

VOLUME II OF II

State of South Carolina
In the Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
The Honorable Benjamin H. Culbertson, Trial Judge
The Honorable Paul M. Burch, Post-Conviction Relief Judge

Appellate Case No: 2017-000240

TIMOTHY YOUNG,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

AMENDED APPENDIX

DAVID B. TARR
Attorney for Respondent

Law Office of David B. Tarr, LLC
1313 Elmwood Drive, Suite B
Columbia, SC 29201
(803) 238-7967

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES JR
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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Timothy Young - Direct by Defense

501

1 Q You used one bed - you used one room as a storage room?

2 A Correct.

3 Q Okay, I want you to tell us how - what this house is like
4 when you walk in the door.

5 A When you walk in through the front door you walk into the
6 living room and to your right is the storage room and to the
7 left is the girls' room. Then you walk - there's a bathroom
8 right there. It belonged to Nicole and the kids. Then you
9 had the kitchen. Then you had a little small dining area
10 where a washer and dryer and a eating table was and then you
11 go around to the side to the master bedroom.

12 Q Was there a bathroom in the master bedroom?

13 A Yes, sir, correct..

14 Q Okay, well, with a tub?

15 A No, sir, I had a standup shower.

16 Q Now, how long had you lived at Withers, at that place?

17 A At the, at the residence?

18 Q Withers Swash, at the Swash, how long had you been living
19 there?

20 A I was there two and a half years.

21 Q Is that where the children visited on the weekends?

22 A Yes, sir.

23 Q That's where they would always stay?

24 A Yes, sir.

25 Q And when did you first get to know the children?

1 A I got to know the children August '05 right after me and
2 Nicole had met.

3 Q You and Nicole and them met in '05?

4 A Yes, sir.

5 Q When did you get married?

6 A We got married September the 9th, 2006.

7 Q Nicole was getting visitation from '05 to '06?

8 A Yes, sir.

9 Q Was there any problems with the children, Tim?

10 A None that I could see.

11 Q What do you mean none that you could see?

12 A I mean, they were fine when, I mean, they were fine when
13 they came down to see us.

14 Q Was there any particular reason why you all got married
15 on September the 6th of '06?

16 A Any particular reason?

17 Q Yeah, yeah, I mean, yeah, you all decided to get married
18 then?

19 A Yes, sir.

20 Q And you had been dating for a year?

21 A Yes, sir.

22 Q Did anything change regarding the visitation privileges?

23 A No, sir.

24 Q When the children would come - so, so, when did you start
25 - so, let's see, so, you saw them from '06, '07 up to October

Timothy Young - Direct by Defense

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1 31st of '08; right?

2 A Yes, sir.

3 Q Visitation on the weekend?

4 A Yes, sir.

5 Q When was the last time you saw them, Tim?

6 A Halloween weekend of '08.

7 Q That's October the 31st?

8 A Yes, sir.

9 Q Well, what sort of relationship did you have with both
10 those girls, Tim?

11 A We had a wonderful relationship, a very good one.

12 Q You listened, you watched all those accusations she's
13 made about you?

14 A Yes, sir.

15 Q Did that ever happen?

16 A No, sir, it never happened. It never did.

17 Q What would you all do on the weekends for family time?

18 A We would, if it was warm weather we would go to the
19 beach. We would go to Compass Cove, go swimming. We would go
20 to the dog park, take the kids, basically whatever they wanted
21 to do we did because I wanted them to be happy.

22 Q Well, did they ever have any complaints?

23 A Not down there they didn't.

24 Q Well, where did they have any complaints?

25 A I'm assuming it was up in North Carolina.

1 Q What kind of relationship did Nicole have with her
2 daughters?

3 A The best that any mother and daughters could have.

4 Q Was there any problems between them?

5 A No, sir.

6 Q Was there any problems between Chad and Nicole?

7 A Very, very much.

8 Q What do you mean?

9 A They constantly bickered all the time at each other
10 because Chad would every time that she would try to work
11 things out with Chad he would always make it difficult for
12 her.

13 Q What do you mean?

14 A He would give her a hard time about the kids that she
15 would want to have them, you know, to do things with but he
16 wouldn't never let her do them, but when she would reconcile
17 with him on her visits to do things to keep the kids happy.

18 Q The kids liked being down there.

19 A They loved being down there.

20 Q Did you ever go pick them up?

21 A I picked them up a couple of times. I picked them up
22 maybe once or twice by myself and several times with me and
23 Nicole.

24 Q All right, well, let's talk about this because we want
25 them to know all this. Okay, so, now, you got married in '06;

Timothy Young - Direct by Defense

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1 right?

2 A Correct.

3 Q But you dated in '05?

4 A Correct.

5 Q Okay, now, okay, all right, well, see, was there any
6 problems with Nicole and Chad about visitation from '05 to '60
7 now? Did they ever have to go to court over anything?

8 A I can't really recall.

9 Q Well, Tim, you all would sometimes drive and go pick them
10 up. Then was that ever a problem in physically driving a car
11 to go to North Carolina to get them? Did he, did he ever fuss
12 about driving the car?

13 A No.

14 Q Okay, well, who drove the car?

15 A Sometimes - mostly me.

16 Q Okay, well, it's okay, it's okay, but look, well, did you
17 have a driver's license?

18 A At that time, yes, I did.

19 Q Okay, well, did Nicole have a driver's license?

20 A At that - at the first, no, she didn't. She was working
21 paying on tickets to get her driver's license back.

22 Q Okay, well, did you ever have any problems with your
23 driver's license?

24 A Not at the time I didn't.

25 Q Okay, now, so, well, you're talking - now, you told the

1 jury that you had weekend visitations from '05 - Nicole had
2 weekend visitations from '05 to '06 and then you all got
3 married in '06?

4 A Yes, sir.

5 Q All right, now, the children would come - were you all
6 living together?

7 A Yes, sir.

8 Q When did you start living together?

9 A We started living together around January the 11th of '06.

10 Q All right, well, and the kids would come stay with you
11 all?

12 A Yes.

13 Q On the weekend.

14 A Yes.

15 Q You all weren't married?

16 A Correct.

17 Q Okay well, did that cause a problem?

18 A Yes, it did.

19 Q Okay, what kind of problem did it cause?

20 A I had, I had been investigated by a private investigator.

21 Q What you mean? What you mean?

22 A Well, Chad had took it upon himself that he knew that we
23 wasn't married and he had a gentleman to watch me and Nicole
24 for about three months.

25 Q Well, okay, so, so, so, what did you all do?

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1 A We didn't do anything. We just went a normal life.

2 Q Okay, to straighten out the problem what did you all do?

3 You got married?

4 A Correct.

5 Q Okay, all right, so, and you got married and you was

6 living at Withers Swash?

7 A Yes.

8 Q Were you happy?

9 A Very much.

10 Q What kind - how were the children?

11 A They were very happy, too.

12 Q Okay, so, now, how about, how about the family
13 relationship, the two of you all and the two of them on the
14 weekends, what was it like after you all got married?

15 A It was wonderful. It was just like any husband, wife and
16 kids would have.

17 Q Okay, how about '07?

18 A The same thing.

19 Q Okay, well, how about Christmastime with the kids?

20 A It was just like any normal family would have, Christmas
21 presents, the talking of Santa Claus, the surprise of Santa
22 Claus and it was just like a normal family.

23 Q Easter?

24 A The same difference, the same thing.

25 Q Any complaints about anything?

- 1 A Not that I can recollect.
- 2 Q Okay, and this is all at the house at the Swash?
- 3 A Yes, sir.
- 4 Q Where would the children stay?
- 5 A In their bedroom.
- 6 Q Would they ever sleep in the bed with you all?
- 7 A No, they had their own room. They had no reason to sleep
- 8 with us.
- 9 Q Did you have any children of your own?
- 10 A I have a son that's passed away.
- 11 Q Okay, have you ever been married before?
- 12 A Yes, sir.
- 13 Q Who were you married to?
- 14 A I was married to a lady from Lancaster, Angela Hilton.
- 15 Q How long did that last?
- 16 A About a year and a half.
- 17 Q You all got a divorce?
- 18 A Yes, sir.
- 19 Q Did you all - did you have any children by that lady?
- 20 A No, sir.
- 21 Q Well, who did you have a child by?
- 22 A Had a child by a lady from Pageland, Martina.
- 23 Q Okay, have you ever been around children a lot?
- 24 A I've been around children my whole life.
- 25 Q How's that?

Timothy Young - Direct by Defense

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1 A Well, my sister - well, my sister had a daycare. I
2 worked with her with children and my sister, my other sister,
3 my brother they've had kids. I've just been around children.
4 My, my whole family has just been around kids their whole
5 life.

6 Q Have you ever been investigated for something like this
7 before?

8 A No, sir, this is the first time.

9 Q Did you do anything, did you do anything to her, Tim?
10 Did you do anything to the child?

11 A No, sir, I did not.

12 Q Well, then you got to explain to us since you have such a
13 good relationship with that child then why, tell them, you got
14 to, why would she do this? Why would she come in here and
15 make this stuff up about you because you know everybody wants
16 to know it. You know everybody wants to know it, Tim.

17 A Well, my simple finding is is she's been manipulated by
18 her parents in North Carolina. They put her through a living
19 hell and it's just a false accusation.

20 Q Has anybody else ever approached you about these
21 accusations before this took place?

22 A No, never happened. This is the first time it's ever
23 happened in my life.

24 Q That you've ever been accused of something like this?

25 A Yes, sir.

1 Q How many opportunities did you have to do anything to
2 this child when you first met her, if you wanted to do
3 something to her, how many opportunities did you have?

4 A Probably a million.

5 Q Were you ever alone with **Victim**?

6 A No, I was never alone with **Victim**, never.

7 Q Did you say - you know she says that you bothered her,
8 that she says that you messed with her in, in the bedroom back
9 there.

10 A It never happened.

11 Q In the master bedroom?

12 A It never happened.

13 Q Do you understand that she's accusing you of doing this
14 when she was watching some cartoons?

15 A Yes, but it never happened.

16 Q Well, you know she's accusing you of doing this when she
17 was watching cartoons I guess one Saturday morning and Nicole
18 was in the bedroom, I mean, in the couch in the living room.
19 Do you understand what she's saying, the child's saying?

20 A Yes, I understand.

21 Q And that **Minor 1** was in the other room?

22 A Correct, she was in her bedroom.

23 Q Well, do you have an explanation because they want to
24 know. They ask, do you, you don't have an explanation then.
25 Do you have an explanation as to why she would make this up

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1 because they're going to ask themselves that, Tim?

2 A No, I have no explanation, I have no explanation for that
3 because it never happened.

4 Q What about the stuff she's accusing her mama of doing to
5 her?

6 A Nicole was just doing a mother's love. That's all she
7 was doing. She was trying to take care of her child. That's
8 all Nicole was doing. She loves her children.

9 Q Well, why did Nicole leave?

10 A She had - she left - her grandmother had passed away and
11 she left to go be with her family in Connecticut at that time.

12 Q Well, you all got a divorce since then?

13 A Yes.

14 Q Well, what caused the divorce?

15 A Chad, Chad, just so much animosity between Chad and
16 Nicole and everything I couldn't, I just couldn't take it
17 anymore.

18 Q So, the marriage wasn't going good. Well, when you say
19 animosity, I mean, how do we - how do we picture it in our
20 minds when we, when we're listening to what you say? How do
21 we - what, what you mean animosity?

22 A Just, just so much fussing and fighting over the kids. I
23 mean, it was like you, it was like you're trying to take
24 something and just rip it apart but neither side wanted to
25 give, neither side did.

1 Q Give us some examples.

2 A Well, one weekend, they - **Minor 1** and them had a softball
3 tournament in Lincolnton, North Carolina, if I'm correct, and
4 it was Nicole's visitation that weekend and she took it upon
5 herself to let Chad take the kids because she didn't want to
6 interrupt their softball tournament that weekend and he let -
7 she let them go with her.

8 Q Nicole?

9 A Let the children go with Chad to play in the tournament.

10 Q No weekend visitation?

11 A That was Nicole's weekend to have them.

12 Q Okay.

13 A But she gave them up for him so the kids could go play in
14 the softball tournament.

15 Q Well, he would probably make that up though; wouldn't he?
16 He would make those weekends up; wouldn't he? Don't you
17 think?

18 A I kind of doubt that.

19 Q Okay, well, you don't know if he did or not; right?

20 A No, he didn't, not while I was there.

21 Q Okay, did you all ever have visitation - what kind of
22 visitation privileges did Nicole have during the summer? Was
23 it for any period of, extended period of time?

24 A Just when school was out, just regular like kids would
25 do, just summertime to be a week or so. She would ---

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1 Q And they would stay there for a whole week?

2 A Yeah.

3 Q Well, when they would stay there for a whole week what
4 would they do?

5 A Well, we'd go to the pool, go to the beach, have picnics,
6 go outside and play, play with the dogs, just what any normal
7 family would do.

8 Q Well, who did the children associate with their age when
9 they came around there?

10 A **Minor 5**

11 Q **Minor 5** ?

12 A Yes, sir.

13 Q That's Ms. Eggers' daughter, the lady over there in the
14 blonde hair and the ---

15 A Red shirt, correct.

16 Q --- the red shirt, yeah.

17 A Yes, **Minor 5**.

18 Q Was that - who, who was she - she was - **Minor 5** would play
19 with both the kids?

20 A Yes, sir.

21 Q What sort of things would they do?

22 A Just what typically anything little girls would do, baby
23 dolls, coloring books, games, cartoons, just typical life for
24 kids to be.

25 Q Well, did you know that - did you - am I in your way

1 there? Okay, well, did you know that **Victim** would lie to the
2 schoolteachers?

3 A Yes, I see that now.

4 MS. LIVELY: Objection, Your Honor, if he'd clarify
5 exactly what it is that he's referring to.

6 THE COURT: Overruled, I'll allow the question. Go
7 ahead.

8 Q Well, did you ever spank **Victim**?

9 A Never laid my hands on neither one of them.

10 Q Did you - okay, so, that means you didn't spank **Minor 1**
11 either; right?

12 A No, sir, I never touched neither one of those kids.

13 Q What, what was your relationship like with **Minor 1**?

14 A Very, very good.

15 Q Well, how - what you mean very good?

16 A We got along good. We, we'd watch TV together. I would
17 teach her - she wanted to learn how to cook and I would try to
18 help her how to cook. She loved to cook. Me being from the
19 South that's what I like to do. I like to cook.

20 Q What sort, what sort of relationship did **Minor 1** and **Victim**
21 have with each other as sisters?

22 A Very good.

23 Q Hey, why you say that?

24 A They got along good. They played together just like any
25 two normal sisters would do.

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1 Q What sort of things would you take those children to do?

2 A I would take them - we would go to family kingdom, like I
3 said we'd go to the beach. We've been to the Christmas show
4 at the Dixie Stampede I think it was, Medieval Times, just
5 anything a normal family would do.

6 Q Now, what about the mama taking care of them, especially
7 **Victim** with any female problems. You got any personal
8 knowledge about any of that?

9 A No, wasn't none of my business.

10 Q Did you know anything about it?

11 A Nope, wasn't none of my business.

12 Q Well, around November of '08 did you hear - well, yeah,
13 in November did you hear anything about it?

14 A I heard it, a accusation against Nicole.

15 Q Well, who'd you - well, who'd you hear it from?

16 A A DSS worker, Tim Reagan came to the house to speak to
17 Nicole.

18 Q That was and that's where - your house?

19 A Yes, sir.

20 Q Who, where is he from?

21 A He's from South Carolina. He's a DSS worker in South
22 Carolina.

23 Q You talked to him?

24 A Yes, sir.

25 Q Did he ask you any questions?

- 1 A At that time, no.
- 2 Q Well, did he want to know where - was Nicole there?
- 3 A Yes, sir, the first visit she was there.
- 4 Q Well, you remember close in time to the date?
- 5 A I can't.
- 6 Q Just give us a guess?
- 7 A I'm going to say around November 19th, somewhere around
- 8 there?
- 9 Q Well, where was Nicole?
- 10 A At the time that he came that she was still there.
- 11 Q I know but she wasn't at the house though.
- 12 MS. LIVELY: Objection as to the leading, Your Honor.
- 13 THE COURT: All right, sustained.
- 14 Q Okay, where was she?
- 15 A She was in Connecticut.
- 16 Q How do you know?
- 17 A Because we had separated and she went to be up there with
- 18 her family because her grandmother was really sick.
- 19 Q What did that have to do with the North Carolina
- 20 investigation?
- 21 A She was being investigated.
- 22 Q Is that why she left?
- 23 A No.
- 24 Q Why did she leave?
- 25 A Like I said we - she did - her grandmother was sick

Timothy Young - Direct by Defense

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1 dying. She went up there to be with her family. We wasn't
2 getting along good.

3 Q Why?

4 A On account of Chad.

5 Q Why?

6 A Because the bickering and everything going on all the
7 time, it was just constant fussing and fighting, and I could
8 not take it.

9 Q How would you know about it?

10 A Because I heard it, I seen it.

11 Q When would you see it?

12 A Basically every time that he - every time I saw him.

13 Q When would you see him?

14 A I'd see him when I went with Nicole. I would see him
15 that Friday, but I saw him every Sunday when he come picked
16 them up because I was there.

17 Q Did you listen to the conversation?

18 A Not really because it wasn't none of my business.

19 Q What was your relationship with Chad like?

20 A We got along. I mean, me and him never really had a
21 problem. I mean, we'd, we'd speak and everything but
22 basically that's it, that's all I can - I mean, we never
23 really conversated [sic] any at all.

24 Q You had never had any run-ins with him?

25 A Nope, we never had a run-in.

1 Q You've never - have you ever shaken his hand before or
2 shook his hand before?

3 A Yeah, when the first time we met I shook his hand.

4 Q Any - did you - you all ain't never had any - you all -
5 you ain't never had any ---

6 A Yeah, we had a little confrontation one time but it was,
7 it was nothing to it. I mean, there was no - wasn't no
8 physical alteration [sic] to it.

9 Q What, what was it?

10 A It's just, I just got tired of the bickering and
11 everything and I couldn't take it no more and he came to the
12 house one Sunday and he got out, I told him, I said, "Chad, I
13 want to speak to you a minute," and we walked over to the side
14 and everything, and I told him, I said, "Look, Bo, I'm tired
15 of you messing with my wife because she's mine now. She don't
16 belong to you no more." I said, "Leave her the hell alone,"
17 and I told him, I said, "Your kids is in the Suburban right
18 there." I said, "Me and you could walk around behind my house
19 right now and take care of this like men." He stuck his hand
20 out and told me he did not want a problem and I told him to
21 leave her alone.

22 Q Did Nicole ever spank the children?

23 A Well, if you'd call popping a leg spanking, yes, I
24 guess so, but she only popped them. She never, she never
25 whipped them youngins', never, because she don't believe in

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1 it.

2 Q Well, did you ever see any evidence of a whipping?

3 A Nope.

4 Q Even if you were told about a whipping you wouldn't have
5 ever seen it; right?

6 A Nope.

7 Q Because it would have been on the behind?

8 A Correct.

9 Q Did you ever do anything to **Minor 1**?

10 A Nope. I never did anything to **Minor 1**.

11 Q Well, how many, how many opportunities did you have to be
12 accused of molesting **Minor 1**?

13 A Several times to be accused of it because every time
14 Nicole would go to Walgreens or Walmart or anywhere **Victim**
15 would go with Nicole and **Minor 1** would always want to stay with
16 me.

