

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————  
Certiorari to Sumter County

Honorable R. Ferrell Cothran, Circuit Court Judge

—————  
WILLIAM RICKY WELCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002375

—————  
APPENDIX  
—————

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1 Q All right. And where do you go to school?

2 A I went to South Florence High School.

3 Q All right. And what's your current situation as far  
4 as like the jobs you had and jobs you're currently -- you  
5 most recently had?

6 A I worked at Food Lion for a year ago -- a year last  
7 year, and currently I don't have none.

8 Q Okay. And what's your situation with school?

9 A I'm finishing up in Adult Ed right now.

10 Q Okay. And how is it that you know the defendant in  
11 this case, William Ricky Welch?

12 A He is my mother's boyfriend.

13 Q And your mom is who?

14 A Lisa K Bryant.

15 Q Okay. And approximately how many years do you think  
16 he has been involved with your mom?

17 A Eight to nine years.

18 Q Now Alesha, do you recall a cookout that was at your  
19 aunt and uncle's house who are Margaret and John Hickman?

20 A Yes, ma'am.

21 Q And that cookout was close to what holiday, if you  
22 know?

23 A Christmas.

24 Q All right. And can you tell us whether or not you  
25 recall your cousin <sup>Complainant</sup> being there?

1 A Yes, ma'am, she was.

2 Q All right. And what are some of the things that you  
3 recall people doing that day in terms of activity?

4 A We sat down, ate lunch or dinner, opened Christmas  
5 presents, and rode four-wheelers.

6 Q Okay. And when you say rode four-wheelers, I'm going  
7 to show you a photograph and ask you if you recognize  
8 what's in the photograph.

9 A That's Uncle John's four-wheeler.

10 Q Okay. And where would people normally ride the  
11 four-wheelers, Alesha?

12 A There's two wood trails in the back.

13 Q Okay. And can you maybe sort of describe the trails?  
14 Have you ever ridden on them before?

15 A Yes, ma'am, I have. It's like nature trails, but  
16 enough for a four-wheeler to go through.

17 Q Okay. And how many times in the past do you think  
18 you had been to your aunt and uncle's home and rode  
19 four-wheelers there?

20 A I don't recall because we rarely get to go over  
21 there.

22 Q Okay. More than one occasion?

23 A Yes, ma'am.

24 Q I'm going to take you back specifically to the date  
25 of the cookout which preceded the Christmas holiday in

1 2006. I think you have testified previously that your  
2 cousin <sup>Complainant</sup> was there.

3 A Yes, ma'am.

4 Q On that particular day, Alesha, did you ever see  
5 <sup>Complainant</sup> on a four-wheeler?

6 A Yes, ma'am.

7 Q Okay. And when you saw <sup>Complainant</sup> who was she on the  
8 four-wheeler with?

9 A Ricky and baby E. .

10 Q Okay. And when you saw -- how many times do you  
11 think you saw <sup>Complainant</sup> on a four-wheeler with the defendant,  
12 Ricky Welch?

13 A As I remember, at least twice.

14 Q Okay. The first time you saw them, where were you,  
15 Alesha?

16 A In the back yard just standing around with everyone  
17 else.

18 Q Okay. And you saw them while you were in the back  
19 yard. Were you on a four-wheeler yourself at the time?

20 A Not at the time.

21 Q And where were you the second time you saw them?

22 A Basically in the same area around the yard.

23 Q And were you on a four-wheeler that time?

24 A No, ma'am.

25 Q When you saw <sup>Complainant</sup> on the four-wheeler with Ricky,

1 what are the positions that you remember them being in?

2 A First whenever I saw them leave out to go on the  
3 trail, I saw him driving. And then another occasion  
4 whenever I saw them again, I saw her driving.

5 Q Okay. And when you say, her driving, you're  
6 referring to who?

7 A Complainant .

8 Q Do you still live with your mom, Alesha?

9 A No, ma'am.

10 Q And you consider yourself Ricky Welch's daughter?

11 A No, ma'am.

12 MS. MAYES: Beg the Court's unindulgence.

13 Nothing further.

14 CROSS-EXAMINATION

15 BY MR. FINNEY:

16 Q Ms. Alesha, when is the first time I spoke with you?

17 A I believe this morning.

18 Q You believe this morning.

19 A Because I don't have a good memory, I don't remember.

20 Q Oh, you don't have a good memory. Well, you told me  
21 this morning you didn't remember how many times that you  
22 saw them on the trail; didn't you?

23 A I told you approximately twice.

24 Q You didn't tell me that you remembered -- didn't you  
25 say this morning to me when you talked to me that you

1 Q But you were at times.

2 A I don't remember seeing them on the trail at the same  
3 time as I was. Everybody was riding the four-wheelers.

4 Q Okay. So you could have been on the trail with Ricky  
5 and <sup>Complainant</sup> and baby E. You don't remember.

6 A I guess because I wouldn't know. Everybody was  
7 riding at different times.

8 Q Okay. And do you remember calling Ricky, daddy,  
9 during that time in 2006?

10 A Not at that time. I do not recall that.

11 Q You didn't write him letters when he went to jail and  
12 you called him daddy in the letters?

13 A May I explain myself?

14 Q No. You can answer the question.

15 A Yes, I did.

16 Q But he's not your daddy any more; is he?

17 A No, sir.

18 Q All right. Thank you, ma'am.

19 *MR. FINNEY:* Nothing further from this witness.

20 *THE COURT:* Anything? You ask more questions

21 REDIRECT EXAMINATION

22 BY MS. MAYES:

23 Q Just to clarify. Can you explain, Alesha, what you  
24 recall the conversation being this morning with Mr.  
25 Finney, was anyone else present for that conversation?

1 A Yes, there was somebody else present.

2 Q Who was that?

3 A I don't know his name. He's tall black man that was  
4 there.

5 Q Okay. And was that in the courtroom or outside the  
6 courtroom?

7 A Inside the courtroom at the right corner of the back.

8 Q Okay. And what do you remember -- what do you  
9 remember relating about who was on the trails and when?

10 A What do you mean by that?

11 Q Okay. Well, what do you remember stating to Mr.  
12 Finney about who was on the trails and when?

13 A I remember telling him that I did see them on the  
14 four-wheeler, but I don't remember how many times, but I  
15 wasn't always behind them on the four-wheelers in the  
16 trail and I was there that day.

17 Q All right. And just to clarify, were you or were you  
18 not behind <sup>Complainant</sup> and Ricky throughout the different trails  
19 that they rode on various occasions that day?

20 A I did not follow them, so I would -- I was not behind  
21 them all the time.

22 Q Thank you. Nothing further.

23 MR. FINNEY: Nothing from this witness.

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

25 (Witness left the stand.)

1 MS. MAYES: The State calls Margaret Hickman.

2 MARGARET HICKMAN, after being  
3 duly reminded of oath, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MAYES:

6 Q Mrs. Hickman, I'm going to take you back once again  
7 to the date of the cookout. Do you remember when the time  
8 came when people were leaving the party?

9 A Yes.

10 Q Okay. And do you ever recall seeing your daughter,  
11 Complainant approach Mr. Welch in a van on that occasion?

12 A When they arrived, yes.

13 Q Okay. Do you ever recall seeing your daughter  
14 approach Mr. Welch in the van or give him a kiss goodbye  
15 as they left the party?

16 A No, she was in her room when they left.

17 Q I'm also going to ask you about what if any knowledge  
18 you had prior to the date of the cookout that Mr. Welch  
19 had been convicted for the crime criminal sexual conduct  
20 with a minor?

21 A We had heard that there was a -- a incident where  
22 he --

23 Q Okay.

24 A -- had been--

25 Q I can't, you can't --

1 A Oh, I'm sorry.

2 Q -- get into the details of it. Just let me phrase it  
3 this way. Had you been advised by him or Lisa Bryant that  
4 he had been convicted of that crime?

5 A No.

6 Q Thank you. Nothing further.

7 CROSS-EXAMINATION

8 BY MR. FINNEY:

9 Q Mrs. Hickman, who is Charles Hickman?

10 A My brother-in-law.

11 Q Was he at the cookout?

12 A Yes, he was.

13 Q And was his wife with him?

14 A Yes, she was.

15 Q And how about Joey Hickman?

16 A No, he wasn't there.

17 Q Okay. Do you know who Joey Hickman is?

18 A That's my husband's brother.

19 Q Charles and Joey --

20 A Yes.

21 Q -- brothers to your husband?

22 A Yes.

23 Q All right. Did you ever hear or have a conversation  
24 with them about Mr. Welch's prior record before the  
25 cookout?

1 A No.

2 Q You don't know if Charles or Joey knew about his  
3 record?

4 A I'm not sure.

5 Q Okay. And you and Charles and your husband don't  
6 talk like family members talk? If you knew that -- if  
7 Charles knew that this man had a record, wouldn't your  
8 brother have talked to Charles and known about it?

9 A I assume.

10 Q Okay. But you don't know?

11 A I don't know.

12 Q Okay.

13 A No.

14 Q Now, how are you so sure that <sup>Complainant</sup> was in her room  
15 when my client left?

16 A Because I remember putting her into bed, getting her  
17 ready for bed. It was late.

18 Q It was dark?

19 A It was dark, yes--

20 Q And my client was still at your house?

21 A They were sitting around the kitchen table getting  
22 ready to leave. We were...

23 Q And it was dark?

24 A The sun was down, yes.

25 Q Yes, ma'am. It was dark. They were still at your

1 house.

2 A Yes.

3 Q And you put <sup>Complainant</sup> to bed first.

4 A Yes.

5 Q And when they left, they just went and got in their  
6 van. Nobody said, you know, nobody -- the kids didn't  
7 kiss them goodbye?

8 A Well, the kids, no. We did. I mean, we said  
9 goodbye--

10 Q And you remember that?

11 A Yes, sir.

12 Q Did you ever give a statement to anybody in this --  
13 in this case? Did you ever get a statement -- have a  
14 chance to sit down with an investigator and tell the  
15 investigator what happened at your house that day, who was  
16 doing what and what was going on?

17 A I'm not sure.

18 Q Okay. Well, if I was a police investigator and I  
19 came to your house and I said your little girl has gone to  
20 the hospital, she's made a charge against Uncle Ricky, and  
21 I'm coming to your house to ask you what went on to the --  
22 at the cookout that day, what -- who was with who, did  
23 Uncle Ricky ever go out on the bike, did anybody ever come  
24 and do that to you?

25 A I'm -- I'm sure. I mean, either --

- 1 Q You would have--
- 2 A -- they did or we did or we went up there --
- 3 Q Okay.
- 4 A -- or I'm not sure. Everything was happening so fast
- 5 back then.
- 6 Q All right. And to your knowledge have you ever
- 7 signed a statement saying, this is my statement of what
- 8 happened at the cookout that day?
- 9 A I may have. I'm not sure.
- 10 Q You don't know? Okay. So you're not sure about
- 11 that. But you're sure that your babies were in bed when
- 12 my client left your house that day.
- 13 A Yes, I mean, I... yes, I was, yes.
- 14 Q Okay. And what I'm asking you is, is there anywhere
- 15 I can go back in the file and look and say that you said
- 16 that before today, that you said that your babies were in
- 17 the bed when he left and got in his car and left the house
- 18 that day? Did somebody ask you that before today?
- 19 A I'm not sure.
- 20 Q Okay.
- 21 A I'm not sure.
- 22 Q Would it have been important to know that you said to
- 23 somebody before today, just now on your stand, that Ricky
- 24 left your house at dark --
- 25 A Uh-huh.

1 Q -- after you had put <sup>Complainant</sup> and the baby to bed?

2 A I'm not sure.

3 Q Okay. Let me ask you one more question and I'm going  
4 to sit down. You testified under oath that you had a  
5 one-on-one talk with your child about what Margaret had  
6 called you about.

7 A My sister Melody.

8 Q Melody.

9 A Yes.

10 Q Okay. Was Ricky still at your house when that call  
11 came in?

12 A No. No, he wasn't.

13 Q Well, you are telling me that you put <sup>Complainant</sup> to bed,  
14 then you saw Ricky leave, then you got a call from your  
15 sister saying something was up, so you had to go get your  
16 baby out of bed to talk to her. Is that what happened  
17 that night?

18 A When I said I was putting her to bed, I meant getting  
19 her ready, nightgown and such, getting her ready for bed.

20 Q Nothing further.

21 MS. MAYES: Nothing further, Your Honor. The  
22 State calls John Hickman.

23 THE COURT: Thank you, ma'am. You can step  
24 down.

25 (Witness left the stand.)

1 JOHN HICKMAN, after being duly  
2 reminded of oath, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. MAYES:

5 Q Mr. Hickman, wanted to ask you if prior to the date  
6 of the incident with <sup>Complainant</sup> here, December 23rd, 2006, had  
7 you been advised by either the defendant William Ricky  
8 Welch or Lisa Bryant that Mr. Welch had been convicted of  
9 criminal sexual conduct with a minor in the first degree?

10 A No, ma'am.

11 Q And how did you first learn that he had been  
12 convicted as a sex offender?

13 A When me and my family returned from the ER that --  
14 that afternoon, from the hospital, my wife went online,  
15 and I walked in the computer room, she was on the computer  
16 and we was pulling it up, and seen his spreadsheet where  
17 he was convicted.

18 Q Thank you. Nothing further.

19 MR. FINNEY: No questions.

20 THE COURT: Thank you, sir. You can step down.

21 (Witness left the stand.)

22 MS. MAYES: The State rests, Your Honor.

23 THE COURT: Okay. Ladies and gentlemen, you  
24 have heard all of the testimony you're going to hear  
25 in this case. And now it's time for the closing

1 arguments of the lawyers and for me to charge you on  
2 the law.

3 And that's probably going to run into the dinner  
4 hour. So you are probably better off just stopping  
5 now and going to lunch and we'll come back at 1:30 I  
6 guess. That gives us an hour and half. That's what  
7 we normally take.

8 Then at 1:30 you'll hear the closing arguments  
9 of the attorneys and I will charge you on the law and  
10 give you this case to deliberate. Have a nice lunch.  
11 Don't discuss the case yet. And if you'll be back in  
12 the jury room at 1:30, I will get you out and we'll  
13 finish this case.

14 (Jury left the courtroom at 12:05 pm.)

15 *THE COURT:* Anything before we break for lunch?

16 *MR. FINNEY:* No, Your Honor.

17 *MS. MAYES:* No, sir, Your Honor.

18 *THE COURT:* All right. We'll be back at 1:30.

19 Can you give me an idea about how long y'all are  
20 going to argue?

21 *MS. MAYES:* Your Honor, I never go over 30, at  
22 least if I can help it.

23 *MR. FINNEY:* I'm going to hold her to that, Your  
24 Honor. I'd like 45.

25 *THE COURT:* Okay. You've got up to two hours,

1 but normal adult's attention span used to be 19  
2 minutes. Now it's eight now. Whatever you want to  
3 do. I'll see y'all at 1:30.

4 *MR. FINNEY:* Thank you, sir.

5 (Court was in recess for lunch.)

6 *THE COURT:* Okay. State ready to proceed?

7 *MS. MAYES:* Yes, sir, Your Honor. I do wish to  
8 inquire about the Court's charge concerning criminal  
9 sexual conduct with a minor.

10 *THE COURT:* Okay.

11 *MS. MAYES:* It may be part of the Court's charge  
12 already. But if not, the State would request a  
13 charge pursuant to the statute providing that  
14 corroboration not needed, and that is also under  
15 Title 16.

16 *THE COURT:* All right. Then it's not in there.  
17 Now, tell me what -- because basically the charge  
18 that is in our charge book is basically the statute  
19 because basically -- and I'll be glad to show y'all  
20 what I was going to charge on, what's in our charge  
21 book. If you have got something different...

22 *MS. MAYES:* Your Honor, it would be...

23 *THE COURT:* Because they have not really  
24 developed a charge for us, at least from Court  
25 Administration, the Supreme Court, because it's --

1 the law is so new, especially when you're dealing  
2 with A1 where the jury has to find penetration -- you  
3 know intercourse, anal intercourse or the  
4 penetration.

5 MR. FINNEY: Judge, just for the record, the  
6 second part of your charge talking about consent,  
7 willingness, indifference, or ignorance is not part  
8 of the factual basis of this case, and I would object  
9 to the charge being given to the jury because there's  
10 not any allegations this little girl did something  
11 because she just wanted to.

12 And it -- this part of the law is not part of  
13 the statute I don't believe, and I don't believe that  
14 it follows the factual presentation that the jury has  
15 heard.

16 THE COURT: And that's the charge that's in our  
17 charge book. Now, let me see what you're objecting  
18 to.

19 MR. FINNEY: The second paragraph -- second page  
20 where it starts with the word consent.

21 THE COURT: Consent with... Okay. what is the  
22 State's position on that?

23 MS. MAYES: We believe that would be  
24 appropriate, Your Honor, as a part of the charge to  
25 eliminate any speculation by the jury about exactly

1           whether force is required or not required. And it's  
2           not required under the criminal sexual conduct with a  
3           minor statute.

4           *THE COURT:* Right. And the only thing I  
5           question about this -- which does apply here -- that  
6           in our book it says, woman under the age of 14 cannot  
7           legally consent to sexual intercourse. I always was  
8           under the impression it was 16.

9           *MR. FINNEY:* That's my understanding.

10          *THE COURT:* But I don't know where they came up  
11          with 14. It's in all our charge books. And so I  
12          have been trying to figure out what law allows the 15  
13          year old to make that, but I can't find it. I think  
14          it should be 16 not 14.

15          But I think that's part of the law. And even  
16          though -- and I can't comment on the facts, but the  
17          jury needs to know in every case -- and that as far  
18          as the minor is concerned that consent doesn't play  
19          into it at all.

20          *MR. FINNEY:* I want the record to reflect our  
21          objection, Your Honor.

22          *THE COURT:* I understand. Now, in addition to  
23          this, what is the State's position? You...

24          *MS. MAYES:* Yes, sir, Your Honor. The State's  
25          position is to request a charge for South Carolina

1 code section 16-3-657 which provides that testimony  
2 of the victim need not be corroborated for  
3 prosecution pursuant to South Carolina code section  
4 16-3-652 through 656 which includes criminal sexual  
5 conduct with a minor.

