everything.

12 Q But you said that in front of the Judge?

13 A Yes, everything that was on the paper, that is what I
14 read in front of the Judge.

15 Q Okay. At the time when you met in front of the Judge
16 and the Judge asked you if you were pleading guilty freely
17 and voluntarily, when you said freely were you lying or
18 telling the truth?

19 A Well according to the paper was basically Mr. Verner
20 had coached me that I say yes.

21 Q Okay. When you met with, when you were talking to
22 the Judge and you, the Judge said, have you understood
23 your conversations with him regarding your defense of this
24 case and you said, yes sir. Were you lying or telling the
25 truth?

1 A That was all on the paper that I say, yes.

2 Q So, just to be clear. You got up in front of a
3 Judge, under oath and lied to the Judge based on a piece
4 of paper that was in front of you?

5 A That is what everything that Mr. Verner had typed in,
6 typed on a piece of paper for me to say.

7 Q And when you said, when the Judge said, are you
8 pleading guilty today because you are, in fact, guilty in
9 doing exactly what was Ms. Burchett, (phonetic), said.
10 And you said, I am.

11 A Yes sir, that is what I basically said.

12 Q And when the Court said, are you pleading guilty
13 freely and voluntarily. And you said, freely?

14 A That is what I said, sir.

15 Q So you said all of those things under oath?

16 A I said everything that was on that piece of paper
17 that Mr. Verner had typed. It was word for word.

18 Q Mr. Verner, excuse me, Mr. Ayton, let me make sure I
19 understand this. Even before this conviction you were
20 already a felon?

21 A Well, before this conviction, yes, I was already a
22 felon. My felon was from a childhood, I was living in
23 Florida, sir.

24 Q Okay. So, in 1999 you got four years and seven
25 months on a charge out of Florida. Is that correct?

1 A Yes, sir.

2 Q And then you also got five years and probation on an
3 aggravated battery in '99 out of Florida?

4 A Yes, that was '99.

5 Q And then you had a petty larceny from 2007?

6 A Not that I recall, sir.

7 Q Okay. But either way, since 1999 you have been a
8 felon.

9 MS. SAUNDERS: Your Honor, I am going to object to
10 this line of questioning because it does not have any
11 probative value to the, what we are talking about today.
12 It is not relevant.

13 THE COURT: Sustained, I don't think we need to go
14 through prior record.

15 MR. VANSYCKEL: Nothing further for Mr. Ayton.

16 THE COURT: Redirect?

17 MS. SAUNDERS: Nothing further, Your Honor.

18 THE COURT: You may come down, thank you.

19 MS. SAUNDERS: Your Honor, I call Charles Verner to
20 the stand.

21 CHARLES VERNER, being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Ms. Saunders:

25 Q Mr. Verner, would you please state your name for the

1 record?

2 A Charles Verner, V-E-R-N-E-R.

3 Q And could you explain to the Court your, the way you
4 came to represent Mr. Ayton?

5 A I am the Public Defender, the only Public Defender in
6 Newberry County. We are part of the Eighth Circuit.
7 When, I want to say that Mr. Ayton was in jail in Richland
8 County at Alvin S. Glenn for about nine months, the better
9 part of a year even. His Public Defender in Richland
10 County contacted me, he had a criminal sexual conduct with
11 a minor charge pending in Columbia. His lawyer in
12 Columbia called me and said that he was going to be
13 charged in Newberry because they found evidence of a
14 criminal sexual conduct in Newberry. I am not one-hundred
15 percent positive but I think I first met Harold, I went to
16 Alvin S. Glenn twice and met him up there before he was
17 brought to Newberry to discuss the charges coming. So he
18 would not have put in an application, I would have been
19 contacted by Columbia that he was coming to Newberry and
20 that he was in jail at Alvin S. Glenn.

21 Q So he was indigent or had been declared indigent and
22 assigned a Public Defender in Columbia?

23 A Right. And he is in jail not making bond so I am
24 assuming he is indigent.

25 Q Did you ever have any discussions with him about or

1 did he ever object to your representation of him or
2 anything like that?

3 A No, he was very cordial, very pleasant to talk to
4 when I first met him.

5 Q Okay. What was the basic evidence in the case?

6 A Harold was in jail for almost a year in Richland
7 County. He was living with a woman who had small
8 children, not his. She made an allegation, based on what
9 the children had told that Harold had molested one of her
10 daughter's. There was no real physical evidence. It was
11 a basically, the child's testimony against Mr. Ayton that
12 he had molested her. They didn't do anything with the
13 case for the better part of a year. Another girlfriend,
14 basically while Harold was in jail evicted him and put all
15 of his belongings on the street curb in Columbia including
16 cell phones. People in the neighborhood were going
17 through his stuff because it had been abandoned on the
18 side of the road, when they went through a cell phone they
19 found video footage on a cell phone of someone having sex
20 with what is clearly a seven or eight year old girl. They
21 called, this was like in a housing complex. There was a
22 police officer in the neighborhood already. The citizens
23 contacted, the police officer waived him to come over,
24 showed him the videotape. He watched the videotape, could
25 see the, somebody having sex with a child on the cell

1 phone. At that point they referred the case, the Attorney
2 Generals's office has a unit that handles nothing but
3 prosecution of child video pornography. Because it was a
4 video on a cell phone, it was actually turned over to the
5 Attorney General's office for their video pornography,
6 child video pornography when in fact it probably should
7 have been referred to the Solicitors or to the Sherrifs
8 Department. The AG then reviewed the videotape on the
9 phone, they could not identify the child in the video.
10 But, so they sent pictures that they took of the child to
11 all of the school districts in the surrounding areas.
12 Newberry County School District identified the child as a
13 Newberry County resident, provided her contact information
14 to the Richland County or to the Attorney Generals office.
15 And then that is when the charges were brought on him.
16 The woman in Newberry identified Harold as her live-in
17 boyfriend and that was her child from Newberry County.
18 Q Okay. So the basic piece of evidence or the crucial
19 piece of evidence was a video, right?

20 A There are two specific videos of somebody having sex
21 with a, what is clearly a seven, eight, I can't remember
22 her exact age but she is a small child.

23 Q Did you view it?

24 A I did.

25 Q Did you view it with Mr. Ayton?

1 A The videos were kept by the Attorney General's office
2 in Columbia. They would not release the videos. If I can
3 correct Harold for one thing. Charles Grose was the Chief
4 Public Defender at the time he was probably first
5 arrested. I think I called Charles in the beginning and
6 said, basically, you know, we have got an interesting or
7 we have got a doozy of a case coming to Newberry. It is
8 pretty big, are you interested in kind of sitting as a
9 second chair, just based on the facts and the nature of
10 the charge. And he said, yes, I will come down and talk
11 to him too. We had originally intended to do it as two
12 attorneys. But I am the one who contacted Charles Grose
13 and said, you know, if you have got the time I have got a
14 big case coming into Newberry and you are welcome to look
15 at it because there could be some search issues. And he
16 came down and did meet with him. I didn't realize it but
17 apparently Charles stepped down as Chief Public Defender
18 and Janna Nelson took over. Because I knew that they
19 would not give me copies of the videotape I called Janna
20 and asked if she would ride down with me. Part of that
21 was to get a second set of eyes on the video. Part of it,
22 because the prosecutor, the Attorney General was a woman.
23 The investigator was a woman, it was child porn. I would
24 prefer to have somebody else in case I was alone watching
25 it. So I just, I asked Janna Nelson and she and I set up

1 a date where we both went and reviewed the video. I took
2 my cell phone camera and there were basically two
3 different videos. One is a short video of a child
4 performing oral sex, you cannot identify the person, the
5 man. And the second one is a child having sex on the bed
6 where the camera is purely put on the chest of drawers,
7 propped up on something video taping sex. Also cannot
8 identify the man. But what I did with my cell phone
9 camera is we kind of used a piece of paper and blocked out
10 the prurient parts of the photograph. So maybe you could
11 see like the top of the child's head. But the penis, I
12 would have put paper over and I took a picture of that
13 with my camera phone. The same thing with the child in
14 the bed. And then I think there was a third photograph
15 where you couldn't completely see the man but you could
16 see him standing up. He had a very distinctive tattoo on
17 his, I think his left bicep which matched Harold Ayton's
18 tattoo on his left bicep. And I took a photograph of that
19 and I printed them all out and I gave them to Harold. He
20 also had a copy of the case file but, you know, it is
21 largely a video case with the kid. But all three pictures
22 I turned over to Harold. But, no, he did not see the
23 actual video. The week it was actually called for trial,
24 maybe the day before the trial, the AG's investigator was
25 there, brought the videotape. I think she actually came

1 into the room with us and we watched the videotape and she
2 was told not to say anything. But she kind of played the
3 video and Harold and I watched it without talking and then
4 made her leave before we discussed the video.

5 Q So you did view it with Mr. Ayton?

6 A No. He didn't actually see the actual video until
7 possibly as soon, either the day of or the day before
8 trial. But he would have seen photographs of the video
9 and I watched it with the Chief Public Defender for the
10 Eighth Circuit.

11 Q All right. You mentioned you provided him with the
12 rest of the contents of the file?

13 A He would have had a copy of all of the case file.

14 Q Okay. Do you know anything about this evaluation
15 issue with Donna Schwartz-Watt?

16 A Not Charles Grose, I called Donna Schwartz-Watt who
17 is a psychiatrist, I believe. I told her that, you know,
18 I had a case coming with a lot of heft seriousness to it.
19 And I asked her before I would request a court ordered
20 psychiatric evaluation, I wanted her to meet with Harold
21 and give me some kind of informal report. I got an order
22 signed by the Judge, if you will look at it it will be my
23 motion, not Charles Grose's motion. And she did come
24 fairly quickly and met with Harold for probably about an
25 hour I think. She never prepared a written report. I

1 never had an issue or question in my mind about his
2 competency. She did not present me with any McNaughton,
3 about his capacity to perform conduct issue. She did
4 indicate to me that she would have a trove of useful
5 information to give me. But for my recollection that was
6 more in mitigation of, you know, possible prior abuse that
7 Harold had. But the, she did not have anything to give me
8 more than what I consider mitigation type evidence.

9 Q Okay. So you used her evaluation to further your
10 trial strategy and plans for whether you were going to go
11 to trial or plead?

12 A Right. I saw no issue as far as competency. I saw
13 no issue, in my mind, as far as McNaughton. But because
14 of how serious the charge was and the multi-county
15 charges, you know, I went ahead and got a psychiatrist, if
16 there were issues to put them out there that we could
17 follow-up in case we wanted to use a not guilty by
18 insanity. So I had Harold evaluated prior to trial,
19 privately though.

20 Q Okay. As far as the decision to plead, when did that
21 occur?

22 A Again, until today I didn't realize that the jury had
23 already been drawn. This was a 2011 plea but I remember
24 it was the week of trial. I probably expressed to Harold,
25 you know, his defense was pretty much a suppression

1 motion. If the search of the camera was unlawful then it
2 would be hard for the State, well they could still go with
3 the child's victim and the mom's testimony. But they
4 would not have the video evidence. I cannot recall any
5 defenses, any really substitutively hard defenses. I
6 don't remember any witnesses, certainly there were no
7 alibi or any witnesses.

8 Q So at some point, the night before the second day of
9 trial was going to begin, Mr. Ayton decided to plead
10 guilty?

11 A It is a case, the State I think may have made him a
12 25, I seem to recall made a 25 year plea offer. Part of
13 the problem was Harold had prior lewd act or criminal
14 sexual conduct charges out of Florida. They may have
15 plead down to the aggravated assault and battery but he
16 had similar charges in the past. I thought he was already
17 on the sex offense registry. But that might be wrong.
18 The day he plead, I remember we called his family in New
19 Orleans. We spoke to his dad and mom or at least his dad,
20 I want to say both of them. I thought we spoke to a
21 brother too. But we called his family in New Orleans and
22 he talked to them and told them, you know, listen, I am
23 going to go ahead and take a plea. You know, I informed
24 him and I think he has a 25 year violent offer before
25 trial. I told him he would get probably a lengthy prison

1 sentence if he plead. But it was, it was a case I would
2 have told him beforehand he was going to be getting a
3 lengthy prison sentence.

4 Q Okay. Is this a situation where you would have, be
5 caught in the dilemma that if you go to trial and you get
6 convicted you might get life in prison. Is that what you
7 were looking at?