17 Q And how old was **Minor 1**? She's two years older than
18 **Victim**?

19 A At that time I would say **Minor 1** would probably be roughly
20 around eight I would say..

21 Q Where were you working all this time, Tim?

22 A I worked for Electric Service.

23 Q Electric Service?

24 A Yeah, out of Conway.

25 Q When did you start working with them?

- 1 A I started working with them May the 5th, 2006.
- 2 Q How long did you work with them for?
- 3 A I worked with them up till September the 9th of '09.
- 4 Q Why did you stop working with them then?
- 5 A Because I got laid off.
- 6 Q Did you find another job after that?
- 7 A No, sir.
- 8 Q Have you ever had anything, anything to do with Jennifer,
- 9 the step-mama?
- 10 A No, sir, just met her and that's it.
- 11 Q Did you ever talk with the children about living in
- 12 Myrtle Beach?
- 13 A I never said anything to them about that.
- 14 Q How would they act when they would leave on the weekends?
- 15 A They would be just as happy as any two children could be.
- 16 Q Have you ever seen **Victim** upset before?
- 17 A When she would come down on Fridays when Nicole would go
- 18 get her or either I would be with Nicole she would be in an
- 19 irritable irate mood until maybe Saturday before she'd ever
- 20 get out of that mood. I mean, you couldn't touch her. You
- 21 couldn't do anything with her. She would just whimper. I
- 22 mean, it'd take her like a day before she'd ever get out of
- 23 that mood but when she left on Sunday she was a fine kid.
- 24 Q Was she a clingy child?
- 25 A She clinged to her mother. She loved Nicole.

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1 Q Well, Tim, did you know that the police was going to come
2 lock you up on February the 25th?

3 A I had no idea.

4 Q Nicole had already - had Nicole already gone?

5 A Yes, I was living there by myself with my two puppies.

6 Q And you stayed there - how long did you stay there?

7 A I stayed there till the - about the October the 21st of
8 '09 because being unemployed with the high rent in Myrtle
9 Beach I couldn't afford to stay there by myself anymore.

10 Q Did you know of any of the - before I started helping
11 you, Tim, did you know of any of the specific allegations that
12 were made against you by **Victim**

13 A No.

14 Q How about when you talked to Joe Graham?

15 A I didn't know anything about this until I talked to Mr.
16 Graham.

17 Q And you gave him a statement?

18 A Yes, sir.

19 Q Where was this statement given?

20 A In the police station in a small room.

21 Q Why did you give him a statement?

22 A Because I haven't done anything.

23 Q Why did you waive your right to a lawyer?

24 A Because I haven't done anything.

25 Q Did you answer his questions, did you answer all of his

1 questions?

2 A 100 percent.

3 Q Did he tell you specifically what you were accused of?

4 A After talking a few minutes, yes.

5 Q And did he record it?

6 A Yes, he did.

7 Q Did you know he was recording it?

8 A Yes, I did.

9 Q Have you got a copy of the recording?

10 A Not the audio I don't or the, you know, I don't have a
11 copy of nothing.

12 Q How about the transcript, you got a copy of the
13 transcript of that interview; right?

14 A Yes.

15 Q Okay, well, what are you talking about when you said you
16 ain't got nothing?

17 A Well I didn't, I didn't have a transcript of the
18 conversation on a DVD. I don't have nothing like that.

19 Q You don't have the DVD itself?

20 A No.

21 Q But anyway the point is you talked with him?

22 A Yes.

23 Q Can you tell us why you talked to him?

24 A Because he - I was being investigated over a false
25 allegation.

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1 Q Well, did you know you had a right to interrupt that
2 interview any time you wanted to?

3 A Yes, sir, I was told that plainly.

4 Q Did you interrupt the interview?

5 A No, sir, I did not.

6 Q Why did you want to continue to talk with him?

7 A Because it was a false allegation. I had - I got nothing
8 to hide.

9 Q Where did you grow up?

10 A I grew up in Jefferson, South Carolina.

11 Q What, what kind of family did you grow up in?

12 A I grew up in a very well family, a very country family.

13 Q Where is Jefferson?

14 A It's about 128 miles from Myrtle Beach north towards
15 Charlotte.

16 Q That's - it's on the main drag from Charlotte to the
17 beach?

18 A Yes, sir, Highway 151.

19 Q Well, where did you - how many brothers and sisters you
20 got?

21 A I got one brother and two sisters.

22 Q Well, what's your daddy's name?

23 A Jimmy Jenkins.

24 Q Is he your real daddy?

25 A No, sir.

1 Q Who's your real daddy?

2 A Donald Young.

3 Q Okay, well, where is he?

4 A He lives in Great Falls, South Carolina.

5 Q How about any step-kids, step-brothers and sisters?

6 A Yes, sir, Regina is my stepsister.

7 Q Regina is the lady out there sitting beside your mama;
8 right?

9 A Correct.

10 Q Okay, did you go to school there?

11 A Yes, sir, I went to Central Pageland, South
12 Carolina.

13 Q Well, did you finish school?

14 A No, sir.

15 Q What grade did you go to?

16 A I went all the way up to the 12th. I dropped out at the
17 beginning of the 12th grade.

18 Q What did you - why did you drop out?

19 A I just, I was ready to go to work and I was - I needed
20 money. I mean, I didn't grow up in a well-moneyed family.

21 So, I was wanting my own money and that's, I just did the
22 wrong thing. I dropped out of school and went to work.

23 Q Well, I don't know if that was so wrong or not, but what
24 did you do after you - what kind of work did you do?

25 A I mostly did electrical work my whole life.

Timothy Young - Direct by Defense

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- 1 Q Did you go to any schooling for it?
- 2 A No, sir.
- 3 Q On the job?
- 4 A On the job training, hands on.
- 5 Q Well, when you dropped out of school where did you go
- 6 live?
- 7 A Where I live when I - I was still home with my parents.
- 8 Q When did you move out from your family?
- 9 A Roughly around '89, '90, I would say.
- 10 Q When did you move away from Jefferson?
- 11 A I moved away from Jefferson in April of '05 when I moved
- 12 to Myrtle Beach.
- 13 Q Well, have you been living with your mama and daddy and
- 14 all since then?
- 15 A No, sir, I was married once before and me and my brother
- 16 spent several years together. I've lived with my brother
- 17 pretty much half of my life.
- 18 Q Why is that?
- 19 A Because we get along real good and just brotherly love.
- 20 We're good friends.
- 21 Q Where is he?
- 22 A He's in Myrtle Beach.
- 23 Q So, you've been really unemployed since you've got locked
- 24 up?
- 25 A Correct.

1 Q Why haven't you tried to find a job?

2 A At the time with what's going on I really didn't want to
3 get a job.

4 Q Why?

5 A Because I didn't, you know, getting a job people would do
6 background checks on you which with a false allegation against
7 me like this I didn't want people to know about it because
8 it's ridiculous.

9 Q Well, how do you, how do you feel about the child?

10 A I love **Victim**. She's like one of my own. She was so - I
11 mean, she was just like my own daughter.

12 Q And how did you treat her?

13 A I treated her just, I treated her just as good as any
14 father or mother would their own child.

15 Q You heard everything she said about you now?

16 A Correct.

17 Q But you still feel that way about her?

18 A Yes, I still love her because I haven't done anything to
19 her. The child has been corrupted but not by me.

20 Q Tell them that. Tell them that you didn't do it?

21 A I have not done anything to this child. My hand to Jesus
22 Christ on my son's soul I have not did anything wrong.

23 MR. CANNARELLA: That's all I have, Judge.

24 THE COURT: All right, cross-examination.

25 MS. LIVELY: Thank you, Your Honor.

Timothy Young - Cross by State

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1 CROSS EXAMINATION

2 BY MS. LIVELY:

3 Q Sorry for the loss of your son.

4 A Thank you.

5 Q I wouldn't wish that on anybody. I'm sorry, and I know
6 that you're here to try and make those people over there
7 believe that you're not the liar and **Victim** is the liar.

8 Otherwise, that would make you a monster; isn't that right?

9 MR. CANNARELLA: Your Honor, I object to that. Is
10 that a question or is she testifying?

11 MS. LIVELY: I said is that right.

12 THE COURT: I'm going to sustain that objection.

13 BY MS. LIVELY:

14 Q Let me ask you another way. If you're telling the truth
15 that would make **Victim** a liar; right?

16 A Correct.

17 Q Okay, and that would mean that when you were living with
18 that seven year old little girl back in '08 that she had the
19 forethought to come up with you licking her private part and
20 putting your finger in her vagina; is that right?

21 A No, that's not right because I never done anything to
22 that child.

23 Q Okay, all right, if she was being manipulated and
24 corrupted like you said, okay, isn't that what you said? Is
25 that a yes?

1 A Yes.

2 Q Okay, if she's being manipulated and corrupted like you
3 said and there was so much animosity between Nicole and Chad,
4 why is it that Nicole who you said is a loving mother didn't
5 do something to stop all of it before the allegation came out?

6 A Because nothing never happened.

7 Q No, no, no, I'm talking about the allegation against
8 Nicole. Why is it if Chad was such a terrible person and was
9 spanking the children and the children were crying, didn't
10 want to leave and were upset, why is it that the two of you
11 being such a great family didn't take Chad back to court?

12 A She took Chad to court several times but it was like
13 nothing ever was resolved from it. It was like going to a
14 ball field without players.

15 Q Okay, well, let's clarify something for the jury, okay.
16 Isn't it true that the reason why you and Nicole got married
17 on September the 6th because there was a contempt of court
18 action against Nicole for having the children overnight in the
19 presence of her boyfriend?

20 A No, me and Nicole got married for the simple fact is I
21 married her on September the 9th because my birthday's on the
22 14th and my son's was on the 2nd and I wanted to split it down
23 the difference. That's why.

24 Q Okay, well, you did talk about how there was an
25 investigator who had investigated you; right? You said there

Timothy Young - Cross by State

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1 was a PI out there watching you and Nicole coming and going
2 with the kids before you all were married, that you all were
3 living together?

4 A Yes, we were living together.

5 Q Okay, and isn't it true that in the divorce or custody
6 action or whatever it was there's a provision in there that
7 says that you cannot have overnight guests of the opposite sex
8 not related by blood or marriage in the presence of the
9 children?

10 A Yes, that is correct, that is very correct but the simple
11 fact is I wanted to prove to Nicole before we got married that
12 I was able to establish a home and love and food and shelter
13 for the children. Yes, that's right.

14 Q Okay, but if she just had them every other weekend it
15 probably would have been pretty easy for you to go down to the
16 road, down the road, stay with your brother or somebody so you
17 all wouldn't be violating the court order; isn't that right,
18 do it for the weekends?

19 A Yes, but I wanted to establish, I wanted to show her I
20 could establish a home.

21 Q You wanted to spend the night in the presence of those
22 two little girls overnight with your lover; right?

23 A Because I loved Nicole.

24 Q Okay, all right, what did - how did you feel about her
25 walking around naked in front of the children which she

1 admitted to with you all trying to have a good moral home?

2 How did you feel about that?

3 A I never saw Nicole do that but a few times and the times
4 that I did see her do it I would tell her to put some clothes
5 on but her being the way she said, her mother the way it was,
6 she felt comfortable that way. So, I mean, that's her.

7 Q Okay, all right, well, let's back up to whenever the two
8 of you got married, you said that at the time you were driving
9 to pick up the kids because Nicole didn't have her driver's
10 license, which she's admitted to you; right?

11 A Yes.

12 Q Okay, and then you said that you used to have your
13 driver's license?

14 A Yes, I had my driver's license at that time.

15 Q Okay, what does that mean? Do you not have a driver's
16 license anymore?

17 A Yes, ma'am, I got them in my pocket. Would you like to
18 see them?

19 Q No, I'm just asking. I want to make sure.

20 A Okay, well, I'm just telling.

21 Q All right, let me just - I'm asking the questions here.
22 Okay, I'm not trying to fight with you, Mr. Young.

23 A I'm - well, I'm, I'm answering them the best I can.

24 Q Okay, thank you. Now, let's talk about the real reason
25 that Nicole left. You heard her say that when she left in

Timothy Young - Cross by State

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1 December of '08 she was going to Connecticut not because her
2 grandmother was dying. The first thing that she told us was
3 she was going to Connecticut to be with Andrew; isn't that
4 right?

5 A Yes, she went to be with him because we were - we
6 couldn't get along anymore.

7 Q Okay, all right, and the whole reason why you and Nicole
8 couldn't get along was because of the animosity that you
9 talked about between her and Chad?

10 A Yes, I got tired of the bickering and the fussing and
11 fighting because I was not raised up in a family like that.

12 Q Okay, so, why didn't you leave her and instead she left
13 you?

14 A Because that was my home. That's where I wanted to live
15 and she went her way and I went mine.

16 Q So, she took off to Connecticut away from her girls and
17 you to be with Andrew?

18 A No, that's not correct.

19 Q Okay, all right, well, let me ask you this then, whenever
20 you got contacted from the DSS people, you said they came to
21 the home and talked or wanted to talk to Nicole; correct?

22 A Yes.

23 Q Okay, this is in November of '08; right?

24 A Correct.

25 Q All right, and was Nicole there at that time?

1 A Mr. Reagan came to the house first time, yes, Nicole was
2 there because she spoke to him personally.

3 Q Okay, that's fine, and I'm just asking simple questions
4 here. Okay, don't get upset. Then after that was that
5 whenever Nicole left? You said it was in November.

6 A She had left in November. Her grandmother was dying.
7 She left in November to go up there and be with her family but
8 she came back.

9 Q I understand that. I understand that and when she came
10 back did she come back and stay with you?

11 A She stayed with me for about I would say a few weeks to a
12 month till she could get her stuff together and go back to
13 Connecticut.

14 Q Okay, so, when she stayed with you at that time were both
15 of you aware of the allegations against her by **Victim** regarding
16 the Neosporin, the knuckle and the walking around naked?

17 A After Mr. Reagan came to the house in November that was
18 when we were aware of it.

19 Q Okay, all right, so, you have you and Nicole back
20 together aware of these statements made by **Victim** When was it
21 when all of this was coming out that you and her went to DSS
22 or court to fight for those girls? Tell me when you did it.

23 A Repeat, repeat that question one more time.

24 Q Whenever you - she came back, you're aware of the
25 allegations or the statements because Nicole actually admitted

Timothy Young - Cross by State ;

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1 doing what she did, so, when she was aware of what **Victim** had
2 said ---

3 A Uh-huh.

4 Q --- she comes back. DSS is involved. At what point do
5 you and Nicole who love those kids go to court and defend your
6 honor to support your wife to show that she was doing only
7 what a mother's love would do?

8 A If you're going back to November?

9 Q Yes.

10 A Okay, I did not go with her for the simple fact was she
11 was denied her rights anymore. So, and then she left, went to
12 Connecticut and that was the end of that. I never went to
13 court with her after that because I didn't see her anymore.

14 Q You didn't see her anymore.

15 A No.

16 Q Now, do you remember hearing Nicole say that there was a
17 change in the girls in about September of 2008, that she
18 noticed a change?

19 A Yes.

20 Q Okay, all right, did you notice a change?

21 A Yes, on Fridays when they would come to the house I would
22 see the change in them. They wasn't the same girls, but when
23 they left us on Sunday they were fine.

24 Q Okay, so, when they first got to you how would **Victim** act?

25 A She would, she would - you couldn't touch her. You

1 couldn't do anything to her. She would throw a fit if you
2 tried to tell her to do anything. It would take her like a
3 day to get out of that mood and then finally by Sunday, Sunday
4 afternoon she was a fine kid.

5 Q She didn't want you to touch her; did she?

6 A Huh?

7 Q She didn't even want you to touch her?

8 A No, when she first come down on Fridays, no, she did not
9 but when she left on Sunday she would hug my neck and kiss me
10 goodbye.

11 Q Okay, were you drinking back then?

12 A Was I drinking?

13 Q Alcohol?

14 A Yes, I mean, I drink beer, yeah.

15 Q Okay, and things were really tense in the home because of
16 all the animosity between Chad and Nicole; right?

17 A No, we had a good home until, until - it kept getting
18 worse. When the lice deal came along that's when it really
19 hit the fan.

20 Q But you didn't like Chad; did you?

21 A I never had nothing against Chad. It was just for the
22 simple fact is I just didn't like the way he was treating my
23 wife at the time because she was my wife and not his.

24 Q Okay, and as a matter of a fact whenever you had that
25 moment of a run-in with him, the confrontation, it was you

Timothy Young - Cross by State

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1 that suggested going behind the house and taking care of it
2 and he put his hand out to you and said, "No, man, we're
3 good."

4 A Yeah, because I really don't think he wanted none.

5 Q Oh, because you're a big tough guy? Is that why?

6 A No, no, I just got tired of him running over my wife and
7 I had to sit back and take it because I knew if I did anything
8 he would take her to court and that was his grounds to take
9 them children away from her. So, I stayed out of it.

10 Q Stand up for me, Mr. Young.

11 A (Complies with request.)

12 Q How tall are you?

13 A I'm six one.

14 Q Six, one. What do you weigh?

15 A I roughly weigh 200 pounds.

16 Q All right, you can sit back down. Do you like picking on
17 people that are smaller than you?

18 A Nope, never picked on anybody in my life.

19 Q Now, you said **Victim** was very clingy to her mother. Is
20 that what you said?

21 A Yeah, she loved her mother.

22 Q Okay, I'm just asking you about the clingy. Was she
23 clingy with her mother?

24 A Yeah, she loved her mother.

25 Q All right, and as a matter of a fact whenever she would

1 go to Walgreens you said **Victim** would never stay with you.

2 **Victim** left to be with her mother and away from you; isn't that
3 right?

4 A Nope, it's not. It's incorrect.

5 Q Okay.

6 A She went with her mother to Walgreens and Walmart and
7 places like that because Nicole would give in to her and buy
8 her things.

9 Q Well, a minute ago you said it was because she was clingy
10 to her mama. Which is it?

11 A Yes, because she loves her mother.

12 Q So, it wasn't to get away from you?

13 A No, it was not to get away from me. **Victim** loved me.

14 Q She loved you but she'd lie about you?

15 A Lie about me? Why would she lie about me? I haven't
16 done anything to the kid.

17 Q Okay, well, and that's why we're here. You're saying she
18 wouldn't lie about you but you're saying you didn't do
19 anything to her. Is that what you're saying?

20 A I have not done anything to that child.

21 Q And she wouldn't lie about you; right?

22 A No, she has no reason to lie about me because I was very
23 good to that kid.

24 Q And if there was a big conspiracy by Chad and Jennifer to
25 keep **Victim** away from Nicole the person to lie about would be

Timothy Young - Cross by State

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1 Nicole; wouldn't it?

2 A Well, eventually, I mean, it sounds to me like she's
3 already lied.

4 Q Who's that?

5 A She's telling lies about the abuse that Nicole has done.
6 Nicole hadn't done a thing to that child but show her love and
7 try to take care of her child.

8 Q Well, tell me what it is that she lied about that her
9 mama did to her. I'm just curious because we've heard Nicole
10 admit to the fact she put Neosporin on her genital area and
11 rubbed it in with a knuckle and walked around naked. What
12 else has the child said?

13 A Well, what's that got to do with me?

14 Q That's not what I asked you. You said that there is, if
15 there had been other abuse that the child was going to talk
16 about against the mama and that if she's going to lie on
17 somebody it would be the mama and not you; right?

18 A Why would I - I mean, why would - she has no reason to
19 lie at all, not on me and Nicole because me and Nicole has not
20 done anything. She just did what a mother would do.

21 Q Okay, but clearly what she reported that her mother did
22 to her her mother has corroborated that statement; hasn't she?

23 A What do you mean by that?

24 Q Oh, I'm sorry. Okay, by what **Victim** said her mother did
25 to her, which was the Neosporin, the knuckle and then walking

1 around naked; right, you're aware of that statement?

2 A Yes.

3 Q Okay, you were here whenever Nicole testified and she
4 also said, "Yes, I put Neosporin on her genital area with my
5 knuckle and walked around naked"; right?

