

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

DAVID LORANCE ADAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000781

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

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ALAN WILSON
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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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FORM 5

ORIGINAL

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Lexington)DAVID L. ADAMS #271989)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2015 CP 3203207

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 Correctional Institution
990 WISACKY HWY Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Lexington County
General Sessions Lexington County, S.C.
3. Name(s) of co-defendant(s) (if any) None

The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

2015 - GS - 32 - 1759 Criminal Sexual Conduct 2nd degree

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- (b) _____
 (c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) May 4th, 2015 for 18 years
 (b) _____
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty yes
 (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. South Carolina Court of Appeals
 ii. _____
 iii. _____

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

- i. Appeal was dismissed
 ii. _____
 iii. _____

(c) the date of each such result:

- i. July 9th, 2015
 ii. _____
 iii. _____

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

- i. Appellate Case No. 2015-001043
 ii. _____
 iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____

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(b) _____

(c) _____

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

- (a) Ineffective Assistance of counsel pursuant to S.C. Code 17-23-60
 (b) Plaintiff was denied Due Process of LAW in violation of 4th Amendment
 (c) Plaintiff was denied Due Process of LAW By the State's failure to provide Brady

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

- (a) Counsel failed to conduct Any meaningful pre-trial investigation
 (b) No search warrant or consent form was provided in DNA Blood testing
 (c) State failed to provide medical records of the victim in discovery motion

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

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

- i. _____
 ii. _____
 iii. _____

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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. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? 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? No
- (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. Robert Madsen 407 1/2 W. Main St. Lexington,
S.C. 29072
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. guilty plea trial
 - ii. _____
 - iii. _____

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

Conviction be VACated or sentence reduction

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, David B. Adams, 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.

X David Adams

SWORN to and subscribed before me this 10th day of September, 2015.

Paul D. Driggers (L.S.)
Notary Public

My Commission Expires: 11-05-2019

DEPT. A. C. 100-100
CLERK OF COURT
LEXINGTON SC

2015 SEP 15 A 10:26

FILED

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2015 CP 3203207

ORIGINAL
OK

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

I, David L. Adams, 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.

K David Adams
Applicant

SWORN or affirmed to and subscribed before me this
10th day of September, 2015.

Paul J. Driggers
Notary Public

My Commission Expires: 11-05-2019

FILED
2015 SEP 15 A 10 26
CLERK OF COURT
LEXINGTON SC

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

David L. Adams, #271989,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2015-CP-32-03207

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on September 15, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted by the June 2014 term of the Court of General Sessions for Lexington County for one count of Criminal Sexual Conduct With a Minor Second Degree (2014-GS-32-1759). Applicant was represented by Robert Madsen, Esq. On May 4, 2015, Applicant pleaded guilty to Criminal Sexual Conduct With a Minor Second Degree and was sentenced by the Honorable W. Jeffery Young to eighteen years imprisonment for criminal sexual conduct with a minor.

Applicant filed a notice of appeal which was dismissed by the Court of Appeals on July 9, 2015, for failure to provide a sufficient guilty plea explanation as required by Rule 203(d)(1)(B)(iv) for the South Carolina Appellate Court Rules. The Remittitur was issued on July 27, 2015.

II.

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

1. "Ineffective Assistance of Counsel pursuant to SC Code 17-23-60"
 - i. "Counsel failed to conduct any meaningful pre trial investigation"
2. Denial of due process of law in violation of the 4th Amendment
 - i. "No search warrant or consent form was provided in DNA blood testing"
3. "Plaintiff was denied due process of law by the state's failure to provide Brady "
 - i. "State failed to provide medical records of the victim in discovery motion"

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections,¹ and appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of

¹ Per letter dated June 14, 2016, from the Court Reporter Bethanie K. Creppon, the transcript in this case does not exist because the court reporter's car was broken into and her transcript files were stolen, which included the transcript records for this case.

the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, 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, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

In his second allegations, the Applicant alleges his constitutional rights were violated due to an unlawful search and seizure. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999).

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Furthermore, a guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights. See Rivers v. Strickland, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975) (a plea of guilty constitutes a waiver of non-jurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea); Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981). Therefore, the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. "Where a defendant voluntarily, intelligently, and understandingly enters a plea of guilt, this makes it unnecessary for the State to offer evidence to prove the offense charged in the warrant or indictment." State v. Allen, 261 S.C. 448, 200 S.E.2d 684, 686 (1973). This is because the guilty plea "admits all matter of fact averments of the accusation." Id. The defendant admits all

circumstances described in the indictment, leaving only sufficiency of the indictment for review and waiving all other defenses. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708, 709 (2000). Additionally, PCR is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6).

V.

Applicant's allegations regarding prosecutorial misconduct and Brady violations should be dismissed. PCR "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(B). See also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for [PCR] is not a substitute for an appeal."). Applicant could have raised this issue on appeal. The failure to do so waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2201 (1989).

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady² claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

² Brady v. Maryland, 373 U.S. 83 (1963).

VI.

Respondent, therefore, requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

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

VIII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments well in advance of the PCR hearing will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. Rule 15(a), SCRCP. Because Applicant has been appointed an attorney, the attorney is the only individual authorized to file amendments to this application, and filings by Applicant will not be considered at the PCR hearing. See Rule 11, SCRCP.

IX.

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

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

By: 
ATTORNEYS FOR RESPONDENT

22 Dec, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

DAVID L. ADAMS, #271989,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

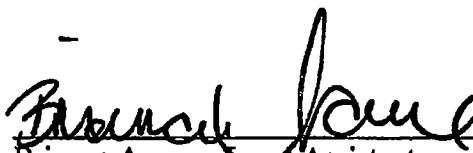
2015-CP-32-3207

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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

David K. Allen, Esquire
The Allen Law Firm, P.A.
Post Office Box 3241
West Columbia, SC 29171

DATED this 22nd day of December, 2016.


Brianna Arnone, Legal Assistant
For Respondent

1 State of South Carolina Court of Common Pleas
2 County of Lexington Eleventh Judicial Circuit
3
4 David L. Adams,) Transcript of Record
5 Applicant/Plaintiff,)
6 vs.) 2015-CP-32-03207
7 State of South Carolina,)
8 Respondent/Defendant.)

9
10 December 11, 2017
11 Lexington, South Carolina

12 B E F O R E:

13 The Honorable J. Cordell Maddox, Jr., Judge
14

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

16 David K. Allen, Esquire
17 On behalf of the Applicant

18 Sherrie Butterbaugh, Esquire
19 On behalf of the State of South Carolina
20

21
22 Stacy S. Johnson
23 Circuit Court Reporter
24
25

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1 (Whereupon, the following proceedings were held
2 December 11, 2017, beginning at 10:55 AM.)

3 **THE COURT:** Okay. This is David L. Adams. I
4 appreciate it, Mr. Adams.

5 What are we doing here, reconstructing the record?

6 **MS. BUTTERBAUGH:** Yes, Your Honor.

7 **THE COURT:** Okay. And just for the record I guess
8 you better tell me what happened.

9 **MS. BUTTERBAUGH:** Okay. Your Honor, this is --
10 excuse me -- a Lexington County post-conviction relief
11 case, David L. Adams versus the State of South Carolina.
12 2015-CP-32-03207.

13 Applicant was indicted in the June 2014 term for one
14 count of criminal sexual conduct with a minor, second
15 degree. He was represented by Robert Madsen. On May 14,
16 2015, he pleaded guilty to CSC with a minor, second degree,
17 and was sentenced by Judge Jeff Young to eighteen years
18 imprisonment. He filed a notice of appeal, which was
19 dismissed by the Court of Appeals on July 9, 2015, for
20 failure to provide a sufficient reason or explanation as
21 required by the South Carolina appellate court rules. The
22 remittitur was issued on July 25, 2015.

23 And, Your Honor, we're gonna need to do a plea
24 reconstruction. As we were gathering our materials to do
25 a return to the allegations in the post-conviction relief

1 application, which was filed on September 15, 2015, we
2 learned that the court reporter's car had been broken into
3 and her equipment and tapes had been stolen so there was
4 no way to get the guilty plea transcript. In your packet
5 there is a letter from the court reporter reflecting that
6 information.

7 So what we had kind of come up with was to call the
8 solicitor and the plea counsel to have them testify to
9 their recollection of the colloquy and then Mr. Allen had
10 said we can -- had discussed then -- because some of the
11 allegations are gonna kind of bleed over into the colloquy,
12 so I don't know how Your Honor would like us to do -- if
13 you would like to do the plea reconstruction and then make
14 a finding on the record that the -- it's been reconstructed
15 or how Your Honor would like to proceed.

16 **THE COURT:** Yeah, why don't you just go ahead and call
17 the solicitor and we'll do that.

18 **MS. BUTTERBAUGH:** Okay.

19 **THE COURT:** I mean, I think in the back you both
20 agreed that essentially the reconstruction of the
21 transcript and the record wouldn't hit on all the
22 allegations regarding his PCR; is that right?

23 **MR. ALLEN:** Yes, sir.

24 **THE COURT:** And what are those allegations just for
25 the record?

1 **MR. ALLEN:** Your Honor, the crux of our case is that
2 my client did not receive the constitutional -- the
3 advisories about the constitutional rights that he is
4 waiving in the context of the guilty plea, as well as
5 the additional requirements under state law about the
6 minimum and maximum penalties of the charge, the crucial
7 elements of the charge and the generally nature of the
8 constitutional waivers that he is agreeing to when he
9 pleads.

10 **THE COURT:** Okay. Why don't you go ahead and call
11 somebody and we'll see where we go from there.

12 **MS. BUTTERBAUGH:** Okay. The State calls Suzanne
13 Mayes.

14 (Whereupon, Suzanne Mayes was duly sworn by the Clerk
15 of Court.)

16 SUZANNE MAYES,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. BUTTERBAUGH:

20 Q. Ms. Mayes, where are you currently employed?

21 A. Here at the Solicitor's Office, Eleventh Judicial
22 Circuit.

23 Q. And how long have you been employed there?

24 A. Since 2011.

25 Q. And were you employed as the senior assistant

1 solicitor in Lexington County on May 4, 2015?

2 A. Yes.

3 Q. Do you recall the matter of the State of South
4 Carolina versus David L. Adams?

5 A. Yes. It was a case that was scheduled for trial and
6 that particular morning we were in the process of appearing
7 for trial, we were the first case on the roster and ready
8 for jury selection, and at that time Mr. Madsen advised me
9 that Mr. Adams had elected to plead guilty as charged to
10 criminal sexual conduct with a minor, second degree.

11 Q. And do you remember which judge was scheduled to hear
12 the trial and then to take the plea?

13 A. It would have been Judge Jeff Young.

14 Q. And had you ever appeared before Judge Young on any
15 other occasions?

16 A. I don't recall having a trial in front of him. I'm
17 pretty sure I would have had a plea at some point before
18 him.

19 Q. Okay. But you had appeared before other judges and
20 presented plenty of other pleas in your --

21 A. Absolutely.

22 Q. -- in your career?

23 A. Yes.

24 Q. And how many would you estimate maybe that you had
25 pled -- how many pleas would you have done before judges?

Suzanne Mayes - Direct by Ms. Butterbaugh

1 A. Well, I've been a prosecutor since 1991, so at that
2 point in time that would have been roughly twenty-four
3 years. Well over a thousand.

4 Q. Okay. Was there anything specifically that you can
5 recall during this plea process that would have stood out
6 to you?

7 A. Only that it was an ordinary plea. Judge Young was
8 very thorough. Judge Young covered all of the crucial
9 factors during the discussion of all aspects of his rights,
10 his waiver of those rights and then the presentation of the
11 facts that I presented in this particular case. This case
12 involved a fifteen-year-old, who I believe she was fourteen
13 when the -- the timeframe of the indictment first began,
14 and then would have turned fifteen at some point during
15 that timeframe. I believe it covered from January through
16 May, so roughly five months. But during the course of that
17 timeframe, she became pregnant. Ultimately she gave birth
18 to a child in October of 2012 and this case really centered
19 around the paternity of that child. As a result of the
20 criminal investigation, the Defendant submitted to a buccal
21 swab, as well as a buccal swab from the infant and the
22 female victim, and the results of that DNA analysis were
23 99.99 percent positive or confirmatory that he was, in
24 fact, the father of this infant. So that's really the
25 basis of the facts of the case and that's what would have

1 been presented at the plea.

2 Q. Okay. So do you recall if the Applicant was sworn
3 before he gave testimony at the guilty plea?

4 A. Yes.

5 Q. And do you recall whether Judge Young reviewed those
6 charges -- you mentioned this kind of in your statement --
7 reviewed the charges with the Applicant on the record the
8 day of the guilty plea?

9 A. Yes, he would have had the indictment, as well as the
10 sentencing sheet that would have been submitted along with
11 the indictment, but having the indictment it laid out the
12 timeframe of the offense and what the allegations were;
13 that he engaged in sexual intercourse with the victim,
14 ██████████, and what her date of birth is. Her date of
15 birth was 1997. So all of those facts were laid out in the
16 indictment which was discussed with Mr. Adams during the
17 course of the plea.

18 Q. Okay. And so did the judge review the maximum
19 sentence with the Applicant as he was -- that he was facing
20 if he went to trial?

21 A. Yes, it carries up to twenty years and it would have
22 been covered that although it carries up to twenty years
23 that does not mean that he would get twenty years. It
24 could be anywhere up to that timeframe.

25 Q. And so you -- you discussed those facts that would

1 have been -- that you would have recited to the -- to the
2 judge and then in front of the Applicant. Do you remember
3 and recall whether the Applicant agreed with the facts as
4 you presented them?

5 A. I don't recall whether there was any specific
6 discussion by the Defendant about what he did, but
7 normally in this scenario it's sufficient to admit that
8 he understands the facts and agrees with the facts without
9 any further description of his actions. But it was laid
10 out that it involved sexual intercourse and, again, because
11 it was a baby who was at the center of this case I believe
12 it was always abundantly understood that it involved
13 intercourse.

14 Q. And did the Applicant admit that he was, in fact,
15 guilty?

16 A. Yes.

17 Q. Did the judge ask Mr. Adams if he wished to waive his
18 right to a jury trial, his right to confront his accuser
19 and his right to remain silent?

20 A. Yes, that was all covered specifically because this
21 was the morning of trial and we had come with the
22 anticipation that it would be a trial. And, again, it
23 was Mr. Adams who elected at the last minute to plead
24 guilty, so it was certainly covered that a jury pool was
25 present and could select a jury for him if he did not wish

1 to enter this plea.

2 Q. And the Applicant testified that he did waive those
3 rights?

4 A. Yes.

5 Q. Did the Applicant, if you recall, testify that he was
6 not under the influence of drugs or alcohol that day?

7 A. Yes.

8 Q. Did he testify he did not suffer from any kind of
9 mental disability that affected his decision to plead
10 guilty?

11 A. Yes, that was covered.

12 Q. And did the judge ask if the Applicant was threatened
13 or coerced in any way to plead guilty?

14 A. Yes.

15 Q. Did the Applicant testify that he was not?

16 A. That's correct.

17 Q. Did the judge ask if the Applicant was promised
18 anything in exchange for his plea?

19 A. Yes, and it was clear that this was -- he was
20 pleading as charged and that there were no other plea
21 negotiations.

22 Q. So it was understood that, like you said, that
23 this was a straight up plea, no recommendations, no
24 negotiations, so this was just gonna be what the judge
25 sentenced?

1 A. Correct. And the victim was present in the courtroom
2 for the plea as well.

3 Q. Did the judge ask if the Applicant was satisfied with
4 his counsel and did Applicant testify that he was?

5 A. Yes.

6 Q. Did the Applicant ask for any more time to consult
7 with his attorney before continuing with the plea?

8 A. No.

9 Q. Was there any mitigation presented at the plea by the
10 Applicant that you can recall?

11 A. I believe there was. Mr. Madsen is here and can
12 give additional details on that. I believe the -- the
13 explanation was that -- I believe there had been something
14 during the course of the presentation of facts about
15 potential flight evidence. I believe the explanation was
16 that he simply moved to live elsewhere with his girlfriend.
17 That's mostly what I recall about mitigation or potential
18 mitigation.

19 Q. And did anyone else testify that day? You mentioned
20 the victim was there. Did she testify at all during the
21 plea?

22 A. It wouldn't have been testimony. It would have been
23 a statement either made by her or on her behalf and I do
24 believe that the victim advocate addressed the Court on
25 her behalf.

1 Q. Okay. So you don't recall anything -- or do you
2 recall anything unusual or out of the ordinary happening
3 that day during the plea?

4 A. No, the only thing out of the ordinary was that we had
5 anticipated that it would be a trial and then Mr. Madsen
6 informed me that his client had chosen to plead guilty and
7 that that was his desire and wish to go ahead and enter a
8 plea as charged.