8 A I think I told him, both, that if you go to trial you
9 are going to get a lengthy prison sentence. But if you
10 plead you are going to get a lengthy prison sentence. So,
11 I mean, we will do it either way. And I think we focused
12 on, you know, let's try to win the suppression motion.

13 Q And you went forward with the suppression motion,
14 right?

15 A As I recall the Judge denied the suppression.

16 Q Okay. Did you ever type anything up for Mr. Ayton?

17 A No. I have never typed up an apology or written up
18 an apology or suggested what people, I think what he might
19 be talking about was Judge Griffith, shortly after he
20 first got arrested, had a rights form that he made people
21 sign or before they plead which was basically the Judge's
22 quarry during a plea. You have got the right to remain
23 silent, you have got the right to see the witnesses in
24 front. Judge Griffith used to have a form where before a
25 plea the attorney was required to go over all of the trial

1 rights and the Defendant signed it in writing prior to the
2 Judge asking those questions orally. But I have never, to
3 my knowledge, I have never written up for a criminal case
4 an apology. I have never coached somebody on the rights
5 to say, other than, you know, I would tell them what
6 questions the Judge may have to give you.

7 Q Okay.

8 MS. SAUNDERS: I beg the Court's indulgence.

9 Q Did you ever see the original phone video?

10 A Yes.

11 Q You did. You saw it on the phone itself?

12 A I don't know. I am sure I saw the actual physical
13 phone because I remember it being a trial exhibit. The
14 video I watched, I am sure was on a computer. They had
15 stripped it from the phone or downloaded it from the
16 phone. So when I saw it it was clearly on a monitor
17 because I remember I took pictures of it. And it must
18 have been big enough where I could put sheets of paper
19 over the scenes from it. So, no, I don't recall and I
20 can't say I saw it actually on the phone itself. The
21 information would have been allegedly downloaded by SLED.

22 Q Answer any questions that Mr. VanSyckel may have.

23 A And it is not to a question but I could clarify one
24 of his, on the indictment by the Grand Jury, on September
25 2nd of 2011 in Newberry the Grand Jury meets once a month,

1 the Friday before court. The indictment was proper in
2 form, September 2nd is a Friday so I am assuming that
3 would have been, I remember him raising that issue to me
4 several years, I remember him having the indictment issue
5 several years ago. The indictment was proper in form. He
6 wanted me to subpoena the Grand Jury or the Foreman
7 because he raised that issue in the very beginning. And I
8 will say on my own, I declined, I felt the indictment was
9 proper in form and I declined to subpoena the Grand Jury
10 Foreman. I am sorry, Mr. Attorney General.

11 CROSS-EXAMINATION

12 By Mr. VanSyckel:

13 Q Mr. Verner, can you briefly describe your
14 relationship with Mr. Ayton in terms, you went to meet
15 with him and then there was a pretrial hearing and then
16 what was supposed to be a trial turned into a plea. Can
17 you describe the nature of your visits with him and how
18 often you did meet with him during that time?

19 A I probably, in the beginning I didn't meet with him
20 too often because he was being housed in Alvin S. Glenn in
21 Columbia, Richland County. And obviously I am in
22 Newberry. I want to say I met with him twice in Richland
23 and then, I would have met with him at least a half dozen
24 times, possibly more than that considering how big his
25 case was. You know, I have never met with anybody the day

1 they are going to trial and introduce myself. I would
2 have, I vaguely remember and I would say that I would have
3 met with him the better part of the full week beforehand
4 because he is going to trial, it is a big trial. And
5 probably, you know, I remember getting Charles Grose
6 involved and I remember going over when I went to review
7 the videotape, I remember several times meeting with him
8 and telling him I would point out the pictures for him. I
9 remember photocopying the discovery, probably six to a
10 dozen times. Sometimes they would be very quick meetings,
11 you know, just one or two questions or just checking in
12 with you to see if anything is new. And other times they
13 would be full reviews of the file.

14 Q Do you recall if he was ever transferred from Alvin
15 S. Glenn to Newberry?

16 A He was. I can't remember the date, how long before
17 trial that would be.

18 MR. VANSYCKEL: May I approach the witness, Your
19 Honor.

20 Q Do you recognize this form?

21 A No, but I am assuming that, it appears to be the
22 arrest warrant for Harold Ayton where he signed on March
23 11th, March 14th of 2011 for the criminal sexual conduct
24 count.

25 Q And then do you recognize this sentencing sheet?

1 A That is my signature and he was sentenced on December
2 4th, 2012 by Judge Griffith. So, yes, that would be his
3 signature in the middle.

4 Q So, just in terms of the time of the case, he was,
5 originally the warrant in 2011 and then it didn't actually
6 go to trial until December of 2012?

7 A Or plead out, that's right.

8 THE COURT: Can you show me that.

9 MR. VANSYCKEL: Your Honor, this should be part of
10 the Judge's packet but if I can approach.

11 THE COURT: Yes, I have been looking for that, I
12 haven't been able to find it.

13 MR. VANSYCKEL: Your Honor, point to the one that you
14 have got right there. The Magistrate, the constable or
15 who delivered it signed right there as March 14th.

16 THE COURT: He didn't sign it?

17 MR. VANSYCKEL: No, Your Honor.

18 A But the signature would be when he was served with
19 it.

20 THE COURT: I understand that. I thought you were
21 asking if Mr. Ayton signed it.

22 Q So once Mr. Ayton was transferred to the Newberry
23 County Detention Center you started meeting with him more
24 frequently?

25 A Yes, I remember in the beginning, his case lasted a

1 long time between charge and plea. So I am sure that
2 there were stretches of weeks where I would not have
3 talked to him. And then as something happened I would
4 speak to him probably a couple of times. But in general I
5 try to talk to somebody once a month. But it can be as
6 simple as just saying, hey, you know, I haven't heard
7 anything, I am just, we are still working. But I don't
8 doubt that in a two-year stretch like that, there could be
9 many, many weeks where I wouldn't have seen him, where I
10 haven't had movement and then sometimes I would see him
11 several times in one week.

12 Q Okay. Did you provide him with this discovery?

13 A I did. I would have photocopied everything that I
14 had. And I would have given him the still shots, I
15 specifically remember giving him the still shots.

16 Q So he would have had everything except the video
17 itself?

18 A Except for the, which I didn't have myself.

19 Q And you would have provided him his warrants?

20 A Yes.

21 Q And would you have provided him with his indictments?

22 A He had a complete copy of the file.

23 Q Okay.

24 A I do not know if I would have copied the indictments.
25 I typically went on the day, when somebody goes to trial I

1 will make a copy of the indictments. But pretrial, like
2 four months before trial I typically won't copy
3 indictments and turn that over. But I remember he had his
4 indictments well before trial because he raised the issue
5 that he believed it was an improper indictment. So he had
6 those well before trial because he raised that issue prior
7 to trial, that he believed that the Grand Jury was not
8 properly convened on that certain date.

9 THE COURT: Let me interrupt you. On that very
10 issue, you look at that indictment and they are all the
11 same, I might say. Does it say anything about the
12 Newberry County Grand Jury.

13 A Judge, I thought he was also indicted by the Newberry
14 County Grand Jury but this is the Attorney General's and
15 that might be--

16 MR. VANSYCKEL: Your Honor, may we approach?

17 THE COURT: Sure.

18 (Whereupon, a bench conference was held.)

19 MR. VANSYCKEL: Your Honor, I am unclear as to your
20 question.

21 THE COURT: Well, there is an inconsistency here, the
22 indictments are signed by the Attorney General. And he is
23 alleging that they were not signed by the Newberry County
24 Grand Jury and it does not appear that they were signed by
25 the Newberry County Grand Jury.

1 MR. VANSYCKEL: Your Honor, if I may, I believe if we
2 refer to that--

3 THE COURT: We need clarification for the record.

4 MR. VANSYCKEL: Yes sir, Your Honor. The front page
5 of the indictment, the face sheet would have the action of
6 the Grand Jury and the signature, I believe. And then the
7 body is signed by the prosecutorial authority, it is my
8 understanding of the form of the indictments.

9 THE COURT: Just to clarify for the record.

10 A That looks like September 8th, but I am not, I can't
11 see. The Newberry Grand Jury indicted Harold Ayton on the
12 petition of the Attorney General's office. It was, the
13 case was realistically procedurally improperly sent to the
14 Attorney General because they, because the camera phone
15 was on video, the Richland County Sherrifs Office treated
16 it as a video child pornography case and the Attorney
17 General has a special unit just for video child
18 pornography. It is really not, in the four-corners of the
19 child pornography by video. But what the Attorney General
20 told me at the time that it was such a strong case that
21 they kept it. Technically it should have been sent to the
22 Sheriffs, to the Solicitor's office for prosecution. But
23 there was a video on a cell phone, what Megan Burchett,
24 the Attorney General said, it was such a strong case they
25 just kept it in-house but ordinarily that would be a

1 routine Solicitor's case.

2 Q Mr. Verner, just to clarify. Even if it would
3 normally have gone to a Solicitor's office, the Attorney
4 General's office does have statewide prosecutorial
5 authority and there is nothing procedurally that would bar
6 them from having that case and they could prosecute it on
7 their own in their own criminal jurisdiction, is that
8 correct?

9 A And it was indicted by the Newberry County Grand
10 Jury.

11 Q So it wasn't indicted by the State Grand Jury, it was
12 indicted by the Newberry County Grand Jury which has
13 authority over this, anything that happened within
14 Newberry County?

15 A I took it as the Attorney General's office has
16 statewide jurisdiction. If they didn't I missed something
17 but it was indicted before the Newberry County Grand Jury,
18 but it was prosecuted by the Attorney General's office.
19 My point was just technically it didn't fit the statute of
20 the task force for child video internet pornography.

21 Q So it didn't fall under the normal task force, what
22 they would normally handle. But there is nothing that you
23 are aware that would bar the Attorney General's Office
24 from prosecuting?

25 A No. They properly had the case.

1 Q Okay. Your view of the video of the sexual acts
2 involving Mr. Ayton and the child, was there anything that
3 stood out to you from that video?

4 A Just that the child's age is clearly under ten. And
5 that, it is clearly an adult man having sex with her who
6 generally matches Harold's physique but unidentified but
7 had the identical tattoo. But just two clear sex acts on
8 the child.

9 Q And the video was contained on Mr. Ayton, a phone
10 that was believed to be Mr. Ayton's, correct?

11 A My understanding is that the video was taken by,
12 purportedly his cell phone but it was a cell phone video
13 that was downloaded on a computer is what I saw.

14 Q Okay. And was placed out on the street that, that
15 phone was placed out on the street by someone at that time
16 who had been in a relationship with Mr. Ayton?

17 A An ex-girlfriend testified at the hearing that she
18 had put his clothing and belongings on the street while he
19 was in jail. And that people in the neighborhood went
20 through the video, that found the phone, went through the
21 video, saw the sex acts and there was a neighborhood
22 police officer already on location and called him over.
23 And he reviewed the video and then at a later date got a
24 search warrant.

25 Q And the victim was the daughter of a paramour of Mr.

1 Ayton's?

2 A The victim was a woman living with, the victim's
3 mother was a woman living with Harold Ayton who identified
4 him and the child was her child of another relationship.

5 Q So, the evidence of Mr. Ayton's guilt was
6 overwhelming?

7 A In my opinion it was a pretty strong case.

8 Q And your decision to encourage him to plead guilty
9 was based on the fact that it was an overwhelming case?

10 A I am not going to say I encouraged him to plead
11 guilty. I probably did indicate to him I felt he was
12 going to be found guilty and he would probably receive,
13 hopefully some benefit of mitigation or accepting
14 reasonability by pleading. Harold was in a case where he
15 was between the scylla and charybdis, a rock and a hard
16 place, he was going to get a hard sentence either way.

17 Q So strategically you believe you were advising him to
18 make his best decision?

19 A I felt he was going to be convicted and I certainly
20 concurred with his decision to plead guilty. And in fact
21 we called his parents on the phone and got their input on
22 it too. I want to say we spoke to a brother too but I
23 can't one-hundred percent say that.

24 Q Do you recall what their response was?

25 A Harold didn't want to give me details of the, he

1 didn't want me to tell his parents what he was pleading
2 guilty to. And so, I will say without going too far that
3 his father seemed to indicate some jest of what the nature
4 of it was. But Harold did not want me to give the details
5 of what the plea was.