6 A Yes, she said that.

7 Q Okay, so, those two statements are exactly the same;
8 aren't they?

9 A Yes.

10 Q Okay, so, the only other thing that the child has said
11 now is what you did to her.

12 A I haven't done anything.

13 Q Was there ever a time when you would have had an
14 opportunity, you said you had millions of opportunities to do
15 this if you were going to do it, was there any time whenever
16 you had the opportunity where you would have licked her
17 private part?

18 A It never happened. It's all a lie. It's false
19 allegations. I took an oath. I put my hand on that Bible to
20 tell you the truth and you're sitting here and asking me about
21 - you're asking me to tell you a lie. I haven't done anything
22 to that child.

23 Q Okay, okay. Well, let me ask you this, did Nicole tell
24 you - now, you said that - okay, let me, let me see how I'm
25 going to ask this. I want to make sure you understand. You

Timothy Young - Cross by State

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1 said that Nicole putting the Neosporin on the genital area was
2 because of a mother's love for her child?

3 A At the time she thought it was the right thing to do
4 because the child was irritated is what she told me.

5 Q Okay.

6 A I'm not a medical doctor. So, you're asking me to answer
7 your question that I don't know nothing about.

8 Q No, I'm just, I'm just asking if I understand what your
9 response was and to why she was doing it. That's all I'm
10 asking and you said it's because she was doing what she
11 thought as a mother she should do; right?

12 A Yes, take care of her child.

13 Q Okay, and, and the thing that was interesting to me and
14 maybe you can explain it to me is you had a registered nurse
15 living next door. Why didn't you and Nicole have the
16 registered nurse look at it or try and help you out?

17 A Well, she's sitting right there. Would you like to ask
18 her because that's none of my business. That's none of my
19 business.

20 Q Sir, I'm asking you.

21 A Why didn't she, I don't know. I can't answer a question
22 that I don't know nothing about because like I said that was
23 her, that was their thing. That's a mother-daughter, had
24 nothing to do with me. I didn't - that was it.

25 Q Okay, so, you weren't worried about that RN possibly

1 seeing something on that child?

2 A Worrying about RN seeing something on her?

3 Q Seeing something wrong with her vaginal area.

4 A I don't know what you're talking about. I had - that was
5 none of my business. That's a female thing. That's nothing
6 to do with me.

7 Q Okay, what do you use Neosporin for?

8 A What do I use it for? I don't use it for nothing because
9 there ain't nothing wrong with me.

10 Q All right.

11 A If I was it would be for an irritation, a scratch or a
12 cut or anything like that.

13 Q Okay, do you blame Chad for your marriage breaking up
14 from Nicole?

15 A Pretty much so.

16 Q Okay, when were you finally divorced from Nicole?

17 A This year.

18 Q So, did you ask her to come back down here and testify
19 for you?

20 A No, I did not ask her to do anything for me.

21 Q Well, you heard her and I'm just asking you. So, you
22 haven't talked to her at all about coming down here?

23 A No, I have not asked Nicole to come down here at all.
24 She's a grown woman. She does what she wants. Me and her
25 have split up. She does her own thing. I do mine.

Timothy Young - Cross by State

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1 Q Did you talk to her at all about what the allegations
2 were against you before she came here?

3 A Not really because it's all false. I mean, what - why do
4 you want to talk about something that never happened?

5 Q So, you didn't even want to tell her what these false
6 allegations were against you and say, "Is there anything that
7 you can think of, Nicole, that we can get up there and say?"

8 A Why?

9 Q Well, I'm just asking you.

10 A Why, no, I'm asking you why.

11 Q Well ---

12 A I haven't done anything to anybody. Why should I want to
13 talk to someone about something that never happened.

14 Q Well, maybe you could say, "Nicole, you know, you like to
15 walk around naked. Was there a time whenever maybe **Victim** saw
16 us do something that we should have shut the door?"

17 A Them children never saw us do anything.

18 Q Okay, all right, they never saw you do anything, and
19 maybe there was a time when you and Nicole, I don't know,
20 remember wrestling with **Victim** after she got out of the
21 bathtub, tickling her and giggling and she took it the wrong
22 way, anything?

23 A Well, like again, I put my hand on the Bible to tell the
24 truth and you're asking me to tell you a lie. No, I have not
25 done anything to that kid and that never happened. I would

1 play with them at the pool, correct. Any, anytime you go to
2 the pool, go swimming, you're going to play with your kids,
3 you're going to throw them around, but there is a million kids
4 there but, no, as far as her being in a towel or anything, no.
5 That is, no, that's incorrect.

6 Q But this happy life of yours that you had with Nicole was
7 basically had come apart and was over as of November of '08
8 when she left you?

9 A It, it - yeah, pretty much, yeah, but we had been having
10 discussions a long time because, like I said, I was just fed
11 up with the animosity between her and Chad. I was just tired
12 of having to go work hard and couldn't come home, on the every
13 other weekend, then I have to deal with a bunch of fussing and
14 fighting on account of "you want the kids, you want the kids,"
15 just trying to tear the kids apart because he didn't want
16 Nicole to have anything to do with them.

17 Q And that's why you took it out on **Victim**.

18 A I ain't took nothing out on **Victim**. Like I said, I took
19 an oath and you're asking me to tell you a lie. I have not
20 done anything.

21 Q Thank you, Mr. Young.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. CANNARELLA:

25 Q Hey, Tim, who is Diane Guida?

1 A Diane Guida, she's from North Carolina.

2 Q Yeah, what is she?

3 A She is a DSS worker.

4 Q Who is Yolanda Daniels?

5 A Yolanda Daniels is in North Carolina. She's a DSS
6 worker.

7 Q Who is Diane Guida?

8 A She is an examiner.

9 Q Thank you.

10 MR. CANNARELLA: That's all I have, Judge.

11 THE COURT: All right, you may step down. Call your
12 next witness.

13 MR. CANNARELLA: That's the defense, Your Honor.

14 THE COURT: All right, all right, ladies and
15 gentlemen, the defense has now closed their case. So, it's
16 now time for me to take up some more legal matters with the
17 attorneys before we progress with the trial. I'm going to
18 excuse you back to the jury room, give you a little break. Do
19 not discuss the case even among yourselves at this point in
20 time. If you've taken notes, please leave your notepads in
21 the jury box and we'll bring you back out in just a moment.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, any motions at this point in
25 time?

1 MR. CANNARELLA: On behalf of the Defendant, Your
2 Honor, directed verdict of acquittal on both counts because
3 the facts don't rise to the standard of proof required under
4 the law in this case to go forward.

5 THE COURT: All right, your motion is noted. I'm
6 going to deny that. Anything else?

7 MR. CANNARELLA: No, Your Honor.

8 THE COURT: All right, anything from the State?

9 MS. LIVELY: No, Your Honor.

10 THE COURT: All right, let's take about - have you got
11 reply, you're going to put up anything in reply?

12 MS. LIVELY: No, Your Honor, the State's done as well.

13 THE COURT: Okay, we've just got closing arguments and
14 charges?

15 MR. CANNARELLA: Yes, sir.

16 MS. LIVELY: Yes, sir.

17 MR. CANNARELLA: Judge, could - I'd like to have about
18 - is 30 minutes too long to ask for?

19 THE COURT: No, that's what I'm saying is because I've
20 still got to draw up some charges and stuff like that. I
21 guess we can just - I hate for the jury to just sit back
22 there.

23 MR. CANNARELLA: I can, if this matters, I'll corral
24 all of my people in that thing across the hall if you wanted
25 to let them go get some sunshine or anything.

Motions

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1 THE COURT: Well, I'm trying to think of the best way
2 to handle it because I've got to draft some charges. We've
3 got closing arguments, charges and then deliberations. Let's
4 just let them sit back there for a little while. I'll
5 probably cut them loose for lunch a little bit early and let
6 them go a little bit early. As a matter of a fact, let's do
7 this, it's 10:30, how long do you all need to prepare for
8 closing arguments?

9 MR. CANNARELLA: I just probably would need ---

10 MS. LIVELY: I'm ready.

11 MR. CANNARELLA: --- I need about 30 minutes.

12 THE COURT: All right.

13 MR. CANNARELLA: And then I - and I'll be ready.

14 THE COURT: All right, let's, let's take about a 30
15 minute break and then we'll come back and do closing
16 arguments; okay?

17 MR. CANNARELLA: That's good, Judge.

18 THE COURT: All right, sounds good.

19 OFF THE RECORD

20 (On the record.)

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, anything from the State before
24 we bring the jury back in?

25 MS. LIVELY: No, Your Honor.

Closing Argument by Defense

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1 THE COURT: Anything from the Defense?

2 MR. CANNARELLA: No, Your Honor.

3 THE COURT: All right, let's go ahead and bring the
4 jury in.

5 (Whereupon, the following takes place in the presence of
6 the jury.)

7 THE COURT: All right, ladies and gentlemen, welcome
8 back. All of the testimony and evidence has been presented in
9 this case and now is the time of the trial where the attorneys
10 make their closing arguments to you. Like their opening
11 statements these closing arguments are not evidence in this
12 case. It is simply the attorneys' contention as to what they
13 think the issues are in this case and what they think the
14 evidence has shown in this case. If at any time the attorneys
15 make a comment about a factual issue that is different from
16 the facts as you find those facts to be or if they make a
17 comment on the law that is different from the law as I
18 instruct you at the close of their arguments you're to
19 disregard their comments because you and you alone decide what
20 the facts of this case are and I will advise you on the law of
21 this case at the conclusion of their arguments. All right,
22 Ms. Lively, does the State wish to waive?

23 MS. LIVELY: Yes, Your Honor, the State would waive
24 first close.

25 THE COURT: All right, the Defense can close.

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1 MR. CANNARELLA: Well, you all, I believe this, I
2 don't believe that there's anything I said to you in the
3 beginning, any promises I made that I didn't try to keep. I
4 tried to do as much as I could possibly do to live up to my
5 promise to you because after I sat down from talking with you
6 the first time I really felt in my heart that maybe we had
7 reached one another about how horrific these charges are and
8 how it makes a normal person feel when you hear Tim accused of
9 something like this. I really looked and watched and felt
10 like you have kept an open mind throughout the whole thing.

11 You don't know much about me though, but my name is Paul
12 Cannarella. I live in Hartsville, South Carolina. I've lived
13 there all of my life. I grew up there. I went to school in
14 South Carolina and I've always been there. Now, Tim Young,
15 he lives just up the road in Jefferson, South Carolina. His
16 family has some people in Hartsville that knew me and that's
17 how he ended up using me as his attorney and we don't come
18 from those different of backgrounds, I mean, our backgrounds
19 are about the same. You know, there's just something, there's
20 just something in this milk that's not just right. There's
21 something in it that's not just right, and I've not used one
22 of these things before but I'm going to do this to try to pull
23 everything together for you all.

24 On January the 8th, Chad and Nicole got married, January
25 the 8th of 2000. At that time **Minor 1** was already born. Then

1 in July of 2000 Chad and Nicole separated and then **Victim** was
2 born and you heard Nicole say they really weren't together any
3 much at all. Her visitation started every other weekend in
4 May of 2003, and in November 2004 they were divorced; and so,
5 you see the gap between three, 2003 and 2006. Well, in
6 between there Nicole is still having weekend visitations and
7 she meets Tim and they date for a year and then a year later
8 they get married and then everything is running fine, '06, '07
9 and up to '08. You know, it makes, it makes you wonder if
10 something - if Tim is a perp, if he's a pervert, if he's a
11 perp it's, I think it's reasonable for me to say to you that
12 something might would have happened before then. What was he
13 doing? He just going to wait until **Victim** gets a little bit
14 older because **Minor 1** older already. It's just not what you
15 typically see in a perp situation like this because you look
16 for kiddy porn. You look for nasty magazines. There's
17 something going to be there because that forensic interviewer
18 that's why she asked that child all those questions because
19 those are things that you normally find in connection with
20 somebody that's been accused like this, though they're not
21 there but look at all the time that passed before, then
22 something just ain't right, but I want to emphasize to you
23 that August the 18th, 2008, psychotherapy with Denise Searce
24 begins with both children. Both of those children were going
25 to see the psychotherapist. Now, is something wrong with both

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1 of them or is just something wrong with one of them?
2 Something has got to be wrong with both of them and it's that
3 high conflict situation that developed between Nicole and Chad
4 and the way they treated each other. Nicole, okay, hey, she's
5 a bad - she was a bad person. She got up here. She said she
6 was a bad person. She knows she's a bad person. You can see
7 the hurt in her when she was on this witness stand but you
8 know, could you look, could you look at her and could you feel
9 her and could you believe that she was being truthful with you
10 with everything she said because you get to assess how
11 somebody acts on the witness stand, and you know, you can -
12 you don't make - you inevitably think about how somebody came
13 across to you on that witness stand in making your decisions
14 about whether they're guilty or whether they're innocent or
15 whether they're telling the truth or whether they're not
16 telling the truth.

17 On October 28th, 2008, Searce sends a letter to Chad
18 Turbeville's attorney disclosing a high conflict situation
19 because that's what Denise Searce said it was. It was a high
20 conflict situation and she was evaluating two children, not
21 just one, and I know she saw the children a number of
22 different times after that before these complaints about the
23 mother come out and those complaints were taken and they were
24 run with. They, they - Nicole doesn't need to walk around
25 the house naked, okay. I know. She doesn't need to, she -

1 maybe she needs to do, you know, an application. Maybe she
2 didn't do it right with her finger. Maybe that's, maybe
3 that's not the right way to do things, okay, but that does
4 not, that does not mean that you take that and you take that
5 ball and you run with that ball and you ram it down her throat
6 and make her look like she's nothing but a piece of trash when
7 you're talking about she didn't care about her children and
8 try to turn putting Neosporin on this child's knuckle [sic] to
9 mean that she's a perp or was she really, oh, no, no, here's
10 what she was doing with it, Neosporin. If you believe this,
11 she was taking that Neosporin and she was covering up those
12 scrape marks, they're going to argue, that Tim was making on
13 the child. Well, why does this stuff matter? Why is all this
14 stuff coming about? Why is all this stuff coming about now in
15 - and after about three years everything is going along fine.
16 What's - here's what it is, here's what it is, those children
17 get to come down here and I think this is reasonable for me to
18 say, those children come down here and they like it in Myrtle
19 Beach. Who wouldn't? Who wouldn't like it in Myrtle Beach?
20 You got two little girls and Tim and Nicole and they got their
21 undivided attention. You're not, you're not in a household
22 with a mama, a daddy and three - and five other children.
23 They liked coming down here to have the undivided attention of
24 Tim and Nicole. They liked that. They were enjoying it.
25 They were enjoying it and that's what internally started to

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1 build and create the high conflict situation. They were
2 enjoying themselves. They were having a good time. Tim
3 wasn't running around perping on Nicole, I mean, perping on,
4 perping on **Victim**. He loved the child. He took care of the
5 child and is it - why, why, he had plenty of opportunities
6 before that particular point in time but the, the fabrication
7 is made about Nicole because you could take that, yeah, you
8 could take that and turn it into something and they really
9 took it, they really turned it into something. They really
10 turned it into something big, but see, I don't know, I don't
11 understand now. You know, and this don't make no sense.
12 Really, the child was led to believe that there was something
13 purvey about what her mama did to her and that was built up in
14 her mind. Maybe she felt uncomfortable about her mama walking
15 around naked in the house. Maybe she felt uncomfortable about
16 her mama applying it. I mean, but even Dr. Rahter said she
17 would take her own finger and put it on her own child but she
18 wouldn't use the knuckle. So, the manner of application,
19 okay, that's, that's - that, that was bad, but see, it was
20 blown all up. It was blown all up and then you got this child
21 in this high conflict situation, two of them already seeing a
22 psychotherapist for something and they ain't seeing them
23 because they made any allegation about anybody being messing
24 with them until November and the allegations are made about
25 the mama. Well, I don't know. Well, I don't know. You have

1 to, you have to ask yourself this question, you know, well,
2 would a child - would your child, well, do you think your
3 child would say something, if, if Nicole and Tim were messing
4 with **Victim** well, I - do you think that - you say, "My mama
5 was doing something to me," or what would stand out in a
6 child's mind to bring it on out? I mean, I - if there was
7 going to be some disclosures it just, it's just - there's
8 something just ain't right in the milk. I don't have the
9 resources. We don't have the resources to do all this
10 hunting. We don't have them. We don't have it to do all
11 this. I don't know and I know it's going to say, well, the
12 reason you don't know is because the little child is telling
13 the truth. Well, she is. Well, you know, Rahter, I mean, not
14 Rahter, the counselor from North Carolina, "Would it surprise
15 you if I told you **Victim** lied about her stomach?" "Yeah, it
16 would surprise me." So, that child's a good liar then because
17 that woman wouldn't believe she wouldn't tell a lie, and on
18 the - on her testimony she, she lied - she talked about lying
19 with her - lying on her siblings to maybe get - I don't know
20 why, get what she wants, you know.

21 There was a - I tell you, first, and my true love,
22 really, insofar as what I like, I like football. I just - I
23 like it. I guess if I had my druthers I'd be on the sideline
24 trying to coach quarterbacks this weekend, but anyway, this
25 friend of mine he told me, he said, "Well, you know," he

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1 drives, he drives a - he's a football coach at Hartsville and
2 he drives - assistant coach and he drives a - he does student
3 driving and I was talking to him one day and he says, "Well,
4 you know," he says, "My" - he said, "There's something
5 interesting about my students," says, "if good - if you, if I
6 got a student that drives good, they've got that from their
7 parents, the parents are good drivers. If I got a bad driver,
8 I got it from my - they got it from their parents." You know,
9 and a lot of times the character of the parent can be
10 reflected in the character of the child about how they raised,
11 you know, it's what they around, and the child lies to the
12 teachers, lies about her, lies, lies on her siblings, if
13 you're talking about being traumatized, well, who would ever
14 say, who would ever, would you ever, would you ever threaten
15 your child with a prison belt? I ain't know why - even know
16 what a prison belt was till I heard that, till I read it in
17 getting ready for this case but it's in there. It's on that,
18 it's on that interview. It's on the Dianne Nordeen's forensic
19 interview, and corporal punishment. Well, I mean, I don't
20 know, you know, that's, that's, that's just a personal choice,
21 I guess.