9 Q. Okay. And if there was anything unusual about the
10 plea, would you have stopped the judge; do you think?

11 A. Yes, myself or Mr. Madsen I'm sure would have
12 approached the bench to address any issues that may have
13 arisen.

14 Q. Did the judge accept Mr. Adams' plea as voluntarily
15 and knowingly entered?

16 A. Yes, all indications were that it was voluntary.

17 Q. So he accepted his plea as entered?

18 A. Yes.

19 Q. And, again, from your experience, anything
20 specifically about this plea that stood out to you?

21 A. No, it was ordinary by every description of the word.
22 And, again, there was nothing unusual about it. It
23 appeared to be ordinary. He appeared to understand his
24 rights and then willingly and voluntarily waived those
25 rights to enter the plea.

1 **MS. BUTTERBAUGH:** Your Honor, that's all the
2 questions I have of the Deputy Solicitor. If there's
3 anything that --

4 **THE COURT:** Okay. Yes, sir.

5 **MR. ALLEN:** Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. ALLEN:

8 Q. Ms. Mayes, you said this plea was ordinary in every
9 description of the word. That is what you just testified
10 to, correct?

11 A. Yes.

12 Q. And this plea was May 4th of 2015?

13 A. Correct.

14 Q. So over two and a half years ago?

15 A. Yes.

16 Q. And yet you've testified that you have specific
17 memories of all these constitutional waivers; is that
18 correct?

19 A. That is correct. Again, if there was anything
20 unusual or that was not ordinary about the plea, that
21 would certainly stand out. Sometimes during a plea
22 someone will back up, or change their mind or request
23 additional time to talk to their attorney and sometimes
24 pleas are set aside or sometimes it will stand out that
25 he was having trouble or difficulty entering that plea.

1 In this one, we didn't experience any of those issues.

2 Q. Okay. So is it that you don't remember anything
3 unusual happening or do you specifically remember these
4 usual things happening?

5 A. It's both. I remember the plea and I remember that
6 it was ordinary and that he didn't waiver. He didn't seem
7 to have any resistance. He never wanted additional time
8 to talk to Mr. Madsen, so it was an ordinary plea.

9 Q. And you remember that Judge Young said Mr. Adams, do
10 you understand that you're giving up your right to a jury
11 trial? You remember the judge saying that?

12 A. Yes, because of the fact that we were there to select
13 a jury.

14 Q. Okay. And you've testified that you've been a
15 prosecutor for twenty-four years or was it twenty-four
16 years at the time?

17 A. Twenty-four at the time.

18 Q. Okay. And as you said probably thousands of pleas
19 that you've participated in?

20 A. That's correct.

21 Q. And yet you remember those conversations in this one
22 plea two and a half years ago?

23 A. What's distinct about this case, again, is that this
24 was a trial. We were there to begin a trial. It was
25 case that I'd spent a lot of time on, as well as

1 Mr. Madsen. I believe I had a conversation with
2 Mr. Madsen that morning about the fact that both of us
3 had spent the entire weekend working this case, so he
4 wasn't expecting it to turn into a plea either. So we
5 showed up with a jury there ready to go, we're the number
6 one case, and at that point in time Mr. Adams advised
7 Mr. Madsen that he wished to enter the plea.

8 So that's what makes it distinct to me and that's
9 how I recall that during the course of that plea it was
10 certainly discussed that a jury was there and was present
11 and could be selected if he had any questions or
12 reluctance to enter the plea and he did not.

13 Q. Has a plea ever happened the day of trial before?

14 A. Yes.

15 Q. Isn't that a fairly common thing?

16 A. It's not that common in my cases.

17 Q. Okay. How many times would you say -- can you give
18 me an estimate on that? How many times has a plea -- how
19 many times has a trial turned into a plea the day of the
20 trial?

21 A. The day of the trial? Less than twenty.

22 Q. How about during the trial at any point?

23 A. The same thing. Less than twenty.

24 Q. Okay. Where was Mr. Madsen when he told you that
25 this was now a plea?

1 A. He came to our office.

2 Q. So he came to your office?

3 A. Yes, he did.

4 Q. Okay. What did he say?

5 A. He said he was surprised by the change of mind, but
6 that his client has now informed him that he wishes to
7 plead guilty and that he had discussed it with him and he
8 was sure and I said well, are you sure, Rob, because, you
9 know, we've got the jury here ready to go, we've got
10 witnesses here ready to go, and he said yeah, that's what
11 he says. So we went ahead and took some additional time
12 for him to get his client signed up; probably thirty to
13 forty-five minutes during that whole process. We had the
14 jury sent elsewhere. I don't recall where they went.
15 Probably down to the third floor. We entered the plea
16 upstairs on the fourth floor.

17 Q. All right. Well, let me continue on with the plea.
18 You've got a specific memory that the judge asked my
19 client if he understood the crucial elements of the
20 offense?

21 A. He would have read the indictment.

22 Q. You say he would have?

23 A. He did read the indictment. The indictment was
24 discussed, but he also would have gone over with him what
25 the elements of the offense was that I put on the record;

1 that he had sex with the victim and it resulted in a baby.

2 Q. Do you have a specific memory at that plea that
3 Judge Young notified my client of the minimum and maximum
4 penalties of the plea?

5 A. Yes.

6 Q. You have that specific memory?

7 A. Yes, up to twenty years.

8 Q. And I don't -- I apologize. I don't remember if I
9 got all the way through it. His right to remain silent,
10 you have a memory that Judge Young said Mr. Adams, two
11 and a half years ago, you understand that by entering a
12 plea you're giving up your right to remain silent? You
13 remember that?

14 A. I don't remember that particular right being advised.
15 That certainly doesn't mean that it wasn't. I remember
16 that each and every ordinary right was discussed. There
17 was nothing that appeared to have been left out.

18 Q. But you don't have a specific memory of that right?

19 A. I wasn't transcribing the plea.

20 Q. Of course. And I wouldn't expect that you would.

21 That's kind of my point. What else do you remember? Was
22 my client in an orange suit from the jail at the time?

23 A. I believe he had on regular clothes.

24 Q. Okay. Do you remember who was there with my client
25 other than Mr. Madsen?

1 A. Shenika.

2 Q. Who's that?

3 A. The paralegal.

4 Q. Okay. Anybody else there at the plea on behalf of
5 my client?

6 A. I don't recall and I don't recall his clothing
7 either.

8 Q. Okay. Were there any investigating officers there
9 that testified at the plea?

10 A. We had an investigating officer there. Detective
11 Trish Stoner. She did not testify. It's not ordinary
12 that an officer would testify at the plea.

13 Q. Did anybody speak on behalf of the State other than
14 yourself and the victim's advocate?

15 A. Not that I recall.

16 Q. Did Mr. Madsen do some mitigation?

17 A. Yes.

18 Q. Did my client speak on his own behalf?

19 A. Not that I recall.

20 Q. And you specifically recall that the judge asked my
21 client if he was under the influence of any substances?
22 You remember that?

23 A. Yes.

24 Q. You remember that the judge asked if there was any
25 mental disabilities that my client suffered from?

1 A. Again, I don't recall each and every one of the
2 specific rights. I can't say in which order they would
3 have been presented, but Judge Young is very thorough and
4 he was very thorough in this plea.

5 Q. So then you don't remember if he asked my client if
6 there was anybody that threatened or coerced him into
7 pleading guilty?

8 A. That was asked, yes.

9 Q. You do remember that one?

10 A. Yes.

11 Q. Do you recall if anybody -- do you recall if the
12 judge asked if anybody had promised my client anything?

13 A. Yes.

14 Q. You do remember that one?

15 A. Those are questions that I always pay particular
16 attention to because we want to make sure that it's
17 understood if it's a straight up plea that it is a
18 straight up plea and that there aren't any additional
19 plea offers or negotiations.

20 Q. And you remember specifically if my client was asked
21 if he was satisfied with his representation?

22 A. Yes, and he was.

23 Q. He was?

24 A. (Nods head.)

25 Q. Do you recall specifically if my client was asked if

1 he needed any more time to speak with his attorney?

2 A. Yes.

3 Q. What did my client say to that?

4 A. He did not indicate that he did.

5 Q. What did the victim's advocate say?

6 A. That the victim had endured a lot of trauma and
7 emotional distress because she had become a mother at
8 fifteen by a man who was a relative and she was now
9 raising that child. And certainly all of those factors
10 were taken into account as part of the victim impact.

11 Q. How long did she speak for approximately?

12 A. I don't know.

13 Q. How long was the entire plea?

14 A. Less than thirty minutes.

15 Q. More than fifteen minutes?

16 A. Yes.

17 Q. Had y'all already struck the jury?

18 A. I don't believe we had.

19 Q. Are you sure?

20 A. I'm not sure. I do recall a jury was present.

21 Q. During your direct examination, I noticed you looking
22 down. Are you reading from some notes or were you reading
23 some notes?

24 A. No, I've got the indictment in front of me.

25 Q. That pink sheet there?

1 A. Uh-huh.

2 Q. Okay. So do you have any notes from the plea?

3 A. Not from the plea.

4 Q. Did you have any other pleas that went before Judge
5 Young that day?

6 A. Not that day.

7 Q. I didn't understand your testimony on direct. You
8 said that you had been in front of Judge Young before you
9 believed; is that right?

10 A. I know I have. I just don't recall if it was before
11 or after this particular plea.

12 Q. Was it a trial or was it all pleas?

13 A. That was a plea.

14 Q. So you've been in front of him one other time?

15 A. At least, yes.

16 Q. And you don't recall if that was before or after this
17 plea?

18 A. I don't.

19 **MR. ALLEN:** Thank you.

20 **MS. MAYES:** Yes.

21 **THE COURT:** Anything on redirect?

22 **MS. BUTTERBAUGH:** No, Your Honor.

23 **THE COURT:** Okay. You can step down. Thank you.

24 **MS. MAYES:** Thank you, Judge.

25 (Witness excused.)

1 **MS. BUTTERBAUGH:** Your Honor, the State would call
2 Rob Madsen.

3 **THE COURT:** All right.

4 (Whereupon, Robert Madsen was duly sworn by the Clerk
5 of Court.)

6 **THE COURT:** Yes, ma'am.

7 ROBERT MADSEN,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BUTTERBAUGH:

11 Q. Where are you currently employed?

12 A. I'm the circuit public defender for the Eleventh
13 Circuit.

14 Q. And how long have you been employed there?

15 A. Over nine years.

16 Q. And were you employed there in Lexington County on
17 May 4th of 2015?

18 A. Yes, ma'am.

19 Q. Can you tell me how you got involved in this case
20 with Mr. Adams?

21 A. It appears that Mr. Adams was not initially appointed
22 to our office, but in March there is an appointment order.
23 It looks like we opened -- or opened our file and screened
24 him about March 24th and I had my initial visit with him
25 at the jail on April 7th of 2014.

1 Q. Okay. And so do you recall this beginning as trial
2 preparation for you and your office?

3 A. Yes.

4 Q. Okay. And this became a guilty plea proceeding where
5 Mr. Adams pled guilty to the charges as indicted -- the
6 charge as indicted?

7 A. He did.

8 Q. And when did that happen?

9 A. That morning. The morning that he was scheduled for
10 trial, we were up on the fourth floor, and I don't remember
11 if David had gotten dressed out and put the clothes on or
12 not, but I had gone back into a little chamber there where
13 inmates usually sit or dress out, and he told me he wanted
14 to plea. And I had met with him the -- either the
15 Wednesday or Thursday before and the Friday before and he
16 was adamant at that time he wanted a trial, but when I
17 walked into the room he said I want to plea, I don't want
18 to put everyone through this.

19 Q. So you've had the opportunity then to review your
20 file in this case?

21 A. I have.

22 Q. And you heard the testimony previously from the
23 solicitor in the case that was just presented?

24 A. Correct, I did.

25 Q. And would you agree with her recollection of the

1 plea?

2 A. Yes, ma'am.

3 Q. Okay. So did you recall whether Judge Young reviewed
4 the charges with the Applicant on the record the day of
5 the plea?

6 A. He did.

7 Q. And did you review with Mr. Adams the charge that he
8 was pleading to?

9 A. I don't remember if I over -- or went over it again
10 that day, but I know when I initially met with him on
11 April 7th of 2014 in our initial meeting I went over not
12 only his trial rights, but the minimum and maximum, some
13 of the ancillary things such as SVP and registration, and
14 fully went over his trial rights at that initial meeting.

15 Q. So he understood going into this plea what -- the
16 sentencing range or is it your understanding that he would
17 have known what the sentencing range would have been?

18 A. Yes.

19 Q. So in the plea colloquy with the judge, did he review
20 the maximum sentence that the Applicant was facing if he
21 had gone to trial?

22 A. He did.

23 Q. And do you recall whether the Applicant agreed with
24 the facts that were presented by the solicitor during the
25 colloquy?

1 A. Yes. He didn't go into detail, but when the judge
2 got done as far as prior to the acceptance of the plea,
3 yes.

4 Q. So the Applicant admitted that he was, in fact,
5 guilty of the charge?

6 A. Yes.

7 Q. So did the judge ask the Applicant if he wished to
8 waive his right to a jury trial, his right to confront
9 his accuser and his right to remain silent?

10 A. He did.

11 Q. And you recall that?

12 A. I do.

13 Q. Did the Applicant testify he waived those rights?

14 A. Yes. I mean, it's usually one word.

15 Q. Okay. And he testified he was not under the
16 influence of any drugs or alcohol that day?

17 A. Correct. And obviously I had had dealings with him
18 on this morning and I wasn't concerned about anything of
19 that either.

20 Q. Did the judge ask the Applicant if he was threatened
21 or coerced in any way to plead guilty?

22 A. He did.

23 Q. And he testified that he was not?

24 A. Correct.

25 Q. Did the judge ask the Applicant if he was promised

1 anything in exchange for his plea?

2 A. Yes.

3 Q. And he testified that he was not?

4 A. Right. David knew it was a straight up plea.

5 Q. Pardon?

6 A. He knew it was a straight up plea. We never received
7 an offer during the entire time. It was, you know, kind
8 of an all or nothing, and he was aware of that. There was
9 some discussions about an Alford plea and there was a
10 grievance that talked about an Alford plea at some point
11 in time, but you can't do an Alford plea on a straight up
12 plea unless they're offering you something and he and --
13 David and I during the course of the representation had
14 had discussions about that.

15 Q. Do you recall any specific details as to what was
16 asked and answered that day between the judge and the
17 Applicant beyond what -- the questions that I've asked
18 you?

19 A. No. I mean, it was just basically a standard plea.

20 Q. So there was nothing unusual to you that stood out?

21 A. No. We didn't have to stop or start or he didn't
22 vacillate, which at least initially going in I would worry
23 about because I had someone that was very adamant during
24 the entire time of the representation that they wanted to
25 go to trial and then that morning, like I said, I walked

1 in and the first thing he said to me was I want to plea.

2 Q. So this was his decision to plead guilty?

3 A. Absolutely.

4 Q. So there was nothing unusual that you recall about
5 this plea?

6 A. Other than -- I will say I thought it was interesting
7 that as defense counsel this only the second time that
8 I've had a client that I've represented plea in front of
9 trial, so it certainly stuck out to me. Because, you know,
10 generally if we spend time, we're gonna try the case. And,
11 like I said, that's only the second time that I've ever
12 had a client tell me that morning, hey, I want to change
13 my plea.

14 Q. And what did he indicate to you was the reason for
15 changing his mind?

16 A. He just said -- or I walked in and he said I want to
17 plead guilty, I don't want to put everyone through this.

18 Q. This being?

19 A. The trial.

20 Q. Did the Applicant voice any complaints or concerns
21 about your representation to the judge?

22 A. No.

23 Q. Was there any mitigation that you presented to the
24 judge or was there any --

25 A. He had a limited prior record. I do not recall the

1 specifics and I do not recall whether or not we had a
2 family member speak on his behalf. I do specifically
3 recall that when the victim got up and spoke or their
4 part of that that it actually wasn't nearly as bad as I
5 had kind of expected there. I remember being kind of
6 surprised by that. In cases like this they usually want
7 to throw them under the jail and that was not the sense
8 that I got, which kind of surprised me.

9 Q. So did you feel like Mr. Adams understood what was
10 going on at the plea?

11 A. Absolutely he understood.

12 Q. And if you had felt at the time that he did not
13 understand anything, would you have stopped to explain it
14 to him?

15 A. Yes. I am not an attorney who twists arms. If my
16 client vacillates or indicates that they don't want to go
17 through with it, I would have told the judge, hey, we're
18 -- judge, we need a moment or we would like to withdraw
19 the plea and pick a jury.

20 Q. So how many times have you appeared, do you think,
21 before Judge Young?

22 A. Not very many. I know generally he is not a great
23 sentencing judge and I got bit pretty early by him, so I
24 generally tried to stay away. And I had told David that,
25 you know, the week before that he was probably as far as

1 a sentencing standpoint was the worst sentencing judge in
2 the state.