6 The charging of this particular provision has  
7 been upheld in State versus Shumpert, a 1993 case,  
8 and also more recently.

9 THE COURT: Okay. What -- what says the defense  
10 about that? What's your position on that, Mr.  
11 Finney?

12 MR. FINNEY: Judge, I don't think it applies in  
13 this case.

14 THE COURT: Why don't you?

15 MR. FINNEY: Corroboration of the victim's  
16 testimony? I mean--

17 THE COURT: That's what the law -- that's what  
18 section 16 3 657 says. Now...

19 MR. FINNEY: In a case, Your Honor, where the  
20 victim, let's say, was in an alley, nobody was with  
21 her, she got thrown down, didn't know the fellow and  
22 she testified, yes, that's the fellow and yes, this  
23 is what happened, I could understand that happening.

24 In this case they have got everybody that was  
25 with the girl and all of that that's already

1 corroborated and testified about what happened, what  
2 she said, what she looked like, and all of that.

3 So I don't think it's a correct statement and I  
4 don't think it's relevant to the -- to the jury's  
5 decision as to whether or not they believe her or not  
6 or believe the testimony of the State or not.

7 *THE COURT:* I understand. You know, this is the  
8 code section the legislature passed. Now, the  
9 testimony of the victim need not be corroborated in  
10 the prosecution under sections 16 3 652 through 658.

11 *MR. FINNEY:* And look at the history, Judge.  
12 The history is that it was passed in 1997 before  
13 the -- the law that we're talking about here today  
14 was even enacted.

15 *THE COURT:* I understand that. But you are  
16 telling me that's not still good law?

17 *MR. FINNEY:* Don't think it applies in this  
18 case, Your Honor.

19 *THE COURT:* How does it not apply to any case?

20 *MR. FINNEY:* I said it would apply to the lady  
21 in the alley, Your Honor, because she was by  
22 herself --

23 *THE COURT:* I know, but I can't--

24 *MR. FINNEY:* -- and you would want to tell the  
25 jury that she doesn't have to have anybody second to

1 her opinion.

2 *THE COURT:* Well, the lady in the alley who may  
3 have been sexually assaulted and then they had DNA  
4 evidence, that that corroborates her story that in  
5 fact she was -- that...

6 I understand your position, but it is the law.  
7 Now, the weight the jury gives that and whether they  
8 even understand corroboration, I don't know. But if  
9 the State -- if that's part of the statute and the  
10 State asks me to charge it, how does that -- or  
11 shouldn't be charged in this case?

12 *MR. FINNEY:* I just simply would not argue with  
13 the Court. I don't believe it meets the test in this  
14 case because there was testimony from State witnesses  
15 which sought to corroborate her testimony, so you  
16 would be basically making a comment on the facts, I  
17 think by testifying or stating this.

18 The other thing I would say is that this  
19 apparently was enacted in 1997 a long time before  
20 Jessie's law went into effect, which is the code  
21 section 17 -- 16 3 655 which we're acting under  
22 today. And because they have enacted a special--

23 *THE COURT:* They just amended -- 655 has been on  
24 the books a long time. They just amended it with  
25 Jessie's law; didn't they?

1           *MR. FINNEY:* Well, I agree that they changed it  
2 substantially. From our point of view it is  
3 substantially a new law.

4           *THE COURT:* I understand that. But they also  
5 could have changed the other section that -- the  
6 corroboration section, and they chose not to do that.

7           *MS. MAYES:* For the record, Your Honor, State  
8 versus Shumpert, the 1993 case, one of the cases in  
9 which this particular statute was charged and has  
10 been upheld did involve criminal sexual conduct with  
11 a minor pursuant to 16 3 655.

12           I understand that it has been amended by the  
13 addition of the subsection which we are currently  
14 proceeding under. However, State's position is it  
15 would not change the scope or the effect of the law  
16 at all.

17           *THE COURT:* Okay. All right. I'll -- I don't  
18 see whether it's commenting on the facts at all in  
19 this case. I think it's part of the law and I will  
20 charge it.

21           *MR. FINNEY:* Subject to our objection. Thank  
22 you, Your Honor.

23           *THE COURT:* Subject to your objection. Anything  
24 else? Anything else before we bring the jury in?

25           *MS. MAYES:* No, sir, Your Honor.

1           *THE COURT:* All right. If you will get us the  
2 jury.

3           (Jury entered the courtroom at 1:50 pm.)

4           *THE COURT:* Mr. Snyder, I understand you're  
5 going to be the foreperson?

6           *FOREPERSON:* Yes, sir.

7           *THE COURT:* And your job as foreperson is simply  
8 to preside over the deliberation. And I will explain  
9 that to you in detail when I give you the charge.

10           Your vote is not any greater than anybody  
11 else's. Somebody's got to be in charge. And you  
12 will ultimately write the verdict down on the verdict  
13 form and sign your name to it and knock on the door  
14 and tell them -- the bailiff you have reached the  
15 verdict.

16           Now if y'all will pay close attention to the  
17 closing arguments of the attorneys. Are you waiving  
18 opening on the law?

19           *MS. MAYES:* Yes, sir, Your Honor.

20           *THE COURT:* Mr. Finney?

21           *MR. FINNEY:* Thank you, Your Honor. Ms. Mayes.

22                                   CLOSING STATEMENT

23           *MR. FINNEY:* Ladies and gentlemen, in June of  
24 2006 the people who make the laws in this state  
25 passed a law. They call it Jessie's law. And it was

1 a law that we hadn't had before. And I think it's  
2 one of the worst laws that I have ever seen as a  
3 lawyer.

4 It's a law that says that even though we have  
5 constitutions, state and federal, we have rules and  
6 regulations, we have all of these protections for a  
7 person who is accused of a crime -- under this  
8 particular law that was passed by the legislature in  
9 this state and in other states, the jury in a case  
10 where a man is charged with criminal sexual conduct  
11 from June 2006 going forward, the State has the right  
12 to bring in a prior conviction.

13 Now, how can it help you to determine what  
14 happened in the past as to what happened today? Why  
15 is it that on all kinds of other cases in South  
16 Carolina, stealing a car, killing a person, whatever  
17 else, that rule doesn't apply?

18 On this case it applies because we had a lot of  
19 people upset about the way our children were being  
20 treated, and they thought this was a good way of  
21 doing it. It's not. It's a poor law. But it is the  
22 law.

23 And the Judge is going to charge you that law in  
24 a few minutes. 16 3 655. You have to decide whether  
25 this man has been proved guilty by the State of South

1 Carolina with their evidence and their witnesses, and  
2 you get to know, oh, by the way, he had a conviction.

3 There's no way in the world that the human mind  
4 can separate that fact. They don't want you to  
5 separate it. They want you to know about it. It's  
6 part of the the law. It's a poor law.

7 In the mean time, that's the law we have got in  
8 this case. But we have also got something else. We  
9 have got the burden of proof and we have got  
10 something called reasonable doubt.

11 It's a standard that the Judge is going to tell  
12 you you have to use to together when you go back in  
13 that jury room and talk.

14 Now ladies and gentlemen, this wasn't an easy  
15 case when I took it, and I know it wasn't going to be  
16 an easy case to present because it's got issues  
17 involving an eight year old girl just as cute as a  
18 button. And Complainant did a great job.

19 But there's a problem. The State of South  
20 Carolina wants you to believe <sup>Complainant</sup> said it, the lady  
21 who went to see <sup>Complainant</sup> three days later -- <sup>Complainant</sup> went  
22 to see her three days after the report was made, saw  
23 her, Ricky's got a prior record. That's it. Let's  
24 go home. Ain't nothing else to talk about.

25 That's what they want you to believe. That

1 what's they want you to do, A, B, C, we're out of  
2 here.

3 So I have to do some things to show you that  
4 it's not like that because there are some rules and  
5 regulations which we have to test this evidence.

6 If you took <sup>Complainant's</sup> statement and looked at it,  
7 every time she made the statement, it changed. Every  
8 time. First of all, she didn't tell her mom and dad.  
9 All right.

10 Gwen Herod, expert witness number one, says that  
11 usually kids who get bothered, touched, assaulted by  
12 people they know don't tell for a long time. That is  
13 the general rule. That's what she told us. She's  
14 supposed to be an expert.

15 <sup>Complainant</sup> tells a friend, H.M. , her cousin, within  
16 an hour. We don't know what she said happened. She  
17 said Uncle Ricky touched me.

18 Well, ladies and gentlemen, when an eight year  
19 old says, Uncle Ricky touched me, does that mean he  
20 reached around on the back of the bike to check to  
21 see if baby E. was all right?

22 Does it mean he reached around there and grabbed  
23 her to see if she was all right? I don't know  
24 because the State of South Carolina didn't prove it  
25 in this case.

1           What we need is clear and convincing proof  
2           beyond a reasonable doubt. That is the standard.  
3           That is the job they accepted by bringing these  
4           charges against my client in 2007, eleven days after  
5           the little girl reported.

6           What did she tell happened? What did H.M.  
7           understand it? H.M. wasn't an adult. Here's an  
8           eight year old talking to a 10 year old. How do we  
9           know what H.M. understood the touch meant, Uncle  
10          Ricky touched me. What does that mean?

11          How did H.M. understand it? She probably  
12          didn't. She told her mama on the way home. All  
13          right. That's how the ball got rolling. We still  
14          dealing with here what happened.

15          H.M. 's mama told Complainant's mama. All right.  
16          Now, the -- still rolling. So now we had Complainant tell  
17          H.M. , H.M. tell Aunt May, Aunt May told mama.  
18          What do we know? Don't know much. Uncle Ricky did  
19          something.

20          What did he do? Not sure. So what's the first  
21          thing we do? We go get H.M. -- Complainant put her in a  
22          room, just me and mom talking.

23          Now ladies and gentlemen, I tried to pick the  
24          smartest jury I could. So did the State. I hope  
25          that you all have experience with kids because two

1 things came out in this trial that you can bet are  
2 sure about every kid in every place in this country.

3 Number one, kids like to make their parents  
4 happy. Gwen Herod, our expert, told you children try  
5 to please their parents. What is a little eight year  
6 old going to do when mama calls her in the bedroom  
7 all by herself at seven or 8:00 that night and closes  
8 the door and says, I just got a call from Aunt May  
9 and she said.

10 What's an eight year old going to do? I don't  
11 know. This eight year old told mama something. And  
12 what did mom and dad do? They went to sleep. They  
13 said goodnight.

14 They didn't call in the EMS. They didn't call  
15 any officers. They didn't go to the hospital. They  
16 didn't call Uncle Ricky. They didn't call Aunt Lisa.  
17 They went to sleep. That is a very strong indication  
18 as to what <sup>Complainant</sup> told them that night. It wasn't  
19 anything.

20 If <sup>Complainant</sup> had told these people -- these are  
21 people you met, and those are good people. That  
22 man's been in the military. She's an EMS tech.  
23 These are good people doing a good job raising their  
24 family, having a great life with the whole family up  
25 until these two little girls start something that

1 they don't know what they have started, messing with  
2 fire I guess what we like to say.

3 They go to bed. All right. The next day <sup>Complainant</sup>  
4 gets up early. Mama, I don't feel good, can't pee.  
5 Hurts to pee. All right. Mama's an EMS tech. Let's  
6 take her to the doctor, see what's going on.

7 Something was told by Aunt May the night before.  
8 Now she wakes up to pee -- automatic going to the  
9 hospital. 100 percent.

10 What do they find at the hospital? The doctor  
11 says no tears. No bleeding. Nothing. No discharge.  
12 No trauma.

13 Now, the State of South Carolina wants you to  
14 believe that this little girl was sexually assaulted  
15 and that evidence of that would have been available  
16 the night in question, but nobody called the night in  
17 question.

18 The next day at the emergency room. But the  
19 next day at the emergency room the doctor treated her  
20 for vaginitis. For some discomfort. Gave her some  
21 Monistat. Sent her home.

22 The Police Department of Sumter County sent her  
23 to a doctor three days later. The lady advocate that  
24 came to you, Kathy Saunders, was not a doctor. She's  
25 supposed to have a very fancy scope with a camera on

1           it that she brought you two pictures.

2           Ladies and gentlemen, I'm not a doctor, you're  
3           not a doctor. Look at the pictures. You're not  
4           going to see anything. This lady gave you an opinion  
5           of somebody she saw two times, once on the 27th and  
6           once a week later.

7           I asked her, how deep was the scratch? Don't  
8           know. How long had it been there? Not sure. Did it  
9           get caused by a sexual assault? Could be, could not  
10          be. That's not proof.

11          That's an advocate coming in here saying, yeah,  
12          we see this, could be, we don't know. We don't know  
13          because we didn't do anything on the 24th when it was  
14          reported, not a thing.

15          Hospitals in Florence, Charleston, Richland  
16          county, all over the State. This little girl wasn't  
17          worth going to those troubles because it was  
18          Christmas Eve? Fine. That's what we got.

19          The case they brought you is the proof that you  
20          have to decide. It's not your fault that it was  
21          handled this way. Is not Ricky's fault. This is the  
22          evidence. You have to decide the evidence. I want  
23          you to decide it fairly.

24          I wasn't there. You weren't there. The only  
25          thing you can do is weigh the evidence that was

1 brought to you. And if the evidence does not meet  
2 the standard, you have a job.

3 I'm sorry, not guilty. What will that do the  
4 next time an eight year old is in the emergency room  
5 in Sumter County? Do you think she might get treated  
6 better? Do you think she might see an expert  
7 quicker?

8 Do you think that the case might be a little  
9 better than having a six month old video and a three  
10 day old forensic exam? Do you think that if you're  
11 sent a verdict that we want better evidence, you'll  
12 get better evidence? I guarantee you you will.

13 But you go back in that jury room and you  
14 convict my client because he did something in 1993,  
15 you'll get the same old stuff all over the time every  
16 time they bring a case into this court.

17 That's how you make changes. You tell them to  
18 do their job. Everybody here has got a job. The  
19 Judge, you, me, Ms. Mayes.

20 What about the videotape of <sup>Complainant</sup> six months  
21 later? Ms. Haze -- Ms. Mayes goes through the RATAAC  
22 with Gwen Herod, our state expert. They got this  
23 procedure.

24 They want you to go through certain things with  
25 the child, get the child comfortable, go on to the

1 next level, get the child comfortable. That wasn't  
2 done.

3 You got -- it may be in evidence. I am not  
4 sure. She wrote it on the board, the response, the  
5 repore, the abuse scenario you're supposed to go  
6 through, the parts of the body.

7 Look at the tape. Everything that I asked you  
8 to consider, you go back in that jury room, you don't  
9 agree on it, ask the Judge to play the tape for you.  
10 Ask the Judge to show you the pictures. Ask the  
11 Judge -- everything that's in the record you can hear  
12 again.

13 Five minutes after getting in that room she  
14 asked the girl about, how you been, what you -- where  
15 did you get the blueberry stuff? And then the little  
16 girl said, do we have to talk about Uncle Ricky? And  
17 yes, we do.

18 What did that little girl do? She did the same  
19 thing she did in the emergency room when she was by  
20 herself with Gwen Herod. She gave the responses that  
21 she thought were appropriate that they were -- these  
22 adults were looking for.

23 Doesn't matter that there wasn't anything on the  
24 medical report that same day. Forget about what the  
25 doctor did. He didn't have the equipment. He's not

1           trained. He's a medical doctor, and he's not as  
2           trained at least as good?

3           Ladies and gentlemen, they keep talking about  
4           timeframe. The acute rape kit which would have  
5           happened if they had semen, if they had body fluid,  
6           they would have done an acute kit.

7           They didn't do any more to that little girl in  
8           the medical exam when they put a catheter up her  
9           bladder, when they checked her out, when they  
10          examined her and took her labs and blood pressure and  
11          all of that, they didn't do anything more than they  
12          would have done with the rape kit.

13          All they had to do was do the rape kit and we  
14          would have known some more things. They didn't do  
15          that. One of the things in the rape kit would have  
16          been that they would have got her panties.

17          How can you do an investigation on a little  
18          girl's sexual assault and you don't get the panties,  
19          not the day of the party, not the day that she's in  
20          the emergency room the next day, two days in a row.

21          This is an expert witness case. They need to  
22          look at the evidence. They didn't get it. It's not  
23          in evidence.

24          Gwen Herod gets the call from the dispatch, go  
25          to the hospital, we got a eight year old signal

1 three. That's police code for sexual assault. No  
2 camera, no tape recording, nothing.

3 She runs the parents out the room and says, I've  
4 got to talk to this little girl right now, I've got  
5 to find out what's going on. Goes back to her office  
6 and types up a statement.

7 The statement said that Uncle Ricky pulled my  
8 pants down and put his finger in it. That's the  
9 statement she gave on Saturday or Sunday morning  
10 after this -- the first time she talked to Gwen  
11 Herod.

12 That's not the statement she gave on the video.  
13 By the time six months had gone by, the story had  
14 changed that she was sitting on the back of the bike  
15 and Uncle Ricky reached back there and moved her  
16 panties aside and touched her like that. If they had  
17 interviewed her again, it probably would have changed  
18 again.

19 What we got here is <sup>Complainant</sup>. You have to look  
20 into whether her story is convincing and whether it's  
21 consistent. It isn't consistent because it changes.  
22 Whether it's convincing, I don't know, because here  
23 is what <sup>Complainant</sup> says.

24 <sup>Complainant</sup> says, me and Uncle Ricky went out on the  
25 bike, we had baby E. , and one time I was driving,

1 one time he was driving. . She never told Gwen Herod  
2 that in the statement at the emergency room.

3 That was a new part of the story that she said  
4 on the video, which she said again in court today or  
5 yesterday.

6 What about <sup>Complainant</sup> riding the bike? Yeah, she was  
7 out there riding the bike. And she said that the  
8 bike never stopped on the trail. If you don't  
9 believe me, ask the Judge to let you listen to the  
10 testimony. It's on the record.

11 The way she remembered it in court was that the  
12 bike never stopped on the trail. You have seen the  
13 trail. You know how big the bike is and you know  
14 that the baby was back there.