22 You know, on that October 28th, 2008, letter to Chad's
23 attorney now, I asked Denise Searce if she had did, if she
24 had done a formal family evaluation, and she said, she either
25 said no or she didn't understand what I was asking her. The

1 bottom line of what I was getting at she was not, she was, she
2 was wanting to talk to Nicole. She was encouraging talking to
3 Nicole but she was cut off. She was not hired by Nicole. She
4 was working for Chad Turbeville and she was working for Mr.
5 Phipps, the lawyer and they were concentrating on those two
6 children from whatever was going on with those two children
7 when they both went for therapy because now, remember, they're
8 both in therapy. So, they both need therapy. So, she felt it
9 was important to talk to Nicole but it's just like you've
10 heard in here, you know, she, she, she - it was easy for them
11 to, to knock her out of the box because some of the things she
12 did, but they blew it all out of proportion to keep her, to at
13 least talk to her, at least talk to her, at least try to work
14 it out. I mean, Nicole was there. Searce wanted to get in
15 touch with her and wanted to talk to her but she was really,
16 she, she - that's why, you know how I knew to ask her those
17 questions? You know, because I, because I had something that
18 came from her and I could read in between the lines and I
19 could figure it out. She put that in there for a reason,
20 Denise Searce did. She put that in for reason. She can't
21 really come out and say some things because she's working for
22 - she, she's working for Chad. She's psychotheraping these
23 girls but she said in there, you know, she was encouraging
24 contact, mentioned something about talking to Nicole but Chad
25 had concerns and really he wanted to get the advice of

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1 counsel. That's what that was all about. All right, so, if
2 that's the 28th, you all, that's on the 28th, then on the 31st,
3 the 31st, now, that's - now, that's funny and you get a letter
4 going to the attorney on the 28th and then Halloween was the
5 weekend that all this stuff starts, after that starts blowing
6 up. That's kind of interesting insofar as the - what they
7 call the temporal proximity, what they call how close in time
8 because, see there, there you go, November the 4th, now, that,
9 that 28th letter got fired off, November the 24th, 2008, **Victim**
10 tells Jennifer about the Neosporin on the knuckles, coming
11 home from school. I asked her, I asked, I asked Ms. Jennifer
12 Turbeville, she said, "Yeah, I believe she - I believe **Victim**
13 did tell me something about, 'My mama told me, I believe my
14 mama is trying to get me not to mind you, Jennifer, and by the
15 way she does nasty things to me.'" Okay, so, she tells
16 Jennifer, and then the next thing you know, well, you're going
17 to shoot them - you're going to go on down to, you go on down
18 on November the 6th to see Searce, have her sketched, document
19 it. "Let's document it. Let's get it documented now. Let's
20 get that November 6th documented," because see, they - these
21 children are having a good time. Conflict, the conflict is
22 coming I feel, but it's not me, it's you, I think the
23 conflict's coming because these children are genuinely
24 enjoying spending time with their mother and this down here is
25 less chaotic than it is up there where you've got to deal with

1 that corporal punishment kind of stuff and marks on your butt
2 and the threat of a prison belt. That's enough right there to
3 have to send children to a psychotherapist, the ones that
4 start lying to the teacher and lying on the other siblings,
5 are you telling me that those are classic symptoms of a child
6 who's been abused by Tim? What - they said - that, that - one
7 of those experts, one of their experts said, "See, there's no
8 cluster of symptoms, right." You know, so, how can you
9 really, you know, what was wrong with those children, I don't
10 really know what was wrong with those children but they messed
11 up and you're going to say, you all are going to say, "Tim,
12 you're guilty because you're a perp and you messed with them
13 children." You all will convict him on the basis of that, on
14 the basis of somebody who lies.

15 Now, I can't go, I can't go find out. I can't dig into
16 it and tell you why but Denise Searce said, I asked her,
17 "False allegations of child sexual abuse are common in high
18 conflict family situations when you're dealing with the
19 children," and she knows it. That's why she had to answer it
20 that way. That's why I asked her some questions because to
21 some extent, to some extent she sent me little clues in here.
22 I got them through discovery, I got those little clues in here
23 and that's why I asked her the questions I did.

24 All right, so, November the 12th mom, mom is investigated
25 for putting Neosporin on, on **Victim**. I want to tell you where

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1 this - **Victim** specifically denies Tim Young did anything
2 sexual. When Joe Graham was on the witness stand and I was
3 asking him questions and I was going through everything about
4 Tim's cooperation in giving those voluntary statements and
5 waiving his Miranda rights because he didn't have anything to
6 hide, he didn't have anything to hide. We don't have anything
7 to hide. We're here, we're pouring, and what you see, we're
8 pouring our souls out to you because we are innocent. These
9 are false allegations. These are false. Can I explain them
10 to you? Do I have the - can I explain them to you? Is it
11 just because children don't lie? Well, you know children lie.
12 I guess it's to what extent they lie. If you find him guilty,
13 if you find him guilty on the basis of these allegations and
14 they're false you can't ever change that. You can't change
15 it, and there is enough that, see, something's not right in
16 the milk. What Officer Graham testified to for me was that he
17 had gotten some papers from Yolanda Daniels, and in that, and
18 he read it, Yolanda Daniels in North Carolina because that's
19 where the children live and now even though the allegations
20 were made down here, in that piece of paper I handed to him
21 and he read from Yolanda Daniels said that she specifically
22 asked the child, "Did Tim Young bother you and touch you in
23 any sexually inappropriate way," and the child said no. The
24 child said no, and that's when I brought that piece of paper
25 up here and I went like that and I asked him to read it and he

1 read it because he read what was in this piece of paper. He
2 knew what was in this piece of paper, and so did the people,
3 so did the people who provided me with this piece of paper
4 under the law.

5 Now, I guess delayed reporting, delayed reporting, it's
6 always going to be delayed reporting every time, every time.
7 "Well, they just don't tell you. They just wait and wait and
8 wait." Now, that child has gone in there and talked about her
9 mama and she specifically asked about Tim Young, "Has Tim
10 Young ever touched you in a sexually inappropriate way," and
11 she said no. She said no, but I mean, I reckon she's all
12 across the board. No, all - she's all across the board. She
13 lie this one minute. She'd lie, you know, I don't know. See,
14 that is a - you know what that does though, you know what that
15 does? That's consistent, remember in my opening statement I
16 said, you know, please the call on the field is not guilty.
17 Remember? That's what I mean, things like that.

18 On December the 12th, now, Nicole knows, Nicole knows that
19 - Nicole knows that - well, excuse me, you all, I done lost, I
20 done lost my pointer. No, there it is. Nicole knows, she,
21 she knows that they, they wanting to find out, that North
22 Carolina DSS is wanting to find out something about it. See,
23 you can try to sometimes maybe if you're having, here's what
24 I've done. I've drawn myself a line and down here is South
25 Carolina, Myrtle Beach. Just across that line is North

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1 Carolina. That's where Tabor City is. That's where we are,
2 okay, and that's where the children live. So, to get
3 allegations about something they go to North Carolina DSS.
4 Okay, and November 6th, see, Searce what she did is she calls
5 DSS in North Carolina and that's when **Victim**, and that's when
6 **Victim** is specifically asked, "Has Tim Young bothered you?"
7 "No, he's not bothered me." On December the 12th Nicole goes
8 to, goes - she crosses the line, drives across the North
9 Carolina line and she goes up there to Whiteville and she
10 signs what's on Defense Exhibit Number One, which is the same
11 thing on Defense Exhibit Number Two, okay, except this came
12 from Chad. Number One came from Chad. I brought you Number
13 Two. Okay, I can simply - what this is is this is what I -
14 and you know, she says, "Hey, Clerk of Court, I want, I want
15 to take him to court. I'm not getting the children, you know,
16 won't allow me scheduled visitation." So, okay, "We'll do it
17 on the 13th." Well, the deputy sheriff he gets it on the -
18 North Carolina gets it on December the 15th, takes it to the
19 house on January the 2nd of '09. Nobody, nobody, nobody knows,
20 nobody don't remember anything about that. Jennifer
21 Turbeville doesn't remember anything about that. Michael Chad
22 Turbeville doesn't remember anything about that, but I guess,
23 I don't know, I thought Denise Searce said she went there on
24 the 13th, but I don't - on January the 13th to this court
25 hearing, but I don't really think she did. I think she had

1 been to a few and she was a little bit confused, and in all
2 fairness to her I don't think she went there, okay, but this,
3 this is significant. December the 12th she files these
4 contempt charges. Now, on [REDACTED] [REDACTED] she's going to the
5 school to give the teacher some cards for her, for her
6 children and she talked to the principal, called her by name
7 and gave them the cards and the children got the cards. Well,
8 you know, I don't really know really what the child -
9 children's reactions were to getting - well, that was, that
10 was [REDACTED] [REDACTED] [REDACTED]. That's Victim [sic] birthday. So,
11 so, that's why the mama went there but she left the cards for
12 Minor 1 and Victim, and then, I mean, and all H breaks loose.
13 All H breaks loose then at school, not good. I mean, give
14 them a card. What's that going to do? What's that, what is
15 that going to do to those children to get a card from their
16 mother, through their mother. Now, you know, I think that's -
17 I believe that Denise Searce said they started regressing
18 after that or Victim started regressing after that. Well, I
19 reckon so. If, if you go there and you create all that
20 disturbance at the school over two cards that the biological
21 mother is trying to give to her two children and you mean to
22 tell me the children are not going to get exposed to any of
23 that tension that's created. They're not going to get exposed
24 to any of it at the house up there? All the cross talk, and
25 then, and then, so then, then the child starts - she's getting

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1 upset again because it's the tension, see. I mean, it might
2 not been right for Nicole to go up there and if you want to
3 say and give them the two birthday cards, but my God, getting
4 kicked off, getting kicked off the school grounds, raising so
5 much Cain about two cards and that was going to - that's
6 overreacting, see. That's, there you go, you know, see, it's
7 kind of like how that the driver's training thing that my
8 friend was telling me about how, you know, bad driver, used to
9 being around bad drivers. Good drivers used to being around
10 good drivers. I mean, why raise all the fuss if you're
11 talking about that? Why raise all that fuss? Why not have a
12 little bit of civility about it. What's the big deal? The
13 big - see, the relationships, the relationship between the
14 children and, and Tim and Nicole were truthfully growing
15 stronger, growing stronger because they liked it down here but
16 who wouldn't like it down here coming down here on the
17 weekends, and you know that August thing, it comes, I guess
18 school just right started back, probably the summer was just
19 over, you know, when you, if you, if I, if I, if I flip back
20 to August the 18th, the psychotherapy starts, that's right at
21 the end of the summer, down there having a good time, seeing
22 it, feeling it. Up there across the line they were seeing it,
23 feeling it, but it's the resentment. It's the resentment,
24 it's the resentment, it's the resentment I'm telling you
25 that's still there, and I, you know, a bad situation, a bad

1 situation for that child because, because that child, that
2 child is lying, and if she's lying on him and I can't tell
3 you, I can't tell you why, I can't tell you the psychology. I
4 can't tell you the dynamics behind it because I have not
5 gotten my own psychiatrist to try to delve into that child's
6 head. That child's head is messed up enough now already and
7 you, and you going to send that man, you going to find him
8 guilty on what you've heard in here and there's not any - you
9 don't have any doubts? I feel like I'm fussing. I don't mean
10 to.

11 Okay, so, mama is banned, step-mama is banned from
12 school. Huh, high conflict situation, January 2nd they wanted
13 to know - I don't think - they wanted to know - they got
14 served with that. They couldn't get out of it, they couldn't
15 get out of admitting that. They got served with that at the
16 house. On January the 13th there was supposed to be a contempt
17 hearing. I don't know if there was or there wasn't. I mean,
18 you know, I don't know. Denise Scarce said she was there but
19 it got put off.

20 Okay, January the 13th supposed to be the contempt
21 hearing. This is just a mere coincidence. There's supposed
22 to be a contempt hearing on January the 13th involving their
23 daddy and on January the 14th **Victim** tells Jennifer about Tim's
24 alleged abuse and that's just a day after there's supposed to
25 be a contempt hearing and they want to dance around, they want

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1 to dance around this not being served on Jennifer at the house
2 by the deputy sheriff. They wanted to dance around on that.
3 You know, you could, you could tell from their demeanor when
4 they were on the witness stand they want to dance around about
5 it, and then the 13th is the contempt hearing and then the
6 allegations about Tim come out after that. Now, you know,
7 well, maybe that is a coincidence and maybe it's not. Well,
8 maybe you have a reasonable doubt as to whether that is a
9 coincidence or whether it's not. Maybe you have a reasonable
10 doubt based on all the evidence as to whether he's guilty or
11 whether he's not, but if you're not firmly convinced, if
12 you're not firmly convinced that he's guilty it ain't no might
13 be. You got to be, you got to have, you got to, you got to be
14 sure beyond a reasonable doubt that he is before you can find
15 him guilty. It ain't might be or may be. It's a reasonable
16 doubt. You have any reasonable doubt that he's guilty or do
17 you have a reasonable doubt if he's guilty or not, that's it.
18 You've got to be firmly convinced and these things right here,
19 I mean, you know, when you go under the hood I don't know what
20 you can really tell.

21 Then there's the January the 16th, she says that January
22 the 16th is the letter because they - you know they going to
23 send them right down there and see the, see the pattern? Mama
24 abuse, send them to Searce. Tim's, Tim, allegations against
25 Tim send them to Searce. They do it right away, see. That's

1 the way that they've been working; and so, then January the
2 16th is that letter, and that January the 16th letter is what
3 initiates the investigation because she sees **Victim** I don't
4 know if she's still seeing **Minor 1** or not, and as a result of
5 that January 16th letter this investigation starts, and it's
6 just January the 26th is up there because that's when they,
7 they - that's when Denise Searce has to get the step-mom back
8 on the school grounds.

9 Okay, February the 5th, 2009, she admits that she uses
10 tactics to get what she wants, but if you go back to the
11 January the 16th at that meeting, at that meeting she is asked
12 by the - if you talk about delayed reporting she's - Denise
13 Searce specifically asked her and the reason I know it is
14 because I've seen some things in writing. "Well, why did you
15 - why didn't you tell me about Tim when I saw you on November
16 the 6th?" Well, she felt that she just needed to do one at a
17 time, meaning she'd tell on one and then tell on the other one
18 and then she goes back on February the 5th. Now, you see
19 there's - she's going back on February the 5th because there's
20 still some tension in there, see? She might - she probably
21 did regress. I mean, Ms. Searce is probably right because
22 that was all the tension that was being created in that
23 child's mind because she's been made to believe that her
24 mother is sexually abusing her when she does that. That's
25 been, they, they - that's been built up in her and then, and

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1 then the - and then there's a big to-do at the school
2 probably. You don't know who saw what at the school house.
3 You know, you don't know how embarrassed the children were.
4 We know that the step-mama got kicked out the - kicked off the
5 school grounds, all them little children talking. Who knows
6 what. I don't know. That's reasonable to think that it might
7 have happened that way. I don't know. That's more internal
8 conflict creating in that little child, and I asked Ms.
9 Searce about her February the 5th session, and in there Ms.
10 Searce said, "Yes, **Victim** admits that she uses tactics to get
11 what she wants."

12 Now, I want you to just please bear with me and it's been
13 long and I know we all have families to go to, but go back in
14 time with me for a minute. You see, on November the 4th,
15 November the 6th Ms. Jennifer is told, **Victim** tells something to
16 Jennifer. Then Searce has a session. She calls DSS. Okay,
17 so, now, that is an allegation. That is an allegation of
18 sexual abuse. DSS is investigating. So, they follow certain
19 protocol; right? We know what protocol they follow because
20 we've seen it because see when you come down here to South
21 Carolina, now just kind of keep in your mind that drawn out
22 line there, North Carolina, South, we're right there, and the
23 protocol, you know you saw DSS was not involved in South
24 Carolina because the children weren't here, but you've got
25 Dianne Nordeen. You've got a forensic interviewer.

1 Okay, that's the protocol because there's an allegation and
2 then you've got a medical examiner and that's in Carol Rahter,
3 okay. All right, now, follow me for a minute. If you go back
4 to North Carolina and you've got allegations of sexual abuse
5 on the part of Nicole, well, that - but the children are in
6 North Carolina, see. So, the incident happens down here
7 supposedly by Nicole on the weekend, but the children live up
8 there in North Carolina. So, as soon as Searce hears it she
9 tells DSS up there. Okay, that's how I got that thing from
10 Yolanda Daniels, that DSS worker, with the Officer Graham
11 helped me. He showed you all that. The child said, "No, Tim
12 didn't mess with me." Remember that? Okay, so, that's DSS up
13 there. All right, now, the protocol. Think about the
14 protocol. What did they do down here? You got to, you go to
15 the forensic interviewer down here. You go to the examiner
16 down here. So, what would you do up there? Remember when I
17 asked Tim about who Diane Guida was? Diane Guida was an
18 examiner. Okay, well, is it - if anything - if there was
19 anything wrong with that child, if there was any, if there was
20 any abnormal vaginal findings about that child up there in
21 North Carolina when they started looking into allegations
22 against Nicole, you know that if there was any abnormal
23 examinations up there in North Carolina you would have heard.
24 They would be here, but you didn't hear any come in. So, it's
25 reasonable to conclude that around November up there during

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1 this DSS investigation that if there were any examinations of
2 this child's body parts they were normal because they're not
3 brought into this courtroom today and you know they would be
4 if they were anything other than normal.

5 So, if you, if you're going to - if you're going to be -
6 if they're going to try to make you believe that the mama was
7 putting Neosporin on the outer part of the child's vagina
8 because Tim was scraping it with his finger, then if he's
9 scraping it with his finger on Halloween weekend then and then
10 the - and the allegations about the mama came out, well, then
11 there would be come findings of all that up there in North
12 Carolina and they would have brought them here, but that
13 didn't happen. You know that's just - that - it's just it's
14 pulling straws there now.

15 Okay, on February the 17th there goes the forensic
16 interview and the forensic interviewer asks a lot of
17 questions. "It happened in this little small house. I didn't
18 scream. I wasn't yelling. I wasn't doing anything. I was in
19 the bed with Tim in there. It was when the cartoons was
20 playing and mama was right out here in this little 500 square
21 foot place. She ain't knowed nothing had happened in the
22 morning," and **Victim** was over here in the bedrooms, you know,
23 perps, it happens at night, pornography, asked her all those
24 questions. There's none of that there because there's nothing
25 to corroborate. The law says you don't have to have any

1 corroboration but there is nothing to corroborate that he did
2 a thing, that he did anything. These are false allegations
3 and this is real and this is serious and it's up to you all.
4 These are false and this is serious here because they are,
5 because there's enough stuff in here you ought to turn that
6 man loose, high conflict situation. She told you, Denise
7 Sceaux said they come when you've got situations like this
8 and you know the child ain't right. She's going to a
9 psychotherapist to start with. I can't account for all that.
10 I can't tell you why. I don't know, and it's not because
11 she's telling the truth anyway.

12 You know, in, in the interview, in the forensic interview
13 she said, **Victim** said that, "I stopped going to my mama's
14 because of what she did to me." That means putting the
15 Neosporin on there and I know it's going to be hard to
16 remember all that because it was not - there was not an easy
17 thing to watch because of the equipment. There was a part in
18 there, too, and you all collectively can remember, there was a
19 part in there that he's - he was the - and this was repeated
20 by Dianne Nordeen because it couldn't be heard that well but
21 it's - she said, "He's the only one around. So, I guess it was
22 him. He was the only one around. So, I guess it was him."
23 That just don't sound right, and then they - then they talk,
24 Dianne Nordeen talked on that interview about, "Well, did, did
25 you ever really see **Minor 5**, **Minor 5** the friend, the nurse

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1 lady's daughter, did you ever see **Minor 5** [REDACTED] by herself."
2 "Well, it might have when, when me and mama went to Walgreens.
3 Might have, might have left her there." You talking about
4 leading questions, you're talking about suggesting, you're
5 talking about crosstalk between adults, you're talking about
6 contamination. I don't know. I can't, and I know they're
7 going to say there's none of that, but now, can you believe,
8 can you really believe that's fair and reasonable to believe
9 that there ain't some kind of contamination here and some kind
10 of cross talk?

11 **Victim** [REDACTED], cross examination, April 5th, 2001 -
12 2011, "I wanted to finish one before I started on the other."
13 That's what was said in that room over there and that ain't,
14 that ain't no child talk right there. That ain't child-like.
15 Denise Searce, "That is not something a child would say."
16 You deserve - you observed, you observed Tim on the witness
17 stand. That's the innocent man talking to you. That's an
18 innocent man. These are truly false allegations. Can I
19 explain why? I can't and I'm not going to - I can't, I can't
20 explain why. I don't know why. I ain't never seen anything
21 like this before and it's not just I believe because why would
22 a little child lie because we know she'll lie. I guess it's
23 to how much would she lie. Who's - what's she trying to
24 please. The dynamics of this thing are so horrible. I told
25 you this is a bad thing one way or the other. It is. I feel

1 sorry for that child. I feel sorry for her. I don't - but is
2 it all, is it all Nicole and then this man right here is being
3 accused of something when you look at him and you listen to
4 him and you watch him on the witness stand he ain't done this.
5 He didn't do this, but I can't - I'm sorry. I can't tell you
6 why that child would lie. I don't know but all I've done is
7 bring you enough in here to have reasonable doubt about
8 whether he's guilty or not.