3 Q. So he was a tough judge?

4 A. He was a tough sentencing judge.

5 Q. And how many pleas have you handled before other
6 judges?

7 A. Oh, gosh. Thousands as a prosecutor, but I would
8 guess a thousand as the public defender.

9 Q. If there was anything that had stood out to you or
10 anything that the judge neglected to go over, would you
11 have stopped him or objected?

12 A. When I've had that happen, I generally bring that out
13 to the judge. Hey, Judge, I just want to let you know
14 that I've also informed my client that this is classified
15 as a violent or a most serious or something like that. I
16 generally do that to make sure that the record is clear.
17 I didn't have to do -- I did not have to do that in this
18 plea.

19 Q. So everything was, as you testified before, in your
20 opinion ordinary?

21 A. Yes, it was. Like the solicitor said, it was
22 basically a standard plea. The judge went over all the
23 rights, my client agreed to those and then they did their
24 part and we did our mitigation.

25 Q. And would you have let your client plead guilty if

1 you felt that he did not fully understand what he was
2 pleading guilty to?

3 A. No.

4 **MS. BUTTERBAUGH:** Okay. That's all the questions I
5 have.

6 **THE COURT:** All right.

7 Yes, sir.

8 **MR. ALLEN:** Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. ALLEN:

11 Q. Mr. Madsen, you said that Judge Young bit you early
12 on on a sentence and you tended to stay away from him?

13 A. Absolutely.

14 Q. Is that -- is it well-known, I guess, amongst
15 attorneys that do as much trial work as you do that --
16 which judges are more favorable than others?

17 A. Generally, if you have experience with them, you kind
18 of try to keep a mental note of judges have certain pet
19 peeves.

20 Q. Do you talk -- I'm not gonna ask you the substance
21 of conversations, but do you talk with other public
22 defenders, other defense attorneys, about which judges
23 are good to plea in front of and which aren't?

24 A. You can, yes.

25 Q. Do you do that?

1 A. Yes.

2 Q. Do you feel that that's a common practice?

3 A. Oh, yeah.

4 Q. You said in the beginning of your testimony that
5 it appears that you were not originally appointed on
6 Mr. Adams' case, correct?

7 A. Correct. And I base that on -- on the fact that it
8 looks like he was arrested by my notes January 28th and we
9 did not interview him initially, and when I say interview
10 that's a jail screener, until 3-24, which would have been
11 almost two months later. In my file, there's something
12 from the Clerk of Court's office indicating that they had
13 appointed him to our office in late March, which tells me
14 that initially when he went in front of the magistrate he
15 was not qualified for a public defender and he must have
16 written the clerk's office or someone must have reached
17 out to the clerk's office and they had appointed us
18 because that's when we get those sheets. It would trouble
19 me that we would not have had contact with him for two
20 months if we were appointed at the end of January, and
21 that's something as the circuit public defender I try to
22 keep track of.

23 Q. And that's a detail that you don't remember, but you
24 referred to your notes to remind you of?

25 A. Right. I had documentation on it.

1 Q. Okay. Because that's a long time ago, right?

2 A. Uh-huh. It is.

3 Q. And you stated that -- I just want to be clear. You
4 stated that the judge did inform him of the maximum and
5 minimum penalties?

6 A. Yes, and I did myself also.

7 Q. You remember that discussion in front of the judge?

8 A. I do.

9 Q. Okay.

10 A. Like I said, this was unusual because it's only the
11 second case that I've had that got ready and we're there
12 for trial and ended up pleading out. That is not my
13 experience, you know, once we get to that point. Like I
14 said, I'm not an arm twister. I don't try to force people
15 to do something that is -- you know, that they don't want
16 to do, and so that is not generally my habit.

17 Q. Okay. And you specifically remember the judge said
18 Mr. Adams, you're giving up your right to a trial by
19 pleading guilty today?

20 A. Yes, sir.

21 Q. You remember that the judge said Mr. Adams, you're
22 giving up your right to remain silent by pleading guilty
23 today?

24 A. Yes.

25 Q. You remember that the judge recited -- or rather the

1 solicitor recited the facts of the case and that Mr. Adams
2 indicated that he agreed with those specific facts?

3 A. Yes, as far as the elements for the offense.

4 Q. Okay. Well, was it the solicitor that did it?

5 A. Yes. And the judge also had the indictment, but
6 generally the solicitor -- or, well, then the solicitor
7 went into their version of the facts. Ours were not
8 different, but we had some mitigation as to how the
9 pregnancy occurred.

10 Q. Okay. You said there was some discussion of an Alford
11 plea. Do you mean discussion between you and Mr. Adams?

12 A. At some point in time he had grieved me complaining
13 about the Alford plea. You know, I had discussed with
14 him that you have to have -- you have to get something.
15 They have to put a cap on it, they've got to dismiss
16 charges, they've got to do something. There's got to be
17 a recommendation or else you can't have a plea because
18 there's no benefit of the bargain.

19 Q. So you think an Alford plea was not even legally
20 available?

21 A. Right, it was not, and I had explained that to
22 Mr. Adams.

23 Q. Do you feel that he understood that?

24 A. He did.

25 Q. So this plea was unusual in the sense that it happened

1 the day of trial, but otherwise completely un --

2 A. Right, just a standard plea. I did not -- you know,
3 he was pretty adamant the week before when I met with him
4 a couple of times that he wanted to go to trial and then,
5 like I said, I got there that morning and that's the first
6 thing he said to me.

7 Q. But you don't remember if he was dressed out or not?

8 A. That's the one thing I don't -- I remember meeting
9 him back in the room where that's normally where they
10 put them to dress out and we had a conversation, but I
11 wouldn't sit here and swear that he was dressed out, but
12 I believe he probably was.

13 Q. Was anybody there with him other than your paralegal?

14 A. Well, there would have been a sheriff's deputy that
15 had placed him in that room that would have brought him
16 up because he was jailed all the way up until his plea.

17 Q. What I mean is apparently the solicitor had the
18 investigating officer here, the victim and the victim's
19 advocate. Kind of in y'all's corner, if you will, it was
20 you and your paralegal. Was there anybody else?

21 A. Not that I recall.

22 Q. Any family members?

23 A. I believe he had some family members. I don't recall
24 because generally they're gonna be behind me. I don't
25 recall if his mother spoke or not. I've been racking my

1 brain to try to remember whether she spoke on his behalf
2 or not. I just don't have a recollection of that.

3 Q. Okay. Y'all were on the fourth floor courtroom?

4 A. We were.

5 Q. Did you provide some mitigation for Mr. Adams?

6 A. I did.

7 Q. Did you go up to the podium to do that or did you do
8 it --

9 A. We were both at the podium.

10 Q. You and Mr. Adams were at the podium?

11 A. Right.

12 Q. Not at the table?

13 A. Right.

14 Q. What did you say in your mitigation?

15 A. Well, he didn't have much of a prior record and from
16 my notes -- yeah, he had some -- a couple of DUS's and a
17 contributing and a possession, but it was all very old,
18 it was over twenty years of age, and so I pointed that
19 out to the judge. Obviously he was up there admitting to
20 guilt. He did have a story that kind of changed through
21 the course of the representation, but, you know, I shied
22 away from that a little bit because I didn't think that
23 would be terribly effective in front of a judge and was
24 worried about just kind of inflaming him even more, but
25 just basically went through the fact that he didn't have

1 much of a prior record, that this was certainly, you know,
2 kind of an anomaly as far as his character went. And he
3 was -- I believe he was thirty-eight or close to -- well,
4 he was a little bit older than that at that point in time,
5 so, like I said, that was -- our major contention is that
6 he didn't have this terrible record and, you know, he had
7 over twenty years to -- you know, if he was gonna be a
8 really terrible person to kind of stack charges and so that
9 was one of our major points.

10 Q. Did you have any other pleas that week?

11 A. Not in front of Judge Young. Like I said, I --

12 Q. What about any other judges that might have been here?

13 A. I don't recall.

14 Q. What other judges were here?

15 A. I don't recall what other judges. My focus because
16 it was going to be a trial and I expected that trial to
17 take the full week and I knew Judge Young was gonna be the
18 trial judge.

19 Q. What did you do with yourself when you had a week
20 open up to you when he pled the day of the trial?

21 A. After that I would have just done administrative
22 stuff, checked to see if I had other stuff. I wouldn't
23 have scheduled anything that week knowing that I wasn't
24 going to be there.

25 Q. You say you wouldn't have?

1 A. Right.

2 Q. Do you remember --

3 A. I don't recall exactly what I did for the rest of
4 that week.

5 Q. Okay. All right. How do you remember those specific
6 comments the day of the plea?

7 A. Like I said, it's just -- that was just very unusual
8 and it really kind of shocked me that I walked in there
9 and David -- I mean, he had been very adamant because I
10 had gone and seen him with Jael Gilreath, who was in my
11 office, because she was going to help me try that case,
12 and he was adamant that he wanted a trial. I, you know,
13 explained to him that Judge Young was about the worst judge
14 you could pick and we had had -- or I had discussions with
15 Solicitor Mayes about the fact that if he wanted to plea
16 he could have pled with Judge McMahon that week even on
17 Friday. Judge McMahon is not a great sentencing judge on
18 stuff like that, but I thought that he would be better than
19 Judge Young and so I had talked with David and made sure
20 that he understood that and David was adamant that he
21 wanted a trial and so it really kind of -- like I said, it
22 was extremely unusual --

23 Q. That's unusual --

24 A. I'd only had one other time where someone's come to
25 trial and said, hey, I want to plea.

1 Q. That's unusual, but the constitutional rights are
2 something that happens at literally every plea that
3 couldn't be more common.

4 A. Sure. Like I said, it just sticks out in my mind
5 because of that factor and the fact that we were up on the
6 fourth floor courtroom and the fact that -- like I said,
7 that might have only been the second time that I had
8 appeared in front of Judge Young. Like I said, when he
9 took the bench I had a client with no prior record pleading
10 to a contributing for kissing a girl and Judge Young gave
11 her a year in prison -- or gave him a year in prison with
12 no prior record and after that I generally tried to shy
13 away from him.

14 Q. Do you think that other attorneys know and believe
15 the same thing you believe about Judge Young's sentencing
16 tendencies?

17 A. Oh, absolutely.

18 **MR. ALLEN:** Thank you.

19 **THE COURT:** Anything else?

20 **MS. BUTTERBAUGH:** No, Your Honor.

21 **THE COURT:** Okay. Thank you, sir. You can step
22 down.

23 (Witness excused.)

24 **THE COURT:** Anything else from the State?

25 **MS. BUTTERBAUGH:** No, Your Honor. We just ask that

1 you find that the -- make a finding on the record that the
2 transcript has been reconstructed before we move onto the
3 merits hearing.

4 **THE COURT:** Do you have anything further?

5 **MR. ALLEN:** Your Honor, I would oppose that motion.
6 I believe that there are -- there's just simply not enough
7 here to have a complete record from which we can proceed
8 on PCR. We've had the prosecutor testify, we've had the
9 defense counsel testify. To certain things the prosecutor
10 says she has specific memory of. To other things her
11 testimony was that that would have happened, that this
12 would have happened. We don't have testimony from the
13 trial judge, Your Honor, who is very much within the
14 prosecution's control as he works for the Attorney
15 General's office currently. Without that and given the --
16 the minimal testimony we've got, I think the interest of
17 justice calls that we do not have a complete record from
18 which to go forward on today. My client is here to
19 challenge his conviction and we just don't have an accurate
20 enough record for him to make a legitimate challenge to
21 that.

22 **THE COURT:** Okay. What's y'all's position?

23 **MS. BUTTERBAUGH:** One moment, Your Honor.

24 It's the State's position that this being
25 post-conviction relief, and this was an attempt to

1 reconstruct the plea hearing, that it's his burden of
2 proof and he hasn't even taken the stand yet to talk
3 about, you know, the allegations and his position on the
4 allegations, so.

5 **THE COURT:** Well, I'm talking about just the
6 reconstruction of the record now.

7 **MS. BUTTERBAUGH:** And that everything, you know,
8 before the Court right now is that it was a consistent
9 plea hearing, that it was constitutional and that, you
10 know, there's nothing inconsistent before the Court now.
11 This was an ordinary plea, this was a thorough plea by
12 Judge Young. His rights were read. Both the plea counsel
13 and the solicitor testified that they would have stopped
14 the proceeding if there was something unusual about it
15 that they thought needed to be raised, so I think that
16 this -- you know, I think the indications are in front of
17 the Court that this was, you know, a proper plea hearing
18 and this was a proper plea.

19 **THE COURT:** All right. Well, I mean, reconstruction
20 of a transcript like this is hard and I've had to joke
21 before you usually do it with your own cases, but obviously
22 Judge Young is no longer on the bench. It's important to
23 me that the defense lawyer, who's been in front of me
24 often and is very good and also very thorough, and the
25 solicitor, who's also very good and thorough, both

1 testified, and specifically it's important to me that the
2 defense lawyer remembered this as unique because it was
3 only the second time he'd ever had a trial to a plea in a
4 day. I mean, I don't want to comment on anybody else's
5 sentencing habits, but I know that there have been people
6 who've come to me -- when Judge Young and I were in the
7 same building, he was usually out by one o'clock and I was
8 there until five, and I say that half jokingly, but not
9 completely, and I understand that because we all have our
10 own reputations, but because of all of these unique markers
11 I think that the transcript has been reconstructed enough
12 for me as the judge on a PCR to determine whether or not
13 any of the allegations of the PCR are correct.

14 Now the question is do you need more time -- now
15 that I've ruled this way, do you need more time to talk to
16 your client about the actual PCR? Because this is a very
17 unique situation and I don't have a problem with that.

18 **MR. ALLEN:** Judge, we're prepared to go forward.

19 **THE COURT:** Okay. All right. Well, let me take a
20 quick break and I'll be back and we'll go forward.

21 **MS. BUTTERBAUGH:** Thank you, Your Honor.

22 **THE COURT:** Give me about five minutes and then we'll
23 figure out what we're gonna do.

24 **MS. BUTTERBAUGH:** Okay. Thank you.

25 (Recess taken.)

1 **BAILIFF:** All rise. Court's now in session.

2 **THE COURT:** Thank y'all. Have a seat.

3 Yes, sir.

4 **MR. ALLEN:** Thank you, Your Honor. May it please the
5 Court?

6 **THE COURT:** Yes, sir.

7 **MR. ALLEN:** At this time I'd call David Adams.

8 **THE COURT:** All right. So we're proceeding on with
9 the PCR portion?

10 **MR. ALLEN:** I'm sorry, Your Honor?

11 **THE COURT:** We're proceeding on with the PCR portion?

12 **MR. ALLEN:** Yes, sir. Yes, sir.

13 **THE COURT:** Okay.

14 (Whereupon, David L. Adams was duly sworn by the
15 Clerk of Court.)

16 **THE COURT:** How are you doing, Mr. Adams? Have a
17 seat there and answer any questions they have for you.

18 **THE APPLICANT:** Yes, sir.

19 **MR. ALLEN:** Thank you, Your Honor.

20 DAVID L. ADAMS,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ALLEN:

24 Q. David, please spell your last name for the court
25 reporter.

David L. Adams - Direct by Mr. Allen

1 A. A-D-A-M-S, Adams.

2 Q. David, you brought this application for
3 post-conviction relief from a plea of some kind that
4 you entered on May 4, 2015, correct?

5 A. Yes, sir.

6 Q. All right. Who represented you on that plea?

7 A. Mr. Madsen.

8 Q. Mr. Madsen that's already testified at the
9 reconstruction portion of this case?

10 A. Yes, sir.

11 Q. When was your first opportunity to meet with
12 Mr. Madsen?

13 A. The latter end of March of 20 --

14 Q. Is it Mr. Madsen's representation of you in this
15 matter that you challenge was ineffective?

16 A. Yes, sir.

17 Q. Okay. And you met him the latter end of March?

18 A. Yes, sir.

19 Q. When were you arrested?

20 A. January the 5th of 2014.

21 Q. January of 2014?

22 A. Yes, sir.

23 Q. Okay. And you met him in March of 2014?

24 A. Yes, sir.

25 Q. Okay. Upon first meeting Mr. Madsen, what was the

1 general discussion?

2 A. Well, just he let me know who he was and he asked me
3 what had been transpired and that was pretty much it the
4 first initial visit.

5 Q. How long would you say it lasted?

6 A. I'd say roughly probably like ten to fifteen minutes.

7 Q. Okay. Was it -- where was that meeting?

8 A. At the county jail.

9 Q. Lexington County Detention Center?

10 A. Yes, sir.

11 Q. Okay. Did he provide you with any paperwork or
12 anything?

13 A. Not at that moment.

14 Q. Did he offer any thoughts about your case at that
15 moment?

16 A. No, sir.

17 Q. All right. What's the next thing that happened
18 regarding Mr. Madsen's interaction with you?

19 A. As far as the representation?

20 Q. When's the next time you talked to him?

21 A. I believe it was -- I think the second week in April.

22 Q. Okay. Tell us about that discussion.

23 A. He just came in to reassure me about the situation;
24 that he's gonna do the investigation and whatever else
25 needs to be done in the case at hand.