6 Q Okay. Nothing further, Your Honor.

7 THE COURT: Redirect?

8 MS. SAUNDERS: Your Honor, I have nothing further.

9 THE COURT: All right. You may come down. Can this
10 witness be excused.

11 MR. VANSYCKEL: No objection.

12 MS. SAUNDERS: Without objection. Your Honor, that
13 is our case. We have nothing further.

14 THE COURT: Anything further from the State?

15 MR. VANSYCKEL: Your Honor, nothing further from the
16 State.

17 THE COURT: All right. Proposed orders. How much
18 time?

19 MR. VANSYCKEL: Twenty days.

20 THE COURT: Is that satisfactory?

21 MS. SAUNDERS: Yes, Your Honor, no objection.

22 THE COURT: All right, court is adjourned for the
23 day.

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Newberry, South
14 Carolina on the 5th day of June, 2017.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 December 17, 2017
2021 
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: May 2, 2026

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

HAROLD AYTON
PLAINTIFF

v.

STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT

CASE NO: 2015-CP-36-00021

MOTION IN AFFIDAVIT ADD OBJECTION
OPPOSITION TO HONORABLE JUDGE
COOPER PROPOSED ORDER

FILED
NEWBERRY COUNTY
2017 JUN 23 AM 9 53
ELIZABETH P. FOLK
CLERK OF COURT

PLAINTIFF moves with objection to the PCR Honorable Judge Cooper ORDERING the Attorney General AND PCR Counsel to prepare the Written Proposed Order within twenty (20) days DURING the Plaintiff PCR hearing on June 5, 2017. Plaintiff object to this order because PCR Counsel should kept in mind that courts will often ask the prevailing party to prepare an order. When counsel should object to allowing the PCR Honorable Judge Cooper to draft his own FINDINGS OF FACT AND CONCLUSIONS OF LAW because the supreme court has said that it STRONGLY ENCOURAGES PCR judges to draft their own FINDINGS OF FACT to the proposed FINDINGS AND CONCLUSIONS. See HALL v. CATOE, 601 S.E.2d 335, 341 (S.C. 2004).

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

HAROLD AYTON
Plaintiff

v.

STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT

CASE NO: 2015-CP-36-00021

CERTIFICATE OF SERVICE

FILED
NEWBERRY COUNTY
2017 JUN 23 AM 9 54
ELIZABETH P. FOLK
CLERK OF COURT

I hereby submit that i've served the Newberry County Court of Common Pleas at P.O. Drawer 10 Newberry, SC 29108 and the Attorney Generals Office at the Dennis Building P.O. Box 11549, Columbia, SC 29211, the Plaintiff Motion In Affidavit ADD Objection Opposition To Honorable Judge Cooper Proposed Order, by mailing it in the United States mail First class postage prepaid addressed as follows on June 20, 2017

June 20, 2017



Harold Ayton
Perry Corr Inst
430 Oaklawn Rd
Pelzer, SC 29669

PERRY CORR INST
 HAROLD AYTON #353371
 430 OAKLAWN RD
 PELZER, SC 29669

NEWBERRY CLERK OF COURT
 P.O. DRAWER 10
 NEWBERRY SC 29669

6-20-17

FILED
 NEWBERRY COUNTY
 2017 JUN 23 AM 9 53
 ELIZABETH P. FOLK
 CLERK OF COURT

Re: HAROLD AYTON V. STATE OF SOUTH CAROLINA
 Case No: 2015-CP-36-00021

DEAR CLERK;

ENCLOSED PLEASE FIND A MOTION IN AFFIDAVIT AND OBJECTION OPPOSITION TO
 HONORABLE JUDGE THOMAS COOPER PROPOSED ORDER. I REQUEST THAT YOU PLEASE
 FILE THIS DOCUMENT AND PLEASE SEND ME A CLOCK STAMP COPY.
 AND MAY YOU PLEASE SEND A COPY TO THE ATTORNEY GENERAL.

WITH kindest regards

Sincerely



COPY SENT TO PLAINTIFF & ATTORNEY GENERAL
 6/23/17

Perry Correctional Inst
 Harold Ayton #353371Q4A220
 430 Oaklawn Rd
 Pelzer, SC 29669

GREENVILLE
 SC 296
 21 JUN '17
 ENCL

Newberry Clerk of Court
 P.O. Drawer 10
 Newberry, SC 29108

RECEIVED

JUN 20 2017

PCI Mailroom

LEGAL MAIL

29108-001010



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
	)	2015-CP-36-00021
Harold R. Ayton,	)	
S.C.D.C. No. 353371,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

ELIZABETH P. FOLK
CLERK OF COURT

2017 AUG 21 AM 9:43

FILED
NEWBERRY COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 13, 2015. An evidentiary hearing into the matter was convened on June 5, 2017, at the Laurens County Courthouse in Laurens, South Carolina. Applicant was present at the hearing and represented by Laura Saunders, Esquire. Judah N. VanSyckel, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Charles Verner, Esquire, also testified. This Court had before it a copy of Applicant's records from the Newberry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted by the Newberry County Grand Jury for three counts of criminal sexual conduct with a minor (first degree) (2011-GS-36-631, -633, -635) and two counts of sexual exploitation of a minor (first

GP

degree) (2011-GS-36-632, -634).¹ Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted. Applicant was sentenced to concurrent terms of thirty-five years imprisonment for each charge of criminal sexual conduct (2011-GS-36-631, -633), to run consecutively to the two charges of sexual exploitation. Applicant was sentenced to concurrent terms of five years imprisonment for each charge of sexual exploitation of a minor (2011-GS-36-632, -634), to run consecutively to the two charges of criminal sexual conduct.

On July 19, 2013, the Office of the Attorney General received a notice of appeal and proof of service from Applicant appealing the convictions and sentences in question. The proof of service was dated July 17, 2013. By Order filed September 18, 2013, the South Carolina Court of Appeals dismissed the appeal based upon Applicant's failure to provide a proof of service showing timely service of the notice of appeal. The remittitur was issued on October 8, 2013.

Applicant subsequently filed a Motion for Rehearing and to Reinstate the Appeal. The Court of Appeals subsequently issued an Order recalling the remittitur. By document dated November 12, 2013, Applicant again forwarded a proof of service for the notice of appeal dated July 17, 2013. Respondent filed a Return. By Order filed February 26, 2014, the Court of Appeals denied Applicant's Motion for Rehearing. The Remittitur was sent April 9, 2014.

PCR Application

In his current application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a) Failure to disclose and explain discovery material
- b) Failure to prepare and investigate
- c) Failure to subject case to meaningful adversarial testing
- d) Failure to visit and inform Applicant of any developments in his case
- e) Failure to go over or even consider possible defense
- f) Failure to get Applicant an independent medical and mental evaluation

¹ Indictment 2011-GS-36-635 was nolle prossed.



- g) Coercing and threatening Applicant into plea instead of trial
- h) Failure to inform Applicant of his right to appeal his plea decision and file a Notice of Appeal
- i) Improperly advising Applicant to accept the plea which was not in his best interest
- j) Failure to advocate
- k) Failure to contact, interview, and subpoena potential witnesses
- l) Failure to motion for a new trial on the grounds that the evidence was insufficient to support a conviction
- m) Failure to get Applicant mental health testing for criminal responsibility relating to the time of the alleged offense
- n) Failure to get Applicant mental health test for competency to stand trial or plead
- o) Failure to present, submit into evidence and argue favorable evidence during plea and closing arguments
- p) Failure to object to hearsay testimony
- q) Failure to obtain defense expert witness
- r) Failure to prepare and present mitigating evidence at plea
- s) Failure to impeach witness and victim
- t) Failure to file a pre-trial motion for the Protection of Persons and Property Act
- u) Failure to file a notice of appeal after plea
- v) Failure to file an appeal when Applicant told counsel that he wanted to appeal his conviction and sentence
- w) Failure to present mitigating social history evidence good character evidence and good character witnesses.
- x) Failure to ask for a continuance when he knew he was not ready for court
- y) Failure to call expert witness that were subpoena to testify
- z) Failure to present favorable evidence in support of defense
- aa) Failure to investigate background of the victim
- bb) Failure to investigate and test evidence
- cc) Failure to file for a DNA test for Applicant
- dd) Failure to give Applicant discovery

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that the first time he met with Counsel, Charles Verner, was shortly before trial. Applicant testified he only pled guilty because Counsel said the Applicant didn't have a defense. Applicant testified that he lied under oath at his guilty plea in response to the Judge's questions. Applicant testified that he was already a felon at the time of the plea.



Applicant testified he wasn't ready for trial and never received discovery. Applicant testified that the grand jury did not meet the week that his indictments appear to be signed.

Counsel Charles Verner's Testimony

Charles Verner, Esquire testified that he represented Mr. Ayton. Mr. Verner testified that Mr. Ayton was already detained at Alvin S. Glenn detention center on similar charges in Richland County when Mr. Verner started meeting with Mr. Ayton, and that Mr. Verner was originally working with Mr. Charles Grose in the representation of Mr. Verner before Mr. Grose left his position as the Circuit Public Defender for the 8th South Carolina Judicial Circuit.

Mr. Verner explained that while Mr. Ayton was incarcerated on his Richland County charges, Mr. Ayton's possessions were removed from the house in which he had been staying and had been placed on the street. Mr. Verner then explained that Mr. Ayton's phone was found by neighborhood residents and they reviewed its contents. Mr. Verner then explained that Mr. Ayton's phone and its contents were shown to law enforcement who happened to be in the area on an unrelated matter and that it appeared to show several sex acts between a child under ten and a grown man. Mr. Verner explained that law enforcement got a warrant for further investigation into the phone and that the further investigation resulted in the child being identified as a child in Newberry County, South Carolina and that law enforcement was able to then contact that child and its mother and build the case against Mr. Ayton.

Mr. Verner testified that he met at least twice with Mr. Ayton in the Richland County Detention Center. Mr. Verner also testified that he met with Mr. Ayton numerous times once Mr. Ayton was transferred to the Newberry County Detention Center and detained on the relevant warrants. Mr. Verner testified that he kept Mr. Ayton abreast of the case developments and provided him with the discovery in the matter and went over it with him in preparation for trial.



Mr. Verner testified that he was unable to show Mr. Ayton all of the discovery in the matter until the day before the plea, as until that point it had been physically impossible for him to do so. Mr. Verner testified that The Attorney General's office had allowed Mr. Verner to review the video of the sexual encounters between Mr. Ayton and his victim, and had allowed Mr. Verner the opportunity to take still photographs of the video images with the graphic items censored so that he could show them to Mr. Ayton, but had not allowed a full copy of the video images to be made available to Mr. Ayton. Mr. Verner testified that he was only able to show the video to Mr. Ayton after the suppression hearing, the day before the plea, when the Attorney General's office brought a copy of the video to court and was able to show it to Mr. Ayton and Mr. Verner while still maintaining possession.

Mr. Verner testified that Mr. Ayton's face was not visible on the video, but that there were identifying marks on the man in the video that matched Mr. Ayton. Mr. Verner also testified that the victim in this case was the child of one of Mr. Ayton's former romantic partners whom Mr. Ayton had lived with previously.

Mr. Verner testified that he had Dr. Schwarz-Watts examine Mr. Ayton and that there was no formal report written as the examination did not create a question about competency.

Mr. Verner testified that the case against Mr. Ayton was strong and that the only defense was a suppression motion. Mr. Verner testified that after losing the suppression motion he probably did advise Mr. Ayton to plead as he would likely be found guilty at trial, and that he certainly agreed with that decision.

Mr. Verner testified that he did not force Mr. Ayton to plead, nor did he write up a script for Mr. Ayton to follow. Mr. Verner testified that to the best of his knowledge, the only thing

that he is aware of that Mr. Ayton could be referring to is the Advisement of Rights Form that the Honorable Eugene Griffith requires as part of the plea process.

III. APPLICABLE LAW

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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record



must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). This Court finds that Applicant has failed to prove that Counsel was ineffective.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to disclose and explain discovery material, as the testimony indicates that discovery was provided to the defendant and Counsel advised Applicant as to the case against him.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to prepare for and investigate this case as Counsel's testimony establishes that he spent a substantial amount of time reviewing the relevant materials in the case and meeting with Applicant about them. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

This Court finds that Applicant has failed to prove that Counsel was ineffective for not subjecting the case to meaningful adversarial testing as Mr. Verner's testimony indicated he analyzed the case and did attempt to have the case dismissed by attacking the search of Applicant's phone.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to visit and inform Applicant of any developments in the case as Counsel's testimony indicates that he visited and informed Applicant of case developments regularly.