15 But the worst part is that her other statement  
16 that she gave said that the bike stopped, and she --  
17 and she was stopped. She was lifted up or her pants  
18 were -- panties lifted down. That's what Gwen Herod  
19 was talking about her doing on the video. Gwen had  
20 to stop her.

21 And let me say this while I'm thinking about it.  
22 Gwen Herod said two things that are absolutely true.  
23 Children try to please their parents. She also said  
24 you cannot ask leading questions on these kind of  
25 interviews, you got to let the child lead.

1 Ladies and gentlemen, if you don't believe me,  
2 look at the video. Gwen Herod led this child  
3 throughout that interview. She led the child to the  
4 parts that she wanted to have on the record so they  
5 could come to court and get this man who had done  
6 this before. It's easy for them to do that.

7 And so the child -- they asked leading  
8 questions. She said to the baby, when did he pull  
9 down your pants? The baby hadn't said nothing about  
10 pulling the pants down.

11 Gwen put that on the table. And guess what the  
12 baby said. No, I was sitting on the back of the  
13 bike. He moved my underwear and put his fingers in.

14 Time after time after time after time this case  
15 doesn't come together. It doesn't make sense.  
16 What's the most important thing about this case that  
17 doesn't make sense? All of these people were getting  
18 along.

19 They had known Ricky for years, not weeks, not  
20 months. This is an '05 picture. February of '05  
21 picture of Ricky with the babies at his house.  
22 Having a great time.

23 This is an '02 picture, going out showing the  
24 girls, how the geese looked, what's going on in the  
25 world. Doing nice things with them. Taking them

1 presents.

2 That's the most inconsistent thing that the  
3 State has to not -- don't think about that -- because  
4 he's got a prior record, ladies and gentlemen, you  
5 don't have to worry about what kind of person he has  
6 become, what he was trying to do with his life.

7 Maybe he made a mistake in the past. They don't  
8 believe that people can change? This man is going to  
9 come an hour in the minivan with his family. He's  
10 going to come to a party bearing gifts.

11 They are going to have a great time. They're  
12 going to eat together, laugh together, open presents  
13 together. Then they're going to ride on the  
14 four-wheelers with the kids and he's going to go out  
15 on the trail all of a sudden and pull somebody's  
16 pants down and put his fingers in there, and he's a  
17 convicted person?

18 And within five minutes this little girl is  
19 going to be going back to her mama, and he doesn't  
20 know if she's going to cry, bleed, scream, throw up?  
21 He's just going to do this, ladies and gentlemen?

22 It doesn't make any sense, ladies and gentlemen.  
23 I'm asking you, get past the sympathy for <sup>Complainant</sup>. Get  
24 past the shock of my client having a prior record and  
25 look at the facts.

1           There are no facts here that this man did this.  
2           There's just suspicion, and that's not enough to  
3           convict him. Please go back and talk about this in  
4           your jury room, but don't get bogged down on the  
5           sticky stuff.

6           She's cute. She wouldn't lie. He's -- a prior  
7           record -- don't get bogged -- the facts are in the  
8           middle of this case, and they don't make sense  
9           because he wouldn't have done this.

10          Why didn't they try to talk to Ricky for 11 days  
11          after this incident? They had already made up their  
12          mind. They were coming to get him.

13          How long did it take them to find out he had a  
14          prior record? I don't know. Probably that day that  
15          she was in the hospital. Certainly by the day -- by  
16          the time she went to -- to see the doctor that's --  
17          the nurse at the Children's Health Center, Kathy  
18          Saunders. Certainly by then they knew. They were  
19          coming to get him.

20          Don't get bogged down because <sup>Complainant</sup> got  
21          different versions. Kids give different versions.  
22          Doesn't mean that she's telling the truth about it.  
23          Doesn't mean that she understood what she was saying.

24          Kids often say something that means one thing to  
25          them, means something totally different to the

1 adults, especially police.

2 Let me make this point before I sit down. We  
3 have heard from Gwen Herod, Kathy Saunders, and other  
4 witnesses. These are police officers. Excuse me.  
5 Gwen Herod works for the police officers.

6 Kathy Saunders is a advocate for children who  
7 does nothing, nothing but child abuse cases. She's  
8 done 5000 of them, and she's a young woman. That  
9 will tell you the perception that they bring to their  
10 job. You have to be aware of that.

11 You don't bring that perception because you're  
12 not a law enforcement person. If you were, I  
13 wouldn't have put you on the jury because I know  
14 perceptions matter.

15 I'm a defense lawyer. I have a different  
16 perception of things than the Solicitor does. We all  
17 have perceptions. That's why we've got 12 people on  
18 the jury and not one, because y'all get to talk about  
19 it and explain to each other how it could have  
20 happened other than what the jury heard from these  
21 witnesses.

22 That is why we have a system of juries who weigh  
23 the evidence and decide together. It's a great  
24 system and it works fine. But you have to do your  
25 job.

1           Final thing I need to talk to you about is the  
2           law. The Judge in this case is going to charge you  
3           the law after Ms. Mayes. He's going to tell you  
4           things about reasonable doubt and how you weigh  
5           things like in a scale, and if you have a doubt about  
6           whether something occurred the way it's supposed to,  
7           you have to resolve that doubt in favor of the  
8           defendant, my client, Mr. Welch.

9           That means you give him the benefit of the  
10          doubt. If you have a -- a doubt about something, if  
11          you have something that doesn't make sense, you can't  
12          make it fit, that is a reason for you to stop and  
13          write on that paper, we the jury find the defendant  
14          not guilty.

15          That's what the system says. That's what your  
16          job says. You have to do your job. You have to do  
17          that. Give him the benefit of the doubt.

18          One of the things the Judge is going to talk  
19          about is mental intent. It's called criminal intent.  
20          In order for you to find my client guilty of this  
21          charge -- he's charged with two crimes.

22          You don't have to find him guilty of both. You  
23          don't have to find him guilty of anything. You can  
24          find him guilty of one and not guilty of one.

25          But in this case the dividing line is the

1 criminal sexual conduct requires that you find that  
2 he touched <sup>Complainant</sup> in her private area with the intent  
3 to violate the law, that he -- he knew what he was  
4 doing was wrong.

5 The other side of the line is called lewd act.  
6 It means he touched her on her shirt or on her bottom  
7 or something like that, they don't know. They just  
8 put that one in because if they can't get him on the  
9 big one, they got a little hook out there that you  
10 might want to compromise and say, well, we're not  
11 just going to send him home, we're going to put this  
12 little charge on him. No.

13 The burden of proof is the same. As a matter of  
14 fact, it's -- facts are the same. They just don't  
15 know which one you might want to consider. So they  
16 gave you both to consider.

17 But it's the same evidence on both except that  
18 on one you have to prove from touching on the inside.  
19 The other one you don't have to prove that.

20 Listen to the Judge. He's going to explain this  
21 to you. Two charges. You have got to weigh them  
22 both.

23 Mental intent -- what I was talking about --  
24 also known as criminal intent. The State has to  
25 prove that.

1           Now, the State's going to tell you they're going  
2 to prove the mental intent was he did it before.  
3 That's bad. That has nothing to do with this.

4           He was at the party. He was riding on the bike  
5 with <sup>Complainant</sup>. They were having a great time. What  
6 happened after he left the party and for the next 11  
7 days he doesn't know anything about.

8           But I wanted to call him and let him testify to  
9 tell you what he knew because all he knew was what he  
10 told you. We had a great relationship. We were  
11 looking forward to a great Christmas. And 11 days  
12 after this party was over, he was on his way to jail.

13           And all he knows is what we have been able to  
14 show you in court for the last two days. This little  
15 girl says something happened.

16           The last thing I'm going to say to you is that  
17 you have to return a unanimous verdict. All 12 of  
18 you have to agree. This is not a time for being  
19 Mr. Nice Guy or Mrs. Nice Person.

20           This is not a time for saying, well, there's  
21 seven people who say this and five people, I'll just  
22 go with the majority.

23           Each one of you is a judge. Each one of you has  
24 got on a badge that could very well be a black robe.  
25 You judge the facts of this case. You judge the

1           credibility of the witnesses. You judge the  
2           believability of the witnesses.

3           You judge everything about this case and come up  
4           with a decision that you can live with. And if your  
5           verdict is different -- if your decision is different  
6           than somebody else, that's why you talk. That's why  
7           you discuss.

8           But you stick by what you believe because this  
9           is far too important. This case is much bigger than  
10          the people in this courtroom.

11          Complainant is already riding her new bike. People  
12          have already gone to graduations and getting ready  
13          for the next school year, and life has gone on for  
14          everybody for the last two years.

15          But this is very important. You have to decide  
16          now whether this job has been proven to you, this  
17          case has been proven to you beyond a reasonable  
18          doubt.

19          And if it has not, after you talk and after you  
20          look and after you discuss, if it doesn't fit  
21          together, give my client his life back. Thank you.

22          THE COURT: Okay. Can y'all approach just a  
23          minute?

24          (Whereupon a bench conference was held.)

25          MS. MAYES: May it please the Court.

## 1 CLOSING STATEMENT

2 MS. MAYES: Ladies and gentlemen of the jury,  
3 first I want to thank each of you for the careful  
4 attention that you have paid throughout this trial on  
5 behalf of the State, and I'm sure on behalf of all  
6 the different parties involved in this case.

7 Throughout the last two days I have watched each  
8 of you and noticed how carefully you have listened to  
9 each witness and evaluated the testimony, the  
10 evidence before you.

11 Mr. Finney is an excellent attorney. And I'm  
12 sure that there are many different ways to look at  
13 this case. But I listened carefully to his argument,  
14 and I took from it one central thing.

15 That the voice of a child means nothing or so he  
16 would have you believe. But that's not the law of  
17 the State of South Carolina nor will it ever be,  
18 because the voice of a child matters especially when  
19 it comes from here.

20 And you heard in this case the testimony of  
21 Complainant , someone who was there on  
22 December 23rd, somebody who felt it, somebody who saw  
23 it, and somebody who experienced it.

24 And ladies and gentlemen, I submit to you that  
25 Complainant's testimony alone, even if she had been the

1           only witness offered by the State, her testimony  
2           alone is sufficient evidence in this case to find  
3           William Welch guilty beyond a reasonable doubt.

4           But in this case there is so much more. In this  
5           case there is undisputed, uncontroverted medical  
6           evidence that was consistent with a digital  
7           penetration, penetrating injury. And we know how  
8           that happened to<sup>Complainant</sup>.

9           You know, the thing about sexual assault crimes,  
10          especially sexual assault crimes against children I  
11          submit, thing that makes it so difficult within the  
12          criminal justice system and even outside of the  
13          criminal justice system is that these are secret  
14          crimes.

15          These are not crimes that are like the burglary  
16          cases and the armed robbery cases and things like  
17          that that are often on criminal dockets.

18          You know, in a burglary case a lot of times you  
19          come into court and you have fingerprints that were  
20          left behind at the crime scene. Or in an armed  
21          robbery case sometimes you have the videotape that  
22          was rolling in the convenience store when the robber  
23          was in there, and it's a matter of providing the  
24          fingerprints or the videotape to the jury.

25          But these child abuse crimes are not like that,

1 almost never. Because an offender such as William  
2 Welch finds an opportunity when he has a child alone  
3 or without witnesses. And when he has an  
4 opportunity, he takes it. And that is exactly what  
5 happened in this case.

6 And it's also a situation that's often shrouded  
7 in secrecy and lies. And you heard his testimony  
8 that everybody knew about his record, and that is  
9 absolutely not the case as you heard from the  
10 testimony of Complainant's parents.

11 Think about when you evaluate the credibility of  
12 the witnesses, who had something to gain and who had  
13 something to lose.

14 And ladies and gentlemen, Complainant has  
15 absolutely nothing to gain by coming in this  
16 courtroom and saying that about him. Absolutely  
17 nothing to gain.

18 In fact, she has so much to lose even by telling  
19 about what happened to her. She had to go through  
20 how many medical exams, not just the doctor's  
21 check-up where he comes in and listens to her  
22 heartbeat.

23 These are medical exams which result in  
24 discomfort and embarrassment, especially for a child  
25 that age. And then on top of that to have to deal

1 with the -- what the people in her family know, how  
2 many people around her know, how many people at  
3 school know, and how did she have to suspend her  
4 Christmas? Her Christmas Eve was in an emergency  
5 room.

6 And then to come into this courtroom before you  
7 12, 14 strangers and talk about the most shameful and  
8 embarrassing of experiences. And why would she do  
9 that? Because it's the truth.

10 And no matter what, it would have been the  
11 easiest thing in the world to say, you know what,  
12 let's -- let's just forget it, I'm not going to talk  
13 about what Ricky did.

14 Even when he told her not to tell, she knew she  
15 needed to tell because throughout it all, one thing  
16 stands like stone, he did it. He did it. And  
17 there's no other reasonable explanation for why we  
18 are here.

19 When we talk about the law -- and the Judge is  
20 going to charge you on that momentarily -- it's  
21 actually very simple. All of these counts before you  
22 are actually quite simple in -- as far as proving of  
23 the elements go.

24 But one of the things that he's going to charge  
25 you on is about evaluating the credibility of

1 witness.

2 In addition to Complainant's testimony, which I submit  
3 has been -- she has been consistent throughout. She  
4 has always maintained what happened, who did it, and  
5 where it happened.

6 And if there's any question at all about any of  
7 the testimony, you can certainly ask to re-hear  
8 testimony. You can certainly ask to view any of the  
9 evidence that's already in the record, which includes  
10 Complainant's videotaped view.

11 One of the -- one of the things that you have  
12 heard is the testimony of Gwen Herod who talked about  
13 when she was at the emergency room and interviewed  
14 Complainant for the first time.

15 And I noted a discrepancy in Mr. Finney's  
16 argument to you when he said that somewhere on that  
17 date Complainant had stated that he pulled her pants down.  
18 That is absolutely nowhere in Mrs. Herod's testimony  
19 about what was said at the emergency room.

20 Complainant has always maintained that his hand was in  
21 her underpants, and that on the videotape where she  
22 explained exactly how he got into her underpants, and  
23 things like pulling underpants down or moving them  
24 aside, however it is interchangeable for an eight  
25 year old, and I ask you to look at this through the

1 eyes of an eight year old who is explaining it in  
2 their own language and their own words.

3 Pulling down, moving aside, it's all the same  
4 thing in the mind of an eight year old. All she  
5 knows is she was on the four-wheeler and the next  
6 thing that happened is Ricky has his hand in her  
7 underpants. That's the thing that the child  
8 remembers.

9 Do they get pulled down while he's putting his  
10 hand in there? Do they get pushed aside? Does any  
11 of that really matter when you're eight years old and  
12 it's happening to you?

13 What she has always known is his hand was in her  
14 underpants, and she's always been consistent about  
15 that. And she showed you from the witness stand how  
16 that happened as well.

17 When we talk about the medical evidence, I ask  
18 you to consider that both Dr. Clanton from the  
19 emergency room and also Kathy Saunders who did her  
20 follow-up exam confirmed that she had healing tissue  
21 located in this area just at the vaginal opening.

22 And the testimony, which again is  
23 uncontroverted, is that that healing tissue is  
24 consistent with trauma. And as Kathy Saunders  
25 explained, this isn't the kind of trauma that a child

1 gets from playing outside or riding a four-wheeler or  
2 any of those things.

3 She had been riding that four-wheeler most of  
4 her life. As Kathy Saunders explained, this is a  
5 penetrating injury. It's an internal injury  
6 consistent with digital penetration and him putting  
7 his finger inside of her vagina. That's what caused  
8 this injury.

9 And ladies and gentlemen, there's no other  
10 reasonable explanation for how the injuries were  
11 received. And the fact that Kathy Saunders' exam  
12 actually occurred approximately four days after the  
13 injury is a good thing because, as Dr. Clanton  
14 explained, when he saw her, she was feeling --  
15 feeling the pain of the trauma, especially upon  
16 urination when the acid that's in the urine would hit  
17 the part of the body that had been traumatized.

18 And he tested her to see if she had a urinary  
19 tract infection, and she was negative for infection.  
20 She didn't have one. And so what was causing the  
21 pain was the combination of urinating in addition to  
22 the traumatized area.

23 But the injury was still so fresh that he was  
24 not yet able to see the healing tissue which usually  
25 occurs within the next two to eight days.

1           And so on the fourth day she sees Dr. Kathy  
2           Saunders -- or excuse me -- she sees Kathy Saunders  
3           who does her medical exam, and that's when Kathy  
4           Saunders was able to visualize with the aid of the  
5           culposcope -- which has the magnifying glass and the  
6           camera -- she was able to view the internal injury  
7           here within what's called the posterior fourchette,  
8           the entrance of the vagina.

9           And ladies and gentlemen, that healing tissue  
10          there is conclusive evidence of the injury that  
11          occurred as a result of Mr. Welch's actions.

12          I'm going to talk to you just briefly about the  
13          law. And one of the charges that you will get is  
14          going to be a charge on reasonable doubt. And I  
15          submit to you that reasonable doubt is not just any  
16          doubt. It's not just a fanciful doubt.

17          And in this case there isn't reasonable doubt  
18          because the evidence is more than sufficient to leave  
19          you firmly convinced. The first offense is what we  
20          call criminal sexual conduct with a minor in the  
21          first degree.

22          And the elements of this particular offense are;  
23          one, that an act of sexual battery occurred. And  
24          sexual battery includes the act of digital  
25          penetration or insertion of a finger into the vaginal

1 opening, however slight.

2 So it's not upon the State to prove that there  
3 was full penetration or how -- to what degree there  
4 was partial penetration, only that there was some  
5 intrusion however slight.

6 And as previously stated, the injury that <sup>Complainant</sup>  
7 received was clearly within the interior portion of  
8 the vaginal opening. I submit to you that's -- that  
9 element has been proven beyond a reasonable doubt.

10 Secondly, that it occurred to a child under 16,  
11 which without question we know that <sup>Complainant</sup> was eight  
12 years old when this particular offense happened.

13 And the final element is that the offense was  
14 committed by a convicted sex offender. And you heard  
15 the testimony again, undisputed, that Mr. Welch is in  
16 fact a convicted sex offender pursuant to Title 23  
17 which the Judge will charge you on momentarily.