1 Q. What did he think needed to be done?

2 A. Well, go around and talk to witnesses that I gave
3 him and as far as I know it was probably like two, maybe
4 three people he talked to to my knowledge. I had more
5 than that, but I don't know how that panned out.
6 Constitutional issues dealing with the investigation as
7 a whole. There was some things that was done that I
8 brought to his attention that he didn't pursue to find out
9 what happened with that.

10 Q. But at this second meeting you were discussing about
11 doing these things and he indicated that he would?

12 A. Yes, sir.

13 Q. Okay. When did it become apparent to you that he was
14 not going to do those things you just mentioned?

15 A. When I inquired to him about the DNA.

16 Q. Well, when was that roughly?

17 A. It was about -- it was right before July the 4th.

18 Q. Of 20 --

19 A. '14.

20 Q. Okay. So you're about four months in at that point?

21 A. Yes, sir.

22 Q. And what was it exactly that he was not following up
23 on?

24 A. Well, the detective that did the DNA, she never had a
25 search warrant, which was required by law, and I brought

1 it to his attention and he said he was gonna talk to her
2 and see, but he never -- he never gave me any kind of
3 insight on it or anything like that.

4 Q. So in July it became clear to you that he wasn't
5 following up on the DNA search warrant issue?

6 A. Yes, sir.

7 Q. Okay. At that point in July, were there any other
8 issues that you had with the way he was representing you?

9 A. Yes, sir. There was some things. I sent a motion
10 -- well, I wrote him a letter about filing a motion for
11 a fast and speedy trial and asked him about the bond
12 reduction hearing.

13 Q. Had he filed motions for those two things?

14 A. For the bond reduction hearing. As far as the fast
15 and speedy trial, no, sir.

16 Q. So he did file for a bond reduction, did not file for
17 a speedy trial?

18 A. Yes, sir.

19 Q. Okay. Did you get that bond reduction hearing?

20 A. Yes, sir.

21 Q. When was that?

22 A. August. Sometime in August.

23 Q. Was bond reduced?

24 A. No, sir.

25 Q. You remained in jail?

1 A. Yes, sir.

2 Q. Through the rest of 2014, how many visits did you
3 have with Mr. Madsen?

4 A. I'd say roughly probably about five, maybe six.

5 Q. Did you keep a running log of all your interactions
6 with him?

7 A. Yes, sir. I started that log in May of 2014. Every
8 time he visited, every time I made a call to his office,
9 whatever the case may be. Anything that I had to interact
10 with him, I made sure I kept a log of it.

11 MR. ALLEN: I beg the Court's indulgence, Your Honor.

12 THE COURT: Sure.

13 MR. ALLEN: I'm sorry, Your Honor. I've got this log
14 somewhere.

15 THE COURT: Okay.

16 BY MR. ALLEN:

17 Q. David, let's move on. I will find that and then we'll
18 circle back.

19 At some point did your relationship with Mr. Madsen
20 break down to the point where you asked him to be relieved
21 as your lawyer?

22 A. Yes, sir.

23 Q. Do you recall when that was?

24 A. It was sometime in Octo -- September.

25 Q. 2014?

1 A. Yes, sir. Everything was in 2014. September of 2014.

2 Q. Okay.

3 A. We went before the judge in October. October the
4 10th, I believe, 2014.

5 Q. What was the decision from the judge on him being
6 relieved as your lawyer?

7 A. Well, in the middle of my conversation, the judge
8 stopped -- stopped me in the middle of my conversation and
9 he started commending Mr. Madsen and he denied my motion.

10 Q. Was your motion based on the failure to follow up on
11 the things that you had already mentioned here today?

12 A. Yes, sir.

13 Q. Anything else?

14 A. That was pretty much it during that point in time.

15 Q. All right. Did you file any other filings as a result
16 of your poor relationship with Mr. Madsen?

17 A. Yes, sir, I did.

18 Q. What was that?

19 A. 2015 I filed a motion to the Supreme Court of
20 Disciplinary Counsel.

21 Q. Was Mr. Madsen aware that you had done that?

22 A. No, sir.

23 Q. Did he become aware of that at some point?

24 A. I'm pretty sure he did when they notified him.

25 Q. When what happened?

1 A. When they notified him, I guess. I'm taking it as
2 once you file a complaint against a -- against
3 representation, I believe that they notify the
4 representation and let them know that there has been
5 some type of complaint filed against them.

6 Q. Did you and Mr. Madsen ever talk about it?

7 A. No, sir.

8 Q. The testimony at the reconstruction hearing today has
9 been that this case was set for a trial up until the day
10 of the trial. Is that correct?

11 A. Yes, sir.

12 Q. Did you want to proceed to trial on this matter?

13 A. In the beginning I did, then I decided -- I told
14 Mr. Madsen that morning that I would plead guilty.

15 Q. Why did you change your mind?

16 A. Because of his representation, I was stuck with him
17 and I didn't have no way of getting him relieved as my
18 counsel, so, you know, it kind of had a lot to do with
19 what was going on at hand.

20 Q. Did you have -- what do you mean with going forward
21 with him? Are you saying the failure to do the things
22 that --

23 A. Yes, sir.

24 Q. -- you'd asked him to do?

25 A. Yes, sir.

1 Q. Please elaborate on that a little. Was there
2 anything else the day of the trial that concerned you
3 about his representation?

4 A. I mean, the things that he was doing, he just wasn't
5 representing -- representing me like he was supposed to
6 as far as doing the initial investigation and all of the
7 witnesses that I gave him to talk to. You know, during
8 that point in time before trial, I believe it was in
9 February, eleven and a half months -- eleven and a half
10 months later that's when I was appointed a private
11 investigator. I was denied a DNA specialist, but I was
12 appointed a private investigator eleven and a half months
13 later.

14 Q. Did you meet with that private investigator?

15 A. Once.

16 Q. One time?

17 A. Yes, sir.

18 Q. What did the private investigator investigate?

19 A. I don't know. All he did is ask me did I have
20 anybody he needed to talk to and I gave him a couple of
21 names and he said, well, these names that you just gave
22 me, these are the ones that Mr. Madsen gave me, and that
23 was it. The conversation didn't last not even five
24 minutes.

25 Q. So you met with the private investigator one time

1 for less than five minutes?

2 A. Yes, sir. And it was in April of 2015.

3 Q. Do you believe that these witnesses were valuable to
4 your defense at trial?

5 A. Yes, sir.

6 Q. Was it your understanding that that they were gonna
7 be available at trial?

8 A. Yes, sir.

9 Q. They were going to be available at trial?

10 A. They would.

11 Q. Well, is it your understanding rather that they were
12 coming to trial to testify in your case?

13 A. No, sir. Because the only witnesses that I had from
14 the sheet that he gave me that I saw was just me. That's
15 the only witness that I had was myself.

16 Q. Was there any DNA evidence in your case?

17 A. Yes, sir.

18 Q. Is it your understanding that the State had expert
19 witnesses to talk to the jury about that DNA?

20 A. As far as I know.

21 Q. Did you have any DNA experts?

22 A. No, sir.

23 Q. Do you think you needed them?

24 A. Yes, sir. Most definitely.

25 Q. Did you and Mr. Madsen discuss having a DNA expert?

1 A. Yes, sir.

2 Q. Do you understand why you didn't have one?

3 A. No, sir. It never was explained to me.

4 Q. All right. Let's move ahead to the day of the trial.

5 At what point that day did you first see Mr. Madsen?

6 A. That morning when I got to the courthouse. Probably
7 like fifteen minutes after I got to the courthouse.

8 Q. Where were you when you and Mr. Madsen got together?

9 A. I was in the holding cell and they brought me out of
10 the holding cell and went to a little room sitting off
11 adjacent from the holding cell.

12 Q. What happened when you first talked to him?

13 A. Well, I proceeded to go forward, you know, with the
14 trial and getting dressed and -- and all.

15 Q. What did you and Mr. Madsen talk about when you first
16 saw him that morning?

17 A. He asked me was I ready, was I prepared to move
18 forward, and I told him yes, I was.

19 Q. All right. And what happened next?

20 A. He left out and allowed me to continue to get dressed
21 and as I was adjusting my tie that's when he came back in
22 and he's like you ready and that's when I brought it to
23 his attention and I just let him know, you know, instead
24 of going through with the trial I'd just go ahead and plead
25 guilty.

1 Q. Okay. How long was it between meetings with
2 Mr. Madsen that morning?

3 A. So altogether probably like two or three minutes.

4 Q. What happened after you told him you wanted to plead
5 guilty instead of going to trial?

6 A. He said he'd let the State know and he went -- he
7 went up there and he came back and he stayed back there
8 with me about five seconds and he left back out and that
9 was it.

10 Q. Were -- were you and him on good terms at that time?

11 A. No, sir.

12 Q. Your first interaction was a few minutes and your
13 second interaction was a few seconds?

14 A. Like the first -- when he came in when I first met
15 him that morning, it was a few minutes, and then when I
16 was in the process of getting dressed when he come and
17 asked me was I ready, that's when he stayed back there
18 like a couple of seconds, about five seconds, and he left
19 back out to let them know that I wanted to plead guilty.

20 Q. What happened after he left out to do that?

21 A. I haven't seen him since. They called me to the
22 front. That's when the bailiff took me up front.

23 Q. When you say up front, what do you mean?

24 A. They brought me to the beginning of the courthouse --
25 brought me into the courtroom.

- 1 Q. What happened in court when you got in there?
- 2 A. It was -- I guess they were doing jury selection.
- 3 Q. There were jurors seated all in the --
- 4 A. Back, yes, sir.
- 5 Q. -- audience area?
- 6 A. Yes, sir.
- 7 Q. Was it full?
- 8 A. Yes, sir.
- 9 Q. Were they selecting the jury on your case?
- 10 A. I don't know.
- 11 Q. Okay. How long did you sit there until something
- 12 happened on your case?
- 13 A. About twenty, twenty-five minutes.
- 14 Q. Any further discussions with Mr. Madsen at that time?
- 15 A. No, sir.
- 16 Q. After twenty, twenty-five minutes, what happened?
- 17 A. I was the first person on the docket. They called
- 18 me up front and that's when the State -- when the
- 19 solicitor read out the indictment and I pulled Mr. Madsen
- 20 to the side and let him know, you know, the indictment
- 21 isn't accurate.
- 22 Q. Okay. Did you at any point during the plea admit to
- 23 the facts in the indictment?
- 24 A. No, sir. I -- I tried to correct them.
- 25 Q. You tried to correct them on the record?

1 A. Yes, sir, but when I went to speak the judge told me
2 I have to go through counsel.

3 Q. Okay. Did Mr. Madsen as your counsel say anything
4 about correcting the facts?

5 A. No, sir.

6 Q. Did you have any discussion with the judge about
7 giving up certain constitutional rights when you pled
8 guilty?

9 A. Can you -- could you elaborate a little more on that,
10 please?

11 Q. Did the judge inform you that you're giving up your
12 right to remain silent when you plead guilty?

13 A. No, sir.

14 Q. Did Mr. Madsen inform you of that?

15 A. No, sir.

16 Q. Did the judge inform you that you were giving up your
17 right to a jury trial?

18 A. No, sir.

19 Q. Did Mr. Madsen?

20 A. No, sir.

21 Q. Did the judge inform you that you were giving up your
22 right to confront accusers?

23 A. No, sir.

24 Q. Did Mr. Madsen?

25 A. No, sir.

1 Q. We've already talked about the facts of the case.

2 Did the judge inform you of the minimum and maximum
3 penalties associated with your charge?

4 A. No, sir.

5 Q. Did Mr. Madsen?

6 A. No, sir.

7 Q. Did you believe you were pleading guilty that day?

8 A. Yes, sir.

9 Q. Did you believe you were pleading guilty straight up
10 as they say?

11 A. No, sir.

12 Q. What did you believe was happening?

13 A. I thought maybe it was gonna -- I thought it was an
14 Alford plea given my record. I don't have an extensive --
15 the only thing I have on my record was the one felony and
16 that was when I was eighteen years old when I caught that
17 charge, everything else were misdemeanors, so I thought it
18 being an Alford plea it would be more lenient on me to get
19 less time or whatever. I thought I was going home with
20 probation.

21 Q. Did you and Mr. Madsen talk about an Alford plea in
22 your prior discussions before the trial date?

23 A. No, sir.

24 Q. Was there any discussion of it being an Alford plea
25 on the record?

1 A. Not to my knowledge.

2 Q. Was anybody there on your behalf other than

3 Mr. Madsen?

4 A. My family. My fiancée and my mom, my dad and my
5 sister.

6 Q. Okay. You have some folks here today?

7 A. Yes, sir.

8 Q. Okay. Who are they?

9 A. That's my mom and my step-dad.

10 Q. These folks here?

11 A. Yes, sir.

12 Q. Were they there the day of the plea?

13 A. Yes, sir.

14 Q. Did Mr. Madsen provide some mitigation to the Court?
15 Did he speak on your behalf?

16 A. The only thing -- yes, sir. The only thing he said
17 was that I take care of my kids, and that was it. That's
18 the only mitigating evidence that he gave.

19 Q. Did you say anything on your own behalf?

20 A. No, sir.

21 Q. Who spoke on behalf of the State?

22 A. Ms. Mayes, the victim and the victim advocate.

23 Q. And, of course, what sentence did you receive as a
24 result of that plea?

25 A. Eighteen years.

1 Q. Out of how many available years?

2 A. Out of twenty.

3 Q. Why do you believe your conversations with Mr. Madsen
4 were so brief the day of the plea?

5 A. I -- I took it as though he was upset with me or mad
6 because I wrote a letter to the Supreme Court Disciplinary
7 Counsel about how he was representing me.

8 Q. Did his attitude toward you change after that?

9 A. I haven't seen him since. Not until today.

10 Q. Well, I withdraw that. Do you feel like you were
11 adequately informed about the proceedings going into the
12 plea?

13 A. No, sir.

14 Q. Do you feel that you were adequately informed of the
15 constitutional rights you now know you were waiving?

16 A. No, sir.

17 Q. Is there a transcript available for us to prove that
18 you were not given those constitutional warnings?

19 A. No, sir. Not to my knowledge. I mean, granted the
20 whole hearing lasted probably like seven or eight minutes
21 because I was the first one on the docket. Once they
22 finished with the jury selection, they read out the
23 indictment, Mr. Madsen said what he had to say and that
24 was pretty much it.

25 Q. Do you understand that a PCR cannot give you a reduced

1 sentence? Do you understand that?

2 A. Yes, sir.

3 Q. Do you understand that if you win your PCR you would
4 just be back in the position you were in before you pled
5 guilty?

6 A. Yes, sir, I am completely aware of that.

7 Q. Is that the relief you're asking for today?

8 A. Yes, sir.

9 **MR. ALLEN:** Thank you. No further questions.

10 **THE COURT:** Okay.

11 **CROSS-EXAMINATION**

12 **BY MS. BUTTERBAUGH:**

13 Q. So when you changed your mind and decided to plead
14 guilty, what did you think was gonna happen? What did --

15 A. I honestly thought I was going home because, like I
16 said, I don't have no extensive background. I only have
17 one felony on my record. I caught that when I was
18 eighteen years old.

19 Q. So what did you think the guilty plea was?

20 A. As far as I was thinking if you plead guilty the
21 judge will be lenient on you, give you a couple of years
22 probation.

23 Q. In your first meeting with Mr. Madsen he provided
24 with you a sheet of paper that gave you the charge that
25 you'd been indicted on -- indicted on, the charge -- the

1 maximum sentence --

2 A. No, ma'am.

3 Q. -- so you could -- you faced the potential of twenty

4 years. So you thought that you were just gonna be able

5 to go home?

6 A. Well, when I first met Mr. Madsen, none of that was

7 brought to my attention. The second time I talked with

8 Mr. Madsen, I never received any documentation or

9 paperwork. I didn't get none of the -- no paperwork or

10 anything like that until probably about May. That's when

11 I got my Rule 5. Right before I went to my preliminary

12 hearing.

13 Q. And the State had DNA evidence that proved paternity

14 that this child was yours?

15 A. They do, but the -- the results didn't come in

16 accurate, so basically the results came back with

17 somebody else's name. How could I be that person when

18 it's not me?

19 Q. That's -- the results came back that it was your

20 child.

21 A. That's what they're saying, but the results is not

22 accurate.

23 Q. And you consented to that DNA test.

24 A. No.

25 Q. Yes, you did. You consented to that DNA test prior

1 to your arrest.