9 A lawyer's job is not to create doubt because creating
10 doubt is kind of like making it up, but I didn't have to - I
11 didn't create any doubt in here. You and I searched for it to
12 find it and we found it in a lot of different ways that would,
13 that would cause you to hesitate before you unanimously agree
14 that he's guilty. The child could be telling the truth. The
15 child could be lying. You don't know which way to go.

16 Okay, here's what the law says. If you don't know which
17 way to go you've got to be sure about finding him guilty.
18 You've got to be firmly convinced before you unanimously find
19 this man guilty based on everything you've heard and
20 everything you know.

21 I want to - I'm going to go, but before I do, in the
22 beginning I told you what was the call on the field. The call
23 on the field was not guilty. So, they throw out the red flag.
24 They're challenging the call. The constitution presumes he's
25 innocent and they're challenging the call. So, when the -

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1 when the coach throws the red flag out on the field to
2 challenge the call, time out. Then what's the next thing that
3 you're going to see? The referee is going to look under the
4 hood, and he's - you know what he's looking for? He's looking
5 for a reason to overturn that call if one exists. The
6 receiver has caught the ball and he's gone down and he's hit
7 the ground and that ball is right in here. You can't tell if
8 he's caught the ball or if he's not caught the ball. The
9 referee said it's an incomplete pass, okay. He didn't.
10 That's his call on the field. He's innocent. Well, and then
11 they go underneath the hood and they look at many different
12 angles to see if they can overturn that call and the only way
13 that the official after reviewing the play will only, the only
14 way he'll overturn that call on the field is if he has
15 indisputable evidence, indisputable, undisputable,
16 uncontraverted evidence that that receiver held on to that
17 ball and he - when he hit the ground he had that ball wrapped
18 up underneath him and he caught it. That's the only way that
19 they will overturn the call on the field if there's clear,
20 undisputable evidence that the referee's decision was wrong
21 and then they reverse it. Then they reverse it. Well, see,
22 the call on the field is that he's not guilty and the State
23 has to prove to you by undisputable evidence that that was a
24 bad call, that that was the wrong call and unless you have
25 undisputable evidence, undisputable evidence that he is

1 guilty, then the call on the field stands. He's not guilty.
2 They have got to prove to you beyond a reasonable doubt when
3 you examine this under the hood that you - that, that's
4 undisputable evidence has been presented to you to change that
5 call on the field and find that man guilty and that - and it's
6 not here. You don't have undisputable evidence of proof
7 beyond a reasonable doubt that Tim Young is guilty and that
8 you should overturn that call on the field. You don't have
9 it. Turn him loose because you looked at him, you watched
10 him, he does not behave, he ain't - he does not behave like a
11 guilty man on that witness stand. He does not behave like
12 that. You can't coach that. I wasn't worried one bit about
13 his cross examination today. I wasn't worried. You know why?
14 Because I'm telling you he's telling the truth and that's why
15 this is a bad case. These allegations are false from him,
16 false against him and you don't have enough, you don't have
17 enough underneath that hood of undisputable evidence to change
18 that call on the field and find him guilty. Turn him loose.
19 Turn him loose.

20 "I wanted to finish one before I started on the other.
21 I've done with one. Now I'm starting on the other." That's
22 what was said. That's what I heard. I made sure I heard that
23 right. I know that was heard, I know I heard that. I know
24 that's in the evidence in the record, "I wanted to finish one
25 before I started on the other one." This man is innocent

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1 This man is innocent of this. He ain't pulling your legs.
2 Now I'm telling you he's innocent. These are false
3 accusations of child abuse, to turn him loose, please. Thank
4 you. Thank you, Judge.

5 THE COURT: You want the lights on?

6 MS. LIVELY: Yes, sir. May we approach for a moment?

7 THE COURT: Yes.

8 (Whereupon, a bench conference is held in the presence
9 but out of the hearing of the jury.)

10 THE COURT: All right, ladies and gentlemen, let's go
11 ahead and take about a 10-minute break, give you an
12 opportunity before the State makes their closing argument.
13 We'll give you about a 10-minute break, give you an
14 opportunity to use the restroom, stretch your legs and things
15 of that nature. We'll bring you back in just a minute; okay?
16 Thank you very much.

17 (Whereupon, the following takes place outside the
18 presence of the jury.)

19 THE COURT: All right, let's take about a 10-minute
20 break.

21 MS. LIVELY: Yes, sir.

22 THE COURT: Let's go ahead and raise the screen and
23 turn the lights back on and let's go ahead and get them lunch
24 because it's going to be after two o'clock before they start
25 anyway. So, let's go ahead and get it and have it back there

1 waiting for them when they get done.

2 OFF THE RECORD

3 (On the record.)

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, anything from the State before
7 we bring the jury in?

8 MS. LIVELY: No, Your Honor.

9 THE COURT: Anything from the Defense?

10 MR. CANNARELLA: No, Your Honor.

11 THE COURT: All right, let's go ahead and bring the
12 jury in. Thank you.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right, ladies and gentlemen, welcome
16 back. Ms. Lively, does the State wish to make a closing
17 argument?

18 MS. LIVELY: Yes, sir, Your Honor, thank you. May it
19 please the Court?

20 THE COURT: Yes, ma'am.

21 MS. LIVELY: Well, ladies and gentlemen, we're finally
22 to this important moment where you're going to get everything
23 sent back to you in that jury room and you get the decision,
24 the chance to determine what the truth is. Mr. Cannarella
25 can't tell you what the truth is. I can't tell you what the

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1 truth is. Ethically I can't vouch for any of my witnesses,
2 including **Victim**, because that is your job, and if you remember
3 whenever I first stood up here in front of you I said my job
4 as an assistant solicitor here in Horry and Georgetown County
5 is to bring you the relevant, admissible evidence to help you
6 reach a decision, and what has been presented to you is not a
7 confusing mess as you would be presented by the Defense. The
8 Defense is here to make it a mess, and what I am trying to do
9 now and I'm hoping that all of you didn't fall for it and get
10 confused but I'm going to try and clean it up, and listen, I
11 can tell you right now that there are reasons why children in
12 a high conflict situation, if you want to call it that, or who
13 has a mama who's a drug user and a convicted liar, why these
14 children become victims. That's why. It is what it is, but
15 if you think this is a false allegation and that seven-year-
16 old little girl is a conniving, manipulative liar then cut him
17 loose, let's all go, but instead, that little seven-year-old
18 girl, who's now nine, had to get up on a witness stand and be
19 victimized again, but the law requires that, ladies and
20 gentlemen, there's no way around it because the Defendant has
21 a right to confront his accuser. So, even though the law does
22 everything it can to protect victims of sexual abuse, there is
23 still the requirement under our Constitution, the same one
24 that says he's presumed innocent until proven guilty, that
25 allows him the chance to confront his accuser, and his accuser

1 is not Chad Turbeville, it's not Jenny Turbeville, it's **Victim**
2 That's why you heard from her and that's why you get the
3 chance to determine whether or not she's credible, and listen,
4 she's a kid. She's nine. She is back at school today, but
5 she's been through a lot and you saw that. You saw her on the
6 stand. You saw her break down. So, keep that in mind, and
7 when I talked to you at the beginning I told you this
8 Defendant is charged with two things, and when I go through
9 some of the facts and things that you all have heard I just
10 want you to keep in the back of your mind like I asked you in
11 the beginning about what the charges are and what the State
12 has shown you happened to that little girl. He is charged
13 with criminal sexual conduct with a minor in the first degree.
14 She was under the age of 11. There's no disputing that, and
15 she told you how he digitally penetrated her more than one
16 time and how he licked around her private. That's CSC with a
17 minor first-degree. That's it. If you believe her then he's
18 guilty.

19 Then lewd act on a minor, why would somebody do something
20 like that, why would somebody touch a little girl for his own
21 sexual gratification or to get the sexual gratification for
22 that child. Those are the two charges, ladies and gentlemen,
23 and I'm going to show you why the State has met its burden. I
24 welcome the burden beyond a reasonable doubt because it's not
25 beyond all doubt. If it was beyond all doubt forget it. I

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1 wouldn't have a job, and there are protections there for
2 everybody that are accused of a crime, but there's also
3 reasons why people come into this courtroom accused of a
4 crime. The State brings evidence in this courtroom through
5 that witness stand and that's direct evidence, ladies and
6 gentlemen, and I'll give you an example. There's been a lot
7 of talk about just because she said it happened does that mean
8 we're going to convict him on just this allegation? Yes,
9 because the law says that is what happens, and you can look at
10 the evidence and decide whether or not you want to believe him
11 or you want to believe **Victim** and let me tell you why. Our law
12 says you don't have to have corroboration when you're a victim
13 of a sexual battery, okay. Battery is any type of sexual
14 contact that includes an intrusion of the genital openings,
15 however slight. So, it doesn't even have to be a violent
16 attack or battery. It can be however slight. Okay, so, keep
17 that in mind, but let me get to everything that you guys have
18 heard. Nothing was kept out in regards to the turmoil between
19 Chad and Nicole and the thing is about the turmoil and the
20 soap opera, whatever you want to relay it to, is that out of
21 all of that he is now married to Jenny, he's been married for
22 a while now, and they have five kids in their home, and the
23 Defense wants you to punish them for the fact that when they
24 see something's wrong with **Minor 1** and **Victim** he puts them in
25 therapy. Okay, let's see what his options are. His options

1 are, "I'm going to talk to Nicole because she's always been so
2 truthful, helpful and reasonable in the past." Let's see how
3 far that would have gotten him. Not going to happen. Okay,
4 so, we have a father whose mother of the children, he has
5 already through everything he's done realized he is not going
6 to get any help from this woman at all. Okay, so, the
7 children start acting strange, but listen to **Victim** what her
8 voice told you in that forensic interview, and I'm just going
9 to tell you right out, straight out as soon as I heard that
10 forensic interview and the audio I wanted to scream because it
11 is horrible, and I know as a prosecutor that one of the most
12 important things I can provide to you is that forensic
13 interview that the new law allows me to give you, so you can
14 see the child in a close timeframe from whenever she discloses
15 what happened to her because what if it had been three or four
16 years, she could be as tall as me by now sitting on that stand
17 telling you what happened, but you know, when you see that
18 child sitting at the desk, coloring pictures, talking to
19 someone she's met for the first time that day about her body
20 parts, that's compelling. That's important, and I wanted you
21 to hear everything. That's why the transcription was given to
22 you so that you could follow along because remember that is
23 when **Victim** was given that interview just a couple of months,
24 actually I think it was in February when she was interviewed
25 which would've only been about a month or three weeks after

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1 she had told what Tim did to her.

2 Delayed disclosures, unfortunately, is what happens with
3 children because they don't know. She was seven. How does a
4 seven-year-old know that whenever a man licks you down there
5 that that's wrong? How do they know that? How do they know
6 it's sexual? I mean, your mom is putting Neosporin on your
7 vaginal area. You know that hurts. Do you remember that? In
8 the interview she said, "That hurts." That's why she told
9 about that. "That hurts. Mama, stop." "No, it'll make it
10 heal." "What Tim did to you, Victim, how did that feel?" "It
11 was uncomfortable." She didn't know, or if you believe the
12 Defense, she was conniving, she was waiting, she knew, she
13 knew, "Okay, I'm going to get mama in trouble, and then if
14 that's not good enough I'm going to throw Tim under the bus,"
15 seven years old.

16 This is the thing with sexual assault cases that make me
17 crazy. If this was a burglary and Officer Joe Graham went up
18 to let's just say my neighbor's house, she had called the
19 police, "Yeah, somebody broke into my house." There's no
20 evidence, all right. There's no blood. The person used
21 gloves, whatever, but she saw the intruder. She gives a
22 description. They do a photo ID lineup. She picks the guy
23 out. "That's him. I've seen him before. Now I remember. He
24 lives down the street." There's no physical evidence.
25 There's no DNA. There's no video. There's no nothing but we

1 have an ID. Why is that easier for everybody to wrap their
2 mind around that this person broke into this person's home and
3 just because she said it was him, it was him, but whenever
4 somebody comes in and says that a seven-year-old child was
5 molested by her stepfather, nobody wants to believe that kind
6 of stuff happens. Why is that? That's the reason why we
7 bring in Denise Scarce. That's the reason why we do forensic
8 interviewing at the Children's Recovery Center because when we
9 come into court that's exactly what the Defense is going to
10 say. "I didn't do it. I wouldn't do anything like that. I
11 love kids." Of course he's going to say that. Is he going
12 to tell you that he was sick of Chad, he was sick of Nicole,
13 she was already one foot out the door, he was drinking and he
14 was in a situation where he took advantage of that little
15 girl.

16 Now, I have to convince you as to why somebody does that?
17 I don't want to know why somebody does that. All I can tell
18 you is it happens. It happens every day, and it happened to
19 **Victim**. If you remember and this is the other thing. If you
20 want to hear any testimony from anyone who has come into this
21 courtroom and put their hand on the Bible, you want to rehear
22 anything, that is your right and you ask for it. I welcome
23 you to do that because you need to be sure and you can listen
24 to anything you want and you just ask the Judge. We'll play
25 it back for you. The State has nothing to hide at all.

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1 Now, talking about Nicole, I'm going to tell you that I
2 have never in my career had an opportunity to impeach someone
3 for being a perjurer. That was a first for me, but you know,
4 since she's changed her life and she doesn't use drugs anymore
5 she wants you to believe everything she said in that witness
6 stand, and you know what, okay, okay. Let's say we believe
7 her and let me tell you why I don't even have much of a
8 problem with that. Remember that no corroboration thing I
9 told you about that I don't have to give corroboration to what
10 my victim has told you, what little **Victim** came in here and
11 told you, guess what, Nicole, thank you, you gave me some
12 corroboration. She came in here and told you that exactly
13 what **Victim** said about her and what she did was the truth.
14 Yes, she did. I didn't think she was going to get in here and
15 say that but I welcomed it, thank you very much. "So, you
16 were applying Neosporin with your knuckle?" "Yes, I was." Do
17 you remember when **Victim** showed that in the forensic interview
18 how she did that? She sat there and she actually did like
19 this (indicating)? "What did it feel like?" "It hurt."
20 "Okay, and mommy also walks around naked." "Nicole, do you
21 walk around naked?" "Yeah, it's my birthday suit. What's
22 wrong with that?" In front of little girls, okay. Maybe she
23 didn't think anything was wrong with Tim being in the bedroom
24 alone with **Victim** either while she was out there watching TV,
25 sitting in her birthday suit, doing whatever it is she was

1 doing. The only thing that she is worried about is she
2 doesn't want to look bad. She wants to have another man in
3 her life. She jumped right out of the love of her life, Tim,
4 who was the best man ever, who she had to marry, was great
5 with her kids, loved him to death, but boy, she couldn't wait
6 to get away from him and run to Andrew in Connecticut.
7 Remember, she didn't say, "I left because my grandma was
8 dying." What was the first thing she said when she said why
9 she left? To be with Andrew. There's a reason why she said
10 that. That's because that is the real reason why she left.

11 So, **Victim** tells us what her mom does, which is dead on
12 for what Nicole says she does. All right, so, what is a
13 parent supposed to do when that information is disclosed to
14 them? Are you supposed to say, "Oh, I'm sure she was just
15 putting Neosporin on your vaginal area just to help you feel
16 better." "But it hurt, Daddy," or, "It hurt, Ms. Jenny." So,
17 they tell the counselor, and what did Ms. Denise tell you?
18 "I'm a mandated reporter. If I think there might be something
19 inappropriate" - she said inappropriate boundaries. She did
20 not say sexual abuse. She said, "I thought there was some
21 inappropriate boundaries. The girls were uncomfortable. That
22 is why I reported it to DSS," for what, an investigation, not
23 because she said - oh, and did they run to Family Court to
24 take away her visitation rights at that moment? No. Is that
25 what this was about? No. It wasn't. If he really thought,

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1 he being Chad, that something was going on and he could take
2 visitation away from Nicole, you've heard them all say they've
3 been to court several times. It would have been the easiest
4 thing to do just hire the counselor, go to court and just do
5 it then. That's not what happened. It's easy to twist it and
6 try to make it into that, but it doesn't make sense when you
7 look at how it truly unfolded and in **Victim** interview and the
8 forensic interview the thing that you need to remember and
9 which was so telling to me because I never even could get a
10 straight answer about when Tim and Nicole got married. You
11 know, I finally got it out when he testified, and this is the
12 interesting thing about that and think about it, he said, "We
13 were married in September of 2006," okay, and so, I was
14 sitting there and I flipped back through **Victim** forensic
15 interview and I was trying to say, "I know she said something
16 about when he started messing with her," and I tried to think
17 about it and when it could have been and I'm going to see if I
18 can find it now because that 2006 hit me because she said,
19 when she was being asked about how many times he had touched
20 her and bothered her, well, actually it was touched her and it
21 made her feel uncomfortable. That's the actual terminology
22 that was used. Dianne Nordeen said, "Okay, how many times."
23 "It was less than five times, two or three times," and then
24 Dianne says, "Okay, and about how old were you the first time
25 that Tim touched you?" "I think five or six." She was born

1 in June of 2001. She would've been five in 2006 when they got
2 married. Wow, so, a smart kid. Remember though she's
3 conniving. She's not just smart. She's not just remembering.
4 She's planning all this out.

5 Okay, let's talk about how more of what **Victim** said was a
6 part of this diabolical plan to put this man in jail. In the
7 forensic interview Dianne Nordeen tells you, you know, these
8 are delayed disclosures. Everybody talks about - well, Denise
9 Searce and Dr. Rahter talks about delayed disclosure. First
10 and foremost that you need to remember is that if there is any
11 type of injury to the child's body it's going to be gone
12 within 72 hours unless there is a major injury to the child,
13 okay. Dr. Rahter told you in her expert opinion as a medical
14 doctor that 90 percent of sexual abuse cases that are
15 reported, and this is documented, 90 percent of reported abuse
16 there's no physical findings, okay, and that is because the
17 body heals quickly in that area. Within 72 hours there's
18 probably not going to be anything.

19 All right, **Victim** says to Dianne Nordeen when she asked
20 her, "When, about when was the last time whenever Tim touched
21 you?" "About two weeks before the last time," and she says,
22 "Before the last time of what," and she said, "Before the last
23 time I was there for visitation." So, there was not going to
24 be any physical evidence in the North Carolina case or in the
25 South Carolina case based upon what Dr. Rahter told you, just

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1 wasn't going to be there. This is the other thing. You know,
2 I really jumped on the Neosporin thing and the reason why is
3 because, you know, I heard Mr. Cannarella ask Dr. Rahter about
4 the Neosporin thing, too, and one of the things that really I
5 was waiting for whenever he asked her, and I don't know if you
6 remember this or not, but he said, "Well, couldn't the little
7 girl have been confused about what the mama was putting on her
8 vagina? Maybe she got it wrong." So, I thought, well, he's
9 going to put Nicole up there and she's going to say, "Yeah, I
10 was actually using Desitin or I was using A and D Ointment or
11 I was using some type of antifungal cream." I mean, Lord
12 knows, when Nicole got up there she remembered exactly how
13 much she had spent for the lice treatment for the kids' hair,
14 a hundred and 30 something dollars and 99 cents and she
15 remembers that very well but that's the reason why I was
16 waiting for that because I was like, okay, here comes the
17 explanation, here comes the logical reason why someone would
18 put Neosporin, which is not supposed to be used but
19 externally, why you would put it there, and no, what she said
20 is exactly what **Victim** said. It was put there and then my mind
21 just kept thinking, you know, so, it had to have been for
22 something else. I mean, use your commonsense, ladies and
23 gentlemen. I'm not telling you what to think. I'm telling
24 you my process of what has come out and I'm just offering it
25 to you. What is reasonable? What is reasonable in this.