This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to go over or even consider possible defenses as no evidence was presented by Applicant of any other possible defenses and additionally, Counsel testified that he did consider the best defense to the charge to be the attack on the search of the phone.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to get Applicant an independent medical and mental evaluation as Counsel had Dr. Shwartz-Watts evaluate Applicant.

This Court finds that Applicant has failed to prove that Counsel was ineffective for coercing and threatening Applicant into a trial as this Court finds that there is no evidence to show that Counsel coerced or threatened Applicant into a plea.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to advise the Applicant of his right to appeal his plea and file a Notice of Appeal as no testimony was given by the Applicant as to that issue.

This Court finds that Applicant has failed to prove that Counsel was ineffective for advising the Applicant to accept the plea, as the Court finds that there was overwhelming evidence in this case of Applicant's case and that Applicant would have likely been convicted at trial and not have received the benefit of a plea bargain.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to advocate, as the Court finds that Counsel advocated well on Applicant's behalf based on Counsel's attempt to suppress the search of the phone and the presentation of the mitigation.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to contact, interview, and subpoena potential witnesses as Applicant has failed to identify any potential witnesses who could have provided any evidence of Applicant's innocence and that



there is overwhelming evidence of Applicant's guilt. This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id., citing Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to file a motion for a new trial on the grounds that the evidence was insufficient to support a conviction as the court finds that there was overwhelming evidence of the victim's guilt.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to get Applicant mental health testing for criminal responsibility relating to the time of the alleged offense, as Applicant failed to elicit any testimony or evidence that Applicant was not criminally responsible or should have been tested for criminal responsibility.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to get the Applicant mental health testing for competency to stand trial or plead as Counsel's testimony indicates that Applicant was indeed tested and there was nothing arising out of that testing that indicated that Applicant's competency was in question.

This Court finds that Applicant has failed to prove that Counsel was ineffective for "failure to present, submit into evidence and argue favorable evidence during plea and closing arguments" as Applicant failed to identify any evidence that should have been entered at the plea that was not, and further, there was no closing argument as this was a plea.



This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to object to hearsay testimony as “[i]n a sentencing proceeding, evidentiary rules are inapplicable.” State v. Gullede, 326 S.C. 220, 487 S.E.2d 590, 594 (1997).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to obtain defense expert witness as Counsel testified that a defense expert witness was retained regarding mental health matters and Applicant has failed to identify any other areas in which an expert witness would have provided any assistance.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to prepare and present mitigating evidence at the plea, as Applicant failed to identify any mitigating evidence that was not presented which should have been presented, and additionally, the transcript makes clear that Counsel did make the court aware that Applicant was a victim of the Hurricane Katrina disaster, that Applicant had two children, and that Applicant suffered from effects of a head injury that made his life harder, but which did not affect his competency, and that Applicant had been molested by his Father. (Trial Tr. Pg. 188-192).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to impeach the witness and the victim as Counsel would not have had the opportunity to do so as they were not cross-examined.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing “to file a pre-trial motion for the Protection of Persons and Property Act” as that Act is inapplicable to Applicant’s conviction.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to file a Notice of Appeal after Plea as the testimony did not substantiate that the



Applicant asked to file an appeal and there was no evidence that the Applicant asked Counsel to file an appeal.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing "to present mitigating social history evidence, good character evidence, and good character witnesses" as Counsel did present mitigating evidence and the Applicant failed to identify any further witnesses which should have been called.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to ask for a continuance when Counsel knew he was ready for court, as Counsel's testimony regarding his preparation indicates that he was indeed ready for court and Applicant has failed to establish how Counsel was unprepared. See Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (no prejudice results when the applicant did not offer any evidence or argument as to how counsel's alleged lack of preparation prejudiced him, and the court declined to speculate that counsel's alleged deficient performance was prejudicial).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to "call expert witness that were subpoena to testify" as Applicant failed to identify any witnesses who were under subpoena for trial who should have been called to testify at the plea.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to present favorable evidence in support of defense as the Applicant pled guilty and admitted to the crime.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to investigate the background of the victim as the background of a child who is the victim of a brutal sex crime by an adult is immaterial as to the guilt or innocence of the perpetrator of such an act and the evidence that Applicant committed the crime was overwhelming.

CS 12

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to investigate and test evidence as Applicant failed to identify any evidence that was not tested that should have been and further, Counsel testified that he did investigate the case and reviewed the evidence.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to file for a DNA test for applicant as Applicant has failed to establish how a DNA test is relevant to this matter.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to give the Applicant the Discovery in the case as Counsel testified that he gave the Applicant the Discovery.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.



Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of August, 2017.



G. THOMAS COOPER, JR.
Presiding Judge
Eighth Judicial Circuit

Clason, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP3600021

Harold Ayton

South Carolina State Of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk:

Order of Dismissal

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

374

S/ A. Thomas Cooper, Jr.

8/24/2017

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **August 21, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **August 24, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Laura McCall Saunders PO Box 731 102 Church Street
Laurens, SC 29360

Justin James Hunter PO Box 11549 Columbia, SC
29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Elizabeth P. Folk (jt)

Court Reporter

Elizabeth P. Folk - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT

HAROLD AYTON,
Applicant

CASE: 2015-CP-36-00021

v.

STATE OF SOUTH CAROLINA
Respondent

MOTION AND AFFIDAVIT TO ALTER
AND TO AMEND JUDGMENT UNDER
RULE 59(E) SCRCIV.P. 59(E)
IN THE GUISE OF MOTION TO RELIEVE
COUNSEL

FILED
NEWBERRY COUNTY
2017 SEP 20 PM 12:00
ELIZABETH P. FOUL
CLERK OF COURT

Petitioner submits and received the Order of Dismissal signed by Judge Thomas G. Cooper Jr. through the mail on September 5, 2017, by Attorney Laura M. Saunders notifying the petitioner that the case was dismissed. The PCR Court nor did the Newberry Clerk of Court sent the petitioner the Order of Dismissal. A Rule 59(E) motion must be served within ten (10) days of receiving the written notice of the entry of the order denying PCR. See S.C.R.Civ.P. 59(e). Filing a Rule 59(e) motion also tolls the time for filing a notice of intent to appeal. See S.C.R.Civ.P. 59(f).

Petitioner submits upon deception of the 59(e) on September 5, 2017. Petitioner now timely files his motion to Alter and to Amend Judgment upon reception of the Order of Dismissal. In Aice v. State, the court explained that every PCR applicant is entitled to a full adjudication on the merits of the PCR Application or one bite at the apple which includes the right to appeal the denial of a PCR application and the right to assistance of counsel in that appeal. See Aice v. State, 409 S2d 375.

Plaintiff now moves to Alter and Amend Judgment signed by Judge Thomas G. Cooper Jr. on August 16, 2017.

This matter comes before the court by way of an application for Post Conviction Relief (PCR) filed January 13, 2015. Respondent was procedurally barred because they did not file a return within thirty (30) days after the PCR was filed with the court in accordance to SC Statute Code 17-27-74(a) which states: The State, as respondent, is required to answer the allegations within thirty (30) days or within such time as the court may allow. However if the State fails to respond within the specified period, the applicant must conclusively show he was prejudiced by the States delay in order to receive the relief requested in the application. See Kneec v. State, 236 S2d 746, 747 (SC. 1977) (citing Hanning v. State, 206 S2d 885 (SC. 1974) see also Slezak v. South Carolina, No. 2003-CP-10-766 2003 WL 25459562 at 8 (SC. Com. Pl. November 24, 2003)

PROCEDURAL HISTORY

- 1) On page one lines 1 thru 4: The Respondent states that the applicant has been indicted for 3 counts of Criminal Sexual Conduct and 2 counts of Exploitation. Applicant objects and states that the respondent are wrong because applicant was never indicted peria by a Grand jury for 3 counts of Criminal Sexual Conduct and 2 counts of Exploitation.
- 2) On page two lines 1 thru 6: The Respondent states that applicant pled guilty as indicted and was sentenced to concurrent terms of 35 years imprisonment for each Criminal Sexual Conduct (2011-GS-36-631, -633) to run consecutively to the 2 Exploitation and sentenced to concurrent 5 years imprisonment for each Exploitation (2011-GS-36-632, -634) to run consecutively to the 2 Criminal Sexual Conduct. Applicant objects and states that the respondent are wrong because the applicant never pled guilty voluntarily applicant was force to plea guilty under duress.
- 3) On page two lines 7 thru 11: The Respondent states that on July 19, 2013 the Attorney Generals Office has received a Notice of appeal and proof of service from applicant appealing the conviction and sentence in question. The proof of service was dated July 17, 2013. The Court of Appeal dismissed the appeal because applicants failure to provide a proof of service. Applicant objects and states that the respondent are wrong because the applicant has filed his appeal on December 6, 2012 but did not put in a proof of service but was told by the court of appeal to submit a proof of service which the applicant submitted the appeal again.

II SUMMARY OF THE TESTIMONY

APPLICANT'S TESTIMONY

- 4) On page three lines 1 thru 4: The Respondent states that applicant testified that he met with counsel Verner, was shortly before trial, and also testified he pled guilty because counsel said he didn't have a defense, and applicant lied under oath at his guilty plea and that he was already a felon at the time of the plea. Applicant objects and states that counsel Verner was not appointed to represent the applicant which exhibit was shown at the hearing proving that counsel wasn't appointed, and that he was under duress and force to plea guilty by counsel as well he was coached thru the whole process, and also states that he wasn't a felon at the time of the plea because the applicant history from another state doesn't have anything to do with the current matter which was objected to and sustained by the judge.

COUNSEL CHARLES VERNER'S TESTIMONY

- 5) On page FOUR LINES 3 thru 15: The respondent states that COUNSEL VERNER testified that he represented the applicant when applicant was at ALVIN S. GLENN Detention Center he started meeting with the applicant and that he was originally working with COUNSEL GROSS in the representation before COUNSEL GROSS left his position. Applicant objects and states that the respondent are wrong because COUNSEL VERNER was never appointed to represent the applicant which the applicant at the hearing has produced the exhibits from the CLERK OF COURT stating there is no appointment for COUNSEL VERNER which makes COUNSEL VERNER a impersonator and a sham because COUNSEL GROSS only met with the applicant only once.
- 6) On page FOUR LINES 8 thru 17: The respondent states that while the applicant was at ALVIN S. GLENN Detention Center COUNSEL VERNER spoke with the applicant about the removal of his possessions from where he was staying and about his phone was found by neighborhood residents and they reviewed the content on the phone and the contents were shown to law enforcement which showed sex acts and that the officer got a warrant for further investigation into the phone. Applicant objects and states that COUNSEL VERNER never spoke with the applicant when the applicant was housed at ALVIN S. GLENN Detention Center about his possession's being removed from his house and has been placed on the street, as well applicant objects and states that COUNSEL VERNER never explained anything concerning his phone and the contents were shown to law enforcement and that law enforcement had got a search warrant for further investigation which the applicant had never seen or received the search warrant to search the phone.
- 7) On page 4 LINES 18 thru 22: The respondent states that COUNSEL VERNER testified that he met with the applicant twice at ALVIN S. GLENN Detention Center and met with the applicant numerous times once the applicant was transferred to the Newberry Detention Center and kept the applicant abreast on all development and provided the applicant with a discovery as well went over with the applicant in preparation for trial. Applicant objects and states that COUNSEL VERNER has never met with the applicant twice at ALVIN S. GLENN Detention Center and when applicant was transferred to Newberry Detention Center applicant was placed in lockup until trial and only received 3 visits, one by DA Schwarz-Watts and two from the assistant which came from the attorney general office to see if applicant wants to plea. The numerous of visit by COUNSEL VERNER is not supported by documentation and is seeking discovery to prove the false of that fact because COUNSEL VERNER did not visit the applicant numerous of times and COUNSEL VERNER has never given the applicant a discovery because the applicant has filed for his own discovery once he was in prison.

8) On page five line 1 thru 10: The respondent states that counsel verner testified that he was unable to show the applicant all of the discovery until the day before the plea, and it had been physically impossible for him to do so and that the Attorney General allowed him the opportunity to take still photographs of the video images with the graphic items so he can show them to the applicant and that he was able to show the video to the applicant at the suppression hearing the day before the plea. Applicant objects and states that counsel verner did not say this at the hearing this is false. He stated the reason why he couldn't get possessions of the video because the attorney general was a female, and he never gave or went over any discovery material with the applicant as well counsel verner shown the video to the applicant the day of the plea hearing on December 4, 2012 not the day before the plea.