18 The next charge before you is what we call lewd  
19 act upon a child. And lewd act basically means  
20 improper touching or fondling.

21 It does not require any degree of penetration.  
22 It does not have to be inside the clothing. It can  
23 be outside the clothing. And it can occur almost  
24 under any circumstances.

25 An additional element is that the child was

1 under 14, which <sup>Complainant</sup> is, that the perpetrator is  
2 over 14, which he is, and that it was done with lewd  
3 intent.

4 And ladies and gentlemen, there is no question  
5 that for an adult male to stick his hands inside the  
6 underpants of the child and repeatedly commit the act  
7 of penetration, that that would be beyond a  
8 reasonable doubt with lewd intent.

9 Some of the testimony you heard I submit is  
10 exactly what is to be expected in a case like this, a  
11 child sexual assault case. You know, <sup>Complainant</sup> first  
12 disclosed to her cousin, who is H.M. .

13 And one of the things she said to H.M. was  
14 that she wanted her to keep it a secret. And just  
15 how it all flowed with -- beginning with Mr. Welch  
16 telling <sup>Complainant</sup> not to tell anybody. And you heard  
17 what she said to that.

18 I shook my head that I wouldn't tell, but deep  
19 down she was going to tell, and she knew that she  
20 needed to tell. But because of what he said to her,  
21 there's still that little doubt about, should I keep  
22 it a secret. He's telling me to keep it a secret.

23 And so she tries to go on about her day as  
24 normal. She ends up on the four-wheeler with her  
25 cousin H.M. and then H.M. says, she got dead

1           serious, dead serious, which was unusual for <sup>Complainant</sup>,  
2           and she -- that's when she told her about what Ricky  
3           had done.

4           And as H.M.     said, she knew that she had to  
5           tell a grown-up. She knew that was the right thing  
6           to do and that that needed to be done.

7           And then when it came out to the parents -- and  
8           you heard the testimony from <sup>Complainant's</sup> mom about how  
9           scared she was and how timid she was in having to  
10          relay what had happened to her.

11          There was no malicious intent even by the  
12          parent. There was no rush to judgment by them in  
13          terms of wanting to pain him or go confront him  
14          angrily -- like I submit I'm sure many many a parent  
15          would want to do, and perhaps even rightfully do in  
16          that situation.

17          But they waited and let the police do their job.  
18          And there was no rush to judgment by the police. The  
19          testimony is that after <sup>Complainant's</sup> interview on  
20          Christmas Eve in which she identified him as the  
21          perpetrator, the police still waited until she had  
22          her medical exam and evidence was found consistent  
23          with the penetrating injury.

24          And even after that is when a warrant was  
25          obtained for Mr. Welch. Nobody ran out the hospital

1 emergency room waiting doors to go get a warrant on  
2 Mr. Welch.

3 They waited and let law enforcement do their  
4 job. The family put their trust in law enforcement,  
5 and there has never been any malicious intent where  
6 Mr. Welch is concerned, no ax to grind, no reason,  
7 absolutely no reason to make this up.

8 And everybody agrees that <sup>Complainant</sup> trusted him and  
9 thought of him as an uncle. Absolutely no reason to  
10 say this except that he did it.

11 You have before you the most noble of  
12 opportunity, the chance to strike back against  
13 injustice and deliver a verdict which speaks the  
14 truth.

15 You are the conscience here now as to what crime  
16 will be tolerated in Sumter County. And I ask you to  
17 send a message to this defendant, William Welch, that  
18 this crime will not and cannot be tolerated in Sumter  
19 County.

20 William Welch is guilty as charged of criminal  
21 sexual conduct with a minor in the first degree and  
22 guilty of lewd act upon a child.

23 You do not have to pick between the charges.  
24 Both charges are before you. He can be convicted of  
25 both charges. And I submit he is beyond a reasonable



1 indicates or designates you the exclusive judge of  
2 the facts in this case makes me the exclusive judge  
3 of the law in this case.

4 Therefore, if you have an opinion as to what you  
5 think the law is or what you think the law ought to  
6 be and it differs from what I now tell you the law  
7 is, you must disregard that opinion and apply the law  
8 exactly as I give it to you.

9 The fact that this defendant was arrested,  
10 charged, and indicted in this case is not evidence in  
11 this case and cannot be considered by you as evidence  
12 of guilt in this case nor does it create any  
13 presumption or inference of guilt.

14 The indictment is simply the formal written  
15 instrument which contains the charges made against  
16 this defendant that serves as the formal document to  
17 bring those charges in this courtroom.

18 To this indictment the defendant has entered a  
19 plea of not guilty. And this plea casts the burden  
20 upon the State of South Carolina to prove each and  
21 every element of this offense beyond a reasonable  
22 doubt.

23 A person charged with a criminal offense in  
24 South Carolina is never required to prove himself or  
25 herself innocent. It's an important rule of law in

1           this country that the defendant in a criminal trial  
2           will always be presumed innocent of the crime for  
3           which he is indicted unless and until his guilt has  
4           been proven by evidence that satisfies you of that  
5           guilt beyond a reasonable doubt.

6           The presumption of innocence is not a mere legal  
7           theory. It is not just a legal phrase. It is a  
8           substantial constitutional right to which every  
9           defendant is entitled.

10          This presumption of innocence accompanies this  
11          defendant from the time he's charged throughout the  
12          trial and until you reach a verdict of guilt based on  
13          the evidence that satisfies you of his guilt beyond a  
14          reasonable doubt.

15          Now, a reasonable doubt is a doubt which makes  
16          an honest, sincere, conscientious juror in search of  
17          the truth to hesitate to act.

18          Proof beyond a reasonable doubt must therefore  
19          be proof of such convincing character that a  
20          person -- that a reasonable person would not hesitate  
21          to rely and act upon it in the most important of his  
22          or her own affairs.

23          Proof beyond a reasonable doubt can also be  
24          described as proof that leaves you firmly convinced  
25          of the defendant's guilt.

1           There are very few things in this world that we  
2 know with absolute certainty. And in a criminal  
3 case, the law does not require proof that overcomes  
4 every possible doubt.

5           If based on your consideration of the evidence  
6 you are firmly convinced that the defendant is guilty  
7 of the crime charged, you must find him guilty.

8           If on the other hand you think there's a real  
9 possibility that he's not guilty, you must give him  
10 the benefit of that doubt and find him not guilty.

11           In determining the facts in the case, you must  
12 necessarily pass upon the credibility, which simply  
13 means the believability of the witnesses and the  
14 value or weight to be given to their testimony.

15           You alone must decide the force and effect, the  
16 truth of their testimony. In making this decision,  
17 there are many things that you may consider.

18           One, the appearance and manner of the witness on  
19 the stand, sometimes referred to as the demeanor of  
20 the witness. Was the witness forthright or hesitant.  
21 Was the witness's testimony consistent or did it  
22 contain discrepancies.

23           What was the ability of the witness to know the  
24 facts about which he or she testified. Did the  
25 witness have cause or reason to be biased or

1 prejudiced in favor of the testimony he or she gave.

2 Was the witness's testimony corroborated or made  
3 stronger by other evidence or was it made weaker or  
4 impeached by other evidence.

5 Now, the rules of evidence don't ordinarily  
6 permit a witness to testify to opinions or  
7 conclusions. An exception to this rule exists for  
8 witnesses we call expert witnesses.

9 A witness who by education and experience has  
10 become an expert in some art, science, profession or  
11 calling may state an opinion as to relevant material  
12 matters in which the witness claims to be an expert  
13 and may also give reasons for that opinion.

14 You should consider any expert opinion received  
15 in evidence in this case like any other evidence,  
16 give it the weight you think it deserves.

17 If you decide an opinion of an expert is not  
18 based on sufficient education and experience or if  
19 you conclude that the reasons given in support of  
20 that opinion are not sound or that opinion is  
21 outweighed by other evidence, you may disregard the  
22 opinion in its entirety.

23 An expert's testimony is to be given no greater  
24 weight than any other witness simply because that  
25 person is an expert. Further, you are not required

1 to accept an expert's opinions even though it was  
2 uncontradicted.

3 As jurors, you have the right to believe a small  
4 portion of the witness's testimony and disregard the  
5 larger or vice versa.

6 You are able to believe all of the witness's  
7 testimony or none. You may believe the testimony of  
8 a single witness against that of many or the other  
9 way around.

10 Now, there are two types of evidence which  
11 generally are presented during a trial, direct and  
12 circumstantial.

13 Direct evidence is the testimony of a person who  
14 asserts or claims to have actual knowledge of a fact  
15 such as an eye witness.

16 Circumstantial evidence is proof of a chain of  
17 facts and circumstances indicating to the existence  
18 of a fact.

19 The law makes absolutely no distinction between  
20 the weight or value to be given either direct or  
21 circumstantial evidence. There is not necessarily a  
22 greater degree of certainty.

23 Let me explain to you a little bit about  
24 circumstantial and direct evidence. If I go to bed  
25 tonight, look out my front lawn, it's clear. I wake

1 up in the morning and it's covered in snow.

2 I didn't see it snow. But I can derive that  
3 sometime during the night while I was asleep it  
4 snowed outside because the circumstances the next  
5 morning, there was snow everywhere.

6 Now, if I'd have seen it snow, that's direct  
7 evidence. I saw it snow. And circumstantial  
8 evidence, I didn't see it snow, but based on the  
9 circumstances, I can make certain presumptions or  
10 conclusions that it must have snowed while I was  
11 asleep that night.

12 That's the difference between direct and  
13 circumstantial evidence. And after weighing all of  
14 the evidence if you're not convinced of the  
15 defendant's guilt beyond a reasonable doubt, you must  
16 find him not guilty.

17 Now, criminal intent is a necessary element of  
18 each crime that must be proven by the State beyond a  
19 reasonable doubt. Criminal intent is always a matter  
20 that must be determined by the jury from the  
21 circumstances surrounding the situation.

22 There is no way to prove intent to a  
23 mathematical certainty. There is no way medical  
24 science can dissect a person's brain and determine  
25 what he or she had in mind.

1           So the law states criminal intent may be  
2           inferred from the circumstances shown to have existed  
3           both before and after the fact. This is how you the  
4           jury make a determination of whether or not the  
5           element requiring intent was present.

6           Criminal intent is a state of mind that operates  
7           jointly with an act or omission in the commission of  
8           a crime. Criminal intent is a mental state of  
9           conscious wrongdoing.

10          So it's up to you, the jury, to determine what  
11          the defendant intended to do based on the  
12          circumstances shown to have existed.

13          I tell you that the State must prove criminal  
14          intent beyond a reasonable doubt just like the State  
15          must prove every element beyond a reasonable doubt.

16          Now, the defendant is charged with first degree  
17          criminal sexual conduct with a minor. The State must  
18          prove beyond a reasonable doubt that the defendant  
19          engaged in a sexual battery with the victim.

20          A sexual battery is sexual intercourse,  
21          cunnilingus, fellatio, anal intercourse, or any  
22          intrusion, however slight, of any part of the  
23          person's body or any object into the genital or anal  
24          openings of another person except that in -- the  
25          intrusion is -- when the intrusion is accomplished

1 for medically diagnostic reasons.

2 The State must then prove beyond a reasonable  
3 doubt that the victim was less than 16 years of age  
4 and that the actor had been previously convicted or  
5 pled guilty or nolo contendere to or adjudicated  
6 delinquent for an offense listed in section 23 3  
7 40 -- 30 of the South Carolina code of laws.

8 And I instruct you that that particular code of  
9 law deals with sexual register crimes and that  
10 criminal sexual conduct with a minor in the first  
11 degree is listed under section 23 34 40 -- I mean  
12 430C of South Carolina code.

13 Consent, willingness, indifference or ignorance  
14 on the part of the minor, if any, as to what was  
15 taking place does not in any way effect the charge of  
16 criminal sexual conduct with a minor because an  
17 unmarried woman under the age of 16 cannot legally  
18 consent to sexual intercourse.

19 The defendant's also charged with lewd act upon  
20 a minor. The State must prove beyond a reasonable  
21 doubt that the defendant was over the age of 14.

22 Next the State must prove that the defendant  
23 willfully and lewdly committed or attempted a lewd  
24 and lascivious act on or with the body or the parts  
25 of a child -- or its parts of a child that's under

1 the age of 16 years with the intent to arouse, appeal  
2 to, or ratify the lust, passion, or sexual desires of  
3 the defendant or the child.

4 Willfully means voluntarily and intentionally.  
5 Specific intent to do something the law forbids.  
6 Lewd means obscene, lustful, indecent, or lascivious.

7 Lascivious means intent to incite lust, lewd,  
8 innocent -- I am sorry -- lust, lewd, indecent,  
9 obscene or intending to deprive the morals and  
10 respect of the sexual relations.

11 Now ladies and gentlemen, you're not partisans  
12 or advocates for the State of South Carolina or this  
13 defendant. Clearly you're not here to reward your  
14 friends or punish your enemies. That system of  
15 justice would not be tolerated.

16 You have been selected by both the State and  
17 this defendant to be -- as fair and impartial jurors.  
18 It is your duty then by your joint deliberations to  
19 determine the truth in this case giving to this  
20 defendant the benefit of every reasonable doubt on  
21 each and every issue.

22 Then to the facts which you determine to be true  
23 apply the law that I have now given to you and arrive  
24 at a verdict which speaks the truth.

25 When you have accomplished these

1           responsibilities, you will have satisfied your oath  
2           as jurors and you will have discharged your duty to  
3           this court.

4           Now, I'm going to instruct you about the verdict  
5           form. And this is -- this form I had my Law Clerk  
6           type up, it's simply the caption of the case and  
7           the -- the two -- or the possible verdicts that you  
8           may reach.

9           Number one, we the jury unanimously find the  
10          defendant, William Ricky Welch, guilty of criminal  
11          sexual conduct with a minor in the first degree or  
12          not guilty of criminal sexual conduct with a minor  
13          first degree.

14          Number two, we the jury unanimously find the  
15          defendant, William Ricky Welch, guilty of committing  
16          or attempting to commit a lewd act on a minor or not  
17          guilty of committing a -- or attempting to commit a  
18          lewd act on a minor.

19          Then the bottom says, I certify this is a  
20          unanimous verdict or a unanimous decision of the  
21          jury, and you will sign it as foreperson and date it.

22          Now, the order that I have put this in you're to  
23          draw no inference from at all. I had to put it in  
24          some order.

25          You simply -- once you have reached a unanimous

1 verdict, the foreperson will check the appropriate  
2 box, sign his name, which means it is a unanimous  
3 verdict, date it, and knock on the door, and we will  
4 bring you out and receive your verdict.

5 Now, while y'all are deliberating, if one of you  
6 have to be excused, one of you have to get up and go  
7 to the restroom, whatever, you must stop your  
8 deliberation.

9 All twelve of you must be present the entire  
10 time you're deliberating. So if somebody has to step  
11 out, just stop talking about the case till they come  
12 back and then resume your deliberations till you have  
13 reached a verdict.

14 And then -- it's very important that you knock  
15 on the door. I had a case one time that -- I was not  
16 the Judge, but the Judge forgot to tell the jury  
17 that.

18 They sat back there 10 hours waiting on the  
19 Judge to get them out. They didn't tell them to  
20 knock on the door. When you have reached a verdict,  
21 please knock on the door because we don't know until  
22 you let us know.

23 Now, the law also requires now that I consult  
24 with these attorneys to be sure that I have not left  
25 anything out. So what I'm going to do is send you to

1 the jury room, consult with the attorneys.

2 If I have left something out, I will bring you  
3 back out and charge you further on the law. If I  
4 have not, then I will send the evidence in along with  
5 this plea sheet -- I mean -- I'm sorry -- along this  
6 sentence sheet, and when you get -- I still messed  
7 that up -- along with the verdict form.

8 When you get this verdict form, that means you  
9 can start your deliberation. And so now -- the  
10 original 12 of you can go. Everybody seems to be  
11 healthy, so the two alternates, I know y'all sat here  
12 all week, but you won't get to go in the jury room at  
13 this point.

14 But if you go to the jury room, I will either  
15 bring you back out or I will send the verdict form in  
16 with the evidence and you can start your  
17 deliberations.

18 *JUROR:* Your Honor, if we have a question, what  
19 is the form...

20 *THE COURT:* If you have a question, you will  
21 write that question down on a piece of paper, give it  
22 to the bailiff, and he will bring you back into the  
23 court and we will deal with that question.

24 Understanding if you want to hear evidence or  
25 have something played back, you have a right to do

1 that. I cannot answer a question of fact.

2 You have heard all of the evidence you're going  
3 to hear in this case. I can only answer questions of  
4 law. So if you need a clarity of the law, I can  
5 answer that question.

6 If you want me to -- ask me a question about the  
7 facts of this case, I can't answer that question, and  
8 nobody else can because you have heard the evidence  
9 in this case.

10 Don't -- we can re-play evidence for you, but I  
11 can't answer any questions of evidence. You  
12 understand? Okay?

13 (Jury left the courtroom at 2:51 pm.)

14 *THE COURT:* Are there any exceptions or  
15 additions on behalf of the State?

16 *MS. MAYES:* No, sir, not as to the charge. I do  
17 believe we have a redaction that's going to need to  
18 be done as to one exhibit.

19 *THE COURT:* Okay. And that's that -- the  
20 sentencing sheet or the... okay.

21 *MS. MAYES:* Correct, Your Honor.

22 *THE COURT:* What about the defense? Any  
23 exception?

24 *MR. FINNEY:* No, Your Honor. A fine charge.

25 *THE COURT:* Okay. If y'all will get together on

1 the evidence and make that redaction. How about look  
2 at the verdict form and be sure it meets your  
3 satisfaction. I can give each one of you copies for  
4 your files or...

5 MR. FINNEY: I will keep one.

6 THE COURT: Okay. I will give the jury this  
7 one. And be sure once you make that redaction you  
8 both agree and all the evidence is...

9 MS. MAYES: Does the Court have or the defense  
10 have an objection to the State's Exhibit 18 being  
11 released for purposes of redaction? I think we need  
12 to make a copy of it.

13 MR. FINNEY: I think you do need to make a copy  
14 of it.

15 THE COURT: Okay. If you will just make a copy  
16 of it, then you can redact the copy and then we'll  
17 have both of them in the record, but only the  
18 redacted copy will go to the jury room. Okay?