2 A. No, ma'am. She told me she had a search warrant which
3 she never gave me, which by law under Statute 17-13-140
4 requires that if you do any body intrusion you must have
5 a search warrant. She told me she had a search warrant,
6 which I believed her, and gave her the DNA. Upon to
7 my knowledge of that, that's when I found out that she
8 never had a search warrant and that's when I brought it
9 to Mr. Madsen's attention that she never had a search
10 warrant.

11 Q. So it is your contention that you did not consent to
12 your -- prior to your arrest you did not consent to the
13 buccal swab?

14 A. No, ma'am. And when she first asked me about it, I
15 told her no and when I told her no, she was like that's
16 what -- I figured you'd say that, I have a search warrant.
17 When I asked her to let me see the search warrant, she
18 never had it with her, she said she left it in the car,
19 and that's when she said since we've already got the
20 buccal swab here, let's go ahead and swab you and I'll
21 bring the search warrant back. I've never seen her
22 since.

23 Q. So how many times did you say that you met with your
24 attorney? You said you have a log?

25 A. Yes, ma'am. I'd say roughly about five to seven

1 times. Between five and seven times.

2 Q. Okay. And so including the DNA that you contest, do
3 you recall reviewing any other discovery with Mr. Madsen?

4 A. No, ma'am.

5 Q. And do you recall discussing any possible defenses
6 with your attorney?

7 A. Yes, ma'am.

8 Q. And what were those defenses?

9 A. About how the whole situation went forward and what
10 happened and -- and when I told him, he thought I was
11 lying. He told me that the jury wouldn't even believe
12 that.

13 Q. So what were your defenses that you were gonna raise
14 at trial?

15 A. My whole defense was when I -- when I got up that
16 morning, I took my son for her to baby-sit him because I
17 work nightshift. While I was asleep, I woke up with her
18 on top of me. I left and I went and told her mom what
19 happened and her mom told me she was gonna handle the
20 situation.

21 Q. And so your first statement to police, which I have
22 copies here, was that you never touched her, you never
23 touched the victim?

24 A. Yes.

25 Q. That was your original -- here's a copy of that.

1 **MS. BUTTERBAUGH:** May I approach, Your Honor?

2 **THE COURT:** Sure.

3 **MS. BUTTERBAUGH:** State's Exhibit 1 -- or
4 Respondent's.

5 (Respondent's Exhibit Number 1 was marked for
6 identification.)

7 BY MS. BUTTERBAUGH:

8 Q. So your first statement to police was that you had
9 never touched her in that way and that was sort of how you
10 guys began preparing for trial; is that correct? You and
11 Mr. Madsen.

12 A. Yes, ma'am.

13 Q. And then when did the story change and become that
14 you woke up?

15 A. Basically that's -- that's basically what happened
16 and that's what the whole thing is saying right there.
17 I never touched her. I never did anything to her.

18 Q. And when did the story change and become that you had
19 woke up and she was having sex with you?

20 A. I told Mr. Madsen on the first initial visit that's
21 what happened.

22 Q. Okay. So the judge told you at the guilty plea the
23 charge that you're -- that you were pleading guilty to,
24 you're saying that the judge did not tell you what charge
25 that you were pleading guilty to?

- 1 A. He told me it was a CSC charge.
- 2 Q. And so you're -- you're saying that you don't recall
3 waiving your right to remain silent?
- 4 A. That's correct.
- 5 Q. And your right to a trial?
- 6 A. That's correct.
- 7 Q. So you recall telling the judge that no one was
8 promised -- you know, if he was -- anyone was promising or
9 threatening you in order to plead guilty?
- 10 A. That's correct.
- 11 Q. Do you recall the judge telling you that you wished
12 to -- asking you if you wished to plead guilty?
- 13 A. Excuse me?
- 14 Q. Do you recall the judge asking you if you wished to
15 plead guilty?
- 16 A. Yes, ma'am.
- 17 Q. Do you recall acknowledging that there was a strong
18 likelihood that you would be convicted if you elected to
19 go to trial?
- 20 A. Rephrase that again.
- 21 Q. Do you recall acknowledging that there was a strong
22 likelihood that you would be convicted if you elected to
23 go to trial?
- 24 A. Not no strong likelihood. It was a possibility.
- 25 Q. Do you recall acknowledging that you were pleading to

1 CSC with a minor second degree?

2 A. Yes, ma'am.

3 Q. And there were no negotiations; that this was a
4 straight up plea?

5 A. Not to my knowledge.

6 Q. And so you don't recall telling the judge that you
7 understood that the sentencing range was up to twenty
8 years?

9 A. That's correct.

10 Q. So you're saying that you did not understand that you
11 could receive up to twenty years when you pled guilty?

12 A. Yes, ma'am.

13 Q. So now when you were arrested -- where were you when
14 you were arrested?

15 A. I was living in Vermont. The detective knew.

16 Q. Pardon?

17 A. The detective knew that I had moved to Vermont
18 because she kept in contact with me about the situation
19 and included me in the investigation.

20 Q. So it wasn't evidence of flight that you had -- were
21 trying to cross into the -- into Canada?

22 A. No, ma'am.

23 Q. Now this discovery, you're saying that you did not
24 review discovery with your attorney at all?

25 A. No, ma'am.

1 Q. So you didn't have medical records, you didn't see
2 medical records of the victim, you didn't --

3 A. No. There's no medical. I've got my Rule 5 with me
4 now and there's no medical records, none whatsoever, in my
5 Rule 5.

6 Q. So this DNA test -- so you're saying witnesses. Did
7 you give your attorney any witness names to look into?

8 A. Yes, ma'am.

9 Q. And he had an investigator there at the public
10 defender's office look into those, correct?

11 A. I didn't know who the investigator was. Like I said,
12 I didn't get appointed an investigator until February the
13 24th of 2015.

14 Q. And what about a private investigator?

15 A. I guess that's what he was.

16 Q. And what about funding to have a DNA expert look into
17 this DNA?

18 A. I didn't get none of that. This -- that's what was
19 told to me on February 24th by his paralegal. They said
20 I was denied DNA funding, but I was approved for a DNA
21 specialist. When I found that out, I brought it to
22 Mr. Madsen's attention. When I called, when I left a
23 message, I let him know that's -- that's not really fair
24 on my -- for me because the main evidence that the State
25 has is DNA.

1 Q. Uh-huh. Well, here are two funding requests. One
2 for a DNA statistician, this is ex parte funding, and one
3 also for the private investigator.

4 **MS. BUTTERBAUGH:** May I approach, Your Honor?

5 **THE COURT:** Yes.

6 (Respondent's Exhibit Number 2 and 3 were marked for
7 identification.)

8 BY MS. BUTTERBAUGH:

9 Q. And these might be the -- the dates that you're
10 talking about, if you want to take a look at these.

11 And this is for the DNA statistician who was gonna
12 review the DNA results to look into them to see -- to make
13 sure that it was your DNA and it was a gentleman up in
14 Charlotte. And this is funding for a private investigator
15 and that's what you were aware of who also, in addition to
16 the investigator at the public defender's office, looked
17 into your case.

18 A. See, Mr. Madsen never told me anything about this.
19 The only person I talked to about this was his paralegal
20 and that's when she told me that I was denied the DNA
21 specialist, but I was approved for the private
22 investigator.

23 Q. Okay. So on the morning of trial you decided to
24 plead guilty and what went into that decision? Why did
25 you make that decision to plead guilty instead of going

1 to trial?

2 A. I was just trying to get the situation done and over
3 with. The main reason being I was trying to get back home
4 to my kids because I was the sole provider.

5 Q. So it was voluntary decision to plead guilty?

6 A. It wasn't really a voluntary. Just given the current
7 circumstances with what was going on during the initial
8 investigation, the representation, you know, that had a
9 lot to do with it.

10 **MS. BUTTERBAUGH:** One moment, Your Honor.

11 BY MS. BUTTERBAUGH:

12 Q. And so at no time, I guess, Mr. Madsen or the judge
13 -- at any time you never understood the minimum to maximum
14 sentencing range for CSC with a minor second degree?

15 A. That's correct.

16 Q. And you said you understood, you know, that when
17 you were pleading guilty that you just wanted a lower
18 sentence. Is that -- that's why you made the decision
19 to plead guilty, you wanted a lower sentence than the
20 maximum that you could potentially get of twenty years?

21 A. The main reason why I plead guilty was because of the
22 representation and the facts that was surrounding the
23 whole situation; the DNA, the representation and the way
24 things was just unfolding. You know, I had a situation
25 going on with my kids. I had a son, my baby almost died

1 during the course of that, so, I mean, I had a lot of
2 things that was wearing on me and I was trying to do the
3 best thing possible to try to get back home to my family.

4 Q. So if you had a lesser sentence today you wouldn't be
5 contesting this guilty plea; is that what you're saying?

6 A. No, ma'am.

7 Q. So you would still be contesting this plea?

8 A. Yes, ma'am.

9 **MS. BUTTERBAUGH:** One moment, Your Honor.

10 **THE COURT:** Okay.

11 **BY MS. BUTTERBAUGH:**

12 Q. So what other witnesses were available and necessary
13 for you to present; do you think? Because in that room it
14 would have been just you and the victim.

15 A. Excuse me?

16 Q. In that room it would have been just you and the
17 victim, so what other witnesses would have been available
18 and necessary for you to present?

19 A. Character witnesses as far as family members since
20 it was a family situation.

21 Q. Uh-huh. But those witnesses would have been
22 testifying at your plea in mitigation. Did you have them
23 there to testify for you?

24 A. Yes, ma'am.

25 Q. And did they?

1 A. Nobody ever -- they never come forward. The only
2 person -- the day of the trial, that's when everything
3 changed, and nobody was called forward on my behalf.

4 MS. BUTTERBAUGH: That's all the questions I have,
5 Your Honor.

6 MR. ALLEN: Briefly, Your Honor.

7 THE COURT: Yes.

8 REDIRECT EXAMINATION

9 BY MR. ALLEN:

10 Q. Mr. Adams, the Attorney General's asked you a good
11 bit about your interactions with Mr. Madsen, as did I.
12 Did you, in fact, prepare a log about those interactions?

13 A. Yes, sir.

14 MR. ALLEN: If I may, Your Honor, I'm gonna hand up
15 a piece of paper for the witness to review.

16 THE COURT: All right.

17 MR. ALLEN: The attorney general's not seen this yet,
18 Your Honor, so if they want some time to review it I have
19 no objection.

20 BY MR. ALLEN:

21 Q. David, is that the log of communications that you
22 wrote down?

23 A. Yes, sir.

24 Q. Does that memorialize all the meetings and
25 conversations you had with Mr. Madsen?

1 A. Yes, sir.

2 Q. Does it accurately memorialize those?

3 A. Yes, sir.

4 Q. Is it complete?

5 A. Yes, sir. I think it's missing a page. I believe
6 it's missing --

7 Q. Take a look and make sure.

8 A. I believe that's it.

9 Q. Okay.

10 **MR. ALLEN:** Your Honor, at this time I'd offer this
11 in evidence as Applicant's Exhibit 1.

12 **THE COURT:** Any have objection?

13 **MS. BUTTERBAUGH:** No, Your Honor.

14 **THE COURT:** All right. Without objection.

15 (Applicant's Exhibit Number 1, a log, was marked and
16 admitted into evidence.)

17 BY MR. ALLEN:

18 Q. And, David, you responded to questions from the
19 attorney general that it was the deficient performance of
20 your trial counsel that led you to plead guilty?

21 A. Yes, sir.

22 Q. What you do mean by that exactly? Why -- why did
23 that lead you to plead guilty as opposed to going to
24 trial?

25 A. I mean, the main evidence against me was the DNA and

1 if I run your DNA and it comes back with somebody else's
2 name, I mean, that's gonna raise a red flag pointblank
3 period, so I'm held to be accountable for somebody else's
4 actions.

5 Q. What other name did the DNA come back as?

6 A. It come back as a Johnson.

7 Q. Okay. Have you ever gone by the name Johnson?

8 A. Never in my life.

9 Q. And the attorney general asked you if you would
10 still plead guilty today if you were to get a lesser time
11 reduction. What do you want out of your plea if you were
12 to plea again?

13 A. I just want to get home to my kids. I mean, that's
14 my main concern.

15 Q. Do you want a fair plea?

16 A. Yes, sir.

17 Q. Do you want to be on notice of all the constitutional
18 rights you're waiving while you plead?

19 A. Yes, sir.

20 **MR. ALLEN:** Thank you.

21 **THE COURT:** Anything else?

22 **MS. BUTTERBAUGH:** Your Honor, I forgot to move those
23 into -- into the record. My exhibits.

24 **THE COURT:** Any objection?

25 **MR. ALLEN:** I think they're court filings anyway,

1 Your Honor, but I -- I don't have filed copies. I have
2 no objection to that, Judge.

3 **THE COURT:** All right.

4 (Respondent's Exhibit Number 1, a statement, and
5 Respondent's Exhibit Number 2 and 3, funding orders, were
6 admitted into evidence.)

7 **THE COURT:** Was there a DNA statistician --
8 statistician appointed or hired?

9 **MR. ALLEN:** Not on behalf of defense counsel, Your
10 Honor.

11 **MS. BUTTERBAUGH:** In the -- in the original trial,
12 yes, Your Honor.

13 **MR. ALLEN:** Well, there's a State --

14 **THE COURT:** There was \$2,000. I'm talking about
15 what he had asked for, there was a \$2,000 order. I'm just
16 asking before the plea was there a DNA statistician hired
17 and who had a report?

18 **MS. BUTTERBAUGH:** Yes, Your Honor, there was.
19 Mr. Madsen hired someone, yes.

20 **THE COURT:** Okay. I guess we'll hear about it.

21 **MS. BUTTERBAUGH:** Yes.

22 **THE COURT:** Okay.

23 All right, sir. You can step down. I appreciate it.
24 (Witness excused.)

25 **MR. ALLEN:** Your Honor, that's the Applicant's case.

1 **THE COURT:** Okay. Yes, ma'am.

2 **MS. BUTTERBAUGH:** Your Honor, the State calls Rob
3 Madsen.

4 **THE CLERK:** Should I swear him in again?

5 **THE COURT:** No, he's been sworn. Mr. Madsen, you
6 understand you're under oath?

7 **MR. MADSEN:** Yes, sir.

8 ROBERT MADSEN,
9 having been previously sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. BUTTERBAUGH:

12 Q. Mr. Madsen, how long have you been practicing law?

13 A. Twenty-one years.

14 Q. And has it been with the public defender's office the
15 whole time?

16 A. No. I started in private practice, went from private
17 practice to the Second Circuit Solicitor's Office where I
18 practiced for just about six years leaving there as a
19 senior assistant, coming to Lexington starting as an
20 assistant, becoming senior assistant and a team leader for
21 just under six years in Lexington, and then I've been the
22 public defender for nine years.

23 Q. And were you appointed or retained in this case?

24 A. Appointed.

25 Q. And about how many times do you think that you met

1 with Mr. Adams prior to his guilty plea?

2 A. By my notes, including his guilty plea, we had eleven
3 face to face interactions.

4 Q. And so you would have had probably more than that
5 including phone calls?

6 A. There were some phone calls, there were some letters
7 sent back and forth; me to him, him to me.

8 Q. And did you file any Rule 5 or Brady motions in the
9 case?

10 A. I did. That's initially done at the beginning of the
11 case.

12 Q. And what would that have included for you in this
13 case? What would you have received from the solicitor's
14 office?

15 A. I received it was supposed to be from them their full
16 discovery and I provided that to Mr. Adams.

17 Q. Okay. Was there any material that you think of --
18 that you can think of that was withheld in this case?

19 A. You know, going back through, and my trial notebook
20 is kind of jumbled, I saw something. I did file a -- a
21 supplemental motion for some Brady material because at
22 some point in time -- it was initially alleged that this
23 was a one-time instance and then I can't remember if it
24 was the bond hearing or at some point in time all of a
25 sudden it seemed to be that there might have been more

1 than -- or allegations of more than once instance, which,
2 to me, would be subject to -- you know, that should have
3 been disclosed because of the fact that if someone's
4 going to change what they've testified to under Kyles
5 versus Whitley or Brady, I think that that's impeachment
6 evidence, so I did have a motion in regards to that that
7 had we gone to trial I would have presented.

8 Q. And did you review this discovery with Mr. Adams?

9 A. I did.

10 Q. Now in addition -- because some of this, you know,
11 was DNA evidence?

12 A. (Nods head.)

13 Q. Did you receive funding for your own investigators or
14 your own experts?

15 A. Yes. Initially what we started is we have paralegal
16 investigators within our office that do investigation.
17 He had given me a number of names and my internal
18 investigator was having trouble getting the folks to call
19 back. On some of them she did interview some of those
20 individuals, but to kind of get a second set of eyes or to
21 get help on those people that we were unable to contact,
22 I hired a private investigator also.