9) On page five line 15 to 22: The respondent states that counsel verner testified that he had Dr. Schwarz-Watts examine the applicant and there was no formal report written and that he probably did advise the applicant to plead and that he did not force the applicant to plead nor did he write up a script for the applicant. Applicant objects and states that counsel verner never had the applicant examine counsel gross did because counsel verner was never appointed to represent the applicant also, counsel verner putted applicant under duress and forced him to take a open plea. As for the viewing of the video with the judge counsel verner did write a script and a protection keep away name list for the applicant and presented it to the judge.

10) On page eight lines 17 thru

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10) On page eight lines 17 thru 23: The respondent states that the applicant failed to prove that counsel was ineffective for not subjecting the case to meaningful adversarial testing. Applicant objects and states that counsel verner didn't attempt to have the case dismissed by attacking the search of applicants phone because he never asked the state to produce the search warrant which was never presented at the hearing, also, counsel verner stated he visited the applicant regularly to advise the applicant on all developments of the case. Applicant objects and states that this is not supported by documentation and is seeking discovery to prove the false of that fact because counsel verner has never visited the applicant regularly.

11) On page nine lines 3 thru 4: The respondent states that counsel verner testified that he did consider the best defense to the charge was to attack the search of the phone. Applicant objects and states that counsel verner attacked the search of the phone because he never asked the state to produce the search warrant because the applicant has never seen or received a copy of the search warrant.

- 12) On page nine line 1 thru 23: Applicant objects to this entire page and states that judge cooper abused his discretion by dismissing applicant's PCR and not upholding the integrity of the court and violating judicial cannons 1, 2 and 3 by not allowing applicant to give direct testimony which would have contradict counsel testimony. Applicant now moves to alter and to amend the judgement and present evidence that's not been heard and shall be ruled on by this court.
- 13) On page ten line 1 thru 22: Applicant objects to this entire page and states that judge cooper abused his discretion by dismissing applicants PCR and not upholding the integrity of the court and violating judicial cannons 1, 2 and 3 by not allowing applicant to give direct testimony which would have contradict counsel testimony. Applicant now moves to alter and to amend the judgement and present evidence that's not been heard and shall be ruled on by this court.
- 14) On page eleven line 1 thru 22: Applicant objects to this entire page and states that judge cooper abused his discretion by dismissing applicants PCR and not upholding the integrity of the court and violating judicial cannons 1, 2, and 3 by not allowing applicant to give direct testimony which would have contradict counsel testimony. Applicant now moves to alter and to amend the judgement and present evidence that's not been heard and shall be ruled on by this court.
- 15) On page twelve line 1 thru 23: Applicant ~~now moves to alter and~~ objects to this entire page and states that judge cooper abused his discretion by dismissing applicants PCR and not upholding the integrity of the court and violating judicial cannons 1, 2, and 3 by not allowing applicant to give direct testimony which would have contradict counsel testimony. Applicant now moves to alter and to amend the judgement and present evidence that's not been heard and shall be ruled on by this court.
- 16) On page thirteen line 1 thru 22: Applicant objects to this entire page and states that judge cooper abuse his discretion by dismissing applicants PCR and not upholding the integrity of the court and violating judicial cannons 1, 2, and 3 by not allowing applicant to give direct testimony which would have contradict counsel testimony. Applicant now moves to alter and to amend the judgement and present evidence that's not been heard and shall be ruled on by this court.
- 17) Applicant objects to the entire judgement order by judge cooper and states that judge cooper abuse his discretion by dismissing applicants PCR and not upholding the integrity of the court and violating judicial cannons 1, 2, and 3 by not ruling on all issues in the applicants entire application. Applicant now moves to alter and to amend the judgement and present evidence that not been heard and shall be ruled on by this court.

18) Applicant submits to the court that he hasn't received the clock stamped copy of the judgment by Judge Cooper From the Newberry Clerk of Court, That stating that this order is Final. Applicant is submitting his 59(E) motion to the sign order because he has not received the clock stamped copy

VERIFICATION

I HAROLD AYTON HAVE READ THE FOREGOING TO ALTER AND TO AMEND MOTION AND HEREBY VERIFY THE MATTERS ALLEGED THEREIN ARE TRUE AND EXCEPT AS TO MATTERS ALLEGED ON INFORMATION AND BELIEF AND AS TO THOSE I BELIEVE THEM TO BE TRUE. I CERTIFY UNDER PENALTY AND PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signature: Harold Ayton

Date: 9-18-17

HAROLD AYTON
PERRY CORR INST
430 OAKLAWN RD
PELZER, SC 29669

FILED
NEWBERRY COUNTY
2017 SEP 20 AM 11:56
ELIZABETH P. FOLK
CLERK OF COURT

Broad River Correctional Institution
 Harold Ayton #353371
 4460 Broad River Rd
 Columbia, SC 29210

Attorney Laura M. Saunders
 Post Office Box 731
 Laurens, SC 29360

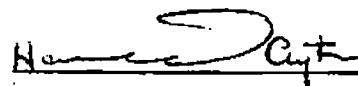
4-26-16

Re: Amended Issues Attachment To PCR Application
Harold Ayton, Appellant v. State of South Carolina,
Respondent, Case No. 2015-CP-36-00021

Dear Ms. Saunders:

Enclosed for adding is the amended issues for the PCR application in the above case. And i need to see you or talk to you on the phone.

Sincerely,



Harold Ayton
 4460 Broad River Rd
 Columbia SC 29210

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STATE OF SOUTH CAROLINA

County of Newberry

Harold Aytan
Petitioner

v.

State of South Carolina
RespondentIN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH CIRCUIT COURTMOTION TO ADD OTHER ISSUES TO
THE AMENDED POST CONVICTION RELIEFAttachment To Application For PCR Relief

1. Court Lacked jurisdiction to accept Guilty plea
2. Prosecutorial Misconduct, Denying Due Process
3. Counsel Failed to notice jurisdictional defect
4. Counsel Failed to challenge states misconduct
5. State altering video
6. No elements in the indictments
7. Grand Jury convened illegally outside of S.C. Code 1974 § 14-5-130 Terms of Court

Supporting Arguments

This matter is being brought to the attention of this Honorable Court by way of a pro-se application, requesting leave to permit this amended application for PCR. Or, to allow recharacterization of such motion, in the event the standards under the Uniform Post Conviction Act, is inadequate or ineffective, to test the legality of applicant's detention. See Gibson v. State, 495 S.E.2D 426, 428 (S.C. 1998). In conjunction with the above circumstances, the applicant also moves for an order to release the prisoner based on the following conclusive demonstration, this court was without subject matter jurisdiction, on December 4, 2012 in cases # 2011-GS-36-0631 through 0635 to accept the guilty plea or try these cases before a petit jury. See Brown v. State, 343 S.C. 342, 540 S.E.2D 846 (2001) (Guilty pleas not waive jurisdiction), State v. Gentry, 363 S.C. 93

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Supporting Argument And Memorandum Of Law

The applicant can provide a sufficient reason for why the ground was not raised or was inadequately raised in the original application.

Thus, the clear unambiguous language of the statute clearly permits a opportunity for the applicant here to provide sufficient reason why the ground was not raised in the original application.

1) The applicant would also expose his plea of guilty was premised on coercion and threats, with absolutely no direct evidence for the charges of Criminal Sexual Conduct in a First Degree. Whereas, at minimal, the state had tested the victim for a STD which was positive and negative for the applicant, which counsel failed to pursue.

Thus, no court in South Carolina disagrees with the binding rules founded within our constitution that requires a valid indictment by a properly impaneled grand jury, prior to trial or guilty plea for felony offenses. See BROWN v. State, 343 S.C. 342 (2001); and State v. Gentry, 363 S.C. 610 (2005). Wherefore, the applicant posits here, consistently with the above holdings in Odom and Tilley; the lack of such a valid indictment whenever or wherever discovered, deprives any circuit court for this state, of subject matter jurisdiction. A fact which can be adequately asked and answered, and must be, anytime such jurisdiction is in question. Or, such refusal to hear applicant's claim on jurisdictional grounds, runs the risk of constituting a gross miscarriage of justice. See Aice v. State, 409 S.E.2d at 394.

Summary Of Facts Supporting Relief

The applicant has been tirelessly attempting to obtain witnesses and tangible information in the form of a valid true billed grand jury indictment in his criminal case. The applicant's appeal was dismissed for failure to show proof of service on a timely appeal. Where counsel failed to file the required appeal.

In such circumstances, the applicant would nevertheless be entitled to a belated appeal. But moreover, as testified to during the December 4, 2012 plea hearing, the applicant never had a copy of his indictments or the discovery in his criminal case.

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Second, the state has tamper with evidence by altering video from the cell phone. And third, the applicant was never tested for a transmitted disease by the state or his lawyer to see if the applicant had a STD.

Next, even in light of the above, the applicant still maintained his innocence of the wrongful charge of Criminal Sexual Conduct in a First Degree. Applicant wanted a trial by jury. And it wasn't until the day of trial applicant changed courses after learning; his attorney had not notified him that he will have another lawyer appointed because the present lawyer has stop taking cases.

The Invalid Indictment

Here, the applicant not only will demonstrate his innocence, but for the constitutionally deficient performance and the ineffectiveness of plea counsel during the plea hearing. But mainly applicant will irrefutably show unto this court the state knowingly employed the use of unlawful procedures for the return and publication of its alleged true billed indictment.

That the state unlawfully impaneled a grand jury outside the jurisdiction (Statutory Mandated) of the court of general sessions, and then willfully caused false and misleading information to be printed in its indictment constituting prosecutive misconduct, at the highest level of state government.

Invalid Procedure And Void Indictment

The matter presented below for review is not a challenge to the courts general grant of authority to hear and determine cases. That authority is rightfully granted by our constitution. See Gentry v. State, 363 S.C. 43, 610 S.E.2D 494 (2005) and will not be at issue here. Instead, applicant contends that the court of general sessions failed to comply with statutory law, jurisdictional in nature, specifying the manner and means for lawfully returning a true billed indictment which effectively deprives the applicant of due process of law. The jurisdiction of a court over the subject matter of a proceeding is determined by the constitution, the laws of the state, and is fundamental. See State v. Hayward, 564 S.E.2D 379 (S.C. App. 2002) (citing Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2D 900 (1989)).

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Subject matter jurisdiction may not be waived even with consent of the parties, and may be raised at anytime). See Brown v. State, 343 S.C. 342, 540 S.e.2d 846 (2000). And no indictment may be true billed by grand jury when circuit court lacks jurisdiction, since grand jury's jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry. State v. McClure, 277 S.C. 432, 289 S.e.2d 158 (S.C. 1982) and State v. Funderburk, 259 S.C. 256, 191 S.e.2d 520 (1972); see also State v. Wheeler, 259 S.C. 571, 193 S.e.2d 515 (1972). Thus the primary question before this court is whether S.C. Code Ann. § 14-9-210, is jurisdictional in nature and whether it requires that all criminal indictments must be issued through a grand jury impaneled before the court of general sessions, and whether the states non-compliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and its indictments null. The statutory provisions at issue are contained in section 14-9-210, and provide in pertinent part that: The county solicitor shall prepare and through the presiding judge of the court of general sessions, submit to the grand jury while in attendance upon the court of general sessions, bills of indictments in all cases pending in the county court in which the punishment may exceed a fine of one hundred dollars or imprisonment of 30 days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its actions to the presiding judge of the court of general sessions and said judge shall direct the clerk of court of general sessions to report the same to the presiding judge of the county at its next ensuing term.

The statutory terms above are clear, unambiguous, and requires the county solicitor to prepare and submit bills of indictment through the presiding judge of the court of general sessions to a grand jury impaneled under the authority of the court of general sessions. No exceptions exist.

It is a cardinal rule of statutory constitution that the primary purpose in interpreting statutes is to as certain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.e.2d 578 (2000); State v. Martin, 293 S.C. 46, 358 S.e.2d 697 (1987)

When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 442 S.E.2d 177, 179 (1994).

And words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. See Beyant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 895 (1998). Accordingly, section 14-9-210 requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the court of general sessions before lawful return of a true bill indictment can take place.

However, here, the evidence will establish that the state unlawfully impaneled its grand jury outside the jurisdiction of the court of general sessions and then willfully printed and published false and misleading information in its indictment in order to keep secret its violation of statutory law.

No elements of the charge on the indictment

Pursuant to State v. Liti, 355 P.3d 1078 (2015 UT App. 186) states: The elements of a crime must be charged in an indictment and proved to a jury beyond a reasonable doubt. See also State v. Baker, 411 S.C. 583 769 S.E.2d 860 (2015) where a sufficient indictment must do more than merely recite the elements of the offense charged; the indictment must contain sufficient factual allegations to permit the accused to know whether he may plead an acquittal or conviction thereon.