1 situation? Is it reasonable to believe that this seven-year-
2 old girl did this, planned this, talked about somebody licking
3 her private and putting their fingertip inside of her private
4 part? Is that reasonable that she made it up or is it
5 reasonable that she's telling what happened because it's what
6 happened? And, you know, the forensic interview is so helpful
7 because you can watch it again. I know it was really hard to
8 hear but the interesting thing is even if you were to turn off
9 the volume and look at her when she was dealing with the
10 anatomical dolls that is so compelling because she actually
11 shows how and that's why, I'm getting ahead of myself, that's
12 why Dianne Nordeen asked the details because the truth is in
13 the details. If Chad Turbeville and Jenny said, "Okay, now,
14 **Victim**, whenever you talk to these people you tell them that he
15 licked your private part and you point it out where it is.
16 You tell them that he used his fingertip, not the knuckle
17 because you already said the knuckle with mama. So, you don't
18 say the knuckle because it's got to be different and you tell
19 them it started when you were about five or six years old, and
20 it happened two or three times and, and, whenever you do that
21 tell them he didn't pull your panties all the way off, that he
22 just did it to the knees and be sure to tell them that you
23 fought now," remember her telling you that, that she tried to
24 close her legs and he pushed them apart? She told you that in
25 that forensic interview and she told you that on the stand.

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1 The truth is in the details. There hasn't been one legitimate
2 explanation for why she would have those details except that
3 it happened, and unfortunately she's a victim because her mama
4 didn't protect her. I don't know for sure if she knew what
5 was going on. I don't know if whenever **Victim** got in that
6 bathtub and something burned and she looked down there and she
7 was like, "This doesn't look like the usual yeast infection.
8 I might better use something else," I don't know because I
9 promise you this if **Victim** had ever said, "I did tell my mama
10 that Tim was doing this to me," she'd be sitting right next to
11 Tim today, but we are going by exactly what **Victim** has told us
12 happened and exactly what she told all of you happened and
13 it's not a conspiracy, ladies and gentlemen. It's just not.

14 Now, whenever you heard from I think her name is Aneicsa
15 Eggers, I thought at first it was Lisa but Ms. Eggers, who's
16 the neighbor, I know, my sister-in-law is a nurse
17 practitioner. If something's wrong with my kids before I even
18 waste my time calling the doctor and trying fitting them in
19 I'll call her up and say, "You know, my daughter," this, that
20 and the other, "What do you think?" Okay, so, we have
21 somebody who's a registered nurse that is living next door.
22 She goes to her for the lice issue, okay, but she doesn't go
23 to her and say, "Gosh, every time I get **Victim** she's got some
24 red rash or she's got an abrasion," or nothing. She doesn't
25 ask her. Does that raise some concern in your mind as to why?

1 I don't know. That's up to you. It bothered me. Because,
2 you know, as you hear more and I heard Nicole talk because
3 that's the first time I'd ever seen her, talked to her or
4 anything. I mean, I knew about the allegations obviously, but
5 to hear that and to know you've got somebody next door and you
6 don't talk to her about that, you don't say, "Hey, what do you
7 think? I put Neosporin on it, you know, she cries when she's
8 getting in the tub saying it burns," might be because a
9 registered nurse is a mandated reporter, too. She saw
10 something that didn't look right she'd have to report it. I
11 don't know, but the bottom line is this, you have to have a
12 reason to believe that that child could and would target the
13 Defendant and make these statements and all you have is a
14 father who took his child to counseling and then whenever
15 something came out he let the professionals handle it. He
16 never even filed anything in court until February of 2009.
17 The person that filed something was Nicole and, you know, the
18 paper that shows what she filed, look, Chad and Jennifer have
19 been - they've got five kids. Chad's been to court so many
20 times with Nicole and she has said it herself she can't even
21 remember. Okay, so, Jennifer signs for this and, you know,
22 and I asked her about it. She barely remembers but the reason
23 why, ladies and gentlemen, is because when they got there the
24 complainant wasn't there. So, nothing happened. Nothing
25 happened, and you'll get to read this. It says she filed it

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1 herself, contempt of court, for failure to abide by the prior
2 orders, "Won't allow me scheduled visitation with children,"
3 blah, blah, blah. So, she filed this on December 12th, six
4 days before she took off, six days. She leaves. So, she's
5 gone. She shows up at the school and she admits to you she's
6 not supposed to be there, okay. Does that matter? No. I
7 mean, erase it all out of your mind. It doesn't. It doesn't
8 because by that time what's happened to **Victim** has already
9 happened to **Victim**. It's done, and you know what, if we want
10 to go with the motive that the Defense is trying to paint for
11 you don't they already have what they want? Mama out of the
12 picture. I mean, **Minor 1** and **Victim** don't have to see her
13 anymore. DSS, she even told you herself, Nicole did, they
14 substantiated findings against her. It was done. The only
15 reason why there was anything on January the 13th was because
16 of Nicole, not because of Chad or Jennifer. They were done.
17 They were focusing on their children, still taking **Victim** to
18 counseling, hoping that what had happened was done, not
19 thinking that they're going to be here two years later having
20 to deal with this mess in front of all of you. She took off
21 to be with Andrew instead of staying here and fighting it and
22 saying, "I just put Neosporin on my baby for the love of a
23 mother." She took off, left the man she loved, that good man,
24 to be with Andrew but she's back, and why did she tell you she
25 was back? She came back to testify. I said, "Why haven't you

1 filed anything? Go in there with that doctor's excuse, Dr.
2 Corontzes, saying that, "Oh, I had a reason to put Neosporin
3 on my child's vagina." Why didn't you do that? She's sure
4 not afraid to fight. She's done it for years. Why? She told
5 you why. "I'm back down here testifying. I haven't filed
6 anything yet because I got to take care of this first before
7 I can file anything." She's got to help him get away with it
8 before she can go back in and start making his life heck
9 again. That's why she waited because I promise you if that
10 woman had that document from that doctor and I promise you if
11 she was worried that he was beating that child with that
12 prison belt and there were marks we would've seen pictures.
13 You would've seen that document from that doctor. She would
14 have just come right up here and told you and given every bit
15 of it to you. I can promise you that. It doesn't exist.
16 Smoke and mirrors, the good old, you know, divert the
17 attention from what's the truth. That's what's been going on
18 here. That's it, and unfortunately we watch the news. We
19 know there's people out there, priests, Boy Scout leaders,
20 coaches, some of the best people in our society that we know
21 for a fact, even though they have no prior records because
22 they wouldn't be in that business if they did, have molested
23 children and no one is going to be able to look at you and
24 tell you and give you the answer you want as to why. It
25 happens. It happened to **Victim**.

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1 Now, her statements and the thing I was going to tell you
2 about Dianne Nordeen is the details, the truth being in the
3 details, why they use the anatomical dolls because if the
4 child may have been coached or may have been told to say
5 something, you know, the forensic interview is an interview
6 that is going to be used in court for the purposes of trying
7 to get to as accurate and as pure of a statement from the
8 child as you can. That is the whole point. That's why
9 Officer Graham didn't talk to her. That's the reason why only
10 the professionals who know don't ask leading questions. You
11 can ask follow-up questions that are leading that's fine, like
12 for instance after she already said Tim had touched her, for
13 Dianne to say, "You know, okay, tell me where Tim touched
14 you," and whenever she said, "Well, he touched me in my
15 private part." "When he touched you in your private part,"
16 the follow-up questions are completely appropriate because the
17 child's already told you. Remember she said she lets the
18 child lead her through where she goes, okay, and she even
19 asked, "What did he do with his finger?" Well, this is a
20 seven-year-old child. So, you would think she'd just be like,
21 "I don't know, you know. Didn't I tell you enough? I mean,
22 he touched me with his finger." No, she said, "Well, he
23 pulled my panties down." "Show me how far down, **Victim**." I
24 said, "Can you make an X for me?" She put an X right there
25 above where the legs were. "He pulled my panties down that

1 far." "How did he have your legs?" "Kind of like with, like
2 with what mama," and she said, "Bent, yeah, bent." "Okay,
3 okay." "And I tried to close them but he pulled them apart."
4 "Yeah, okay, where did his finger go," and she circled it, in
5 his front, in her front privacy part. "Where did he lick you?
6 I said can you X it for me?" She X'd it right here. The same
7 thing she told Dianne Nordeen, the same exact thing, not
8 because I told her to say it, not because Dianne told her to
9 say it. She was asked and she told and you get the benefit of
10 this. She even asked her, "Did he do anything with his
11 finger?" I mean, that's a tough question even for a grownup.
12 You feel like, "What are you talking about, did he do
13 something with his finger? He put it in my private part."
14 "No, I mean is there anything that he - did he just put it
15 there? Did he move? What did he do," and what did she do?
16 She told Dianne, "He moved it in a circular motion." Wow, who
17 told her to say that when she was asked about how he moved the
18 finger? Who told her to remember, "When you're asked about
19 the finger, now, **Victim**, you tell them how he rubbed it in a
20 circular motion on your vagina." Nobody told her. She's just
21 telling you what happened to her. Nobody told her to say
22 those things, and I'm not trying to make any of you feel
23 uncomfortable. I am just telling you what that child went
24 through, and yeah, it's terrible her parents are split up, but
25 she's not the only kid who's ever been through split-up

1 families, doesn't mean that they're abused, but you know what,
2 when you have a mama that doesn't protect you and you have a
3 mama who lies, who says, "I'm going to come get you. I'm
4 going to take you from your daddy," and she has nightmares,
5 she's crying. She lies about stomachaches to get out of
6 school. She lies about stomachaches. She, being a great
7 student until 2008, 2009, starts lying, gets a phobia. You
8 remember Ms. Stout-Wilson she has nothing to gain in this
9 case. That's the first time I'd ever met her when she got on
10 the stand, and the only reason why I even called her was
11 because I said, "You know, we want to make sure that we can
12 document that **Victim** having problems in school," but you know
13 something, that kid, man, she is tough. She never let her
14 grades drop. She hung in there, but she was scared to be at
15 school. So, she lied about her stomachaches, let him go.

16 She was afraid for her daddy to leave her at school
17 because her mama, who was not supposed to come to the school,
18 might show up and take her away. That's why she told on mama
19 first. If you remember Denise Searce told you her immediate
20 concern, her fear came from her mother. That's why she told
21 on her mother first. Now, of course, that is Denise Searce's
22 interpretation of it but she had been counseling the child but
23 doesn't that make sense, and the mother had been the one that
24 actually hurt her in her mind. You know, children that age
25 the type of stuff that they remember is going to be the stuff

1 that it either hurts or is going to be the stuff from someone
2 who gave them the biggest betrayal in their life and what more
3 of a betrayal can you have than your own mother doing
4 something like that to you, than your own mother standing by
5 the man who molested you, and you remember her saying he said
6 he liked to do this to little girls when he licked her and it
7 was, it was weird how it came out and you can actually watch
8 it but Dianne said, "Did he say anything else to you?"
9 Because you remember she did say he said, "Don't tell anybody
10 because me and mama will split up." Well, look there. Nicole
11 took off. She didn't stand by her man. Do you wonder why
12 that is? Do you wonder why when that thing came out about the
13 Neosporin she took off? That's not a coincidence, ladies and
14 gentlemen. I think she saw the writing on the wall. She
15 knows **Victim** a smart girl, and it was all going to come out,
16 and then what was she going to do? She was going to have to
17 either admit that she was married to a monster or she was
18 going to have to call her daughter a liar. Either way she
19 couldn't win. So, she ran to the arms of Andrew, gone, but
20 **Victim** is still here. She came in here with the meekest of
21 voices, quiet little child, smart as a whip, doing great in
22 school, made A-B honor roll, not missing school anymore, not
23 lying about stomachaches to get out of going to school. Mr.
24 Cannarella said, "Do you want to see your mama," and through
25 tears she said no. She knows and remembers her abuse came at

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1 the hands of her mama and the Defendant. There's no way to
2 separate them out. I'd focus on the Defendant on everything I
3 could but I'm telling you there's no way to separate it
4 because one went hand in hand with the other. It just did and
5 **Victim** told you and she said it happened, started happening
6 when she was five or six right after they got married. It
7 didn't happen all the time. Maybe it was in one of those high
8 conflict situations, Tim frustrated with Nicole, alone with
9 **Victim**. Like I said, I can't make you explain - I can't
10 explain to you why someone would do that. I don't expect you
11 to understand it, but the State has brought you everything in
12 this case, brought you everything. I brought you **Victim**. She
13 told you what he did. There's no question.

14 And this is something that you can look at back there,
15 too. You can look at, I mean, I wish I had a video. I don't,
16 ladies and gentlemen. I wish I had DNA. I don't, but I've
17 got an identification. I've got a victim. I've got details,
18 and what's really amazing is that these are details from a
19 seven-year-old child who has no sexual experience, period,
20 none. I'm not even dealing with a grownup rape victim here
21 who might have to explain her past history, even though the
22 law doesn't always require that, allows it, keeps it out a lot
23 of times, but you know what, this is a seven year old victim
24 and she's a victim. That's what he's done. Criminal sexual
25 conduct with a minor in the first degree, any intrusion,

1 however slight, of any part of a person's body or an object.
2 We already know number two is obvious. Number one, the
3 fingertip moving circular inside, "Was it inside or outside or
4 both?" "Both." "How many times?" "Two or three." "Okay,
5 how did it feel?" "Uncomfortable." She didn't say it hurt.
6 Boy, if she wanted to ram it down him she could have said it
7 hurt, we want to just lay it on thick, make this up good.
8 That's not what's going on. So, criminal sexual conduct with
9 a minor first degree, we've made our burden. We've told you
10 the reasonable explanation, the only explanation for what
11 **Victim** has told and that is because it happened. That's it.
12 Now, the other thing is lewd act on a minor. It's kind
13 of all-encompassing. What lewd act on a minor focuses on is
14 the sexual nature of it. It's something, and remember as a
15 child you might not even know that what's happening to you is
16 sexual. "Did Tim do anything sexual to you?" "No." "Okay,
17 has anybody touched your body that makes you feel
18 uncomfortable," the question from Dianne Nordeen? "Yes, Tim
19 did." "Where did he touch you?" Okay, processing it like a
20 child is difficult to do, but when you do it all comes
21 together. It makes sense. So, these are the two charges, and
22 I'm asking you to find him guilty on both and beyond a
23 reasonable doubt doesn't have to be beyond all doubt. Are you
24 wondering whether or not there was high conflict and there was
25 a problem between the two? God knows every bit of it came in.

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1 There was nothing to hide. Okay, but that is not the reason
2 to ignore the facts of what happened, the reality of how it
3 came about. That January 13th hearing, so what, it didn't take
4 place, nothing came out of it. There wasn't a plan. If there
5 had been they would have told **Victim** to make it when? January
6 12th, not the day after the hearing is supposed to take place.
7 I mean, if it was so important and a part of a conspiracy and
8 we were going to try and show that, you know, **Victim** is
9 throwing another one under the bus just so she doesn't have to
10 see her mama it would have been before that hearing, "Call DSS
11 again, get them on the line, we've got another perpetrator."
12 That's why their theory doesn't work, and why, is because it's
13 just a theory. It is smoke and mirrors to get you away from
14 thinking about **Victim** as she truly is, and that is a child who
15 was sexually molested by the Defendant, period, end of story.

16 If you are firmly convinced, firmly convinced that that
17 child in her descriptions to you has told you what really
18 happened to her then he's guilty. It's not a family court
19 case. We're not deciding who gets custody. It doesn't
20 matter. I've given you the evidence in this case. Look
21 through it with a fine-tooth comb. I have nothing to hide.
22 Go back there, think about it, go through **Victim's** statement
23 from what you remember. Think about maybe the Defendant's not
24 this great guy. Maybe that's why even Nicole got the heck out
25 of here and didn't stand by him. Remember the doll and

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1 pulling down her panties, "What did you have on?" She even
2 corrected Dianne, "Oh, a t-shirt and panties." "How did he do
3 it?" "Just to the knees, okay." A sexual battery occurred,
4 ladies and gentlemen. It happens in private. Who knows if
5 Chad hadn't been the diligent father taking **Victim** to
6 counseling she could still be being victimized today. Don't
7 penalize him for loving his child and don't penalize **Victim** for
8 being a kid. Maybe she didn't say it the way you wanted her
9 to. She even told you the truth and told you she had lied
10 about her stomachaches.

11 He's guilty, ladies and gentlemen, but if you want to cut
12 him loose you cut him loose. If he touched this child and you
13 feel like he touched this child, hold him responsible for what
14 he did to her and for what she went through.

15 Thank you so much for everything you all have done and
16 listening to me and for listening to **Victim**, and thank you so
17 much for seeing through what the Defense is trying to fool you
18 with because that's all they're trying to do, divert your
19 attention from the truth. Thank you.

20 THE COURT: All right, ladies and gentlemen, all of
21 the testimony and evidence has been presented in this case.
22 The attorneys have made their closing arguments and now is the
23 time for me to charge you with the law to be applied in this
24 case.

25 I remind you that the fact that the Defendant was

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1 arrested, charged and indicted in this case is not evidence in
2 this case and cannot be considered by you as evidence of guilt
3 in this case, nor does the arrest, charge and indictment of the
4 Defendant create any presumption or inference of guilt. The
5 indictments are simply the formal written instruments which
6 contain the charges made against the Defendant. They are the
7 formal documents by which this case is brought into this court.

8 The indictments in this case allege two different
9 offenses against the Defendant. The alleged offenses or
10 charges in this case are committing a lewd act on a minor and
11 criminal sexual conduct with a minor in the first degree.
12 Each indictment charges a separate and distinct offense.

13 You must decide each indictment separately on the evidence
14 and the law applicable to it, uninfluenced by your decision as
15 to the other indictment. The Defendant may be convicted or
16 acquitted on one or both of the offenses charged. You will be
17 asked to write a separate verdict of guilty or not guilty for
18 each indictment.

19 The Defendant has pled not guilty to these indictments,
20 and that plea puts the burden on the State to prove the
21 Defendant guilty. A person charged with committing a criminal
22 offense in South Carolina is never required to prove his
23 innocence.

24 I charge you that an important rule of the law is that the
25 Defendant in a criminal trial, no matter what the seriousness

1 of the charge may be, will always be presumed to be innocent
2 of the crime for which the indictment was issued unless guilt
3 has been proven by evidence satisfying you of that guilt
4 beyond a reasonable doubt. This presumption of innocence does
5 not end when you begin your deliberations, but it accompanies
6 the Defendant throughout the trial until you reach a verdict
7 of guilt based on evidence satisfying you of that guilt beyond
8 a reasonable doubt.

9 The presumption of innocence is like a robe of
10 righteousness placed about the shoulders of the Defendant
11 which remains with the Defendant until it has been stripped
12 from the Defendant by evidence satisfying you of the
13 Defendant's guilt beyond a reasonable doubt.

14 This presumption of innocence is not a mere legal theory.
15 It is not just a legal phrase. It is a substantial right to
16 which every Defendant is entitled unless you, the jury, are
17 satisfied from the evidence of the Defendant's guilt beyond a
18 reasonable doubt.

19 Now, what is reasonable doubt in the law? A reasonable
20 doubt is the kind of doubt that would cause a reasonable
21 person to hesitate to act. Proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the Defendant's
23 guilt. We know very few things in this world with absolute
24 certainty, and in criminal cases the law does not require
25 proof that overcomes every possible doubt. If, based on your

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1 consideration of the evidence, you are firmly convinced that
2 the Defendant is guilty of the crime or crimes with which he
3 has been charged, you must find the Defendant guilty. If on
4 the other hand, you think a real possibility exists that the
5 Defendant is not guilty, you must give the Defendant the
6 benefit of that doubt and find him not guilty.

7 During this trial, you and I have certain duties to
8 perform. As the trial judge, my responsibility is to preside
9 over the trial of this case. I also have the duty to rule on
10 the admissibility of evidence offered during this trial. You
11 are to consider only the competent evidence before you. If
12 any testimony was ordered stricken from the record in this
13 case during this trial, you must disregard that testimony.
14 You are to consider only the testimony which has been
15 presented from the witness stand, any exhibits which have been
16 made a part of the record in this case and any stipulations of
17 counsel.