23 Q. Okay. And then these were names that Mr. Adams would
24 have given to you to then follow up on?

25 A. Correct. Names that he would have given us or the

1 individuals that he gave us if they gave us other names of
2 individuals that we should talk to.

3 Q. And these were people that you would have spoken with
4 and used potentially at trial?

5 A. Potentially. I mean, we spoke to some of them that
6 just weren't helpful and so we wouldn't have used them at
7 trial.

8 Q. Okay. And with this -- with this DNA evidence, what
9 was the ex parte funding order, what was that expert for?

10 A. David initially had told me that he wanted everything
11 retested and obviously given the fact that it's DNA, you
12 would either have to have some kind of consent or order to
13 get it from the mother of the child and the child also. We
14 got set to do that hearing and the solicitor was willing
15 to consent to that, but had indicated that if they were
16 going to consent to it at the hearing they were going to
17 ask the judge that they be provided with those results
18 also. I explained that to David. You know, I don't think
19 that the judge would have done that, but if the judge did
20 that that would be something that would not be helpful to
21 our case and David indicated that he wanted -- he did not
22 want to go forward and have independent DNA testing. I
23 eventually hired Ron Ostrowski out of North Carolina to
24 review the DNA. He basically said, you know, as far as
25 the DNA went it was clean, but he did prepare questions

1 for my cross-examination.

2 Q. And so was he someone that you would have used at
3 trial as an expert?

4 A. I would not have called him as a -- a witness because,
5 I mean, in his -- in his opinion the DNA was not helpful
6 and he did not see any errors other than like Mr. Adams
7 had mentioned about David Johnson. If you look at the
8 SLED report, on the front part of the SLED report it
9 indicates the samples of the individuals they had gotten
10 it from but on the back side is a block and it says David
11 Johnson instead of David Adams. That's something that he
12 and I discussed and I think the State would have explained
13 that away as a scrivener's error, but that was something
14 that we discussed. But certainly that would have been
15 part of my cross-examination of the expert; that, in other
16 words, if they can't get something as simple as a name
17 right on this, how can you trust them with DNA.

18 Q. But then, again, you didn't have the chance to do
19 this at trial?

20 A. Right, because he had decided he wanted to plead
21 guilty. I had prepared it for trial, I had motions
22 prepared. I'm kind of anal, so I write out my questions
23 for witnesses on the front end, I had done that on a
24 number of witnesses because I fully expected that we.
25 Would be going to trial on that day.

1 Q. So let's talk about some of the defenses that you
2 guys had discussed. Explain some of those for us.

3 A. Well, initially when I met with David, his indication
4 to me was that he had not touched her, that he only has
5 sex with white women and his children are all biracial,
6 and we had numerous discussions where I told him that a
7 defense of I only have sex with white women and his cousin
8 was African American was terrible; that I did not think
9 that that would be successful and I thought -- I just did
10 not think that would be successful and generally that was
11 his defense until the Friday before when I met with him
12 and he disclosed to me at that point in time that [REDACTED]
13 had had sex with him. When he woke up -- and when he
14 woke up he had been ejaculating and told me, he said,
15 well, you remember, that's what I said before and I told
16 him, I said, no, that was not what you had said. He had
17 always told me that they had not had any intercourse and,
18 in fact, during our investigation I had met with his
19 mother, my investigator had met with his mother, and she
20 had indicated the fact that he had basically told her that
21 he had woken up and this lady was having sex with him. I
22 provided that to him and that's one of the things that
23 he grieved me over; that I had falsified his mother's
24 statement to me.

25 Q. Okay. So you had prepared all along for one defense?

1 A. Correct.

2 Q. And then within days of trial --

3 A. Correct. And, in fact, our -- reviewing most of my

4 trial notes, basically our -- our defense was going --

5 not only being the sloppy stuff, but also there was a --

6 a challenge to the initial consent, there was motions to

7 pierce the rape shield, there were allegations through

8 the investigation that we had done that maybe some other

9 family members had had sex with her, including a cousin.

10 We actually interviewed that cousin. There was

11 allegations that the girl's mother lived with a sex

12 offender. We were able to track him down. He was

13 actually in jail, I believe, in Saluda County. So my

14 investigators tracked all of that down, so it was going

15 to be kind of a quasi, you know, not only were they sloppy

16 and messed some things up, but a third-party guilt, and I

17 had motions to try to proceed down that route.

18 Q. So you had a very thorough trial tragedy then?

19 A. Yes, we were -- I mean, with what we had to work with

20 we were prepared.

21 Q. Did you discuss the elements of the charges with the

22 Applicant?

23 A. I did. At the initial meeting that I had with him

24 on April 7th, I went over the minimum and the max -- the

25 maximum, I went over the elements, I went over the fact

1 that it requires registration given his age and wouldn't
2 be eligible for a Romeo clause, I went over the fact that
3 there were strikes associated with it, I went over the
4 fact that there was a sexually violent predator, and at
5 the end, of course, I asked him if he understood all those
6 things and he said he did.

7 Q. Uh-huh. So you reviewed his constitutional rights
8 even before the plea as well?

9 A. I did, like I said, at the initial visit. Now I will
10 say this. I did not give him a piece of paper. You had
11 asked him about that. I did not give him a piece of paper
12 with those things. That was me and him talking about that
13 orally at the initial visit, which is what I do with every
14 single one of my clients.

15 Q. Okay. So his decision to plead guilty on the morning
16 of trial, was it a voluntary decision? It was his decision
17 to make?

18 A. It was.

19 Q. Okay. And did you explain what that meant for him
20 potentially?

21 A. Yes. He knew he was giving up the trial rights, he
22 was there for a trial. We actually had to go over the
23 plea paperwork and he had to sign that. Like I said, I
24 was not prepared for that at that point in time. That
25 kind of struck me out of the blue.

1 Q. Uh-huh.

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

4 THE COURT: Okay.

5 MS. BUTTERBAUGH: Pardon me. One moment. I'm sorry.
6 One moment, Your Honor.

7 BY MS. BUTTERBAUGH:

8 Q. All right. So were there any character witnesses
9 that -- that you considered presenting in mitigation at
10 the plea?

11 A. Not as far as a character witness, no.

12 Q. Because you had mentioned earlier that when your
13 investigator went out to speak with some of the people
14 that Applicant had -- the Applicant had kind of given the
15 names to you, you said that some of them weren't helpful?

16 A. Well, they just didn't know anything about the case.
17 Like his brother, who was somewhere in the Upstate, he
18 wanted to talk with us. We had trouble getting his brother
19 to call us back. We were pretty sure it was his brother
20 because his voicemail listed his name, but when we talked
21 to the brother he -- he couldn't provide us anything
22 helpful. There was another uncle that we had talked to.
23 Without looking through my notes, I believe his name was
24 Harold Adams, that was some law enforcement that had had
25 a house, we talked with him. I mean, there was nothing

1 that they could provide to us as far as anything that
2 worked with a potential defense. Like I said, we were
3 looking at a third-party guilt, kind of trying to pierce
4 the potentially rape shield, so we were looking for anyone
5 to corroborate that defense.

6 **MS. BUTTERBAUGH:** All right. Thank you, Your Honor.

7 **THE COURT:** All right.

8 Yes, sir.

9 **MR. ALLEN:** Thank you.

10 CROSS-EXAMINATION

11 BY MR. ALLEN:

12 Q. All right. You said you had about eleven meetings
13 with the client throughout this thing?

14 A. Face to face, yeah.

15 Q. And that was between March and May of the next year?

16 A. April 7th and then 5-4, but that included the plea,
17 so.

18 Q. Okay. So eleven meetings including the plea over a
19 year?

20 A. Yes.

21 Q. Okay.

22 A. And then there were calls, letters.

23 Q. Right. There were calls and letters in addition to
24 that?

25 A. Yes, sir.

1 Q. At what point did you start developing a defense for
2 Mr. Adams?

3 A. Well, like I said, when I initially meet with a
4 client, I always go over their rights with them. I always
5 go over the background information with them initially.
6 As I said, he had indicated to our jail screener that he
7 hadn't touched her at that point in time. As soon as I
8 got the re -- or the discovery, I sent it to him. I know
9 he got it because the next meeting, then I confirmed with
10 him and I placed in my notes that he had received the
11 discovery. He had given me names at least initially of a
12 Lizzy Harris, who I believe was an aunt, Eva James -- or
13 Eva Adams, excuse me, that was his mother, Veronica Smith
14 Jones, who was an aunt, and Vernon Adams, who I believe
15 off the top of my head was his brother in the Upstate.

16 Q. So those were the witnesses he gave you?

17 A. Those were the initial witnesses and, like I said,
18 we developed additional witnesses after that.

19 Q. Which one of those witnesses were prepared to testify
20 at trial?

21 A. I've got -- somewhere in here I've got my witness
22 list, if you give me just a second, that I had prepared.
23 And while I'm looking for this I will say obviously
24 something like his case would be fluid if we would have
25 gotten to the point where we did not think that the State

1 had proven their case or had a problem. But as far as
2 potential witnesses, on our witness list we had Douglas
3 Deshaun Morris, who was some type of relation to the lady,
4 and that was kind of what we --

5 Q. The victim?

6 A. To the -- yes.

7 Q. Okay.

8 A. That there was were some allegations that maybe he
9 had had sex with her. Because obviously when you're
10 dealing with DNA and you're dealing with family hoping
11 for a little bit of that. His mother, Eva Adams. Jason
12 Martin, who was the fella who was the sex offender. Frank
13 Adams, who I believe was an uncle. Veronica Smith Jones,
14 who I believe was an aunt. And then also Stephanie Smith
15 was either a girlfriend or fiancée from what I recall.

16 Q. All right.

17 A. But none of them were character witnesses.

18 Q. I'm sorry?

19 A. None of those were character witnesses. We didn't
20 have a character witness defense.

21 Q. Okay. So I -- I can imagine what the sex offender's
22 testimony might be, where he lives, things like that,
23 opportunities to have contact with the victim.

24 A. Correct.

25 Q. These other folks --

1 A. And I'll be honest. I didn't expect that the judge
2 was going to allow that. I thought that that was kind of
3 an uphill battle, but quite honestly we really didn't have
4 much other than that.

5 Q. Well, the other folks you've named apparently were
6 all relatives of either the victim or Mr. Adams?

7 A. Yes, and part of those were going to be individuals
8 testifying that this girl was kind of fast and loose --

9 Q. Okay.

10 A. -- and corroborating, you know, without going back
11 through the notes of the investigative reports, that like
12 -- I don't know if I put it back in -- that Deshaun or
13 Douglas, that were allegations that he was a cousin of the
14 victim and that he had had sex with her also, and so some
15 of those witnesses were going to corroborate that there
16 were admissions saying that that had happened.

17 Q. All right. Well, by -- by my count there are five
18 witnesses that you listed. Is that what your list said?

19 A. I thought there was maybe six, but I'll take -- I'll
20 take your word for it because I put it back in my notes.

21 Q. I may have missed one. Five or six.

22 A. Six.

23 Q. Okay.

24 A. Douglas Deshaun Morris, Eva Faye Adams, Jason Martin,
25 Frank Adams, Veronica Smith Jones and Stephanie Smith.

1 Q. Do you recall specifically except for Mr. Martin what
2 the testimony was going to be of the other five?

3 A. Well, Morris was the one that was alleged to have had
4 sex with the victim --

5 Q. Okay.

6 A. -- and we had interviewed him and he denied that, but
7 there was a possibility of calling him. Frank Adams from
8 what I recall owned a location that there was allegations
9 that they might have gone and had sex at that location
10 and so his testimony would have been that they would not
11 have had access to that location. His mother and Veronica
12 Smith Jones would have been about the victim having --
13 kind of being fast and loose because it was family and
14 they were related to her also. And then Stephanie Smith,
15 like I said, was the -- the fiancée or girlfriend and she
16 would have been similar.

17 Q. Similar to the mom and the aunt?

18 A. Yes, sir. And, like I said, I wasn't real confident
19 that any of those were going to be allowed. We were gonna
20 handle those through pre-trial motions to try to pierce
21 the rape shield.

22 Q. Do you think it is fair to say that you didn't have
23 a good defense going into trial?

24 A. We did not.

25 Q. Do you blame Mr. Adams for feeling like the trial was

1 going to be a disaster?

2 A. No. I mean, he had the right to go to trial or plead
3 guilty. I don't twist arms. I tell everyone that my job
4 is to kind of lay everything out on the table for them and
5 give them the benefit of my experience and then he needs
6 to make the best decision for himself.

7 Q. And you -- you mentioned that the being attracted to
8 white women defense struck you as a terrible defense?

9 A. I thought that was horrible, yes.

10 Q. Okay. And then he dropped the woke up to having sex
11 on --

12 A. Friday.

13 Q. -- Friday before the trial?

14 A. Yes.

15 Q. That was never discussed at any point prior?

16 A. I had asked him early on is that a possibility, and,
17 no. And I didn't even know quite honestly if that was
18 even, you know, physically possible. It's certainly never
19 happened to me, so.

20 Q. How did you come up with that possibility? I mean,
21 how did you ask him about that before he told you?

22 A. Well, initially I'm looking for -- you know, my
23 thought process is, is there some way that we can explain,
24 and I don't even think I had discovery at that point in
25 time, but my thought process is, is there any way to

1 explain, you know, how there's supposedly this genetic --
2 or baby that genetically matches you as the father as a
3 defense. So that's just one of the possible things that
4 I had thought of, but he denied that.

5 Q. So going into the trial we had no good defense, we
6 had no DNA expert to counter what the State was going to
7 offer?

8 A. Correct.

9 Q. And we had no witnesses that the private investigator
10 was able to track down aside from these six to talk about
11 mostly the reputation of the victim?

12 A. Correct. It -- you know, we did not think it was
13 going to be successful, but, I mean, it was always his
14 choice whether or not he pled guilty or went to trial.
15 And he and I had had conversations during the

16 representation that he was looking at a lot of time and
17 I did not think that this was going to be successful.

18 Q. You've heard my client testify about the interaction
19 with you on the day of the plea. He said, I think, that
20 he met with you twice for a matter of less than five
21 minutes and then a few seconds right before the plea
22 began.

23 A. Well, and we would have had to have gone over the
24 paperwork, too, because he had to fill that out.

25 Q. What do you mean when you say the plea paperwork?

1 What is that?

2 A. The sentencing sheet.

3 Q. So the sentencing sheet, he signed that?

4 A. Yes.

5 Q. Okay. But there's no plea paperwork to discuss the
6 waiver of constitutional rights and --

7 A. No, that's just a signature.

8 Q. Okay. Have you seen some jurisdictions where there
9 is such a paperwork?

10 A. Yes, I've seen some places -- or some judges will
11 have people fill out a sheet prior. We've had a few come
12 through Lexington. Judge Young doesn't -- did not use
13 that.

14 Q. He didn't use it on that day at least?

15 A. Right. Yeah. And the other plea I did in front he
16 did not use it.

17 Q. Okay.

18 **MR. ALLEN:** Your Honor, a point of order. Are we to
19 -- I don't want to go back over the reconstruction hearing
20 if we can at all avoid it. If we're stipulating that that
21 testimony would be --

22 **THE COURT:** Yeah, y'all are stipulating that the
23 previous testimony is included in this?

24 **MR. ALLEN:** I would -- I would suggest that.

25 **MS. BUTTERBAUGH:** Yes, Your Honor.

1 **THE COURT:** Okay. Yeah, I think we're clear.

2 BY MR. ALLEN:

3 Q. You testified then that Judge Young is not a judge
4 that you went in front of a lot?

5 A. Right. Well, he's not a resident judge either, so
6 he didn't come through here very much.

7 Q. Okay. But even though he wasn't a resident judge,
8 you have some idea about whether he is a preferred judge
9 to put a plea in front of or not?

10 A. Absolutely.

11 Q. As a result of that, couldn't we assume then that
12 Judge Young does not do as many pleas as many other
13 judges?

14 A. I would assume so to the chagrin of the other local
15 judges, I think.

16 Q. I think so. When Mr. Adams was with you the day of
17 the trial, was that a hectic day for you?

18 A. No.

19 Q. Getting ready for trial there's not a lot going on?

20 A. Well, I mean, I had prepared -- you know, prepared
21 during the course and then obviously was prepared the
22 weekend, so I -- you know, I'm a prep person, so I felt
23 comfortable going in that I was ready.

24 Q. Well, he didn't give you a lot of time on the defense
25 that he dropped on you on Friday though, right?

1 A. No, he did not and so, you know, I -- he did not. I
2 mean, that was something that I had talked with him two
3 days before and had not come up, so.

4 Q. And so you had to worry about being at jury
5 qualifications that were apparently going on around that
6 time, talking to him, he's changing his mind maybe. There
7 was a lot happening at that moment no matter how prepared
8 you were or were not, correct?