Pursuant to State of South Carolina Constitution the elements of the offense must be charge on the indictment. Also see United States v. Jenkins, 675 F.Supp.2d 647 (December 28, 2009) states: The absence of an essential element of an offense from an indictment is a constitutional infirmity that cannot be cured by mere reference to the applicable statute, adequate notice to the defendant, or the trial court's instructions to the jury; this requirement derives from the 5th Amendment, which requires that the grand jury have considered and found all element to be present.

U.S.C.A. Const. Amendment 5; Fed. Rules Crim. Proc. Rule 7(c)(1), 18 U.S.C.A.

Lack of the elements of knowledge and presence from the indictment charging Criminal Sexual Conduct on a minor in a first degree rendered the indictment deficient and thus, the court lacked jurisdiction to accept petitioner's plea. See Hooks v. State, 577 S.E.2d 211 (2003).

The South Carolina Code of Law 1976 § 14-5-730 Terms of Court in the 8th Circuit for Newberry County General Sessions. The Grand Jury shall convene for the month of September shall be the third Monday in each case for one week. But the Grand Jury had convened a illegally hearing that was dated for September 2, 2011, which fell on a Friday in the first week. According to S.C. Code of Law 1976 § 14-5-730 The Grand Jury suppose to convene anytime between the 19th to 28th of September 2011.

By this violation petitioners Federal equal protection rights and state constitution and statutory rights to be lawfully indicted by a Grand Jury were denied him because the solicitor utilized an illegal Grand Jury, outside the jurisdiction of the Court of General Sessions, which deprived the trial court of subject matter jurisdiction and voids the indictment and conviction and constitutes perjury, conspiracy and amounts to prosecutorial misconduct. The Federal Courts have come to the same conclusions finding that a Grand Jurors actions taken outside the scope of its Statutory authority deprives the court of subject matter jurisdiction.

The Evidence In This Case

In this instant case at bar, the bill of indictment prints that it was returned at a Court of General Sessions convened on September 2, 2011, the Grand Jurors of Newberry's present upon their oath. The indictment is signed by the Solicitor Assistant Solicitor and sealed with a true-bill stamp.

Further, the title page of the State's indictment prints that it was published at A Court of General Sessions term as convened on September 2, 2011.

S.C. Const. Art 5, Section 4: OF our constitution provides in pertinent part: The Supreme Court shall make rules governing the administration of courts of this state, subject to Statutory Law. The Supreme Court rules governing the practice and procedure in all such courts. Otherwise, it would be unconstitutional and null, being without binding legal effect.

As to the legality of the Defendants' indictments, the assistant solicitor presented the Defendants' indictment to an illegal and unconstitutional Grand Jury body. Truly, the Defendants' indictments were presented to this illegal Grand Jury outside of the Court of General Sessions, most certainly, outside of a term of court, without a doubt, in violation of S.C. Code § 14-9-210.

Certainly, the state knowingly violated the provisions of S.C. Code Ann.

14-9-210 by (1) UNLAWFULLY impaneled its Grand Jury outside the jurisdiction

OF the court of General Sessions, (2) utilizing an unlawful process for the return of true-bill, and (3) causing false information to be printed and published in the defendants' indictments. Consequently, the grand jury was illegal and its indictments null.

South Carolina appellate courts have held the sufficiency of an indictment must be viewed with a practical eye all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached. State v. Adams, 277 S.C. 115, 125, 283 S.E.2D 582, 588 (1981) overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2D 315 (1991).

Thus, the notice and preparation are inextricably linked concepts as fairness and due process requires that a criminal defendant receive sufficient notice of the charges against him to enable him to prepare a defense. In re Corey B., 241 S.C. 108, 109, 352 S.E.2D 470, 470 (1987).

Without a doubt, the indictments put Petitioner on notice of what charges he was called upon to answer and apprised him of the elements of the offenses the State intended to charge. Gentry, 610 S.E.2D 500. This is all that the law required.

No local rule of court, administrative order, policy, or other procedure can take precedent over statutory law, which is always controlling. (See S.C. Const. Art. 5 Section 4, and State v. Cottingham, 77 S.E.2D 897, 224 S.C. 181 (1953) State v. Duncan, 264 S.E.2D 421 (1980) circuit court rule promulgated by individual judicial circuit was unconstitutional and void.

Thus, under these requirements, no rules can be made or established for process and return of indictments, unless it comports with section 14-5-730, 14-9-170, 14-9-210 and 14-9-260. Otherwise, it would be unconstitutional and null, being without binding legal effect.

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Copy

Received and Picked up

ORIGINAL COPY ON

Unit Counselor R. Davis Q4A
9-29-16

Perry Correctional Inst

Harold Ayton #353371Q4A220

430 Oaklawn Rd

Pelzer, SC 29669

Attorney Laura M. Saunders

P.O. Box 731

Laurens, SC 29360

Re: Amended Issues Attachment To PCR Application

Harold Ayton, Appellant v. State of South Carolina

Respondent, Case No. 2015-CP-36-00021

Dear Ms. Saunders:

Enclosed for adding is the amended issues for the PCR Application in the above case. Once again, I need to see you or talk to you on the phone because you are not telling me nothing.

With kindest regards

Sincerely



Harold Ayton

430 Oaklawn Rd

Pelzer, SC 29669

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
FOR THE EIGHTH CIRCUIT COURT

COUNTY OF NEWBERRY

HAROLD AYTON Petitioner

MOTION TO ADD OTHER ISSUES TO
THE AMENDED POST CONVICTION
RELIEF

v.

State of South Carolina
RespondentAttachment To Application For PCR Relief

1. Ineffective Assistance of Counsel

2. No action taken on arrest warrant within 90 days according to Rule 3(c) SCRCrimp

Statement of Jurisdiction

South Carolina Law provides an avenue for those whose convictions have been obtained in violation of the Constitution of the United States. The Uniform Post Conviction Procedure Act, SC Code ANN 17-27-10 etc. Sec provides an avenue for redress of Federal Constitutional violations in a South Carolina Court. A prisoner in custody under sentence of such a South Carolina Court may challenge his conviction and sentence if such were obtained in violation of the Constitution of the United States or the Constitution or laws of South Carolina S.C. Code ANN 17-27-20(A)

1) The Petitioner feels that his best opportunity to obtain fair and substantial justice regarding his conviction is through this petition as the procedural remedy utilized here in has historically served as a safety net for those who had their Constitutional rights violated

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14th Amendment Section One

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

Ineffective Assistance of Counsel

The Petitioner received Ineffective Assistance when counsel failed to conduct a proper pretrial investigation and lack of support expert services.

Supporting Argument

As the Supreme Court also recognized in *Strickland*, Counsel bears a duty to make a reasonable investigation of the law and facts in his client's case. *Strickland* 466 US 691, Additionally, the A.B.A Standards relating to the administration of criminal justice provide. It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities, the duty to investigate exists regardless of the accused admissions or statements to the lawyer of facts constituting guilt or the accused stated desire to plead guilty.

In order to succeed in a post conviction proceeding, the petitioner must show that the adjudication of a claim by a South Carolina Court resulted in a conviction or sentence that was imposed in violation of the Constitution or laws of the United States, S.C. Code ANN 17-27-20 (A)(1), The Constitution as the frame work from which all South Carolina laws springs must not be violated as applied to the petitioner. The petitioner submits that he received Ineffective Assistance of Counsel prior to and during the plea, The 6th Amendment to the United States Constitution guarantees that every criminal

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Defendant is entitled to the effective assistance of counsel presenting their defense. See also South Carolina Constitution Article 1 Section 14. The Supreme Court has stated the right to counsel is a fundamental right of criminal defendants; it assures the fairness and thus the legitimacy of our adversarial process; *Kimmelman v. Morrison*, 477 US 365, 374 (1986). Furthermore the Supreme Court has recognized that the right to counsel is the right to effective assistance.

The petitioner's counsel had notice of the evidence against him but counsel failed to conduct any independent investigation, or produce defense experts to conduct test on the evidence; This deprived the petitioner of a fair trial or plea, and constituted Ineffective Assistance of Counsel because of counsel unprofessional judgment he severely prejudice the petitioner and denied him a fair trial *Strickland v. Washington*, 466 US 668 (1984) See also *State v. Downing*, 753 F.2d 1124 (3rd Cir. 1985); *State v. Ballard*, 377 S.E.2d 370; *US v. Ferri*, 718 F.2d 985, Due Process requires experts for indigent in preparing the defense. *AKE v. Oklahoma*, 470 US 68 (1985) The Supreme Court held that the denial of an expert to assist at trial would result in a fundamentally unfair trial SC. Code Ann 17-3-50(B)

It is the client's right to expect that his lawyer will use every skill, expert, every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interest *Frazier v. US*, 18 F.3d 775, 778 (9th Cir. 1996) Defense counsel must do his utmost to bring legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made conduct a reasonable pretrial investigation which should include contacting potential witnesses prepare adequately and professionally for trial; conduct the trial to the best of his ability and at the bottom, serve as a vigorous and devoted advocate of the defendant. Cause: *US v. Exrel. Porter v. Lan* (7th Cir 1991) counsel was defective and ineffective for failing to conduct an adequate pretrial investigation *Walker v. State*, Supreme Court of SC. 407 S.Ct 400 (Mar 19, 2014) convicted defendants claim that counsel's assistance was so defective as to require reversal of conviction has two components. Defendant must first demonstrate that counsel was deficient and then must also show deficiency resulted in prejudice. U.S.C.A. Amendment 6.

Hilton v. Alabama, Supreme Court of the United States Feb 24, 2014 134 S.Ct. 1081, Under *Strickland*, the court first determines whether counsel's representation fell below an

an objective standard of reasonableness, and then the court ask whether there is a reasonable probability that, but for counsels unprofessional errors the result proceeding would have been different. Criminal Justice Counsel Defense, Counsels Failure to request additional funds to replace inadequate experts amounted to deficient performance.

No action taken on arrest warrant
within 90 days according to Rule 3(c)

Rule 3(c) SCRCrimp Within 90 days after receipt of an arrest warrant from the Clerk of Court, the Solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the grand jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court.

LEGAL MAIL

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

HAROLD AYTON
APPLICANT

v.

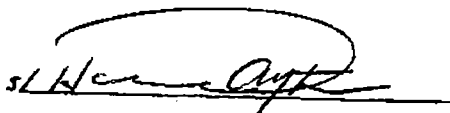
STATE OF SOUTH CAROLINA
RESPONDENT

IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT

CASE NO: 2015-CP-36-00021

CERTIFICATE OF SERVICE

I Harold Ayton hereby certify that I have serve upon the Newberry County Court of Common Pleas at P.O. Drawer 10, Newberry, SC 29108 and Judge Thomas B. Cooper, Jr. at P.O. Box 1557, 1121 Broad Street, Room 313, Camden, SC 29021 and Assistant Attorney General Judith N. VanSyckel at P.O. Box 11549, Columbia, SC 29211 one copy of Applicant 59(E) MOTION TO ALTER AND AMEND THE JUDGMENT, by placing a copy of the same via U.S. Mail prepaid postage on this 18TH day of September 2017



Harold Ayton
430 Oaklawn Rd
Pelzer, SC 29669

FILED
NEWBERRY COUNTY
2017 SEP 20 PM 12:01
ELIZABETH P. FOLK
CLERK OF COURT

THE LAW OFFICES OF LAURA M. SAUNDERS, LLC
Laura M. Saunders
Attorney At Law

P.O. Box 731
102 Church St.
Laurens, SC 29360

(864) 681-4444 phone
(866) 654-0282 E-fax
lmsaunderslaw@gmail.com

August 29, 2017

Via US Mail

Harold Ayton #353371
c/o Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

Re: *Harold R. Ayton vs. State of South Carolina; 2015-CP-36-00021*

Dear Mr. Ayton,

Enclosed is a copy of the filed Order of Dismissal for your files. Although I do not believe an Appeal would be successful, please be advised that you have thirty (30) days from receipt of this Order to file an Appeal. Please contact my office if you would like to further discuss this option.