18 I have the additional duty to charge you the law
19 applicable to this case. As the presiding judge, I am the sole
20 judge of the law in this case. Your duty as jurors is to
21 accept and apply the law as I now state it to you. If you
22 have any idea as to what the law is or what the law ought to
23 be and your idea differs from what I now tell you the law is,
24 you must abandon your idea of what the law is or ought to be
25 because you are sworn to accept the law and apply the law

1 exactly as I state it to you.

2 In every case tried in this court before a jury, the
3 jury becomes the sole and exclusive judge of the facts in a
4 case. A trial judge cannot intimate, state, comment on, or
5 make any statement to a trial jury about the facts in a case.
6 Since you, the jury, are the sole judge of the facts in this
7 case, you are not to infer from what I have said during the
8 process or progress of this trial in ruling upon the
9 admissibility of evidence, or otherwise, or anything I say now
10 during the course of these instructions to you that I have any
11 opinion about the facts in this case. The law does not allow
12 me to have an opinion about the facts in this case. This is a
13 matter solely for you, the jury, to determine. As jurors,
14 your duty is to determine the effect, the value, the weight,
15 and the truth of the evidence presented during this trial.

16 Necessarily, you must determine the credibility of
17 witnesses who have testified. Credibility simply means
18 believability. Your duty as jurors is to analyze and to
19 evaluate the evidence and determine which evidence convinces
20 you of its truth. In determining the believability of
21 witnesses who have testified in this case, you may believe one
22 witness over several witnesses or several witnesses over one
23 witness. You may believe a part of the testimony of a witness
24 and reject the remaining part of the testimony of that same
25 witness. You may believe the testimony of a witness in its

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1 entirety or reject the testimony of a witness in its entirety.
2 You may consider whether any witness has exhibited to you any
3 interest, bias, prejudice or other motive in this case. You
4 may also consider the appearance and manner of a witness while
5 on the witness stand.

6 The rules of evidence ordinarily do not permit witnesses
7 to testify to opinions or conclusions. An exception to this
8 rule exists for witnesses we call expert witnesses. A witness
9 who by education and experience has become expert in some art,
10 science, profession or calling may state an opinion as to the
11 relevant and material matter in which the witness claims to be
12 an expert, and may also state the reasons for the opinion.
13 You should consider any expert opinion received in evidence in
14 this case and, like any other evidence, give it the weight you
15 think it deserves. If you decide that the opinion of an
16 expert witness is not based on sufficient education and
17 experience, or if you conclude that the reasons given in
18 support of the opinion are not solid or sound, or that the
19 opinion is outweighed by other evidence, you may disregard the
20 opinion entirely.

21 An expert witness' testimony is to be given no greater
22 weight than that of any other witness simply because the
23 witness is an expert. Further, you are not required to accept
24 an expert's opinion, even though it is not contradicted.

25 One of the witnesses testifying in this case has a prior

1 record. A person who has a past criminal record is competent
2 to testify during a trial. A past record does not affect the
3 ability of that witness to testify. The past record may only
4 be considered by you, if at all, in determining the witness'
5 believability. Remember, you are the sole judges of the facts
6 in the case and of the believability of any and all of the
7 witnesses.

8 During this trial, you have heard testimony from a
9 child. Where a witness is a child you must determine, as with
10 any witness, whether that testimony is believable. In
11 deciding believability, you may consider not only matters that
12 I have already discussed with you, but you may also consider
13 the age of the child, the child's ability to observe and
14 remember facts, and the child's ability to understand and
15 answer questions. Because young children may not fully
16 understand what is happening here, it is up to you to decide
17 whether the child understood the seriousness of appearing as a
18 witness in this criminal trial, whether the child understood
19 the questions, whether the child has a good memory and whether
20 the child understands the difference between lying and telling
21 the truth. In addition, young children may be influenced by
22 the way that questions are asked. It is up to you to decide
23 whether the child understood the questions asked.

24 The Defendant has presented evidence of his good
25 reputation and character to show that it would be inconsistent

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1 with the Defendant committing the crime. The weight you give
2 to that testimony, like all other testimony in the case, is
3 for you to decide in your good judgment. You may consider
4 testimony of the Defendant's good character along with all the
5 other evidence in deciding whether or not the Defendant
6 committed the crime.

7 In order to establish criminal liability, criminal intent
8 is required. For example, the mental state required to be
9 proven by the State for a particular crime might be purpose,
10 intent, knowledge, recklessness or criminal negligence.
11 Criminal intent must be proven by the State beyond a
12 reasonable doubt. Criminal intent is always a matter that
13 must be determined by the jury from the circumstances
14 surrounding the situation. There is no way to prove intent to
15 a mathematical certainty. There is no way medical science can
16 dissect a person's brain and determine what the person had in
17 mind. So, the law says that criminal intent may be inferred
18 from the circumstances shown to have existed. This is how you
19 make a determination of whether or not the element requiring
20 intent was present. It is not necessary to establish intent
21 by direct and positive evidence, but intent may be established
22 by inference in the same way as any other fact by taking into
23 consideration the acts of the parties and all the facts and
24 circumstances of the case.

25 Criminal intent is a mental state, a conscious

1 wrongdoing. It is up to you to determine what the Defendant
2 intended to do based on the circumstances shown to have
3 existed. Criminal intent can arise from the action or a
4 failure to act. It may arise from negligence, recklessness or
5 an indifference to duty or to consequences that is considered
6 by the law to be the equivalent of criminal intent.

7 The Defendant is charged with first degree criminal
8 sexual conduct with a minor. The State must prove beyond a
9 reasonable doubt that the Defendant engaged in a sexual
10 battery with the victim. A sexual battery is sexual
11 intercourse, cunnilingus, fellatio, anal intercourse or any
12 intrusion, however slight, of any part of a person's body or
13 of any object into the genital or anal openings of another
14 person's body, except when the intrusion is accomplished for
15 medically recognized treatment or diagnostic purposes. The
16 State must then prove beyond a reasonable doubt that the
17 victim was less than 11 years old at the time of the sexual
18 battery. Consent, willingness, indifference or ignorance on
19 the part of the minor, if any, as to what was taking place
20 does not in any way affect the charge of criminal sexual
21 conduct with a minor because an unmarried woman under the age
22 of 14 cannot legally consent to sexual intercourse. Further,
23 in the prosecution of this charge the testimony of the victim
24 need not be corroborated.

25 The Defendant is also charged with committing a lewd act

Charge

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1 on a minor. A minor is a person under the age of 18. The
2 State must first prove beyond a reasonable doubt that the
3 Defendant was over the age of 14. Next, the State must prove
4 that the Defendant willfully and lewdly committed or attempted
5 a lewd or lascivious act on, or with the body or its parts of,
6 a child under the age of 16 years, with the intent to arouse,
7 appeal to or gratify the lust, passions or sexual desires of
8 the Defendant or of the child.

9 Willfully means voluntarily and intentionally with the
10 specific intent to do something the law forbids. Lewd means
11 obscene, lustful, indecent, or lecherous. Lascivious means
12 tending to incite lust, lewd, indecent, obscene or tending to
13 deprave the morals in respect to sexual relations.

14 There are two possible verdicts which you may find for
15 each indictment in this case. No significance whatsoever is
16 to be given to the order in which I state these possible
17 verdicts. I simply must state one verdict first, one second
18 and so forth.

19 As to the indictment for criminal sexual conduct with a
20 minor in the first degree your possible verdicts are guilty or
21 not guilty. Likewise, as to the indictment for committing a
22 lewd act on a minor your possible verdicts are guilty or not
23 guilty.

24 Ladies and gentlemen, each one of your verdicts must be a
25 unanimous one. Mr. Bartelotte, as foreman when the jury

1 agrees on the verdict for an indictment you will write the
2 verdict on the back of the indictment where it says for the
3 verdict, sign your name, date it. When the jury has reached a
4 verdict as to both indictments knock on the door and tell the
5 bailiff that you have reached a verdict on both indictments.
6 We'll then bring you back into the court to receive your
7 verdicts.

8 Now, I'm going to excuse you back to the jury room in
9 just a minute, but please do not discuss or deliberate on this
10 case at, at - right now. I've got to check with the attorneys
11 to see if they have any additions or challenges to my
12 instructions to you. If they do and I deem them warranted
13 I'll bring you back in and I'll address those exceptions or
14 additional charges. If there are none or if I rule that no
15 more are needed then we will send the exhibits back to the
16 jury room with instructions from the bailiff that you can
17 begin your deliberations. I'll also send you the indictments
18 at that time on which you are to write your verdict.

19 Now, we have also ordered lunch for you. You can do one
20 of two things. If you want to deliberate, want to deliberate
21 while you eat lunch you are permitted to do so. If you want
22 to wait until you finish eating lunch and then begin your
23 deliberations you can do that as well. The only requirement
24 is that everyone must do the same thing, either every one must
25 deliberate while you eat lunch or no one can deliberate while

Charge

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1 you eat lunch. So, every one has to agree on what you are
2 going to do.

3 Likewise, any of you have taken notes you will be allowed
4 to take your notepads back into the jury room with you while
5 you deliberate. However, please keep in mind that your notes
6 are personal to you and are not to be shared with anyone. The
7 sole purpose of your taking notes is to refresh your memory as
8 to what you feel is important. In other words, just because
9 someone has taken a note regarding someone's testimony does
10 not mean that that person recalled the testimony or
11 interpreted the testimony any better than someone who did not
12 take notes on the testimony. It is simply a means by which it
13 can - you can refresh your memory personally or address what
14 you think is important personally while you participate in
15 deliberations.

16 All right, I'm going to excuse you back to the jury room,
17 but please do not begin your deliberations until I tell you to
18 do so. Thank you very much.

19 (Whereupon, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right, any challenges to the charges
22 by the State?

23 MS. LIVELY: None from the State, Your Honor.

24 THE COURT: Any from the Defense?

25 MR. CANNARELLA: No, Your Honor.

1 THE COURT: All right, let's go ahead and send
2 everything back to the jury with the indictments, let them
3 begin their deliberations.

4 MR. CANNARELLA: Judge, do we go to lunch now or what
5 should we do?

6 THE COURT: Well, the problem is is I'm going to bring
7 them - the jury back in ---

8 MR. CANNARELLA: We don't know what they're going to
9 do.

10 THE COURT: --- as soon as they reach a verdict. So,
11 I wish, I wish I knew ---

12 MR. CANNARELLA: Okay.

13 THE COURT: --- to tell you what to do, but yeah, and
14 when we take those back I need to bring the alternate out
15 here.

16 (Exhibits reviewed and approved by counsel for State and
17 counsel for Defense.)

18 THE COURT: All right, so, if you would take those
19 back. Tell them if they want to begin their deliberations
20 they can do that. Take those. Then the alternate, please
21 bring Ms. Wright ---

22 OFFICER: Yes, sir.

23 THE COURT: --- Nathalie Wright out.

24 MR. CANNARELLA: Judge, can you find out if they -
25 what they - you going to find out whether they want to eat and

Question from Jury

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1 deliberate or you're not going to ask them either one?

2 THE COURT: Yeah, I'm going to let them do whatever
3 they want to do.

4 MR. CANNARELLA: Okay, that's fine.

5 (Whereupon, Alternate, Juror Number 343, Nathalie Wright,
6 enters courtroom and is dismissed by Court. Deliberations
7 begin at 1:54 p.m.)

8 THE COURT: All right, we'll stand in recess unless -
9 oh, let me see the attorneys up here or let me see the
10 attorneys back in my office for a second.

11 MS. LIVELY: Yes, sir.

12 THE COURT: We'll just stand in recess.

13 OFF THE RECORD

14 (On the record. Question from jury at 2:35 p.m.)

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: Thank you very much. Please be seated.

18 All right, I got a note and I think I know what they're
19 asking but I'm not sure. It says, "Copy of
20 transcript/Nordeen, view **Victim** testimony," and then it's
21 signed Keith Bartelotte, the foreperson. I don't know if that
22 means they want ---

23 MS. LIVELY: Yeah, because there was two - there - if
24 it's Dianne Nordeen then that would be or the forensic
25 interview but if it's the victim's testimony it would be the

1 closed circuit. So ---

2 THE COURT: I'm thinking, and this is what I'm
3 thinking is that they want the transcript from the forensic
4 interview and then review **Victim** testimony is the only thing
5 I can figure.

6 MS. LIVELY: Okay, I got you.

7 THE COURT: And I'm not sure.

8 MS. LIVELY: Right, just might have to get them to
9 clarify, Your Honor.

10 THE COURT: Well, what I'm going to do is bring them
11 back in to find out exactly what it is they want. Now, if
12 they want that transcript that I ruled was inadmissible, I
13 think the only thing I can do, have we still got those or did
14 we ---

15 MS. LIVELY: Yeah, they're under there.

16 THE COURT: I think the only thing I can or what I'm
17 inclined to do is tell them that all we can do is - now,
18 certainly the forensic interview is in evidence and it's on a
19 disk.

20 MS. LIVELY: Right.

21 THE COURT: I'm going to say we can play that back for
22 you and present it to you the same way it was presented at
23 trial and let them use the transcript and we can play back the
24 audio from **Victim** testimony if that's what they want to do,
25 but I don't know that I can give them the transcript and play

Question from Jury

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1 back **Victim** interview. I think we can present it back to
2 them the way it was presented at trial. What's you all's
3 position on that?

4 MS. LIVELY: My understanding in regards to if it's not
5 in evidence it cannot go back in the jury room for them to use
6 as a part of their deliberation. That is my understanding.

7 THE COURT: Right.

8 MS. LIVELY: If they want to review the video and have
9 it done with like a visual aid, you know, I really have never
10 had anybody ask for that before. So, I'm actually going to
11 have to look to you for some guidance on that, Your Honor.
12 I'm not really sure.

13 THE COURT: Well, the thing is is I don't know is the,
14 is the jury room set up to where that can be played back for
15 them in the jury room?

16 MR. CANNARELLA: I don't know.

17 MS. LIVELY: No, and I can't put a computer back there
18 and take a chance ---

19 THE COURT: Yeah.

20 MS. LIVELY: --- that they get ---

21 THE COURT: Well, I'm going to, I'm, I'm ---

22 MS. LIVELY: We're going to have to do it out here.

23 THE COURT: Yeah, what I'll do is I'll just find out
24 exactly what they want.

25 MS. LIVELY: Okay.

1 THE COURT: And certainly the forensic interview is an
2 exhibit. It's in evidence.

3 MS. LIVELY: Yes, sir.

4 THE COURT: They can review that but they'll have to
5 do it out here simply because the jury room is not set up for
6 it, and **Victim** testimony, we don't have it transcribed but I
7 can play back the audio for that. Well, I'd rather present it
8 to them the way it was presented at trial. So, I think I can
9 do - I can just like any other witness, if they want to listen
10 to the audio of any, any witness we can play back the audio of
11 any, any witness's testimony.

12 MS. LIVELY: Yes, sir, that's fine.

13 THE COURT: All right, Mr. Cannarella?

14 MR. CANNARELLA: Yes, sir, I agree.

15 THE COURT: Okay.

16 All right, let's go ahead and bring the jury in.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right, Mr. Bartelotte, I've received
20 a request from the jury. It says, "Copy of
21 transcript/Nordeen." I'm assuming you're talking about Dianne
22 Nordeen's?

23 FOREPERSON: Yes, Your Honor.

24 THE COURT: All right, the - you're talking about the
25 forensic interview ---

Question from Jury

615

1 FOREPERSON: Yes.

2 THE COURT: --- of the child?

3 FOREPERSON: Yes, sir.

4 THE COURT: All right, and then view **Victim**
5 testimony.

6 FOREPERSON: Yes, we were trying to see if there's any
7 way we could actually have a copy of that transcript while we
8 deliberate and view **Victim** actual testimony in court.

9 THE COURT: Okay, all right, I can - we - well, let -
10 we can play it back for you, but this is how we have to do it.
11 I can present any witness's testimony to you in the way it was
12 presented to you. We don't have a video of live testimony but
13 we have audio. So, what we can do is if you want to see - the
14 forensic interview is an exhibit. It's in evidence. We can
15 play it back for you here in the courtroom just simply because
16 we're not set up in the jury room to do it back there. We can
17 play it back for you in the courtroom. We can provide you
18 with a transcript to keep here in the courtroom to review it
19 the same way you reviewed it when it was presented to you.

20 **Victim** testimony we can play back an audio recording of
21 the testimony but it has not been transcribed and we don't
22 have a video. So, we can play back the audio for you.

23 FOREPERSON: That's fine, Your Honor.

24 THE COURT: Okay let's do this, is that - do you need
25 to discuss it with everybody or is that what you all want to

1 do or ---

2 FOREPERSON: I believe that'll be sufficient for us to
3 do that.

4 THE COURT: Okay, all right, let's - it'll take us a
5 little while or how long will it ---

6 MS. LIVELY: Yes, sir, because the - I actually - we
7 had started unplugging everything when we were setting up Mr.
8 Cannarella's thing.

9 THE COURT: Okay.

10 MS. LIVELY: So, I just need to get everything. It
11 might take me 10 minutes.

12 THE COURT: Well, let's do this, all right, I'm going
13 to excuse you back to the jury room. That's what we're going
14 to proceed with doing is playing the forensic video that was
15 presented to you. You'll have a copy of the transcript that
16 you can have with you while you're reviewing it. Then we will
17 be playing back the audio of **Victim** testimony. If that's not
18 right or if there's anything different or something else that
19 you want, just put it on another sheet of paper and send it
20 out, but that's what we're going to be setting up for. It'll
21 take us about five or 10 minutes and once we get it set up
22 we'll bring you back out here; okay?

23 FOREPERSON: Yes, sir.

24 THE COURT: All right, thank you very much.

25 (Whereupon, the following takes place out of the presence

Question from Jury

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1 of the jury.)

2 THE COURT: All right, I'm going to mark this Court's
3 Exhibit Three.

4 (Whereupon, Court's Exhibit Number Three [Question from
5 Jury] appropriately marked.)

6 THE COURT: You all just let me know when you all get
7 that set up; okay?

8 MS. LIVELY: Yes, sir.

9 THE COURT: All right.

10 OFF THE RECORD

11 (On the record.)

12 (Whereupon, the following takes place outside the
13 presence of the jury. Note received from jury at 2:50 p.m.)

14 THE COURT: We've gotten some clarification from them.
15 It says they do not need to view or read Nordeen, which is
16 this testimony.

17 MS. LIVELY: Okay.

18 THE COURT: They would like to listen to **Victim** live
19 testimony.

20 MS. LIVELY: Okay, that's fine.

21 THE COURT: So, I think we can shut all this down and
22 then just play back **Victim** live testimony.

23 MS. LIVELY: I finally got it right, finally, all
24 right, no problem.

25 THE COURT: I'm just going to mark this as Court's

Question from Jury

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1 Exhibit Number Four.

2 (Whereupon, Court's Exhibit Number Four [Note from Jury]
3 appropriately marked.)

4 THE COURT: All right, anything from the State before
5 we bring the jury in?

6 MS. LIVELY: No, Your Honor.

7 THE COURT: Anything from Defense?

8 MR. CANNARELLA: No, Your Honor.

9 THE COURT: All right, let's go ahead and bring the
10 jury in.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: All right, ladies and gentlemen, welcome
14 back. As I understand you do not need to review the forensic
15 interview performed by Dianne Nordeen, but you do want to
16 listen to the testimony of **Victim** Turbeville; correct?

17 FOREPERSON: That, that's correct, Your Honor. Sorry
18 for the confusion.

19 THE COURT: All right, all right, that's no problem.
20 All right, we've got that audio testimony ready. We'll play
21 it back for you. If anybody has any trouble hearing it please
22 just raise your hand and we'll address it then.