9 A. Sure. Sure.

10 Q. Is it possible then that --

11 A. Excuse me. At least at that moment though when I
12 went in there, I mean, it was pretty early on when I -- I
13 first saw him.

14 Q. Okay. Well, but when you first saw him he was not
15 changing his mind; is that right?

16 A. What I recall is the first thing that I -- when I
17 first saw him that day, the first thing he said is I want
18 to plea because that struck me because I did not expect
19 that whatsoever.

20 Q. So you disagree with his testimony that he met with
21 you a couple of times that day before that?

22 A. I do.

23 Q. Okay. So one of us is misremembering or -- I mean,
24 that's probably a safe assumption, right?

25 A. Well, I mean, one of us isn't telling the truth on

1. that.

2. Q. Okay.

3. A. But, you know, I went in there and he immediately
4. said that he was -- wanted to plead guilty, that he did
5. not want to put his family through it. And, like I said,
6. that was not something I expected because I had talked
7. with him numerous times the week before and told him this
8. is absolutely the worse judge as far as sentencing and
9. there was talk with the solicitor about potentially if --
10. if he had decided to change his mind to plea on that
11. Friday in front of Judge McMahon, who, as I said, is not
12. a great sentencing judge on something like this also, but
13. I let him know I thought that he would definitely be
14. better than Judge Young and -- and in hindsight with what
15. the victim's family said I think he would have been
16. substantially better than Judge Young just because victim
17. input is generally very important to him.

18. Q. Well, just given that there's all of that going on,
19. there's this unusual situation to use your statements
20. from the reconstruction hearing of somebody pleading the
21. day of trial, changing the defense on you on Friday, jury
22. qualifications are going on, you're trying to talk to the
23. solicitor, trying to talk to your client, given all of
24. that is it possible that maybe you forgot to do what you
25. normally do and apprised him of the constitutional rights

1 that he is waiving when he goes to trial on this one
2 instance?

3 A. Well, I mean, I always do that initially. I did that
4 when I initially met him, so he knew about that.

5 Q. A year -- a year beforehand?

6 A. Yes.

7 Q. Okay. But that's not --

8 A. Yes. And he -- and he knew that day. I don't have
9 a canned spiel that I go over when someone pleads that day,
10 but he knew that he was giving up his trial rights and he
11 knew that we were set for trial that day.

12 Q. You wouldn't have given him the constitutional rights
13 he would waive at a plea a year beforehand when you first
14 meet him?

15 A. Correct. I didn't go back -- I don't go back all
16 through that --

17 Q. Okay.

18 A. -- and I did not do that day -- that morning.

19 Q. Okay. And so the day of trial is it possible with
20 all that going on that you just failed to do what you do
21 every single time? Certainly you know how to conduct a
22 plea and the rights that a person is waiving. Is it
23 possible you just forgot this one time?

24 A. I don't understand what you're asking me what I
25 forgot. I mean, I don't go back over the rights, but he

1 clearly knew that he was pleading guilty and that he was
2 waiving those trial rights.

3 Q. How did you know that he clearly knew?

4 A. Just through my interactions with him over that year.
5 I mean, he's an intelligent fella, so he -- he would ask
6 questions, he would point stuff out. I would -- from what
7 I recall, initially the -- even on like the DNA where the
8 front page says Adams and then the back said Johnson, I
9 think he caught that before me.

10 Q. He is an intelligent guy, isn't he?

11 A. Yes.

12 Q. Don't you think an intelligent guy like that would
13 want to know, okay, if I plead guilty I'm giving up my
14 constitutionally guaranteed rights to confront accusers,
15 jury trial and to remain silent? An intelligent guy like
16 that would be particularly interested in those things.

17 A. Sure. And I -- I never had any question that he
18 understood all those. And, in fact, when I initially went
19 over them, I always ask, and I asked him, you know, do you
20 have any questions about any of this.

21 Q. When you say you initially went over them, I guess
22 I'm still confused.

23 A. Yeah, we're back in April.

24 Q. April --

25 A. When I first met with him. I think it was April 7th.

1 Q. So you do tell your clients upon first meeting them
2 if you plead guilty, you're giving up these constitutional
3 rights? You do that?

4 A. Yes. I go over all their trial rights with them, I
5 go over the minimum and maximum, I go over the elements of
6 the offense and then like this one had some ancillary
7 problems such as the registry, such as SVP, such as
8 strikes, I go over all those with them, and then I put
9 them in my notes.

10 Q. Okay. How many clients would you say you have at any
11 given -- when you -- when you represented Mr. Adams, how
12 many clients do you think you had at that time?

13 A. I had a much higher case load back then. Now given
14 the fact that our office has gotten larger, we don't have
15 that many clients.

16 Q. But back then what do you think?

17 A. Probably a hundred active.

18 Q. Okay. Was Mr. Adams your favorite client?

19 A. Oh, I don't think any -- I don't have favorites or
20 non-favorites. Some that, you know, are kind of pains in
21 the rear maybe stick out a little bit more. He wasn't one
22 of them.

23 Q. Okay.

24 A. I mean, he and I face to face we got along. Like I
25 said, he grieved me a couple of times. I don't take that

1 -- or he asked me to be relieved. I don't take that
2 personally.

3 Q. Okay. But you wouldn't have been eager or uneager to
4 get in and get out with him?

5 A. Uh-huh.

6 Q. You didn't feel that way about him?

7 A. No. I mean, that's -- I'm paid to do a job and I
8 make sure I do my job as best as I can.

9 Q. Yes, sir.

10 A. And as I told him, and I tell everyone, it doesn't
11 matter to me if he pleads guilty, it doesn't matter to me
12 if he goes to trial. My job is to do the best just I can
13 for him and, like I said, to -- to lay out everything and
14 he needs to -- his job is to make the best decision for
15 himself.

16 Q. Even after he made that decision, did you tell him
17 you thought it was a good or bad decision or you didn't
18 weigh in?

19 A. I did not. I get clients a lot of times that ask me
20 what do you think I should do and right or wrong I tell
21 them that's not my job to decide, that's your job to
22 decide. My job is to kind of lay it out all on the line
23 for you and you make that decision. Now if you have any
24 questions, I'm here to answer them, but I don't twist
25 their arms to go to trial or to plea. I just kind of try

1 to let them know everything I can about their case.

2 Q. Okay.

3 MR. ALLEN: Thank you, Mr. Madsen. I appreciate it.

4 THE COURT: Anything on redirect?

5 MS. BUTTERBAUGH: No, Your Honor.

6 THE COURT: Okay. Thank you, sir. You can step
7 down.

8 MR. MADSEN: Can I be excused?

9 THE COURT: Can he be excused?

10 MR. ALLEN: No objection.

11 MS. BUTTERBAUGH: Yes. I'm sorry.

12 THE COURT: You're excused. Thank you.

13 MR. MADSEN: Thank you.

14 (Witness excused.)

15 THE COURT: All right. Anything else?

16 MS. BUTTERBAUGH: No, Your Honor. That was all the
17 witnesses that we have.

18 THE COURT: Okay. Anything on rebuttal?

19 MR. ALLEN: Can I have just a moment, Your Honor?

20 THE COURT: Sure.

21 MR. ALLEN: No rebuttal, Your Honor.

22 THE COURT: Okay. Well, I've got this information
23 here. I'll take it -- as I told the other defendant, you
24 won't hear from me until after January just because of
25 the schedule, but I've got everything with me, I'll read

1 through it and let you know something after January 1st.
2 I mean, I'm not talking about April, but it's gonna be
3 before -- it won't be before January 1st.

4 **MR. ALLEN:** Your Honor, may we submit proposed orders
5 to you?

6 **THE COURT:** If you want to, sure.

7 **MR. ALLEN:** Okay. Is e-mail appropriate?

8 **THE COURT:** Yeah, just send them to my law clerk and
9 he'll get them to me.

10 **MR. ALLEN:** Thank you.

11 **MS. BUTTERBAUGH:** Thank you, Your Honor.

12 **THE COURT:** Thank y'all.

13 (Whereupon, the proceedings were concluded at
14 1:04 PM.)

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2
3 C E R T I F I C A T E .
4

5 I, Stacy S. Johnson, Official Court Reporter for
6 the Eleventh Judicial Circuit of the State of South
7 Carolina, do hereby certify that the foregoing is a true,
8 accurate and complete transcript of record of all the
9 proceedings had and the evidence introduced in the hearing
10 of the captioned case in Circuit Court on the 11th day of
11 December, 2017.

12 This transcript may contain quoted material. Such
13 material is reproduced as read by the speaker.

14 I do further certify that I am neither of kin,
15 counsel, nor have an interest to any party hereto.

16
17 June 4, 2018

18 ISI Stacy S. Johnson
19 STACY S. JOHNSON
20 CIRCUIT COURT REPORTER
21
22
23
24
25

- 5.27 - Talked to Madsen. He said "Do you know how many guilty people are in prison that are innocent." He isn't trying to help me out at all making a comment like that.
- 6.2 - Talked to Madsen About Bond Reduction. He told me that he would put in for one but doubt if I'll get A reduction + also A Speedy trial.
- 7.1 - Talked to Madsen About Bond Reduction again. He said that he's waiting to hear back from the Solicitor. He never said anything to me about the Speedy trial.
- 7.7 - 7.8 - Called Madsen and asked about getting A DNA Specialist on my case + no answer. I left him a message both days.
- 7.16 - Sent off letter to Clerk of Court. A motion for bond reduction hearing.
- 7.28 - Mailed out letter to Clerk of Court for bond hearing reduction again to Beth Carrigg this time.
- 7.31 - Wrote Bar Association.
- 8.5 - Got response back from Bar Association today.
- 8.26 - Went to Bond Reduction Hearing + was denied bond. Didn't even know that I had A Bond Hearing. Haven't talked or seen Madsen since July 1st. Why would he read out my background when the Solicitor suppose to do that!!
- 9.3 - Called Madsen today + told him to get me into by the end of the month or he's fired!
- 9.8 - Called Madsen today + left him A message / 9.9 - Called Madsen again today + left him A message + they said he wouldn't be back till late this week
- 9.11 - Called Mr. Madsen today. Couldn't understand him b/c of the coughing he was doing when he tried to talk. He said he sent me A letter. I asked him was they gonna offer me A plea + he said I thought you didn't do anything!! What me asking about them offering me A plea has to do with me being innocent or guilty!!! Get rid of him!!
- 9.14 - Called Madsen today and left A message for him to take me in front of judge to remove him from my case. I received A letter from Madsen today with wrong info in his letter. Shows that he doesn't do his job like he suppose to! I Asked for A DNA Specialist back in July when he was on vacation which he didn't

even tell me he was going on! He told Robert Craver + that's how I found out about the vacation + in the letter he's talking about a DNA test!! He really doesn't listen at all!!!

-9.18- Called Madsen today + they said he was out of the office today. She asked me did I already called + I told her this was my 1st time calling today.

-9.22- I called Madsen today + he wasn't in his office. She said all the Public Defenders were in a conference! Whoever answers the phone at that office is very, very rude!!! I asked to speak with Madsen + she said No you may not with an attitude!!! I definitely don't want no one representing me with people like that working for them!!!

-9.23- Called Madsen again today. They said that all Public Defenders are in a conference all week.

-9.29- Called Madsen today. She said he was with a client. I received a letter today from Madsen about his reputation! I still don't want him as my lawyer b/c of the way he's representing me!! He's playing games with my case with the Solicitor!!! I'm not stupid!! He isn't trying to help me at all!

-10.10- Went to court today to fire Madsen. Judge wouldn't let me do it! It was like he was defending Madsen. I was telling the judge how he wasn't helping me + it was like he really didn't care!! There is a lot of corruption in this county!! I was telling Madsen about the Det. on my case, how she lied + he said that he was going to talk to her about it!! He told me by law she had the right to tell a lie!

-10.23- Madsen's investigator came today to give me an update on the case. She still got a few witnesses to talk to. She got statements from Stepp + mamma. She said that she'll try to get me some copies sent out!

-12.2- Madsen came to see me today. It's still the same with this man!! He gave me the statements that Mom + Stepp wrote. Mom's statement doesn't even look like her handwriting + Stepp's statement isn't even signed.

2015 -1.21- Called Madsen today and left a message asking for my All my court transcripts

-1.22- Called Madsen again today and left ~~another~~ message about my court transcripts.

-1.27- Got a letter from Madsen today! He said that he wasn't requesting the transcripts b/c it wouldn't help my defense. I want them so that I can show that he is insufficient!! Where does the DNA hearing come from?!!

over →



Lexington County Sheriff's Department Statement Form



DATE 5/24/2012 PLACE Lex City Detention Center TIME STARTED 0941 A M

I, the undersigned, David Lorraine Adams am 37 years of age, my date and place of birth being the [redacted] day of [redacted], 19 75, at Lexington Medical Center
My present address is [redacted] Batesburg

I completed 11 grade(s) in school. I can read and write. DA (Initials)

CONTACT NUMBERS: H) _____ W) _____ C) _____

ALTERNATE CONTACT: Name _____ Phone Numbers: _____



Before answering any questions or making any statements, Det. TL Storer

a person who identified him/herself as a Detective w/ Lexington County
duly warned and advised me that:

- 1) I HAVE THE RIGHT TO REMAIN SILENT. DA
- 2) ANYTHING I SAY, CAN AND WILL BE USED AGAINST ME IN A COURT OF LAW. DA
- 3) I HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE ASKED ANY QUESTIONS AND TO HAVE HIM OR HER PRESENT WITH ME DURING QUESTIONING. DA
- 4) IF I HAVE NO MONEY FOR LAWYER'S FEES, THE COURT WILL APPOINT ONE TO REPRESENT ME WITHOUT COST TO ME IF I WISH. DA
- 5) IF I DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, I WILL STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. I ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANYTIME UNTIL I TALK WITH A LAWYER. DA

I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. DA I MAKE THE FOLLOWING STATEMENT:

I would go to my cousin Toni Martin's house after work to get some help with Dawson to get some rest if my mom wasn't home. Tracey Johnson would watch him while I rested for a little while. I stop going over there after 2 times b/c of what my cousin Patricia Martin had told us about the things that Tracey has done to her son. Patricia told us that her son (Veronica) Kaitrell would start messing with his private parts.

Q Did you ever have sex w/ Tracey Johnson?
A NO I DID NOT!! I NEVER TOUCH HER IN THAT WAY EVER!!!

Det. TL Storer, LCSO
Notary Public

David Adams
Person giving Statement
5/24/2012
Date

STATEMENT

Page 2 of 2 pages.

Q What way did you touch Tracey Johnson?
A I NEVER TOUCHED HER IN ANY WAY!!!

Sworn to before me this 24 day of May 2012.Det. J. L. Stoner, LCSD
Notary Public of South CarolinaDet. J. L. Stoner, LCSD
Notary Public of South CarolinaDavid Adams

Signature of person giving statement

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

THE STATE,

vs.

David Adams,
Defendant.

EX-PARTE ORDER FOR
PROFESSIONAL SERVICES

Warrant No.: 2013A3210200561

THIS MATTER comes before me upon the motion of Robert M. Madsen, attorney for the above-named Defendant. It appears that the above named Defendant is charged with Criminal Sexual Conduct with a Minor in the Second Degree

It further appears to the Court's satisfaction that the services of a Forensic DNA Statistician is reasonably necessary to assist in the defense and representation of the Defendant.

I further find that because of the seriousness of the charge pending against the Defendant and the complexity of this case that payment for these services in excess of the rates set forth in Section 17-3-50(B) is both reasonable and necessary to provide effective assistance of counsel and that such payment is appropriate. **NOW, THEREFORE**, for good cause shown,

IT IS HEREBY ORDERED that the Defendant's attorney be allowed to secure the services of a Forensic DNA Statistician, on behalf of the Defendant; and,

~~**IT IS FURTHER ORDERED**~~ that the attorney is authorized to incur reasonable fees therefore, not to exceed Two Thousand and no 00/100 (\$2,000.00) Dollars, subject to approval of the Court as authorized by law, without further order of the Court, and such services be paid from the Office of the Indigent Defense not to exceed the above amount upon a proper submission of the necessary documents.

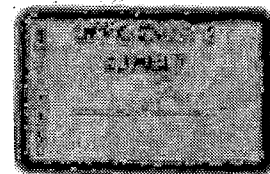
IT IS SO ORDERED.

I SO MOVE:

Robert M. Madsen
Attorney for Defendant

Thomas Russo
Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina
Dated: 11-21-2014



STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

ORIGINAL

THE STATE,

vs.

David Adams,
Defendant.EX-PARTE ORDER FOR
PROFESSIONAL SERVICES

Warrant No.: 2013A3210200561

THIS MATTER comes before me upon the motion of Robert M. Madsen, attorney for the above-named Defendant. It appears that the above named Defendant is charged with Criminal Sexual Conduct with a Minor in the Second Degree

It further appears to the Court's satisfaction that the services of a Private Investigator is reasonably necessary to assist in the defense and representation of the Defendant.