With kind regards, I am

Yours truly,



Laura M. Saunders

LMS
File 4.102
Enclosure

FILED
NEWBERRY COUNTY
2017 SEP 20 PM 12:01
ELIZABETH P. FOLK
CLERK OF COURT



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

G. Thomas Cooper, Jr.
 Judge

Post Office Box 1557
 1121 Broad Street, Room 313
 Camden, SC 29021
 Phone: (803) 425-7182
 gcooperj@sccourts.org

Judah N. VanSyckel, AAG
 SC Attorney General's Office, PCR Division
 Post Office Box 11549
 Columbia, SC 29211-1549

Mr. Vansyckel,

Enclosed please find an Order of Dismissal signed and dated by The Honorable G. Thomas Cooper, Jr. in regards to 2015-CP-36-00021 Harold R. Ayton, #353371 v. State of South Carolina. Please file this Order with the Court and send a copy to Ms. Laura M. Sanders in the preaddressed envelope provided.

If you have any further questions, please feel free to contact me.

Sincerely,

Jamie Rutkoski
 Law Clerk

FILED
 NEWBERRY COUNTY
 2017 SEP 20 PM 12:01
 ELIZABETH R. FOLK
 CLERK OF COURT



ALAN WILSON
ATTORNEY GENERAL

August 17, 2017

FILED
NEWBERRY COUNTY
2017 SEP 20 PM 12:01
ELIZABETH P. FOLK
CLERK OF COURT

The Honorable Elizabeth P. Folk
Newberry County Family Court
Post Office Drawer 10
Newberry, SC 29108

Re: Harold Ayton, # 353371 v. State of South Carolina
2015-CP-36-00021

Dear Ms. Folk:

Enclosed please find the original **Order of Dismissal** signed by the Honorable G. Thomas Cooper, Jr. in the above-captioned case, for filing in your office.

Pursuant to Rule 71.1(f), of the South Carolina Rules of Civil Procedure, please "provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP."

In addition, please forward **proof of service** and a **time stamped copy** back to our office for our file.

Should you have any questions, please call me at (803) 734-3737.

Sincerely,

Judah N. VanSyckel
Assistant Attorney General

JNV/jaj
Enclosure

cc: Laura M. Saunders, Esquire

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

HAROLD AYTON, 353371)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NO: 2015-CP-36-00021

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
 Laura M. Saunders, Bar No.
 Address:
 PO Box 371
 Laurens SC 29360
 Phone: _____ Fax: _____
 E-mail: _____ Other: _____

Defendant's Attorney:
 Judah N. VanSyckel, Bar No.
 Address:
 PO Box 11549
 Columbia, SC 29211
 Phone: _____ Fax: _____
 E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO**SECTION II: Motion/Order Type**

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Judah N. VanSyckel
 Signature of Attorney for ☐ Plaintiff/☒ Defendant

June 27, 2017
 Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____

EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

FILED
 NEWBERRY COUNTY
 2017 SEP 20 PM 12:01
 ELIZABETH F. FOLK
 CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
	)	2015-CP-36-00021
Harold R. Ayton,	)	
S.C.D.C. No. 353371,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
 NEWBERRY COUNTY
 2017 SEP 20 PM 12:02
 ELIZABETH P. FOLK
 CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed January 13, 2015. An evidentiary hearing into the matter was convened on June 5, 2017, at the Laurens County Courthouse in Laurens, South Carolina. Applicant was present at the hearing and represented by Laura Saunders, Esquire. Judah N. VanSyckel, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Charles Verner, Esquire, also testified. This Court had before it a copy of Applicant's records from the Newberry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Newberry County Clerk of Court. Applicant was indicted by the Newberry County Grand Jury for three counts of criminal sexual conduct with a minor (first degree) (2011-GS-36-631, -633, -635) and two counts of sexual exploitation of a minor (first

GP

degree) (2011-GS-36-632, -634).¹ Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty as indicted. Applicant was sentenced to concurrent terms of thirty-five years imprisonment for each charge of criminal sexual conduct (2011-GS-36-631, -633), to run consecutively to the two charges of sexual exploitation. Applicant was sentenced to concurrent terms of five years imprisonment for each charge of sexual exploitation of a minor (2011-GS-36-632, -634), to run consecutively to the two charges of criminal sexual conduct.

On July 19, 2013, the Office of the Attorney General received a notice of appeal and proof of service from Applicant appealing the convictions and sentences in question. The proof of service was dated July 17, 2013. By Order filed September 18, 2013, the South Carolina Court of Appeals dismissed the appeal based upon Applicant's failure to provide a proof of service showing timely service of the notice of appeal. The remittitur was issued on October 8, 2013.

Applicant subsequently filed a Motion for Rehearing and to Reinstate the Appeal. The Court of Appeals subsequently issued an Order recalling the remittitur. By document dated November 12, 2013, Applicant again forwarded a proof of service for the notice of appeal dated July 17, 2013. Respondent filed a Return. By Order filed February 26, 2014, the Court of Appeals denied Applicant's Motion for Rehearing. The Remittitur was sent April 9, 2014.

PCR Application

In his current application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a) Failure to disclose and explain discovery material
- b) Failure to prepare and investigate
- c) Failure to subject case to meaningful adversarial testing
- d) Failure to visit and inform Applicant of any developments in his case
- e) Failure to go over or even consider possible defense
- f) Failure to get Applicant an independent medical and mental evaluation

¹ Indictment 2011-GS-36-635 was nolle prossed.



- g) Coercing and threatening Applicant into plea instead of trial
- h) Failure to inform Applicant of his right to appeal his plea decision and file a Notice of Appeal
- i) Improperly advising Applicant to accept the plea which was not in his best interest
- j) Failure to advocate
- k) Failure to contact, interview, and subpoena potential witnesses
- l) Failure to motion for a new trial on the grounds that the evidence was insufficient to support a conviction
- m) Failure to get Applicant mental health testing for criminal responsibility relating to the time of the alleged offense
- n) Failure to get Applicant mental health test for competency to stand trial or plead
- o) Failure to present, submit into evidence and argue favorable evidence during plea and closing arguments
- p) Failure to object to hearsay testimony
- q) Failure to obtain defense expert witness
- r) Failure to prepare and present mitigating evidence at plea
- s) Failure to impeach witness and victim
- t) Failure to file a pre-trial motion for the Protection of Persons and Property Act
- u) Failure to file a notice of appeal after plea
- v) Failure to file an appeal when Applicant told counsel that he wanted to appeal his conviction and sentence
- w) Failure to present mitigating social history evidence good character evidence and good character witnesses.
- x) Failure to ask for a continuance when he knew he was not ready for court
- y) Failure to call expert witness that were subpoena to testify
- z) Failure to present favorable evidence in support of defense
- aa) Failure to investigate background of the victim
- bb) Failure to investigate and test evidence
- cc) Failure to file for a DNA test for Applicant
- dd) Failure to give Applicant discovery

II. SUMMARY OF THE TESTIMONY

Applicant's Testimony

Applicant testified that the first time he met with Counsel, Charles Verner, was shortly before trial. Applicant testified he only pled guilty because Counsel said the Applicant didn't have a defense. Applicant testified that he lied under oath at his guilty plea in response to the Judge's questions. Applicant testified that he was already a felon at the time of the plea.



Applicant testified he wasn't ready for trial and never received discovery. Applicant testified that the grand jury did not meet the week that his indictments appear to be signed.

Counsel Charles Verner's Testimony

Charles Verner, Esquire testified that he represented Mr. Ayton. Mr. Verner testified that Mr. Ayton was already detained at Alvin S. Glenn detention center on similar charges in Richland County when Mr. Verner started meeting with Mr. Ayton, and that Mr. Verner was originally working with Mr. Charles Grose in the representation of Mr. Verner before Mr. Grose left his position as the Circuit Public Defender for the 8th South Carolina Judicial Circuit.

Mr. Verner explained that while Mr. Ayton was incarcerated on his Richland County charges, Mr. Ayton's possessions were removed from the house in which he had been staying and had been placed on the street. Mr. Verner then explained that Mr. Ayton's phone was found by neighborhood residents and they reviewed its contents. Mr. Verner then explained that Mr. Ayton's phone and its contents were shown to law enforcement who happened to be in the area on an unrelated matter and that it appeared to show several sex acts between a child under ten and a grown man. Mr. Verner explained that law enforcement got a warrant for further investigation into the phone and that the further investigation resulted in the child being identified as a child in Newberry County, South Carolina and that law enforcement was able to then contact that child and its mother and build the case against Mr. Ayton.

Mr. Verner testified that he met at least twice with Mr. Ayton in the Richland County Detention Center. Mr. Verner also testified that he met with Mr. Ayton numerous times once Mr. Ayton was transferred to the Newberry County Detention Center and detained on the relevant warrants. Mr. Verner testified that he kept Mr. Ayton abreast of the case developments and provided him with the discovery in the matter and went over it with him in preparation for trial.



Mr. Verner testified that he was unable to show Mr. Ayton all of the discovery in the matter until the day before the plea, as until that point it had been physically impossible for him to do so. Mr. Verner testified that The Attorney General's office had allowed Mr. Verner to review the video of the sexual encounters between Mr. Ayton and his victim, and had allowed Mr. Verner the opportunity to take still photographs of the video images with the graphic items censored so that he could show them to Mr. Ayton, but had not allowed a full copy of the video images to be made available to Mr. Ayton. Mr. Verner testified that he was only able to show the video to Mr. Ayton after the suppression hearing, the day before the plea, when the Attorney General's office brought a copy of the video to court and was able to show it to Mr. Ayton and Mr. Verner while still maintaining possession.

Mr. Verner testified that Mr. Ayton's face was not visible on the video, but that there were identifying marks on the man in the video that matched Mr. Ayton. Mr. Verner also testified that the victim in this case was the child of one of Mr. Ayton's former romantic partners whom Mr. Ayton had lived with previously.

Mr. Verner testified that he had Dr. Schwarz-Watts examine Mr. Ayton and that there was no formal report written as the examination did not create a question about competency.

Mr. Verner testified that the case against Mr. Ayton was strong and that the only defense was a suppression motion. Mr. Verner testified that after losing the suppression motion he probably did advise Mr. Ayton to plead as he would likely be found guilty at trial, and that he certainly agreed with that decision.

Mr. Verner testified that he did not force Mr. Ayton to plead, nor did he write up a script for Mr. Ayton to follow. Mr. Verner testified that to the best of his knowledge, the only thing



that he is aware of that Mr. Ayton could be referring to is the Advisement of Rights Form that the Honorable Eugene Griffith requires as part of the plea process.

III. APPLICABLE LAW

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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

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III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). To find a guilty plea is voluntarily and knowingly entered into, the record



must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). This Court finds that Applicant has failed to prove that Counsel was ineffective.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to disclose and explain discovery material, as the testimony indicates that discovery was provided to the defendant and Counsel advised Applicant as to the case against him.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to prepare for and investigate this case as Counsel's testimony establishes that he spent a substantial amount of time reviewing the relevant materials in the case and meeting with Applicant about them. Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003).

This Court finds that Applicant has failed to prove that Counsel was ineffective for not subjecting the case to meaningful adversarial testing as Mr. Verner's testimony indicated he analyzed the case and did attempt to have the case dismissed by attacking the search of Applicant's phone.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to visit and inform Applicant of any developments in the case as Counsel's testimony indicates that he visited and informed Applicant of case developments regularly.



This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to go over or even consider possible defenses as no evidence was presented by Applicant of any other possible defenses and additionally, Counsel testified that he did consider the best defense to the charge to be the attack on the search of the phone.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to get Applicant an independent medical and mental evaluation as Counsel had Dr. Shwartz-Watts evaluate Applicant.

This Court finds that Applicant has failed to prove that Counsel was ineffective for coercing and threatening Applicant into a trial as this Court finds that there is no evidence to show that Counsel coerced or threatened Applicant into a plea.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to advise the Applicant of his right to appeal his plea and file a Notice of Appeal as no testimony was given by the Applicant as to that issue.

This Court finds that Applicant has failed to prove that Counsel was ineffective for advising the Applicant to accept the plea, as the Court finds that there was overwhelming evidence in this case of Applicant's case and that Applicant would have likely been convicted at trial and not have received the benefit of a plea bargain.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to advocate, as the Court finds that Counsel advocated well on Applicant's behalf based on Counsel's attempt to suppress the search of the phone and the presentation of the mitigation.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to contact, interview, and subpoena potential witnesses as Applicant has failed to identify any potential witnesses who could have provided any evidence of Applicant's innocence and that



there is overwhelming evidence of Applicant's guilt. This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id., citing Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to file a motion for a new trial on the grounds that the evidence was insufficient to support a conviction as the court finds that there was overwhelming evidence of the victim's guilt.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to get Applicant mental health testing for criminal responsibility relating to the time of the alleged offense, as Applicant failed to elicit any testimony or evidence that Applicant was not criminally responsible or should have been tested for criminal responsibility.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to get the Applicant mental health testing for competency to stand trial or plead as Counsel's testimony indicates that Applicant was indeed tested and there was nothing arising out of that testing that indicated that Applicant's competency was in question.