19 (Alternates excused.)

20 (WHEREUPON, State's Exhibit No. 18A was marked.)

21 (Jury began deliberations at 2:59 am.)

22 THE COURT: (at 3:36 pm) We have received a  
23 question from the jury. Can we see a copy of the ER  
24 doctor's chart and file. Well, I can bring them back  
25 in here and tell them, no, or I can write on here,

1 no.

2 I guess I better bring them in and explain to  
3 them why they can't see it.

4 *MS. MAYES:* No objection from the State, Your  
5 Honor.

6 *MR. FINNEY:* No objection.

7 *THE COURT:* Okay. All right. If you will bring  
8 them in here.

9 *MR. FINNEY:* Did they ask for the doctor's chart  
10 or file?

11 *THE COURT:* The ER doctor's chart slash file. I  
12 have no recollection of either one of those coming  
13 into evidence; Isn't that correct?

14 *MR. FINNEY:* That's correct.

15 (Jury entered the courtroom at 3:40 pm.)

16 *THE COURT:* Mr. foreman, I have received the  
17 question from y'all says, can we see a copy of the ER  
18 doctor's chart slash file. And the answer to that  
19 is, no, in that additional evidence -- that you have  
20 heard all of the evidence you're going to hear in  
21 this case.

22 And so that is something that was not introduced  
23 into evidence in this trial. Therefore, it's  
24 something that I can't provide for you. I can  
25 instruct you on the law, but that's an evidentiary

1 matter that was not introduced to you.

2 Have to decide this case based on the evidence  
3 that was presented to you in this courtroom. That  
4 was not presented to you as evidence, and I can't  
5 give it to you at this point. Okay. Anything else?

6 *FOREPERSON:* Can we hear the playback of what he  
7 said then?

8 *THE COURT:* Sure. Now, I can do that.

9 *JUROR:* That's basically what we want.

10 *THE COURT:* It may take the Court Reporter a  
11 minute to find it. Do you want the entire portion of  
12 his testimony? I can certainly do the entire part or  
13 any portion thereof. Is there something y'all...

14 *JUROR:* We want refreshed on what his findings  
15 were.

16 (Whereupon the testimony of Dr. Garrett Clanton  
17 was played back for the jury.)

18 *THE COURT:* That's all y'all need to hear?  
19 Okay. If you will return to your deliberation and  
20 let us know when you have either reached a verdict or  
21 you have another question, let us know.

22 (Jury left the courtroom at 4:08 pm.)

23 *THE COURT:* We will be at ease until we hear  
24 something else.

25



1           FOREPERSON: Yes, it is, Your Honor.

2           THE COURT: All right, sir. If you would pass  
3 it up, please sir.

4           (Passed to bailiff who passed to the Court.)

5           THE COURT: Okay. You may publish the verdict.

6           BAILIFF: Yes, sir. For the State of South  
7 Carolina, County of Sumter, in the Court of General  
8 Sessions, docket number 2008-GS-43-361, State of  
9 South Carolina versus William Ricky Welch.

10           As to count one, we the jury unanimously find  
11 the defendant, William Ricky Welch, guilty of  
12 criminal sexual conduct with a minor in the first  
13 degree.

14           As to count two, we the jury unanimously find  
15 the defendant, William Ricky Welch, guilty of  
16 committing or attempting to commit a lewd act on a  
17 minor. Signed Scott Snyder, dated June the fourth of  
18 '08.

19           Ladies and gentlemen, if this is your verdict,  
20 so signify by raising your right hand, please. Thank  
21 you.

22           THE COURT: Anything further from the State?

23           MS. MAYES: Nothing from the State, Your Honor.

24           THE COURT: From the defense?

25           MR. FINNEY: We request polling, Your Honor.

1           *THE COURT:* All right. If you would poll the  
2 jury, please.

3           *BAILIFF:* Yes, sir. Ladies and gentlemen of the  
4 jury, when your name is called, please stand and  
5 answer my question. Juror number 106, Kimberly  
6 Murphy, is this your verdict and still your verdict?

7           *JUROR:* Yes.

8           *BAILIFF:* Thank you. You may be seated. Juror  
9 number 21, James Carter, is this your verdict and  
10 still your verdict?

11          *JUROR:* Yes, it is.

12          *BAILIFF:* Thank you. Juror number 64, Alfred  
13 Huggins, is this your verdict and still your verdict?

14          *JUROR:* Yes, sir.

15          *BAILIFF:* Thank you, sir. Justin Ellis, is this  
16 your verdict and still your verdict?

17          *JUROR:* Yes, sir.

18          *BAILIFF:* Thank you. Juror number 150, Geneva  
19 Vaughn, is this your verdict and still your verdict?

20          *JUROR:* Yes, sir.

21          *BAILIFF:* Thank you. Juror number 146, Scott  
22 Snyder, is this your verdict and still your verdict?

23          *JUROR:* Yes, sir.

24          *BAILIFF:* Thank you, sir. Juror number 130,  
25 Rebecca Ritz, is this your verdict and still your

1 verdict?

2 JUROR: Yes, sir, it is.

3 BAILIFF: Thank you, ma'am. Juror 95, Louis  
4 Mcdowell.

5 JUROR: Yes, sir.

6 BAILIFF: Is this your verdict and still your  
7 verdict?

8 JUROR: Yes, sir.

9 BAILIFF: Thank you, sir. Juror number 56,  
10 Sarah Haynesworth. Is this your verdict and still  
11 your verdict?

12 JUROR: Uh-huh.

13 BAILIFF: Thank you, ma'am. Wanda Gibson, is  
14 this your verdict and still your verdict?

15 JUROR: Yes, it is.

16 BAILIFF: Thank you. Juror number 144, Joslyn  
17 Smith, is this your verdict and still your verdict?

18 JUROR: Yes, sir.

19 BAILIFF: Thank you. Juror number 12, Richard  
20 Boston.

21 JUROR: Yes.

22 BAILIFF: Is this your verdict and still your  
23 verdict?

24 JUROR: Yes.

25 BAILIFF: Thank you. Your Honor, the jury has

1           been polled and the verdict stands.

2           *THE COURT:* Okay. Ladies and gentlemen, I want  
3           to thank y'all for service on this case. I have been  
4           telling y'all the whole week you can't discuss this  
5           case with anybody.

6           Now you can discuss it with anybody you want to.  
7           If you want to go home and tell your families what  
8           you have done, you can discuss this case and your  
9           verdict with anyone you want to. You do not have to  
10          discuss it with anyone.

11          And so if you don't want to talk about it and  
12          somebody asks you about it, you simply tell them, I  
13          don't want to talk about it.

14          I have got a little bit of bad news for you,  
15          though. The Solicitor tells me that they need y'all  
16          back at 9:30 in the morning in the big courtroom to  
17          select another jury.

18          But I appreciate your service in this case. And  
19          you're excused. And I will see y'all at 9:30.

20          (Jury left the courtroom at 5:02 pm.)

21          *THE COURT:* Okay. Are we ready to proceed?  
22          Anything further from the State or the defense?

23          *MR. FINNEY:* Your Honor, I would at this point  
24          on the record place a motion for a new trial or  
25          judgment in arrest of -- arresting the verdict

1 feeling that the jury just heard information...

2 They have only -- they got the case from what I  
3 can gather about 3:00 this afternoon. It's now 5:00.  
4 It took two days -- two and a half-days to try the  
5 case.

6 I feel like they have not arrived at their  
7 verdict through deliberation but through some type of  
8 sympathy or feeling of sadness for the facts in this  
9 case.

10 They were -- they asked questions, heard  
11 information, and were only in the jury room about 45  
12 or 50 minutes before a verdict was returned. And  
13 I -- I'd ask the Court for those reasons to grant a  
14 new trial for this defendant.

15 *THE COURT:* Thank you, sir. I find that there  
16 was sufficient evidence in this record that the jury  
17 could have reached the verdict that they reached, and  
18 I respectfully deny your motion.

19 SENTENCING

20 *MR. FINNEY:* We are ready, Your Honor.

21 *THE COURT:* Okay. If the State can give me the  
22 proper paperwork.

23 *MS. MAYES:* Yes, sir, Your Honor. Put the CDR  
24 codes in.

25 *THE COURT:* Okay. Anything else either side

1 wants to tell me?

2 MS. MAYES: Your Honor, I realize that the --  
3 there is the mandatory minimum as to the particular  
4 statute, which is 16-3-655 subsection A, subsection  
5 two, but I do want to put on the record that the  
6 conviction in 1993 did involve a minor child who was  
7 less than two years of age, and in that case as well  
8 the victim suffered a physical injury as a result of  
9 the sexual assault.

10 It's my understanding that the original sentence  
11 by Judge Shuler did request that Mr. Welch receive a  
12 sex offender treatment while incarcerated. My  
13 understanding is that he did receive some degree of  
14 sex offender treatment.

15 However, it's apparent that he remains a danger  
16 to the community. As well as a prior conviction from  
17 1985, I believe, for aggravated assault and battery.

18 THE COURT: Okay. But the State -- the State  
19 did not serve notice on him based on two prior -- two  
20 most serious offenses. Is that correct?

21 MS. MAYES: That is correct, Your Honor.

22 THE COURT: All right. Anything else from the  
23 State?

24 MS. MAYES: Begging the Court's indulgence.  
25 That is correct, Your Honor. 1985 was the conviction

1 date for the aggravated assault and battery. I just  
2 wanted to make sure that we were correct on that.

3 *THE COURT:* Okay. All right. Anything you want  
4 to tell me, Mr. Finney?

5 *MR. FINNEY:* Your Honor please. I have known  
6 Ricky Welch now for over a year and have gotten to  
7 know his family. This has been very hard on all of  
8 the family members in court today I'm sure because it  
9 has torn up his family.

10 His previously very good relationship with his  
11 stepdaughter, Alesha, has gone very badly, and now he  
12 is facing some new charges against -- with her saying  
13 that there was a -- bad acts going on between them.  
14 So we have got to go and fight those over in Florence  
15 County.

16 Your Honor, he went to prison on a 10 year  
17 sentence in 1993. He served five years. At some  
18 point after or near his release he was served with a  
19 petition for the sexually violent predator program as  
20 far as being found one.

21 He had to get a lawyer. David Goldman  
22 represented him. He had a hearing in front of Judge  
23 King. Doctors were called in, tests were done. He  
24 was found not to meet the standard of an SVP and was  
25 therefore found not to have -- to meet the

1 guidelines.

2 Although my understanding is that while he was  
3 in jail he went through all of the classes, took all  
4 of the treatment, and passed all of the course work  
5 and requirements to be released.

6 He had returned to the community, was working  
7 steadily, and met up with Lisa Bryant who you heard  
8 from. They had a very strong relationship.

9 He was very much into the -- helping her  
10 working, getting to know her family, and very much a  
11 person who enjoyed being around young folks and had  
12 no problems whatsoever from any of the young people  
13 he was around on a regular basis, family members and  
14 non-family members.

15 This case by this eight year old young lady is  
16 a -- a tough case for the jury to associate or  
17 disassociate the -- I guess the heartfelt or  
18 emotional issues from the legal issues.

19 They have found him guilty. I -- I'm obviously  
20 too much of an advocate to explain that, but being --  
21 that being the case, this young man had a opportunity  
22 to plead guilty and take some type of deal.

23 He did not want to do that because he felt he  
24 did not do anything wrong, he was not going to  
25 subject himself to being in prison again for taking a

1 deal when he didn't do anything.

2 This is as little evidence as probably could be  
3 brought forward. No evidence of any bad acts on a  
4 prior date. No evidence of a -- of bad acts when he  
5 had custody of this girl many occasions at his own  
6 house and much more opportunity to violate the law if  
7 he had wanted to do that. Nothing like that came up.

8 I'm not in a position to do anything but ask for  
9 mercy because I don't think that justice was done by  
10 the verdict of the jury, but I understand how the  
11 process works.

12 I know this is a very tough case. And as I told  
13 the jury and as I told you, Your Honor, I don't think  
14 this is a fair law at all.

15 I don't see how a guy can get a fair trial if  
16 you're going to bring up a conviction from 10 years  
17 ago when he has been without a record, not even  
18 speeding ticket, for 10 years.

19 I'd ask the Court to impose a lenient sentence  
20 based on the fact that there was not any ongoing  
21 conduct by this young man.

22 I would ask the Court to impose a -- as minimum  
23 a sentence as possible based on the fact that there  
24 was no sexual contact of a -- the usual rape-type  
25 contact. And I would ask the Court for the mercy.

1 You want to say anything?

2 THE COURT: Okay.

3 MR. FINNEY: Thank you, Your Honor. That's all  
4 we have.

5 THE COURT: Yes, sir. All right. Sentence of  
6 the Court is the defendant is committed to the State  
7 Department of Corrections for a term of 20 years.  
8 That's on criminal sexual conduct with a minor in the  
9 first degree.

10 He's given credit for whatever time he served  
11 toward that 20 years.

12 On lewd act upon a minor, the Sentence of the  
13 Court he's committed to the Department of Corrections  
14 for a term of 15 years. That's to run concurrent  
15 with count one. He's also given credit for any time  
16 served.

17 MR. FINNEY: Thank you, Your Honor.

18 MS. MAYES: Thank you, Your Honor.

19 \*\*\* End of requested transcript of record \*\*\*  
20  
21  
22  
23  
24  
25



RECEIVED

JUL 11 2013

Referred to PCR ds  
Answered \_\_\_\_\_

RECORDED

2013 JUL -9 PM 1:02

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.  
in the Court of Common Pleas

STATE OF SOUTH CAROLINA

County of Sumter

2013-CP-43- 1119

William Ricky Welch # 203451  
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina  
Name of Respondent.

CERTIFIED TRUE COPY  
OF ORIGINAL FILE  
**APPLICATION FOR  
POST-CONVICTION RELIEF**  
*R. M. Mager*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

**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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention LEE C.I.
2. Name and location of Court which imposed sentence GENERAL SESSIONS sumter county
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 08-25-43-3332
  - (b) CSC
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) June 4-2008
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. Check whether a finding of guilty was made

- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere \_\_\_\_\_

6. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. SC COURT OF APPEAL
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

- i. AFFIRMED
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(c) the date of each such result:

- i. NOVEMBER 10-2011
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2011-ULP-503
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) NA
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANT OF COUNSEL
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) FAILED TO HIRE EXPERT MEDICAL WITNESS D478 LN-21-23
- (b) FAILED TO OBJECT TO VOUCHING PG 491
- (c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NO

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NA
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. NA

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) NOT AVAILABLE for Direct appeal

(b) \_\_\_\_\_

(c) \_\_\_\_\_

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. ERNEST CHIP MINNEY III 110 south sumter street  
sumter s.c 29150

ii. Robert M. Pachak Division of Appellate  
1330 Lady street, suite 401 Columbia, s.c 29201-3332

iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

i. 16 ABC

ii. 16 D

iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

Reverse sentene and Remand New Trial <sup>for</sup>

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

NO

STATE OF SOUTH CAROLINA

County of Sumter

VERIFICATION

I, William Ricky Welch # 208451, 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.

William Ricky Welch

SWORN to and subscribed before me this 8

day of July, 2013

Debra Swires (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

I, William Ricky Welch # 208451, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

William Ricky Welch  
Applicant

SWORN or affirmed to and subscribed before me this

8 day of July, 2013

Debra Swires  
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA )  
 COUNTY OF SUMTER )  
 )  
 William R. Welch, #208451, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-43-1169

**RETURN AND MOTION TO DISMISS**

In response to the post-conviction relief application filed July 9, 2013, the Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted during the February 2008 term of the Sumter County Grand Jury for Criminal Sexual Conduct (CSC) with a Minor (First Degree), Committing or Attempting a Lewd Act Upon a Minor (2008-GS-43-0361). Ernest Finney, III, Esquire, represented him. Applicant proceeded to a jury trial and was found guilty on June 4, 2008 of CSC with a Minor and Lewd Act Upon a Minor. The Honorable R. Ferrell Cothran, Jr. sentenced Applicant to twenty (20) years for CSC with a Minor and fifteen (15) years for Lewd Act, to be served concurrently. Applicant did not appeal his sentence or conviction.

II.

In his current application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. "Failed to hire expert medical witness."

b. "Failed to object to vouching."

For the purpose of this Return, the Respondent incorporates the Sumter County Clerk of Court record and current South Carolina Department of Corrections records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was found guilty to the offense he challenges in this Application on June 4, 2008. This application was filed on July 9, 2013, well beyond the one year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily

dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,


ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

By:

  
Attorneys for the Respondents  
Post Office Box 11549  
Columbia, South Carolina 29211

October 29, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )  
 )  
 )  
 )  
 )  
 WILLIAM R. WELCH, #208451, )  
 )  
 ) Applicant, )  
 )  
 ) vs )  
 )  
 ) STATE OF SOUTH CAROLINA, )  
 )  
 ) Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

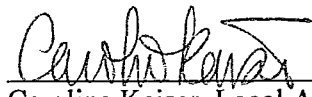
2013-CP-43-1169

AFFIDAVIT OF SERVICE BY MAIL

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

**William R. Welch, #208451**  
**Lee Correctional Institution**  
**990 Wisacky Highway**  
**Bishopville, SC 29010**

DATED this 29<sup>th</sup> day of October, 2013.

  
 \_\_\_\_\_  
 Caroline Kaiser, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
William R. Welch, #208451,	)	
	)	2013-CP-43-1169
Applicant,	)	
	)	
v.	)	<b>AMENDED RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed July 9, 2013, the Respondent would show this Court:<sup>1</sup>

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted during the February 2008 term of the Sumter County Grand Jury for Criminal Sexual Conduct (CSC) with a Minor (First Degree), Committing or Attempting a Lewd Act Upon a Minor (2008-GS-43-0361)<sup>2</sup>. Ernest Finney, III, Esquire, represented him. Applicant proceeded to a jury trial and was found guilty on June 4, 2008, of CSC with a Minor and Lewd Act Upon a Minor. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to twenty (20) years for CSC with a Minor and fifteen (15) years for Lewd Act, to be served concurrently.