I further find that because of the seriousness of the charge pending against the Defendant and the complexity of this case that payment for these services in excess of the rates set forth in Section 17-3-50(B) is both reasonable and necessary to provide effective assistance of counsel and that such payment is appropriate. **NOW, THEREFORE**, for good cause shown,

IT IS HEREBY ORDERED that the Defendant's attorney be allowed to secure the services of a Private Investigator, on behalf of the Defendant; and,

IT IS FURTHER ORDERED that the attorney is authorized to incur reasonable fees therefore, not to exceed One Thousand Five Hundred and no 00/100 (\$1,500.00) Dollars, subject to approval of the Court as authorized by law, without further order of the Court, and such services be paid from the Office of the Indigent Defense not to exceed the above amount upon a proper submission of the necessary documents.

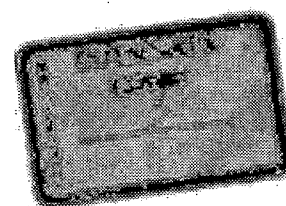
IT IS SO ORDERED.

I SO MOVE:

Robert M. Madsen
Attorney for Defendant

Thomas Russo
Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina

Dated: 2/19/2015

ORIGINALSTATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

David L. Adams, #271989,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2015-CP-32-03207

ORDER OF DISMISSLISA H. COOPER
CLERK OF COURT
LEXINGTON SC

2018 APR -6 AM 11:03

FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed September 15, 2015. An evidentiary hearing into the matter was convened on December 11, 2017. Applicant was present and represented by David Allen. Respondent was represented by Sherrie Butterbaugh of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted in June 2014 by a Lexington County grand jury for second-degree criminal sexual conduct with a minor. (2014-GS-32-1759). Robert Madsen represented applicant. On May 4, 2015, applicant pled guilty as indicted before the Honorable W. Jeffery Young and Judge Young sentenced applicant to eighteen years' imprisonment.

Applicant timely filed a notice of appeal. In an order filed July 9, 2015, the Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued on July 27, 2015.

ALLEGATIONS

In his application, applicant alleges he is being held in custody unlawfully for the

following reasons:

1. Involuntary guilty plea
2. Ineffective assistance of counsel, specifically:
 - a. "Counsel failed to conduct any meaningful pre-trial investigation"
3. Denial of due process of law in violation of the 4th Amendment
 - a. "No search warrant or consent form was provided in DNA blood testing"
4. "Plaintiff was denied due process of law by the state's failure to provide Brady"
 - a. "State failed to provide medical records of the victim in discovery motion"

Prior to the evidentiary hearing, applicant, through counsel, informed the Court he would proceed only on claims one and two. *See* Rule 71.1(e), SCRCF (providing the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence).

GUILTY PLEA TRANSCRIPT

Also before the hearing, respondent informed the Court the transcript from the guilty plea was no longer available and the plea hearing needed to be reconstructed.¹ Respondent presented testimony from Laura Suzanne Mayes, who prosecuted the case, and plea counsel Robert Madsen, who were both present at applicant's plea hearing. Applicant's PCR counsel cross-examined the witnesses.

Ms. Mayes and Mr. Madsen testified to their recollection of the plea hearing, and both stated the plea judge went over the elements of the indicted charge and the possible sentence applicant faced, as well as the constitutional rights applicant waived by pleading guilty. Specifically, Ms. Mayes testified she recalled details about the plea because the parties were scheduled to proceed to trial on the morning of the plea, but applicant instead chose to plead guilty. Ms. Mayes stated applicant made a clear waiver of his rights and she recalled it was an

¹ By letter dated June 14, 2016, the court reporter stated the transcript did not exist because her car was broken into and her equipment was stolen, including her laptop containing files which held applicant's guilty plea transcript from May 4, 2015.

ordinary plea colloquy. Mr. Madsen testified he went over the elements of the charge, possible sentence and collateral consequences, and other constitutional rights with applicant at their initial meeting so applicant was aware of and understood those considerations going into the plea hearing. Mr. Madsen stated further he specifically recalled the plea judge asking applicant if he understood the rights he waived by pleading guilty. Mr. Madsen testified applicant made a valid waiver. Mr. Madsen stated he would have stopped the plea hearing had he believed applicant did not understand something, or if something out of the ordinary occurred.

Both attorneys testified the plea judge found applicant's plea was freely, knowingly, and voluntarily entered.

After testimony was presented, this Court found that the guilty plea record had been reconstructed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety, including the reconstructed guilty plea hearing, the Lexington County Clerk of Court records, applicant's South Carolina Department of Corrections records, and the PCR application. The Court further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. Pursuant to S.C. Code Ann. §17-27-80, the Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

First, as a matter of general impression, this Court finds plea counsel's testimony is credible and persuasive on all matters, while also finding applicant's testimony and assertions lack credibility. These credibility findings have been applied to the Court's findings set forth below.

INVOLUNTARY GUILTY PLEA

Applicant first argues his plea was involuntary. This Court finds otherwise and concludes applicant's plea was entered freely, voluntarily, and intelligently. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. *Boykin v. Alabama*, 395 U.S. 238, 242-44 (1969). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record. *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing *State v. Ray*, 310 S.C. 431, 427 S.E.2d 171 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual and an inmate's right to contest the validity of such a plea is usually foreclosed. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63 (1977)). Representations of the defendant, counsel, and the solicitor, as well as any findings made by the plea judge, "constitute a formidable barrier in any subsequent collateral proceedings." *Blackledge*, 431 U.S. at 73-74.

Applicant claims his plea was given involuntarily because he did not know what rights he was waiving during the guilty plea hearing, and he only pled guilty because of the poor representation of plea counsel. This Court finds applicant's contention incredible and finds he failed to meet his burden of demonstrating his plea was anything other than valid and entered into freely and voluntarily. *See Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding an applicant bears the burden of proving the claims in his application); *see also Boykin*, 395 U.S. at 242-44 (holding a guilty plea will be found knowing and voluntary if the record establishes the defendant had a full understanding of the consequences of his plea and the charges against him).

This Court specifically finds the reconstructed plea hearing belies applicant's claim. Both the solicitor and plea counsel credibly testified they recalled details of the plea colloquy because they worked to prepare for a trial up until the morning applicant chose to accept a plea offer rather than proceed with jury selection. This Court finds very credible counsels' testimony that the plea judge covered all of the crucial factors during the colloquy and applicant made a valid waiver of his rights. Each attorney testified they recalled applicant admitted his guilt following the State's recitation of the facts, and each further recalled the plea judge asked applicant if he wished to waive his right to a jury trial, his right to confront his accuser, and his right to remain silent, and applicant voluntarily waived those rights. Moreover, plea counsel acknowledged applicant was not promised anything for his plea, was not threatened, and was not under the influence of drugs or alcohol the day he pled guilty. The Court notes both counsels are experienced trial attorneys who would have stopped the guilty plea hearing and objected or corrected the record had there been any constitutional right not waived, error made, or concern about whether applicant understood the proceeding against him. This Court finds applicant understood the charge he faced, the maximum sentence he could receive, any collateral consequences, and applicant was fully informed of the nature and consequences of his plea as required.

The reconstructed record reflects applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." *Jamison v. State*, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing *State v. Rice*, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013)). Therefore, this Court finds the plea judge correctly found applicant's plea was freely, voluntary, and intelligently made. This allegation must be denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges plea counsel was ineffective in failing to conduct an adequate pre-trial investigation. During his testimony, applicant stated counsel failed to contact all the witnesses he suggested, failed to fully investigate an issue related to the search warrant for applicant's DNA, and did not hire an expert to look into the DNA match. Further, applicant testified he only met with the private investigator hired by counsel for a few minutes, but acknowledged he met with counsel five or six times. Applicant stated there was a breakdown of the relationship between him and counsel, he requested counsel be relieved, and he filed a grievance against counsel. However, on cross-examination, applicant admitted he discussed the case and evidence with counsel, including possible defenses. Moreover, applicant acknowledged he changed his version of events at least twice.

Plea counsel testified he met with applicant at least eleven times, reviewed all discovery materials, and developed a trial strategy. Counsel stated he and applicant discussed their strategy for months based on the evidence the State had against applicant and counsel determined what motions and arguments he would make at trial. However, it was not until just before the scheduled trial date that applicant changed his version of events again and counsel had to change his strategy. Counsel also testified he requested and received funding for a DNA expert who reviewed the report which determined applicant's DNA matched the child's DNA, but it was counsel's opinion the expert would not be helpful at trial. Counsel also stated he received funding to hire a private investigator who interviewed witnesses, including family members and the victim, and some of them could have testified at trial, had applicant not chosen to plead guilty.

This Court finds applicant's allegation that plea counsel failed to conduct a sufficient pre-

trial investigation to be meritless. Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* at 668. An applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. *Id.* at 117, 386 S.E.2d at 625. Courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* at 117, 386 S.E.2d at 625 (citing *Strickland*, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

This Court finds plea counsel's testimony more credible than applicant's testimony. This Court finds counsel was thoroughly prepared to take applicant's case to trial as he was preparing the case and developing a defense strategy until the day applicant pled guilty. Counsel's testimony regarding his pre-trial work, including funding requests and interviews, indicates a thorough knowledge of the facts of applicant's case and an understanding of the State's evidence against applicant. To establish counsel was inadequately prepared, an applicant must present

evidence of what counsel could have discovered or what other defense could have been pursued had counsel been more fully prepared. *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998). Applicant failed to produce any evidence at the PCR hearing to show what counsel should have, but did not investigate, and therefore cannot prove any resulting prejudice. Applicant cannot meet either prong of the *Strickland* test. Accordingly, this allegation is denied and dismissed.

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, the Court finds applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate his plea was involuntary or that counsel's performance was unreasonable under prevailing professional norms. *See Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (holding an applicant bears the burden of proving the claims in his application). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

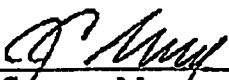
This Court notes applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See Rule 203, SCACR*. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides 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 THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30 day of March, 2018.



J. CORDELL MADDOX, JR.
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

WITNESSES

Lexington County Sheriffs Department

Tricia Chandler Stoner

Law Enforcement Case #: 12009210

LSM

ARREST WARRANT NUMBER**2013A3210200561**

ACTION OF GRAND JURY

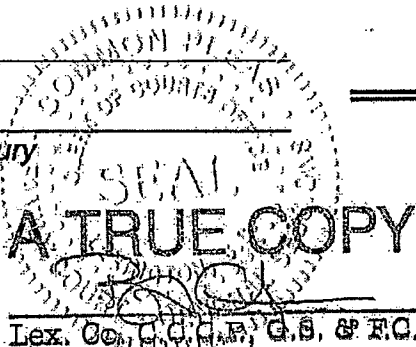
TRUE BILL
Foreperson of Grand Jury

Date: 6/9/14

VERDICT

Foreperson of Petit Jury

Date:

**DOCKET NO. 2014GS3201759****The State of South Carolina****County of Lexington**

COURT OF GENERAL SESSIONS

JUNE TERM 2014

THE STATE**vs.****David Lorange Adams**

CDR #: 0397

Indictment for**Criminal sexual conduct with a minor -
second degree****§ 16-03-0655(B)(2)**

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Criminal sexual conduct with a minor - second
degree

§ 16-03-0655(B)(2)

At a Court of General Sessions, convened on JUNE 2014, the Grand Jurors of Lexington County present upon their oath:

That David Lorance Adams, date of birth being [REDACTED] 75, did in Lexington County on or about January 1, 2012 through May 18, 2012, willfully and unlawfully commit the offense of criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: sexual intercourse upon or with [REDACTED], date of birth [REDACTED] 97, and the Defendant was older than the victim; furthermore, the defendant was a person over eighteen years of age, in violation of Section 16-3-655(B)(2), South Carolina Code of Laws (1976), as amended.

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

Suzanne Mayo
ASSISTANT SOLICITOR

ARREST WARRANT

2013A3210200561

STATE OF SOUTH CAROLINA

☒ County/

Lexington

ORIGINAL

THE STATE

12009210

against

David Lorraine Adams

Address:

Batesburg, SC 29006-2204

Phone:

SSN:

Sex: M

Race: A

Height: 5

8

Weight: 160

DL State: SC

DL #:

DOB:

Agency ORI #:

SC0320000

Prosecuting Agency:

Lexington County Sheriff

Prosecuting Officer:

T. L. Stoner - 1607

Offense:

Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second

Offense Code:

0397

Code/Ordinance Sec:

16-03-0655(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to:

defendant

on

David Lorraine Adams

3/11/14

W. L. Stoner

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

ORIGINAL

TRUE COPY

Lexington, SC 29072

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Lexington

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
Apr 21, 2003
GSCA 510

Personally appeared before me the affiant T. L. Stoner

who

being duly sworn deposes and says that defendant David Lorraine Adams

did within this county and state on or about 3/27/2013

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Lexington

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Between January and February 2012 the defendant, David Adams did have sexual intercourse with the victim, his niece, who he knew was 14. The defendant is a 37 year old male and the victim is a 14 year old female. The victim was watching the defendant's son at her house while the defendant slept. The victim had fallen asleep and woke up to the defendant touching her vagina. He then pulled her pants down and put his penis in her vagina. She told him to stop but he continued. In May of 2012 the victim learned that she was pregnant and gave birth to a girl in October of 2012. DNA samples were collected from the defendant, the victim and the baby and sent to SLED. The SLED lab results showed that the DNA profile developed from the victim, the defendant and the baby are consistent with the baby being the biological offspring of the defendant and the victim. This incident occurred at [redacted] in the Leesville area of Lexington County, SC.

Signature of Affiant

D. L. Stoner

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Lexington

Affiant's Address

P.O. Box 639

Lexington, SC 29071-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/27/2013

defendant David Lorraine Adams

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Lexington

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 3/27/2013

(L.S.)

Judge's Address

139 East Main St

Lexington, SC 29072-

Judge's Telephone

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

(0-20 years)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

David Lorraine Adams

AKA:

Race: White Sex: M Age: 40

DOB: [REDACTED] SS# [REDACTED]

Address:

City, State, Zip: Batesburg, SC 29006-2204

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal sexual conduct with minor - Second degree

INDICTMENT/CASE#: 2014GS3201759

A/W#: 2013A3210200561

Date of Offense: 1/1/2012 - 5/18/2012

S.C. Code § 16-03-0655(B)(2)

CDR Code #: 0397

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or 1.5wd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence ☐ Recommendation by the State.

ATTEST:

KSingh 64191 X David Lorraine Adams PD 12210
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Finding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 56-21-114 (BUI Breath Test Fee)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.3 (SECIA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$
TOTAL		\$130.00

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2156

Sentence Date: 5/14/15

A TRUE COPY

Clerk of Court, Lexington

Court Reporter

Lex. Co. C.C.P., G.S. & P.C.



State of South Carolina
The Circuit Court of the Second Judicial Circuit

Bethanie K. Creppon
Circuit Court Reporter

June 14, 2016

P.O. Box 85411
Lexington, SC 29073
bcreppon@sccourts.org

Ms. Deonna Rogers
Legal Assistant
Office of the Attorney General
Post-Conviction Relief Division

In Re: David L. Adams vs. State of South Carolina
2014-GS-32-1759

Dear Ms. Rogers:

I have received your request for the Transcript of Record in the above-referenced case. I regret to inform you that I will be unable to provide the transcript to you. My car was broken into on June 3, 2015, and all of my court reporting equipment was stolen, including my laptop containing transcript files, as well as my backup external hard drive.

I apologize for any inconvenience this may cause.

This transcript was also requested by Ms. Lakesicha Gibbs on December 2, 2015. I responded to her request on December 9, 2015, informing her that I would be unable to provide the transcript. Ms. Gibbs then asked me to provide a letter stating this so that she could add it to the file for the judge. I have enclosed a copy of that letter as well.

Sincerely,


Bethanie K. Creppon
Official Court Reporter

CC: Court Administration



State of South Carolina
The Circuit Court of the Second Judicial Circuit

Bethanie K. Creppon
Circuit Court Reporter

December 9, 2015

P.O. Box 85411
Lexington, SC 29073
bcreppon@sccourts.org

Ms. Lakesicha Gibbs
Legal Assistant
Office of the Attorney General
Post-Conviction Relief Division

In Re: State v. David L. Adams

Dear Ms. Gibbs:

I have received your request for the Transcript of Record in the above-referenced case. I regret to inform you that I will be unable to provide the transcript to you. My car was broken into on June 3, 2015, and all of my court reporting equipment was stolen, including my laptop containing transcript files, as well as my backup external hard drive.

I apologize for any inconvenience this may cause.

Sincerely,

Bethanie K. Creppon

Bethanie K. Creppon
Official Court Reporter

CC: Court Administration