This Court finds that Applicant has failed to prove that Counsel was ineffective for "failure to present, submit into evidence and argue favorable evidence during plea and closing arguments" as Applicant failed to identify any evidence that should have been entered at the plea that was not, and further, there was no closing argument as this was a plea.

GC 10

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to object to hearsay testimony as "[i]n a sentencing proceeding, evidentiary rules are inapplicable." State v. Gullledge, 326 S.C. 220, 487 S.E.2d 590, 594 (1997).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to obtain defense expert witness as Counsel testified that a defense expert witness was retained regarding mental health matters and Applicant has failed to identify any other areas in which an expert witness would have provided any assistance.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to prepare and present mitigating evidence at the plea, as Applicant failed to identify any mitigating evidence that was not presented which should have been presented, and additionally, the transcript makes clear that Counsel did make the court aware that Applicant was a victim of the Hurricane Katrina disaster, that Applicant had two children, and that Applicant suffered from effects of a head injury that made his life harder, but which did not affect his competency, and that Applicant had been molested by his Father. (Trial Tr. Pg. 188-192).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to impeach the witness and the victim as Counsel would not have had the opportunity to do so as they were not cross-examined.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing "to file a pre-trial motion for the Protection of Persons and Property Act" as that Act is inapplicable to Applicant's conviction.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to file a Notice of Appeal after Plea as the testimony did not substantiate that the



Applicant asked to file an appeal and there was no evidence that the Applicant asked Counsel to file an appeal.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing "to present mitigating social history evidence, good character evidence, and good character witnesses" as Counsel did present mitigating evidence and the Applicant failed to identify any further witnesses which should have been called.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to ask for a continuance when Counsel knew he was ready for court, as Counsel's testimony regarding his preparation indicates that he was indeed ready for court and Applicant has failed to establish how Counsel was unprepared. See Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (no prejudice results when the applicant did not offer any evidence or argument as to how counsel's alleged lack of preparation prejudiced him, and the court declined to speculate that counsel's alleged deficient performance was prejudicial).

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to "call expert witness that were subpoena to testify" as Applicant failed to identify any witnesses who were under subpoena for trial who should have been called to testify at the plea.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to present favorable evidence in support of defense as the Applicant pled guilty and admitted to the crime.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to investigate the background of the victim as the background of a child who is the victim of a brutal sex crime by an adult is immaterial as to the guilt or innocence of the perpetrator of such an act and the evidence that Applicant committed the crime was overwhelming.

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This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to investigate and test evidence as Applicant failed to identify any evidence that was not tested that should have been and further, Counsel testified that he did investigate the case and reviewed the evidence.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to file for a DNA test for applicant as Applicant has failed to establish how a DNA test is relevant to this matter.

This Court finds that Applicant has failed to prove that Counsel was ineffective for failing to give the Applicant the Discovery in the case as Counsel testified that he gave the Applicant the Discovery.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.



Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of August, 2017.



G. THOMAS COOPER, JR.
Presiding Judge
Eighth Judicial Circuit

Clason, South Carolina

FILED
NEWBERRY COUNTY
2017 SEP 20 PM 12:02
ELIZABETH R. FOLK
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF NewberryHarold Ayten

Plaintiff,

vs.

State of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

8TH JUDICIAL CIRCUITCASE NO.: 2015-CP-36-00021MOTION AND ORDER INFORMATION
FORM AND COVERSHEETFILED
NEWBERRY COUNTY
2017 SEP 20 AM 11:56
CLERK OF COURT

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____																			
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																					
SECTION I: Hearing Information Nature of Motion: <u>RULE 59(E) MOTION TO ALTER AND TO AMEND</u> Estimated Time Needed: _____ Court Reporter Needed: ☒ YES / ☐ NO																					
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Ayten H</u> <u>September 18</u> , 20 <u>17</u> Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted																					
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) <table border="0"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td></td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td></td> </tr> <tr> <td>☐ Motion for Publication</td> <td></td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>				☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Execution (Rule 69, SCRPC)	☐ Sexually Violent Predator Act		☐ Motion for Stay in Bankruptcy		☐ Motion for Publication		☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		☐ Other: _____	
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Name of Court Reporter: _____																					
☐ Other: _____																					
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____, 20____																			
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____, 20____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____																					

Perry Carr Inst
 Harold Ayton #53371
 430 Oaklawn Rd
 Pelzer, SC 29669

FILED
 2017 NOV 20 AM 10:19
 CLERK OF COURT

Newberry Clerk of Court
 P.O. Drawer 10
 Newberry, SC 29108

11-17-17

Re: State of South Carolina v. Harold Ayton
 C/A No: 2015-CP-36-00021

Dear, Clerk

I am writing this letter in regards to the Disposition on my Rule 59(e) motion that was file inside your office. May you please let me know what's on the disposition or status on the ruling from Judge Thomas Cooper

With kindest regards

Sincerely



Perry Correctional Inst
 Harold Hyatt #353371
 430 Oaklawn Rd
 Pelzer, SC 29669

SPRINGVILLE
 GA 30786
 17 NOV 17
 PM 2:11

Newberry Clerk of Court
 P.O. Drawer 10
 Newberry, SC 29108

RECEIVED

NOV 17 2017

P.C.I. MAILROOM

29108-001010

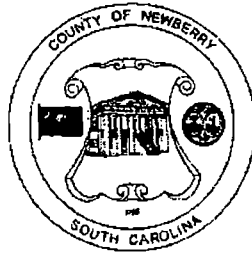
|||||

LOCAL N°

OFFICE OF CLERK OF COURT
COUNTY OF NEWBERRY

Elizabeth P. Folk
Clerk of Court

P.O. Drawer 10
(803) 321-2110
Fax (803) 321-2111



November 21, 2017

Harold Ayton #353371
430 Oaklawn Rd
Pelzer, SC 29669

15-21

Mr. Ayton,

We show you filed a Rule 59 Motion on September 20, 2017, as of today we do not have an Order for this motion. You may want to contact your attorney Laura McCall Saunders at PO Box 731 Laurens, SC 29360.

Please let me know if you have any questions.

Sincerely,

Janeen Toby
Deputy Clerk Common Pleas
Newberry County
jtoby@newberrycounty.net

Cc: Laura McCall Saunders
PO Box 731
Laurens, SC 29360

Justin James Hunter
PO Box 11549
Columbia, SC 29211

WITNESSES

Det. K. Atkins. - Newberry Police Dept.

ARREST WARRANT NUMBER

I-009309

ACTION OF GRAND JURY

TRUE BILL

Cindy Ch. Chmiah

Foreperson of Grand Jury

Date: 9/21/2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-36-0631

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON

D.O.B. 1980

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE**

S.C. CODE §16-15-655(A)(1)

CDR Code: 0385

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.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF NEWBERRY)

CRIMINAL SEXUAL CONDUCT
WITH A MINOR IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or about the date of May 23, 2010, did willfully and knowingly commit the crime of Criminal Sexual Conduct With a Minor in the First Degree. To wit: Harold R. Ayton, a person eighteen years of age or older, did engage in sexual battery, as defined in Section 16-3-651(h), with a victim under the age of eleven within the County of Newberry, State of South Carolina. This is in direct violation of Section 16-3-655(A)(1), 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 (MBW)
ATTORNEY GENERAL

WITNESSES

Det. K. Atkins – Newberry Police Dept.

ARREST WARRANT NUMBER

Z-009310

ACTION OF GRAND JURY

TRUE BILL

Cudjoe Chish

Foreperson of Grand Jury

Date: 9/8/2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-36-0632

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON

D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR
IN THE FIRST DEGREE**

S.C. CODE §16-15-0395

CDR Code: 0379

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.

STATE OF SOUTH CAROLINA	)	INDICTMENT
	)	
COUNTY OF NEWBERRY	)	SEXUAL EXPLOITATION OF A MINOR IN THE
	)	FIRST DEGREE

At a Court of General Sessions, convened on September 2 2011, the Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or May 23, 2010, did willfully and knowingly commit the crime of Sexual Exploitation of a Minor in the First Degree. To wit: Harold R. Ayton, a person eighteen years of age or older, while located in the County of Newberry, State of South Carolina, did produce material containing a visual representation of a minor child engaged in sexual activity, as defined in Section 16-15-375. This is in direct violation of Section 16-15-0405 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 (MBW)
ATTORNEY GENERAL

WITNESSES

Det. K. Atkins.— Newberry Police Dept.

ARREST WARRANT NUMBER

I-009311

ACTION OF GRAND JURY

TRUE BILL

Cindy C. Orish

Foreperson of Grand Jury

Date: 9/21/2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-36- 0633

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON

D.O.B. [REDACTED]

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE**

S.C. CODE §16-15-655(A)(1)

CDR Code: 0385

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

Defendant

I
herely appear in my own proper person and plead
guilty to the within Indictment or to

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF NEWBERRY)

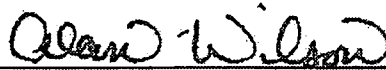
CRIMINAL SEXUAL CONDCUT
WITH A MNOR IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or about the date of March 31, 2010, did willfully and knowingly commit the crime of Criminal Sexual Conduct With a Minor in the First Degree. To wit: Harold R. Ayton, a person eighteen years of age or older, did engage in sexual battery, as defined in Section 16-3-651(h), with a victim under the age of eleven within the County of Newberry, State of South Carolina. This is in direct violation of Section 16-3-655(A)(1), 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 (MBW)
ATTORNEY GENERAL

WITNESSES

Det. K. Atkins – Newberry Police Dept.

ARREST WARRANT NUMBER

I-009312

ACTION OF GRAND JURY

TRUE BILL

Cindy Ph. Chidh
Foreperson of Grand Jury
Date: *9/2/2011*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-36-0634

The State of South Carolina

County of Newberry

COURT OF GENERAL SESSIONS

September 2011 TERM

THE STATE

vs.

HAROLD R. AYTON
D.O.B. [REDACTED]

Indictment for

**SEXUAL EXPLOITATION OF A MINOR
IN THE FIRST DEGREE**

S.C. CODE §16-15-0395
CDR Code: 0379

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.

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF NEWBERRY

SEXUAL EXPLOITATION OF A MINOR IN THE
FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, on or March 31, 2010, did willfully and knowingly commit
the crime of Sexual Exploitation of a Minor in the First Degree. To wit: Harold R. Ayton,
a person eighteen years of age or older, while located in the County of Newberry, State
of South Carolina, did produce material containing a visual representation of a minor
child engaged in sexual activity, as defined in Section 16-15-375. This is in direct
violation of Section 16-15-0405 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 (MBW)
ATTORNEY GENERAL

DOCKET NO. 2011-GS-36-0635

WITNESSES

Def. K. Atkins. - Newberry Police Dept.

The State of South Carolina

County of Newberry

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

Defendant

COURT OF GENERAL SESSIONS

September 2011 TERM

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

ARREST WARRANT NUMBER

Direct Indictment.

THE STATE

vs.

Defendant

Witness:

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

ACTION OF GRAND JURY

HAROLD R. AYTON
D.O.B. [REDACTED]

TRUE BILL

Carlyle O'Neil
Foreperson of Grand Jury
Date: 9/21/11

Not. Pres. 12/4/12
Meghan B. Duckert
AKK

VERDICT

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR IN THE FIRST DEGREE**

S.C. CODE §16-15-655(A)(1)
CDR Code: 0385

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF NEWBERRY)

INDICTMENT
CRIMINAL SEXUAL CONDUCT
WITH A MINOR IN THE FIRST DEGREE

At a Court of General Sessions, convened on September 2, 2011, the
Grand Jurors of Newberry County present upon their oath:

That Harold R. Ayton, around or between the dates of June 1, 2009, and
February 28, 2010, did willfully and knowingly commit the crime of Criminal Sexual
Conduct With a Minor in the First Degree. To wit: Harold R. Ayton, a person eighteen
years of age or older, did engage in sexual battery, as defined in Section 16-3-651(h),
with a victim under the age of eleven within the County of Newberry, State of South
Carolina. This is in direct violation of Section 16-3-655(A)(1), 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 (MBW)
ATTORNEY GENERAL