The Applicant appealed to the South Carolina Court of Appeals. The Court of Appeals affirmed the Applicants conviction and sentence. State v. Welch, Op. No. 2011-UP-503 (Ct. App. filed November 10, 2011).

<sup>1</sup> The Respondent originally submitted a return and motion to dismiss on October 29, 2013.

<sup>2</sup> The cover page of the Transcript of Record dated June 2, 2008, and the Applicant's PCR Application list the indictment number as "2008-GS-43-3332." This is a scrivener's error.

Subsequently, Petitioner filed a petition for rehearing to the South Carolina Supreme Court. The South Carolina Supreme Court denied the petition on December 20, 2012. The Remittitur was issued on December 28, 2012.

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

## II.

In his current application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. "Failed to hire expert medical witness."
  - b. "Failed to object to vouching."

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the 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. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

#### V.

WHEREFORE, having made its Amended Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

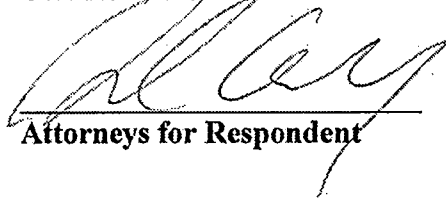
JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:



Attorneys for Respondent

November 22, 2013

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SUMTER )  
 )  
 )  
 )  
 WILLIAM RICKY WELCH, #208451 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS


2013-CP-43-1169

AFFIDAVIT OF SERVICE BY MAIL

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

**Fulton Casey Dale Cornwell, Esquire**  
**Harrison & Radeker, P.A.**  
**Post Office Box 50143**  
**Columbia, SC 29250**

DATED this 22<sup>th</sup> day of November, 2013.

  
 \_\_\_\_\_  
 Caroline Kaiser, Legal Assistant  
 For Respondent

1 State of South Carolina

2 County of Sumter

3

4

5 WILLIAM RICHY WELCH, ) PCR HEARING  
Plaintiff ) 2013CP4301169  
6 vs. )

7 THE STATE OF SOUTH CAROLINA, ) April 15, 2015  
Defendants ) Sumter, S.C.

8

9

10 Before the Honorable George C. James, Jr.,  
11 Judge.

12

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

14 Mr. Fulton Casey Dale Cornwell,  
Attorney for Plaintiff

15

16 Mr. Daniel F. Gourley,  
Attorney for the State

17

18 Margaret T. Sullivan,  
Court Reporter

19

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William Welch-Direct by Cornwell

1 THE COURT: This is Mr. Welch?

2 MR. CORNWELL: That's correct, Your Honor.

3 THE COURT: 2013-CP-43-01169. Mr. Gourley  
4 is here. Mr. Finney is here. And I have materials.  
5 So you can call your first witness, or tell me a  
6 little about the case.

7 MR. CORNWELL: I would call Mr. Welch to  
8 the stand, Your Honor.

9 THE COURT: Come on up, Mr. Welch.

10 WILLIAM RICHY WELCH, Being first duly  
11 sworn, testified as follows.

12 THE COURT: You are William Ricky Welch?

13 A. Yes, sir.

14 THE COURT: You can have a seat.  
15 Mr. Cornwell.

16 Direct Examination by Mr. Cornwell:

17 Q. Now, Mr. Welch, just as a matter of  
18 instruction, you've got to make sure you speak up  
19 loud enough so that the court reporter can hear you.  
20 Annunciate your words clearly. I do it all the  
21 time, I mumble. I have some gum in my mouth, I beg  
22 the court's indulgence. I'll take that out, so I  
23 can be understood.

24 Now, Mr. Welch, we are here because you  
25 went to trial on a CSI and a lewd act, is that

## William Welch-Direct by Cornwell

1 correct?

2 A. Yes, sir.

3 Q. And do you see your attorney, your trial  
4 attorney in the courtroom today?

5 A. Yes, sir.

6 Q. Could you tell me who he was?

7 A. Mr. Chip Finney.

8 Q. Do you remember if he -- if you paid him  
9 or if he was appointed?

10 A. No, he been appointed to me.

11 Q. And did you another attorney prior to  
12 Mr. Finney?

13 A. I had one like a bond, for a bond hearing.

14 Q. For a bond hearing?

15 A. Yeah.

16 Q. Do you know what his name was?

17 A. I forgot his name. The old lady got him.

18 Q. Now before you went to trial, did you have  
19 opportunity to meet with Mr. Finney?

20 A. Yes, sir. He's been coming to the county  
21 jail, and was talking to me.

22 Q. Do you remember how many times  
23 approximately you guys get to talk before the trial?

24 A. Probably 5 or 6 times somewhere along in  
25 there.

William Welch-Direct by Cornwell

1 Q. And did you have an opportunity to review  
2 the evidence against you---

3 A. Yes, sir.

4 Q. ---during those meetings?

5 A. We sure did.

6 Q. And did he talk to you about trial  
7 strategy and possible defenses then?

8 A. Not that I remember of.

9 Q. So you didn't discuss what your defense  
10 would be in the case, as far as, how you would  
11 defend yourself in trial?

12 A. Nothing. Like I say, I can't remember  
13 nothing.

14 Q. During -- now getting to our issues in the  
15 PCR, during the course of the trial, there was some  
16 expert testimony presented, wasn't there?

17 A. Yeah.

18 Q. Now you have an expert witness to testify  
19 in your behalf?

20 A. No, sir.

21 Q. And do you recall how many expert  
22 witnesses the State had?

23 A. They had quite a few of them.

24 Q. And did you talk to Mr. Finney about  
25 getting an expert witness to testify for you?

## William Welch-Direct by Cornwell

1           A.    We talked about it, and he said he was  
2 going to see about getting one.

3           Q.    And do you know if that was done or not?

4           A.    No, sir.  The only thing I know, he went  
5 to Charleston and talked to an expert in Charleston..  
6 Then came back down and said he don't think she  
7 would be good enough or something another like that.

8           Q.    So you didn't have an expert for your  
9 trial.

10          A.    No.

11          Q.    Even though the State did.

12          A.    Yeah.

13          Q.    Now during the course of this trial,  
14 another issue that you raised was that you felt the  
15 State was bolstering the testimony of the witness.

16          A.    Yeah.

17          Q.    And do you remember at any point in  
18 particular, where you felt like that the State was  
19 vouching for the witness?

20          A.    Well the State was coaching my victim in  
21 what to do and all, and everything else.

22          Q.    Now are you talking about during the  
23 trial, or before the trial?

24          A.    Before the trial and all.  It was on video  
25 and everything else.

William Welch-Direct by Cornwell

1 Q. Are you talking about the video they  
2 played?

3 A. Yeah.

4 Q. And you felt like that video was  
5 inappropriate?

6 A. Yeah.

7 Q. Do you recall if your lawyer objected to  
8 the introduction of that video?

9 A. I believe he did.

10 Q. And he was overruled?

11 A. Yes, sir.

12 Q. Do you recall at any time if your lawyer  
13 objected to any statements made by the witnesses  
14 concerning the credibility of the victim?

15 A. With the trial going, I can't say.

16 MR. CORNWELL: I beg the court's  
17 indulgence.

18 Q. Now before you guys went to trial, was  
19 there any discussion about the possibility of plea  
20 at all?

21 A. Yeah, they came and offered me a plea.

22 Q. And what was the offer on the table?

23 A. 20 years.

24 Q. And did you talk to your lawyer about  
25 that, whether you wanted to take it or not?

## William Welch-Cross by Gourley

1           A.    Yes, sir.  I sure did.  I told him I am  
2 taking it to trial.

3           Q.    And that's what you did.

4           A.    Yes, sir.

5           MR. CORNWELL:  No further questions for  
6 this witness at the time, Your Honor.

7           THE COURT:  Mr. Gourley.

8           MR. GOURLEY:  Thank you, Your Honor.

9           Cross Examination by Mr. Gourley:

10          Q.    Mr. Welch, do you recall how many meetings  
11 you had with Mr. Finney?

12          A.    About four, 5, or 6, somewhere along in  
13 there.

14          Q.    And did you give your attorney any leads  
15 or witnesses to look into?

16          A.    Well he had all the evidence and all that  
17 there from the prosecutors.

18          Q.    And you all get to go over the evidence  
19 and everything?

20          A.    Yes, sir.  We sure did.

21          Q.    And you had talked about, you said that  
22 you felt the State was bolstering the victim's  
23 credibility through this video.  What video are you  
24 discussing?

25          A.    I think Ms. Saunders from the sheriff's

William Welch-Cross by Gourley

1 department there. The child advocate whatever her  
2 name is. She is the one that had video you.

3 Q. Are you talking specifically about the DVD  
4 of the forensic interview?

5 A. Yes, sir.

6 THE COURT: Was that played to the jury?

7 MR. GOURLEY: It was, Judge.

8 THE COURT: I don't have that?

9 MR. GOURLEY: Sir?

10 THE COURT: I don't have that?

11 MR. GOURLEY: The interview?

12 THE COURT: Yes, sir.

13 MR. GOURLEY: No, sir.

14 THE COURT: I'll need that if it's going  
15 to be an issue in the case. Okay.

16 MR. GOURLEY: Your Honor, that's all the  
17 questions I have.

18 THE COURT: Redirect, Mr. Cornwell?

19 MR. CORNWELL: No, Your Honor.

20 THE COURT: So your grounds are what?

21 MR. CORNWELL: Your Honor,---

22 THE COURT: I'm sorry, sir, you can step  
23 down.

24 MR. CORNWELL: Your Honor, basically our  
25 grounds for the PCR are that there is an allegation

## William Welch-Cross by Gourley

1 that the State was vouching for the witness, but not  
2 only through the video, but the closing arguments  
3 and the statements made by the State, would serve to  
4 bolster the credibility of the witness.

5 THE COURT: How so? I mean, I don't have  
6 the tape. How am I supposed to know that?

7 MR. CORNWELL: I was specifically  
8 referring to statements made in closing arguments  
9 myself, Your Honor.

10 THE COURT: Okay.

11 MR. CORNWELL: My client feels like the  
12 video was inappropriate. But specifically, I was  
13 referring to statements in his closing arguments.

14 THE COURT: What were those?

15 MR. CORNWELL: Page 491 where the State  
16 goes into 492. She starts talking about the  
17 credibility of the witness. I beg the court's  
18 indulgence.

19 THE COURT: Well let me back up. I'm  
20 sorry. Mr. Gourley, do you have a witness too?

21 MR. GOURLEY: Yes, Your Honor.

22 THE COURT: I'm sorry. I'm sorry, I  
23 skipped over that. Go ahead. You can call  
24 Mr. Finney.

25 MR. GOURLEY: Thank you, Judge.

## William Welch-Cross by Gourley

1 THE COURT: I'm just trying to get ahead  
2 of the curve, so to speak, on what the grounds are.  
3 Mr. Welch says that he thought that the witnesses  
4 vouched for the child's credibility. Mr. Cornwell  
5 says he's just talking about the solicitor vouching  
6 for the child's credibility. So I guess, somebody  
7 is going to need to explain it to me. You can come  
8 on up and be sworn, Mr. Finney. Put your left hand  
9 on that bible after you get around that ledge.

10 ERNEST C. FINNEY, being first duly sworn,  
11 testified as follows.

12 DIRECT EXAMINATION by Mr. Gourley:

13 Q. Please the court, Your Honor. Mr. Finney,  
14 do you recall how many times you met with Mr. Welch?

15 A. It appears from my file that I probably  
16 met him in February of 2008, about 4 o'clock in the  
17 afternoon for the first time. And it appears that  
18 the trial of this case was in June of 2008. So  
19 between February and June, we met at least a half A  
20 dozen times.

21 Q. And it appears that Mr. Welch has alleged  
22 that you should have done something more with the  
23 forensic interview DVD played during the trial. Do  
24 you recall the forensic interview being played  
25 during the trial?

## William Welch-Cross by Gourley

1           A.    Not specifically.  I have reviewed the  
2 transcript, and I feel like whatever objections are  
3 noted in the transcript, we filed them and made  
4 them.

5           Q.    Yes, sir.

6           A.    I -- it's my experience as the trial  
7 attorney that usually when you're dealing with a  
8 young child, a forensic interview is going to be  
9 part of the State's presentation.

10          Q.    Yes, sir.

11          A.    And I believe that was the case in this  
12 case.

13          Q.    Yes, sir.

14          A.    I think the young lady, the victim in this  
15 case, also testified at trial.  And actually for the  
16 defense it was somewhat helpful, because we tried to  
17 show there inconsistencies between her trial  
18 testimony and what she had given to the forensic  
19 interviewer.

20          Q.    Yes, sir.  And just to give the background  
21 to the judge, because he may not be familiar with it  
22 quite yet.  This was obviously a CSC case, correct?

23          A.    Correct.

24          Q.    And it was alleged that Mr. Welch touched  
25 the victim while riding on a four-wheeler, back in

## William Welch-Cross by Gourley

1 the woods.

2 A. That's correct.

3 Q. And an infant was riding with them, baby

4 E. ---

5 A. That's correct.

6 Q. ---as well. And after the incident

7 occurred, I guess this was like a family gathering

8 or party one afternoon and barbecue.

9 A. It was a Christmas Eve gathering of the  
10 family.

11 Q. Yes, sir. And the victim, the young  
12 victim, had disclosed I believe to one of her  
13 cousins that Mr. Welch had inappropriately touched  
14 her.

15 A. That's correct.

16 Q. And then that young, the cousin disclosed  
17 it her mother.

18 A. That's correct.

19 Q. And then her mother, I believe, is somehow  
20 related to the victim's mother.

21 A. She was the sister of the victim's mother.

22 Q. And that obviously got disclosed to the  
23 victim's mother, and kind of snowballed from there,  
24 I guess.

25 A. That's correct.

William Welch-Cross by Gourley

1 Q. So again, you stated that the victim  
2 testified in the trial.

3 A. Correct.

4 Q. And then the officer introduced or the  
5 forensic expert introduced the DVD,---

6 A. Correct.

7 Q. ---correct? And do you recall objecting  
8 to that DVD, the introduction?

9 A. Not specifically, but I would refer to the  
10 transcript.

11 Q. And the transcript reflects that you  
12 objected to that. You don't dispute that.

13 A. I don't dispute that.

14 THE COURT: Did he object?

15 MR. GOURLEY: Yes, sir.

16 THE COURT: What page?

17 MR. GOURLEY: Your Honor, I apologize,  
18 Judge. I'll pull out my phone, Judge. I left my  
19 trial transcripts at home.

20 THE COURT: Okay.

21 MR. GOURLEY: It was published over  
22 counsel's objection, I believe, I don't have the  
23 notation. It was induced through Gwen Herod, Judge.  
24 Starting on page 217. I believe it was somewhere  
25 around 240.

William Welch-Cross by Gourley

1 THE COURT: 217 to 240?

2 MR. GOURLEY: Yes, sir. She, Gwen Herod's  
3 direct at 217 to 251. And I have a notation that  
4 the video was published to the jury over defense's  
5 objection. Unfortunately, I did not specifically  
6 mark the page, Your Honor.

7 A. 245, Your Honor. Line 5.

8 MR. GOURLEY: Thank you, Solicitor. I  
9 apologize, Your Honor.

10 THE COURT: 245, line 5. And it says,  
11 subject to prior motions. Does anybody know in the  
12 transcript where the prior motions are? I guess  
13 those would be in limine motions?

14 MR. GOURLEY: Yes, Your Honor. Page 19.  
15 And they're proffered the testimony of Ms. Harold.

16 THE COURT: It's actually Herod.

17 MR. GOURLEY: Herod. I apologize. And  
18 the court reviewed the video to make sure it  
19 complied with the statute. And find that videotape  
20 was admissible subject to the proper testimony laid,  
21 foundation laid.

22 THE COURT: The objection was made, and I  
23 don't think that's a ground for the PCR, but you  
24 can continue.

25 MR. GOURLEY: Yes, Your Honor.

Chip Finney-Direct by Gourley

1 Q. Mr. Finney, Mr. Welch has also raised a  
2 complaint that you should have objected to the  
3 solicitor's comments regarding the credibility of  
4 the witness. I believe he specifically said on page  
5 491 and 492.

6 A. I've reviewed that trial transcript. And  
7 there do seem to be two paragraphs in the closing  
8 argument of the assistant solicitor. Because it was  
9 closing argument, I didn't feel like it was out of  
10 bounds. And based on what I remember at the time,  
11 and what I read last night, I did not feel it was  
12 objectionable.

13 I didn't know about page 492, but I think  
14 it's a continuation talking about other people that  
15 have to come in the courtroom and share shameful and  
16 embarrassing experiences.

17 Q. And it didn't raise any concerns to you,  
18 or feel like it in any way prejudiced Mr. Welch's  
19 trial?

20 A. No, sir.

21 MR. GOURLEY: Your Honor, I don't have any  
22 additional witnesses. Thank you, Mr. Finney.

23 THE COURT: Well if the applicant is going  
24 to -- are you arguing Ms. Herod's or any other  
25 witnesses vouching for the credibility of the child?

## Chip Finney-Cross by Cornwell

1 MR. CORNWELL: We are specifically talking  
2 about statements made by the solicitor in made  
3 closing argument, Your Honor.

4 THE COURT: You can cross examine  
5 Mr. Finney.

6 Cross Examination by Mr. Cornwell:

7 MR. CORNWELL: And I think I might have  
8 been off on my numbers when I said 491 and 492. I  
9 think it may have been actually been 493, if I am  
10 not mistaken, where she starts making some  
11 statements that weren't objected to. I would direct  
12 Mr. Finney if he would turn to that page.

13 A. I am on 493. Can you give me a line?

14 Q. Actually 492 beginning on, I guess, line  
15 6. And I think it kind of referred to before when  
16 she starts talking about being shameful. And she  
17 basically says, you know, she's telling the truth.  
18 And you didn't object to that?

19 A. No, sir. I've always thought that in  
20 closing argument, a lawyer gets to argue an opinion  
21 and try to attach it to the facts. That's what I do  
22 in my closing. And this lawyer was doing the same  
23 thing in her closing. I didn't think it was  
24 objectionable.

25 Q. And when she starts talking about coming

## Chip Finney-Cross by Cornwell

1 in here and talking to strangers, and how it's  
2 embarrassing and shameful. There was no objection  
3 to that either?

4 A. No, sir. No objection. I did not feel  
5 that was out of bounds.

6 Q. Also did you look in to getting an expert  
7 to testify for the defense in this case?

8 A. I don't have any recollection of talking  
9 to anybody. My understanding is that, first of  
10 all, once Mr. Welch was arrested, he was put in  
11 jail. A lawyer named Mr. Blackmon was hired to  
12 represent him, as far as a bond or whatever. And  
13 after that situation was resolved, the bond was  
14 resolved, he or his family approached me about  
15 representing him. And I believe I was retained.  
16 And I don't know exactly when he was arrested.

17 This incident took place around the  
18 Christmas holiday. I believe he was arrested the  
19 first of January. And I believe I got in the case  
20 late January. I have a note saying that I met with  
21 him on February 29th. So somewhere during that time  
22 period, I became his lawyer. I began talking to him  
23 and his family members and putting the case  
24 together. My understanding is, that the young lady  
25 who was about 7 or 8 years old, had been seen by an

## Chip Finney-Cross by Cornwell

1 emergency room physician the day after a report was  
2 made to her mother. But certainly by the time I  
3 got in the case, there wouldn't have been anything  
4 for a doctor to see. And certainly any injury she  
5 would have sustained would have been healed, or not  
6 something that could have been determined at that  
7 time.

8 Q. Now I'm specifically referring to an  
9 expert maybe to evaluate the nature of the injuries.  
10 There was some, and I think you mentioned that  
11 whether or not these injuries could be caused by  
12 some other means.

13 A. Well I certainly made a point to ask the  
14 young lady about riding the motorcycle that day or  
15 the four wheeler, and how rough it was on the trail  
16 were riding. And I made it a point to show the jury  
17 that the injury could be sustained by other means.

18 Also on the cross examination of  
19 Dr. Clanton, on page find 300 through 305, I think  
20 you will see that he did not find any evidence of a  
21 sexual battery on this child when he examined her  
22 the day after. The child was complaining of some  
23 pain in urination. And he found the child to have  
24 some type of yeast infection or some type of  
25 infection, and gave her Monistat cream to go home

## Chip Finney-Cross by Cornwell

1 and apply. He said specifically there was no  
2 vaginal discharge, no scratches, no tears, and no  
3 bleeding. And so I didn't think I needed another  
4 expert to establish that the child really did not  
5 suffer any meaningful injury. That was 24 hours  
6 after report.

7 Q. Now in regards to the video, did you not  
8 look into an expert maybe to review the videotape to  
9 see if the method was followed, to see if they had  
10 adhered to the method and not, you know, been  
11 inappropriate in the interview? Is that something  
12 you looked into?

13 A. No, sir. I did not. I would imagine that  
14 at this point after everything has been reviewed and  
15 looked at, that an expert could have come in and  
16 challenged the way that the victim advocate did the  
17 forensic interview, or the nurse victim. I did not.  
18 Other than the objections that I made, I thought I  
19 was protected on the record that the young's  
20 disclosure was somewhat inconsistent with testimony  
21 that she had given throughout the course of the  
22 preparation of the case.

23 In other words, she probably testified to  
24 a lady named Ms. Saunders in Florence. She  
25 testified to Gwen Herod, as a part of the

## Chip Finney-Cross by Cornwell

1 investigation, and she also testified in court. And  
2 there were inconsistencies throughout that process  
3 that I tried to make light of to the jury.

4 MR. CORNWELL: Thank you. I have no  
5 further questions.

6 THE COURT: Redirect?

7 MR. GOURLEY: Nothing, Your Honor.

8 THE COURT: Thank you, Mr. Finney, you can  
9 step down.

10 MR. FINNEY: Thank you, Your Honor.

11 THE COURT: Any additional witnesses from  
12 the State?

13 MR. GOURLEY: No, Your Honor.

14 THE COURT: Reply witnesses, Mr. Cornwell,  
15 or anyone else?

16 MR. CORNWELL: No, Your Honor.

17 THE COURT: Mr. Cornwell, I will be glad  
18 to hear your closing comments.

19 MR. CORNWELL: Yes, Your Honor. First I'd  
20 like to kind of address the issue of getting  
21 Mr. Finney not getting an expert in this situation.  
22 We have a PCR case in our state, it's the McKnight.  
23 Jim McKnight versus the State of South Carolina.  
24 Which basically says----

25 THE COURT: Citation?

1           MR. CORNWELL: I'm sorry. I looking at it  
2 on the Supreme Court's, that's where I got it from  
3 the website. I don't have an exact cite for it.

4           THE COURT: Opinion number.

5           MR. CORNWELL: 26484.

6           THE COURT: Date.

7           MR. CORNWELL: April 1st 2008.

8           THE COURT: Okay.

9           MR. CORNWELL: And in that situation, the  
10 State had expert witnesses to testify in regards to  
11 certain things in the case, and regarding abuse.  
12 And the defense had expert witnesses prior, because  
13 it was a mistrial before, and it was a new trial.  
14 And so what happened was, the next time they tried  
15 the case one of the experts became fatal. But she  
16 did still have her one expert that she carried over  
17 from the last trial, and she went forward with the  
18 trial, even though she didn't have the original  
19 expert.

20           Well the court basically said that wasn't  
21 good enough. Because the expert she had, all that  
22 that expert did was almost bolster the State's case.  
23 And she had no expert to counter the State's expert.  
24 And so in this case they said that that was  
25 ineffective, because she didn't ask for a

1     continuance to counter the State's expert.  And she  
2     went forward with an expert and basically bolstered  
3     the State's case.

4             THE COURT:  Well in that McKnight case,  
5     what did the State's expert say that was  
6     incriminating?

7             MR. CORNWELL:  The State's expert just  
8     basically reviewed the scientific evidence, who is  
9     the pathologist.  And basically said that these  
10    injuries were consistent with, you know, the crime  
11    that they were accusing, you know, Mr. McKnight of.

12            THE COURT:  Okay.

13            MR. CORNWELL:  And in this case, it's kind  
14    of, what I would point out is that they had a person  
15    say that basically these injuries are consistent  
16    with digital penetration.

17            THE COURT:  Who said that in this?

18            MR. CORNWELL:  Was it not Clanton but  
19    Saunders, because Saunders who was the nurse?  And  
20    that's the injury -- and that's examination that  
21    occurred 3 days after Mr. Clanton said that he saw  
22    no signs of -- all he saw was, you know, just an  
23    infection.  And I feel like that---

24            THE COURT:  Wasn't that pretty good for  
25    the defendant?

1 MR. CORNWELL: Well...

2 THE COURT: In other words, the expert  
3 doesn't have a label on his head who retained him.

4 MR. CORNWELL: I would say that the  
5 testimony of Mr. Clanton---

6 THE COURT: Dr. Clanton.

7 MR. CORNWELL: Dr. Clanton was good for  
8 the State. Since I agree with Mr. Finney in that  
9 case.

10 THE COURT: Good for the defendant.

11 MR. CORNWELL: Good for the defendant.  
12 But the testimony of Nurse Saunders is damning. I  
13 mean, it specifically went into the allegations of  
14 the State, and just tied it into exactly what her  
15 findings were. She just basically said that the  
16 child was digitally penetrated, which is exactly  
17 what the child alleged.

18 THE COURT: What did Dr. Clanton say  
19 specifically?

20 MR. CORNWELL: I think that Dr. Clanton  
21 said that he only saw signs of an infection.

22 THE COURT: What would a defense expert  
23 have said?

24 MR. CORNWELL: We would submit, Your  
25 Honor, that an expert could have reviewed the

1 records of the medical exam, and probably proffered  
2 an alternative explanation as Mr. Finney tried to do  
3 through his closing arguments and his questioning.  
4 Because an expert would have been far more  
5 effective, because they would have the scientific  
6 know how and knowledge to get on the stand, and give  
7 that information.

8 THE COURT: So an expert could have  
9 reviewed the records, and could have probably  
10 proffered an alternative explanation?

11 MR. CORNWELL: Exactly, Your Honor.

12 THE COURT: And did not Dr. Clanton do  
13 that?

14 MR. CORNWELL: Well Dr. Clanton didn't  
15 offer an alternative explanation. He just testified  
16 as to what he saw on his initial examine of the  
17 patient, Your Honor.

18 THE COURT: You can continue.

19 MR. CORNWELL: In addition, our other  
20 issue with credibility, of course, our state law  
21 kind of says that, you know, you're not allowed to  
22 vouch for witnesses. I think there are some cases  
23 on that. I don't -- right off hand, I can't, you  
24 know, cite those cases. But I know that our case  
25 law basically says that, you know, you're not

1 allowed to do that. So I would submit to, Your  
2 Honor, that because he didn't object to those lines  
3 in closing that tended to bolster the credibility of  
4 the witness, that he's ineffective by not doing  
5 that.

6 THE COURT: Well when you're making an  
7 argument to a jury, how do you do it? If you're  
8 trying to tell -- explain to the jury that they  
9 should believe your client, how do you do it?

10 MR. CORNWELL: Well, Your Honor, artfully,  
11 and try to avoid the appearance of bolstering that  
12 witness, Your Honor. It's a difficult thing to do.

13 THE COURT: Anything else?

14 MR. CORNWELL: Not at this time, Your  
15 Honor.

16 THE COURT: Mr. Gourley.

17 MR. GOURLEY: Your Honor, in regards to  
18 the failure to obtain an expert under the burden of  
19 PCR, an expert would have been needed here to  
20 testify to what could have come up had Mr. Finney  
21 gotten an expert. I would submit to the court that  
22 he has not met his burden on that issue. In regards  
23 to the vouching of the solicitor, Your Honor, I  
24 would submit that those comments stated by the  
25 solicitor did not arise to something that would

1 cause a -- give the defendant an unfair trial.

2 THE COURT: How about when she says,  
3 because it's the truth?

4 MR. GOURLEY: Your Honor, again, I would  
5 just submit to the court focusing on three words,  
6 Your Honor, in light of the overall argument itself,  
7 and it was not prejudicial. Thank you, Judge.

8 THE COURT: Mr. Cornwell, I'll give the  
9 last word if you have any.

10 MR. CORNWELL: Yes, Your Honor. And I  
11 will submit in regards to the expert issue, Your  
12 Honor, that the McKnight case seems to hold that,  
13 you know, the fact that an expert wasn't there, is  
14 the issue. The fact that there wasn't a continuance  
15 asked for to obtain that expert. And the fact that  
16 he failed to obtain an expert is the issue, not  
17 that, you know, what they would have said, you know,  
18 would counter. The fact that there wasn't one  
19 obtained, substantially hindered his ability to  
20 defend himself in the face of a State's expert, who  
21 basically said these injuries came from exactly what  
22 the victim said they came from, digital penetration.

23 THE COURT: I understand. Anything else  
24 from the State.

25 Mr. GOURLEY: No, Your Honor.

1           THE COURT: Thank you. Now, Mr. Welch,  
2 what I will do is, I will be signing an order that  
3 says one of two things. Number one, either I will  
4 grant your application, you will get a new trial.

5           THE PLAINTIFF: Yes, sir.

6           THE COURT: Or I will deny your  
7 application. Whatever the order is, your lawyer  
8 will get a copy of it. And if you do not like what  
9 is in the order, you will have 30 days from his  
10 receipt of the order, to appeal. Do you understand  
11 that?

12          THE PLAINTIFF: Yes, sir.

13          THE COURT: Do you have any questions?

14          THE PLAINTIFF: No, sir.

15          THE COURT: Thank you.

16          --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in Common Pleas Nonjury Court on April 15, 2015, in Sumter County, Sumter, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

1/11/18 Margaret T. Sullivan

DATE COURT REPORTER  
My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

William R. Welch, #208451,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED  
2015 OCT -8 11 11 AM  
IN THE COURT OF COMMON PLEAS  
FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL 2013-CP-43-1169  
CLERK OF COURT  
SUMTER COUNTY, S.C.

**ORDER OF DISMISSAL**

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 9, 2013. Respondent made its amended return on November 22, 2013. An evidentiary hearing in to the matter was convened on April 15, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the February 2008 term of the Sumter County Grand Jury for Criminal Sexual Conduct (CSC) with a Minor (First Degree), Committing or Attempting a Lewd Act Upon a Minor (2008-GS-43-0361)<sup>1</sup>. Ernest Finney, III, Esquire, represented him. Applicant proceeded to a jury trial and was found guilty on June 4, 2008, of CSC with a Minor and Lewd Act Upon a Minor. The Honorable R. Ferrell Cothran, Jr.,

<sup>1</sup> The cover page of the Transcript of Record dated June 2, 2008, and the Applicant's PCR Application list the indictment number as "2008-GS-43-3332." This is a scrivener's error.

*[Handwritten signature]*

sentenced Applicant to twenty (20) years for CSC with a Minor and fifteen (15) years for Lewd Act, to be served concurrently.

The Applicant appealed to the South Carolina Court of Appeals. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Welch, Op. No. 2011-UP-503 (Ct. App. filed November 10, 2011).

Subsequently, Petitioner filed a petition for rehearing to the South Carolina Supreme Court. The South Carolina Supreme Court denied the petition on December 20, 2012. The Remittitur was issued on December 28, 2012

### ALLEGATIONS

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

1. Ineffective assistance of counsel
  - a. "Failed to hire expert medical witness."
  - b. "Failed to object to vouching."

### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Ernest A. Finney, III, Esquire (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he proceeded to trial for criminal sexual conduct and lewd act. Applicant stated Trial Counsel was appointed to represent him at trial. Applicant stated that he had another attorney for his bond hearing, but he could not recall his name. Applicant stated that he met with Trial Counsel five or six times. Applicant stated



that they reviewed the evidence. Applicant could not recall whether they discussed any defenses or strategies. Applicant stated Trial Counsel told him that he would look into hiring an expert. Applicant stated Trial Counsel went to Charleston, SC and spoke with an expert. Applicant stated Trial Counsel informed him that the expert's opinion would not be favorable.

Applicant opined that the State coached the victim before the trial and on the forensic interview video. Applicant noted that Trial Counsel objected and was overruled by the trial judge. Applicant further opined that the solicitor vouched for the victim's credibility during closing arguments. Applicant stated that he received a plea offer of twenty years. Applicant stated that he turned down the plea offer and proceeded to trial.

Following Applicant's testimony, Trial Counsel was called to testify by the State. Trial Counsel stated that he met with Applicant in February 2008 for the first time. Trial Counsel stated that he met with Applicant at least six times. Trial Counsel stated Applicant was arrested January 1<sup>st</sup>. Trial Counsel noted that the trial began in June 2008.

Trial Counsel could not independently recall the videotaped interview of the victim; however he reviewed the trial transcript and noted that he made a motion to suppress the video during trial. Trial Counsel noted that it has been his experience that the video would be introduced at trial. Trial Counsel noted that the victim did testify and was subject to cross-examination. Trial Counsel opined that the introduction of the video was favorable because he was able to point out various inconsistencies of the victim's trial testimony as compared to the video. Trial Counsel noted that the video was introduced over his objection on page 245 of the trial transcript. Trial Counsel stated that he made a motion *in limine* and requested in camera testimony regarding the video. Trial Counsel opined that the solicitor's closing arguments were not objectionable.



Trial Counsel recalled that there was a family gathering where both Applicant and victim were present. Trial Counsel stated that Applicant and victim were riding on a four-wheeler in the woods and Applicant allegedly touched victim while they were in the woods. Trial Counsel stated that victim was taken to hospital by her family the following day. Trial Counsel noted that the doctor found no injury and prescribed Monistat for a yeast infection. Trial Counsel stated it was his strategy to show that the victim's alleged injuries or irritation could have resulted from simply riding the four-wheeler through the woods. Trial Counsel stated that he did not hire an expert to review the videotape or examine the victim. Trial Counsel stated that he tried to point out the various inconsistencies between the victim's statements on the video and her trial court testimony.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### **INEFFECTIVE ASSISTANCE OF COUNSEL**

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process



that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

*Ineffective assistance of counsel for failing to call expert to present an alternative theory to the State's theory that the victim was sexually assaulted.*

The Court finds that Applicant's allegation that he received ineffective assistance of counsel for failing to hire an expert to present an alternative theory to the State's case is meritless. Initially, this Court notes Applicant did not call an expert at the PCR hearing to explain what alternative theory might have been available. As a result of Applicant's failure to present any expert testimony on this issue, this Court finds Applicant cannot show any prejudice. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the

applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative"). Furthermore, this Court finds Applicant has failed to show any deficient performance during Trial Counsel's representation. This Court notes Trial Counsel's cross-examination of Dr. Clanton, a State's expert in emergency medicine, developed the theory that there were other possible causes of the child victim's problems. Based on the foregoing, this Court finds that Applicant has fallen well short of his burden of proof and this allegation must be denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to object to the solicitor vouching for the credibility of the victim.*

This Court finds that Applicant's allegation that Trial Counsel was ineffective for failing to object to the solicitor's vouching for the credibility of the victim to be meritless. This Court has reviewed the solicitor's closing argument and finds nothing about the solicitor's argument concerning witness credibility was objectionable. The Solicitor simply argued the victim had been consistent in giving her accounts of what happened and that overall her credibility could not be questioned. Based on the foregoing, this Court finds Applicant has fallen well short of his burden of proof. Therefore, this Court finds that this allegation is denied and dismissed with prejudice.

**ALL OTHER ALLEGATIONS**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.



**CONCLUSION**

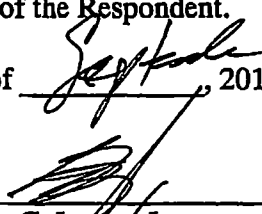
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18 day of September, 2015.

  
 \_\_\_\_\_  
 GEORGE C. JAMES, JR.  
 Presiding Judge  
 Third Judicial Circuit

  
 \_\_\_\_\_, South Carolina

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP4301169

RECORDED

William Ricky Welch

2015 OCT -9 AM 11:28

South Carolina State of

JAMES B. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY  
OF ORIGINAL FILED

*[Signature]*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

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: \_\_\_\_\_
- 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: **See attached Order.**

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.**

Circuit Court Judge

2143  
Judge Code

10/9/2015  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

**William Ricky #208451 Welch Lee Correctional Inst/Flo-S-  
2237 990 Wisacky Hwy Bishopville, SC 29010  
Fulton Casey Dale Cornwell 448 Deerwood Street Unit 9A  
Columbia, SC 29205**

**Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-  
1549**

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*James C. Campbell*

**Court Reporter**

**James C. Campbell - Clerk of Court**

**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.

\_\_\_\_\_

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RECEIVED 3

FORM 5

STATE OF SOUTH CAROLINA

County of Sumter

RECORDED THE COURT OF COMMON PLEAS  
Referred to PPB

MAY 22 2017

2017 MAY 9 PM 2:44

Answered \_\_\_\_\_

William Ricky Welch 208451

Full name and prison number (if any) of Applicant

D. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2017-CP-43-877

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED TRUE COPY  
OF ORIGINAL FILE

Barbara Shaper  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

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 LEE CT

2. Name and location of Court which imposed sentence  
General Sessions Sumter County

3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 08-95-43-3332

(b) CSC

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) June-4-2008

(b) 20 years

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C Court of Appeals

ii. S.C Supreme Court

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. AFFIRMED

ii. Affirmed

iii. \_\_\_\_\_

(c) the date of each such result:

i. Novemder 10-2011

ii. not in possession

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2011-UP-503

ii. not in possession

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NA

(b) \_\_\_\_\_

- (c) \_\_\_\_\_
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
  - (a) \* see on back of page
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
  - (a) \* see on back of page
  - (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? ~~no~~ Yes
  - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? ~~no~~ Yes
  - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
  - (d) any other petitions, motions or applications in this or any other Court? yes

- 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. - ~~PCR~~ PCR 2013-CP-43-1169
    - ii. JUL-9-2013
    - iii. - Motion to Appeal Denial of PCR Relief (Pro Se)
    - iv. \_\_\_\_\_
  - (b) the name and location of the Court in which each was filed:
    - i. Sumter County Judicial Center
    - ii. 215 N. Harvin Street Sumter S.C 29150
    - iii. \_\_\_\_\_
    - iv. \_\_\_\_\_

10.

- a.) Counsel failed to Hire Expert Medical Witness to Rebut State's Experts
- b.) Counsel failed to object to State's Expert in Forensic Interviewing Vouching for Victim's Credibility
- c.) Counsel failed to object to Expert in Forensic Interviewing giving improper Medical Opinion Testimony
- d.) Counsel failed to contemporaneously object to the Reliability of Forensic Interviewer improperly sworn in as Expert in Forensic Interviewing who then went on to Bolster victim's testimony

11.

- a.) see record
- b.) Transcript of Trial, pg. 227, lines 18-25  
pg. 228, lines 1-11
- c.) Transcript of Trial, pg. 286, lines 15-17  
pg. 288, lines 2-12
- d.) Transcript of Trial, pg. 222, lines 14-21

(c) the disposition thereof:

- i. - DENIED
- ii. \_\_\_\_\_
- iii. - former PCR counsel suspended by Supreme Court
- iv. partly due to refusal to file appeal of PCR denial

(d) the date of each such disposition:

- i. 9-18-15
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Order of Dismissal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Counsel failed to Hire Expert Witness to Rebut State's
- ii. \_\_\_\_\_ Expert
- iii. \_\_\_\_\_ (Medical)

(b) the proceedings in which each ground was raised:

- i. PCR
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Grounds (b), (c), and (d) listed in (10)  
 (b) ↓  
 (c) former PCR counsel failed to ascertain meritorious issues

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes  
 (b) your trial, if any? Yes  
 (c) your sentencing? Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
NO

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. Ernest Chip Finney III 110 South Sumter street  
 Sumter S.C 29150  
 ii. Robert M. Pachak Division of Appellate  
 1330 Lady Street, Suite 401 Columbia S.C 29201-3332  
 iii. F. Casey D. Cornwell P.O. Box 5723  
 Columbia S.C 29250  
 (b) the proceedings at which each such attorney represented you:  
 i. ~~16 ABC~~ Ernest Chip Finney III Trial Attorney  
~~16 D~~  
 ii. Robert M. Pachak Direct Appeal Attorney  
 iii. F. Casey D. Cornwell PCR Attorney

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

- Austin appeal  
- Appointment of PCR Attorney

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

No

STATE OF SOUTH CAROLINA )  
County of Sumter )

VERIFICATION

I, William Ricky Welch #208451, 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.

William Ricky Welch  
William Ricky Welch

SWORN to and subscribed before me this 4 day of May, 2017.

Delna Eastridge (L.S.)  
Notary Public

My Commission Expires: 3/3/2024

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

I, William Ricky Welch #208451, 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.

William Ricky Welch  
Applicant

SWORN or affirmed to and subscribed before me this  
# day of May, 2017.

Delma Estrada  
Notary Public

My Commission Expires: 3/3/2024

*[Handwritten mark]*



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	THIRD JUDICIAL CIRCUIT
	)	
William Ricky Welch, #208451,	)	
	)	2017-CP-43-877
Applicant,	)	
	)	
v.	)	<b>RETURN AND MOTION</b>
	)	<b>TO DISMISS ALL ALLEGATIONS</b>
State of South Carolina,	)	<b>BEYOND <u>AUSTIN</u><sup>1</sup> REVIEW</b>
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed May 9, 2017, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted during the February 2008 term of the Sumter County Grand Jury for criminal sexual conduct (CSC) with a minor (First Degree), and committing or attempting a lewd act upon a minor (2008-GS-43-0361)<sup>2</sup>. Ernest Finney, III, Esquire, represented him. Applicant proceeded to a jury trial and was found guilty on June 4, 2008, of CSC with a Minor and Lewd Act Upon a Minor. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to twenty years' imprisonment for CSC with a minor and fifteen years' imprisonment for lewd act, to be served concurrently.

Applicant appealed to the South Carolina Court of Appeals. The Court of Appeals affirmed Applicant's conviction and sentence. State v. Welch, Op. No. 2011-UP-503 (Ct. App. filed November 10, 2011). Subsequently, Petitioner filed a petition for rehearing to the South

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<sup>1</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

<sup>2</sup> The cover page of the Transcript of Record dated June 2, 2008, and the Applicant's PCR Application list the indictment number as "2008-GS-43-3332." This is a scrivener's error.

Carolina Supreme Court. The South Carolina Supreme Court denied the petition on December 20, 2012. The Remittitur was issued on December 28, 2012.

Applicant subsequently filed an application for post-conviction relief on July 9, 2013, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
  - a. "Failed to hire expert medical witness."
  - b. "Failed to object to vouching."

Respondent made its amended return on November 22, 2013. An evidentiary hearing in to the matter was convened on April 15, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. An Order of Dismissal was signed by the Honorable George C. James, Jr. on September 18, 2015, and filed on October 8, 2015.

On or around December 2, 2016, Applicant filed a *pro se* notice of appeal to the South Carolina Supreme Court. On March 28, 2017, Applicant filed a motion to allow the late filing of his notice of appeal. By Order dated April 5, 2017, the Supreme Court denied Applicant's appeal and dismissed it without prejudice to any rights to relief under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The Remittitur was sent April 21, 2017.

## II.

In his current application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. Counsel failed to Hire Expert Medical Witness to Rebut State's Experts.
  - b. Counsel failed to object to State's Expert in Forensic Interviewing Vouching for Victim's Credibility.

- c. Counsel failed to object to Expert in Forensic Interviewing giving improper Medical Opinion Testimony.
  - d. Counsel failed to contemporaneously object to the reliability of forensic interviewer improperly sworn in as expert in forensic interviewing who then went on to bolster victim's testimony.
2. Former PCR Counsel failed to ascertain meritorious issues
  3. Belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, direct appeal records, and the records from Applicant's prior post-conviction relief action and appeal. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III.

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent lacks sufficient information to admit or deny this allegation. Respondent requests an evidentiary hearing on this ground for relief.

### IV.

Respondent submits all other allegations in this application for Post-Conviction Relief should be summarily dismissed because it is a successive application for post-conviction relief and raises claims that are not proper for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Applicant's current allegations could have been raised in the proceedings based on Applicant's prior application for post-conviction relief, and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

Respondent further submits this application should also be dismissed because it raises a claim that is not proper for post-conviction relief. Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and is not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991).

The South Carolina Supreme Court in Aice v. State held that the PCR rules “contemplate an adjudication on the merits of the original petition, one bite at the apple as it were.” 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. Id. at 451, 409 S.E.2d at 395. The Court in Aice further held that “the contention that prior PCR counsel was ineffective is not per se a “sufficient reason” allowing for a successive PCR application under § 17-27-90.” Id. at 452, 409 S.E.2d at 394. Respondent submits Applicant’s contention that prior PCR counsel was ineffective is not *per se* a sufficient reason warranting a successive PCR application under ’17-27-90. This Court should summarily dismiss this successive application for post-conviction relief with prejudice.

## V.

This Application for post-conviction relief must also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant’s remittitur from his direct appeal was issued on December 28, 2012, so he was therefore required to file his application on or before December 28, 2013. This application was filed on May 9, 2017, which well past the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

(1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court should summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

## VI.

Respondent denies each allegation not expressly admitted, qualified or explained.

## VII.

WHEREFORE, Respondent moves to summarily dismiss all allegations beyond the scope of Austin review, and requests an evidentiary hearing be held over that issue.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

August 22, 2017

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER )

2017-CP-43-0877

WILLIAM WELCH, #208451 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

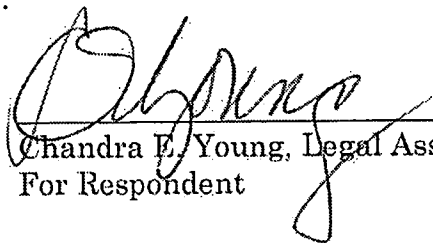
STATE OF SOUTH CAROLINA, )

Respondent. )

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

Lance S. Boozer, Esquire  
 1400 Laurel Street, Suite 4A.  
 Columbia, SC 29201

DATED this 23<sup>RD</sup> day of August, 2017.

  
 Chandra E. Young, Legal Assistant  
 For Respondent

RECORDED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER 2017 NOV -9 PM 2:45 ) THIRD JUDICIAL CIRCUIT

William Ricky Welch, #208451, ) 2017-CP-43-00877  
SUMTER COUNTY )

Applicant. )

v. )

CONSENT ORDER GRANTING AN  
APPEAL PURSUANT TO  
AUSTIN V. STATE<sup>1</sup>

State of South Carolina, )

Respondent. )

This matter comes before the Court pursuant to an application for post-conviction relief filed May 9, 2017. Respondent filed it Return and Motion to Dismiss All Allegations Beyond Austin Review on August 23, 2017, requesting an evidentiary hearing be convened solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. Lance S. Boozer, Esquire, was appointed to represent Applicant by the Sumter County Clerk of Court. Before this Court are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, direct appeal records, and the records from Applicant's prior post-conviction relief action and appeal.

I.

PROCEDURAL HISTORY

*RJC*

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted during the February 2008 term of the Sumter County Grand Jury for first degree criminal sexual conduct (CSC) with a minor, and committing or attempting a lewd act upon a minor (2008-

<sup>1</sup> Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

GS-43-0361)<sup>2</sup>. Ernest Finney, III, Esquire, represented him. Applicant proceeded to a jury trial and was found guilty on June 4, 2008, of CSC with a Minor and Lewd Act Upon a Minor. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to twenty years' imprisonment for CSC with a minor and fifteen years' imprisonment for lewd act, to be served concurrently.

Applicant appealed to the South Carolina Court of Appeals. The Court of Appeals affirmed Applicant's conviction and sentence. State v. Welch, Op. No. 2011-UP-503 (Ct. App. filed November 10, 2011). Subsequently, Petitioner filed a petition for rehearing to the South Carolina Supreme Court. The South Carolina Supreme Court denied the petition on December 20, 2012. The Remittitur was issued on December 28, 2012.

Applicant subsequently filed an application for post-conviction relief (2013-CP-43-1169) on July 9, 2013, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
  - a. "Failed to hire expert medical witness."
  - b. "Failed to object to vouching."

Respondent made its amended return on November 22, 2013. An evidentiary hearing in to the matter was convened on April 15, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Casey Cornwell, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. An Order of Dismissal was signed by the Honorable George C. James, Jr. on September 18, 2015, and filed on October 8, 2015.

<sup>2</sup> The cover page of the Transcript of Record dated June 2, 2008, and the Applicant's PCR Application list the indictment number as "2008-GS-43-3332." This is a scrivener's error.

On or around December 2, 2016, Applicant filed a *pro se* notice of appeal to the South Carolina Supreme Court. On March 28, 2017, Applicant filed a motion to allow the late filing of his notice of appeal. By Order dated April 5, 2017, the Supreme Court denied Applicant's appeal and dismissed it without prejudice to any rights to relief under Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). The Remittitur was sent April 21, 2017.

Applicant subsequently filed a second application for post-conviction relief on May 9, 2017, alleging the following allegations:

1. Ineffective assistance of counsel
  - a. Counsel failed to Hire Expert Medical Witness to Rebut State's Experts.
  - b. Counsel failed to object to State's Expert in Forensic Interviewing Vouching for Victim's Credibility.
  - c. Counsel failed to object to Expert in Forensic Interviewing giving improper Medical Opinion Testimony.
  - d. Counsel failed to contemporaneously object to the reliability of forensic interviewer improperly sworn in as expert in forensic interviewing who then went on to bolster victim's testimony.
2. Former PCR Counsel failed to ascertain meritorious issues
3. Belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

In its Return, Respondent moved to dismiss all claims beyond Austin review as untimely filed and successive. After reviewing the facts and circumstances surrounding the case, Respondent indicates to this Court that the State is willing to consent to the grant of a belated appeal of the denial of Applicant's first PCR application pursuant to Austin and Applicant and Applicant's counsel agree as evidenced by their signatures below.

AJC

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court finds that Respondent's Motion to Dismiss all allegations beyond Austin review should be granted, as any allegations beyond that scope are untimely filed and successive to Applicant's first application for post-conviction relief. Therefore, the motion is granted and Applicant can proceed only on the grounds of Austin relief.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, and based on Respondent's consent, this Court finds Applicant is entitled to appeal the denial of his post-conviction relief application (2014-CP-43-2142). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), post-conviction relief applications may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based on the foregoing, this Court finds that the granting of an appeal of Applicant's first post-conviction relief action (2014-CP-43-2142) pursuant to Austin v. State is warranted.


**IT IS THEREFORE ORDERED:**

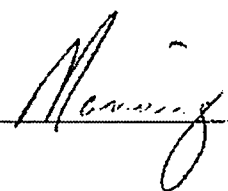
1. That Respondent's Motion To Dismiss All Allegations Beyond Austin Review is granted, and those claims are dismissed with prejudice;
2. That Applicant be granted an appeal of case 2013-CP-43-1169 pursuant to Austin v. State;

QJC/

3. Within thirty (30) days of the service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate appellate review of Applicant's first post-conviction relief action. Counsel and Applicant are directed to King v. State, 308 S.C. 348, 417 S.E.2d 868 (1992) and Rule 243, SCACR, for the appropriate procedure for a belated appeal; and
4. That Applicant remain in the custody of the South Carolina Department of Corrections.

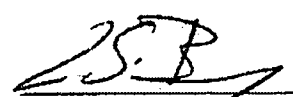
AND IT IS SO ORDERED this 30 day of Oct., 2017.

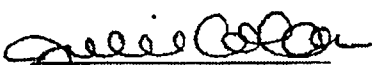
  
 R. FERRELL COTHAN JR.  
 Chief Administrative Judge  
 Third Judicial Circuit

  
 \_\_\_\_\_, South Carolina.

**WE CONSENT:**

  
 William Ricky Welch  
 Applicant

  
 Lance S. Boozer, Esquire  
 Attorney for Applicant

  
 Julie A. Coleman, Esquire  
 Attorney for Respondent

**WITNESSES**

SCSO

Bradley

DOCKET NO. 2008-GS-43- 361

**The State of South Carolina**

**County of SUMTER**

**COURT OF GENERAL SESSIONS**

**FEBRUARY TERM 2008**

**THE STATE**

**vs.**

**WILLIAM RICKY WELCH**

**ARREST WARRANT NUMBER**

J288353

D/A: 01/03/07

**ACTION OF GRAND JURY**

*True Bill*

*William Sanders*  
Foreperson of Grand Jury  
Date: *2/21/08*

**VERDICT**

**Indictment for**

**CRIMINAL SEXUAL CONDUCT WITH A  
MINOR (First Degree), COMMITTING OR  
ATTEMPTING A LEWD ACT UPON A  
CHILD**

Foreperson of Petit Jury  
Date:

**C. KELLY JACKSON, SOLICITOR**

STATE OF SOUTH CAROLINA )  
 ) CRIMINAL SEXUAL CONDUCT WITH A MINOR  
COUNTY OF SUMTER ) (First Degree), COMMITTING OR ATTEMPTING A  
LEWD ACT UPON A CHILD

DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

At a Court of General Sessions, convened on February 21, 2008, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – CRIMINAL SEXUAL CONDUCT WITH A MINOR (First Degree)

That William Ricky Welch did in Sumter County, on or about December 23, 2006, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than sixteen years of age, to wit: Complainant , date of Birth 1998, and the actor has previously been convicted of a criminal offense listed in S.C. Code Section 23-3-430(C) and/or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D), to wit: William R. Welch was convicted of criminal sexual conduct with a minor in the first degree in violation of the Code of Laws of South Carolina Section 16-3-655(1) on or about December 1, 1993; in violation of Section 16-3-655(A)(2) of the current Code of Laws of South Carolina, 1976, as amended.

COUNT TWO – COMMITTING OR ATTEMPTING A LEWD ACT UPON A CHILD

That William Ricky Welch, a person over the age of fourteen (14) years, did in Sumter County, on or about December 23, 2006, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: Complainant , date of birth , 1998, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the Code of Laws of the State of South Carolina, 1976, as amended.

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

*P. Kelly Jackson*  
\_\_\_\_\_  
SOLICITOR