23 (Testimony of **Victim** [REDACTED] played in open court.)

24 THE COURT: All right, that's the testimony. Please
25 retire back to the jury room and you can continue

Verdict

619

1 deliberations. Thank you very much.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right, anything from the State before
5 we recess?

6 MS. LIVELY: No, Your Honor.

7 THE COURT: Anything from the Defense?

8 MR. CANNARELLA: No, no, Your Honor.

9 THE COURT: All right, we'll stand in recess until we
10 hear from the jury.

11 OFF THE RECORD.

12 (On the record. Verdict reached at 5:12 p.m.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right, I understand the jury has
16 reached a verdict; is that correct?

17 CLERK: Yes, sir.

18 THE COURT: All right, all right, before we bring the
19 jury in to publish the verdict on these indictments I just
20 want to let everybody know regardless of what the verdict is
21 there'll be no emotions, whether in favor of or against the
22 verdict by anybody. If there is any show of emotions then you
23 might be subject to contempt of court. I tell that to you not
24 as a threat or anything but to give you an opportunity now if
25 you do not think that you can control your emotions when a

1 verdict is read I'm going to give you an opportunity now to
2 going ahead and excuse yourself from the courtroom, okay,
3 because this has been a tough case for this jury and I don't
4 want this jury to feel criticized in any form or fashion; all
5 right? So, if anybody needs to excuse themselves now is the
6 time to go ahead and do it.

7 All right, anything from the State before we bring the
8 jury in?

9 MS. LIVELY: No, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. CANNARELLA: No, Judge.

12 THE COURT: All right, let's go ahead and bring the
13 jury in.

14 (Whereupon, the following takes place in the presence of
15 the jury.)

16 THE COURT: Mr. Bartelotte, has the jury reached a
17 verdict as to both indictments?

18 FOREPERSON: Yes, Your Honor, we have.

19 THE COURT: Have you written your verdict on the back
20 of both indictments?

21 FOREPERSON: Yes, Your Honor.

22 THE COURT: Signed your name?

23 FOREPERSON: Yes, Your Honor.

24 THE COURT: All right, if you'd please give the
25 indictments to the bailiff, please.

Polling of Jury

621

1 (Complies with request and Court reviews verdicts.)

2 THE COURT: All right, I'll ask the clerk if she'd
3 please publish the verdicts.

4 THE CLERK: Indictment number 2011-GS-26-1089, the
5 State of South Carolina, County of Horry versus Timothy Eugene
6 Young on the charge of lewd act on a minor child, we, the jury
7 unanimously find the Defendant guilty. Indictment number
8 2011-GS-26-1088, State of South Carolina versus Timothy Eugene
9 Young, on the charge of criminal sexual conduct with a minor
10 first degree, we, the jury find the Defendant guilty, signed
11 by the foreperson, Keith Bartelotte.

12 Ladies and gentlemen of the jury, if this is your verdict
13 so signify by raising your right hand.

14 (All jurors raise right hand.)

15 THE CLERK: Thank you.

16 THE COURT: All right, any polling of the jury by the
17 Defendant?

18 MR. CANNARELLA: Yes, Your Honor, please.

19 THE COURT: All right, ladies and gentlemen, we are
20 going to poll the jury, which means that as your name is read
21 you will need to stand and you'll need to answer two questions
22 by the clerk. Question number one is is this your verdict and
23 question number two is this still your verdict. So, please
24 listen as your name is read.

25 THE CLERK: Juror Number 195, Amanda Matthews.

Polling of Jury

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1 Is this your verdict?
2 MS. MATTHEWS: Yes.
3 THE CLERK: Is it still your verdict?
4 MS. MATTHEWS: Yes.
5 THE CLERK: Thank you.
6 23, Penny Boling.
7 Is this your verdict?
8 MS. BOLING: Yes.
9 THE CLERK: Is it still your verdict?
10 MS. BOLING: Yes.
11 THE CLERK: Thank you.
12 136, Bryan Hemingway.
13 Is this your verdict?
14 MR. HEMINGWAY: Yes.
15 THE CLERK: Is it still your verdict?
16 MR. HEMINGWAY: Yes.
17 THE CLERK: Thank you.
18 132, Ellison Hardee.
19 Is this your verdict?
20 MR. HARDEE: It is.
21 THE CLERK: Is it still your verdict?
22 MR. HARDEE: Yes.
23 THE CLERK: Thank you.
24 Shanti Gettys, 115.
25 Is this your verdict?

Polling of Jury

623

1 MS. GETTYS: Yes.
2 THE CLERK: Is it still your verdict?
3 MS. GETTYS: Yes.
4 THE CLERK: Thank you.
5 59, Cindi Conner.
6 Is this your verdict?
7 MS. CONNER: Yes.
8 THE CLERK: Is it still your verdict?
9 MR. CONNER: Yes.
10 THE CLERK: Thank you.
11 148, Timothy Hutchens.
12 Is this your verdict?
13 MR. HUTCHENS: Yes.
14 THE CLERK: Is it still your verdict?
15 MR. HUTCHENS: Yes.
16 THE CLERK: Thank you.
17 39, Stanley Burke.
18 Is this your verdict?
19 MR. BURKE: Yes.
20 THE CLERK: Is it still your verdict?
21 MR. BURKE: Yes.
22 THE CLERK: Thank you.
23 27, James Bowen.
24 Is this your verdict?
25 MR. BOWEN: Yes.

Polling of Jury

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1 THE CLERK: Is it still your verdict?
2 MR. BOWEN: Yes.
3 THE CLERK: Thank you.
4 147, Ida Hussey.
5 Is this your verdict?
6 MS. HUSSEY: Yes.
7 THE CLERK: Is it still your verdict?
8 MS. HUSSEY: Yes.
9 THE CLERK: Thank you.
10 Nine, Keith Bartelotte.
11 Is this your verdict?
12 MR. BARTELOTTE: Yes.
13 THE CLERK: Is it still your verdict?
14 MR. BARTELOTTE: Yes.
15 THE CLERK: Thank you.
16 205, David Merryman.
17 Is this your verdict?
18 MR. MERRYMAN: Yes.
19 THE CLERK: Is it still your verdict?
20 MR. MERRYMAN: Yes.
21 THE CLERK: Thank you.
22 THE COURT: All right, ladies and gentlemen, that
23 concludes your services not only in this case but for the week
24 as well and I want to thank you for your services this week.
25 I know it's been a difficult case and I want to thank

Sentencing

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1 everybody for their attention and for their service in this
2 case. I'm going to excuse you back to the jury room for just
3 a few minutes. I want to come back and thank you personally
4 for your service in this case. I won't be long. I'll be back
5 there to see you in just a minute, but I'm going to excuse you
6 back to the jury room and I'll be there in just one second.
7 Thank you very much.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, any post-trial motions at this
11 point in time by the Defense?

12 MR. CANNARELLA: Not at this point in time,
13 Judge.

14 THE COURT: All right, anything from the State?

15 MS. LIVELY: No, Your Honor.

16 THE COURT: All right, any reason why we can't go
17 ahead and impose sentence at this time?

18 MS. LIVELY: No, Your Honor. The State's ready to
19 proceed.

20 MR. CANNARELLA: No, Your Honor.

21 THE COURT: All right, have we got sentence sheets?
22 Now, this is still under the old statute?

23 MS. LIVELY: No, Your Honor. This is under the new
24 statute.

25 THE COURT: This went in - it goes - the new statute

1 went into effect?

2 MS. LIVELY: 2006.

3 THE COURT: No, I'm talking about - oh, okay. No, no,
4 no, the - what is the possible sentences in this?

5 MS. LIVELY: 25 or life on the CSC with a minor first
6 degree and then zero to 15 on lewd act.

7 THE COURT: Okay, I was thinking - when did that one
8 go into effect?

9 MS. LIVELY: Jessie's Law, June 2006.

10 THE COURT: Six, okay, all right, so, it is under the
11 old law, I'm sorry, I mean, under the new law.

12 MS. LIVELY: Yes, sir, because the events that were
13 alleged were from 2008.

14 THE COURT: Eight, that's right.

15 MS. LIVELY: Yes, sir.

16 THE COURT: I don't know why I was thinking it went
17 into effect in 2008, but it went into effect in 2006.

18 MR. CANNARELLA: 2007.

19 THE COURT: All right, Mr. Cannarella, anything in
20 mitigation?

21 MR. CANNARELLA: Well, Your Honor, that - because of
22 the way the sentencing is structured I don't think there's
23 much I can say because the penalty is pretty clear, but this
24 man, he has a - Tim has a one DUI on his record from a long
25 time ago, driving under suspension, that's about all. Of

Sentencing

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1 course, you've heard from him and you know his background and
2 his family.

3 THE COURT: All right, sir.

4 Mr. Young, is there anything you'd like to say or would
5 anybody like to speak on your behalf?

6 MR. YOUNG: Sir, I didn't do anything wrong.

7 THE COURT: Okay, all right, do the victims wish to
8 speak or say anything?

9 MS. JENKINS: He didn't do anything, Your Honor. He
10 didn't do it.

11 OFFICER: Order, order in court, please.

12 THE COURT: All right, if anybody wants to speak to
13 the Court they need to come forward, give their name and I'll
14 hear from them.

15 First I need you to speak with Mr. Young's attorney
16 because he's representing him in this case. Mr. Cannarella
17 ---

18 MR. CANNARELLA: This is ---

19 THE COURT: --- is it all right with you for these
20 people to speak?

21 MR. CANNARELLA: Should they speak?

22 THE COURT: Yes.

23 MR. CANNARELLA: Yes, Your Honor.

24 THE COURT: Okay, give us your name, please.

25 MS. JENKINS: My name is Betty Jenkins. I'm Tim's

1 mother.

2 THE COURT: All right, Ms. Jenkins, let me hear from
3 you.

4 MS. JENKINS: My son didn't do this. He's been falsely
5 accused of. He would never hurt a child. He would never
6 touch a child. He hasn't been raised like that. He don't
7 deserve this.

8 THE COURT: All right.

9 MS. JENKINS: That's lies that's been told on him. My
10 son's innocent.

11 THE COURT: Thank you, ma'am.

12 MS. JENKINS: And I'm begging you, please, you all, if
13 that was your child how would you feel? That's my son. He,
14 he's innocent I'm telling you. He's innocent. He didn't do
15 that stuff that they're accusing him of doing. He would never
16 do it.

17 THE COURT: I understand that, ma'am.

18 MS. JENKINS: He's my heart.

19 THE COURT: All right.

20 MS. JENKINS: I don't understand why they want to do
21 that to him. If that was their child how would they feel
22 knowing he's innocent and people lying about him.

23 THE COURT: All right, thank you, ma'am. Anyone else?

24 MR. CANNARELLA: Yeah, it's okay, Judge.

25 THE COURT: All right, give us your name.

Sentencing

629

1 MS. WARD: My name is Gail Ward. I'm Tim's sister.

2 THE COURT: Yes, ma'am.

3 MS. WARD: And I just wanted you to know my brother
4 didn't do that. He was good to those youngins'. He loved
5 them. He provided for them when they was over there and he
6 didn't do it. He's innocent.

7 THE COURT: Thank you, ma'am.

8 All right, anyone else wants to speak I need you to
9 discuss it with Mr. Young's attorney first and then come
10 forward.

11 MR. CANNARELLA: Your Honor, this is Tim Hayes, his
12 lifelong friend.

13 THE COURT: All right.

14 MR. CANNARELLA: From Jefferson, Tim Hayes.

15 THE COURT: All right, Mr. Hayes.

16 MR. HAYES: Your Honor, I've known this man all his
17 life. We were born five days apart and we grew up a quarter
18 of a mile away from each other and I can honestly say that he
19 did not do this. (I would not be down here taking the only
20 vacation time I've had in three years from my work to support
21 him if I thought he was the least bit guilty. Also, I would
22 like to let it be known the man is an open book and if he had
23 done this terrible thing that he's being accused of he would
24 have cracked by now and he has maintained his innocence from
25 the day he was accused until just now when he's told it to you

1 and I will go to my grave knowing that an innocent has been
2 put in prison today and it's been said that better ten guilty
3 men go free than one innocent man be in prison and today an
4 innocent man is being imprisoned.

5 THE COURT: Thank you, sir.

6 MR. HAYES: Thank you.

7 THE COURT: All right, anyone else?

8 MR. CANNARELLA: This is Ms. Eggers, Your Honor.

9 THE COURT: All right.

10 MR. CANNARELLA: Lisa Eggers.

11 THE COURT: All right.

12 MR. CANNARELLA: Aneicsa.

13 MS. EGGERS: Sir, I'd like, I'd like for you to know
14 that Tim is - has been a big part of my children's lives and
15 at no point did I ever, ever see, hear, professionally,
16 medically at any point did I notice or see anything that would
17 alarm me for Tim and the children or I would protect my own
18 children. I cannot speak for our whole community and our
19 whole family he is such a great person. We played church
20 softball league. We - his involvement with us and my family
21 has been crucial and my children love Tim just as Chad and
22 Nicole's children did and I honestly think this is not right.
23 It's not right.

24 THE COURT: Thank you, ma'am.

25 All right, anyone else?

Sentencing

631

1 MR. CANNARELLA: That's all, Judge.

2 THE COURT: All right, does the victim, the victim's
3 family wish to say anything?

4 MS. LIVELY: No, Your Honor.

5 THE COURT: All right, any prior criminal record?

6 MS. LIVELY: Just what Mr. Cannarella mentioned, his
7 driving offenses, Your Honor.

8 THE COURT: All right, all right, Mr. Young, the jury
9 has found you guilty of the charge of committing a lewd act on
10 a minor and criminal sexual conduct with a minor in the first
11 degree. On the charge of committing a lewd act on a minor the
12 sentence of the Court is that you be confined to the State
13 Department of Corrections for 10 years. On the charge of
14 criminal sexual conduct with a minor in the first degree the
15 sentence of the court is that you be confined to the State
16 Department of Corrections for 25 years. You'll be given
17 credit for time served. The sentences will run concurrent.
18 That's the mandatory minimum sentence that can be imposed;
19 okay? Thank you very much.

20 MS. LIVELY: Thank you, Your Honor.

21 THE COURT: All right.

22 (Adjourned.)

23

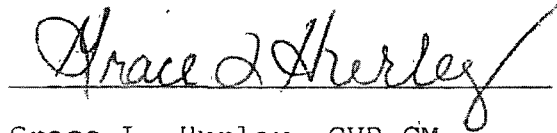
24

25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Trial held in the case of The State versus Timothy Young, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on April 4-7, 2011.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM

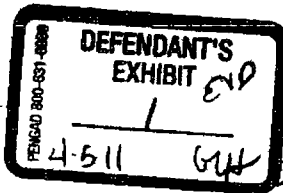
Official Reporter

August 29, 2011.

633 JKS

STATE OF NORTH CAROLINA

Columbus County

Court Case No. 02-CVD-1325
Film No.In The General Court Of Justice
District Court Division

Name Of Plaintiff

Nicole S. Turbeville Young CS

VERSUS

Name Of Defendant

Michael Chad Turbeville

MOTION AND ORDER TO SHOW CAUSE
FOR FAILURE TO COMPLY

WITH A RETURN TO THE COURT

RECEIVED
DEC 15 2008COLUMBUS COUNTY
SHERIFF'S OFFICE

U.S. 50-13-A, 52A 15-5A-21

I, the undersigned, request the Court to issue an order requiring the defendant to appear and show cause, if any, why he/she should not be held in civil or criminal contempt for his/her failure to comply with the Court's order, and in support of the motion, present the following information:

1. The defendant has willfully failed to comply with an Order dated April 20, 2004 by:
- ☐ a. failing to pay medical expenses in the amount of \$ _____
 - ☐ b. failing to provide medical insurance for the child(ren).
 - ☐ c. failing to provide obligee with a medical insurance card or information required to file a claim for the child(ren)
 - ☐ d. (private cases) failing to pay child support. The obligor owes \$ _____ in past-due child support as of _____ (date).
 - ☒ e. Other: Contempt of the Court for failure to abide by the prior orders of the Court.
*won't allow me scheduled visitation with children
*failure to pay back taxes (1999)
*derogatory comments in front of children
*no phone contact with children allowed

2. I am informed and believe that the obligor has the means to comply with the Court's order

SWORN AND SUBSCRIBED TO BEFORE ME

Date 12-12-08	Signature Of Person Authorized To Administer Oath Christine Sellen	Date 12-12-08	Signature Of Person Making Motion Nicole S. Turbeville Young
☒ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court		☒ Plaintiff ☐ Defendant	
SEAL ☐ Notary		Date My Commission Expires	

ORDER TO APPEAR AND SHOW CAUSE

TO THE ☐ PLAINTIFF ☐ DEFENDANT NAMED ABOVE.

The Court finds probable cause to believe that you are in civil or criminal contempt for failing to comply with the Court's order as specified above. You are Ordered to appear at the date, time and place set out below to show cause, if any, why the Court should not enter an order holding you in civil or criminal contempt. Your failure to appear as ordered may result in the issuance of an Order For Arrest or your being jailed for civil contempt.

Date of Hearing 1-13-09	Time Of Hearing 9:30 AM ☒ PM ☐	Date Issued 12-12-08
Place of Hearing Col. Co Courthouse Whitesville, N.C. 28472		Signature Rama C Davis
		☐ Judge ☒ Assistant CSC ☐ Clerk of Superior Court

STATE OF NORTH CAROLINA

Columbus County

2008-0-
w17
5897

Court File No.
02-CVD-1325
Film No.

In The General Court Of Justice
District Court Division

Name Of Plaintiff
Nicole S. Turbeville Young CS

Name Of Defendant
Michael Chad Turbeville

**MOTION AND ORDER TO SHOW CAUSE
FOR FAILURE TO COMPLY**

WITH A PREVIOUS ORDER

Name And Address Of

G.S. 50-13.4; 52A-15, 5A-21

RECEIVED
DEC 15 2008
COLUMBUS COUNTY
SHERIFF'S OFFICE

I, the undersigned, request the Court to issue an order requiring the plaintiff/defendant to appear and show cause, if any, why he/she should not be held in civil or criminal contempt for his/her failure to comply with the Court's order, and in support of the motion, present the following information:

1. The plaintiff has willfully failed to comply with an Order dated April 20, 2004 by:
- ☐ a. failing to pay medical expenses in the amount of \$ _____
 - ☐ b. failing to provide medical insurance for the child(ren).
 - ☐ c. failing to provide obligee with a medical insurance card or information required to file a claim for the child(ren).
 - ☐ d. (private cases) failing to pay child support. The obligor owes \$ _____ in past-due child support as of _____ (date).

☒ e. Other: Contempt of the Court for failure to abide by the prior orders of the Court.
*won't allow me scheduled visitation with children
*failure to pay back taxes (1999)
*derogatory comments in front of children
*no phone contact with children allowed

2. I am informed and believe that the obligor has the means to comply with the Court's order.

SWORN AND SUBSCRIBED TO BEFORE ME

Date <u>12-12-08</u>	Signature Of Person Authorized To Administer Oaths <u>Christine Sellen</u>	Date <u>12-12-08</u>	Signature Of Person Making Motion <u>Nicole S. Turbeville Young</u>
☒ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court		Nature of Interest In This Action ☒ Plaintiff ☐ Defendant	
SEAL ☐ Notary	Date My Commission Expires	☐ Other	

ORDER TO APPEAR AND SHOW CAUSE

TO THE ☐ PLAINTIFF ☐ DEFENDANT NAMED ABOVE:

The Court finds probable cause to believe that you are in civil or criminal contempt for failing to comply with the Court's order as specified above. You are Ordered to appear at the date, time and place set out below to show cause, if any why the Court should not enter an order holding you in civil or criminal contempt. Your failure to appear as ordered may result in the issuance of an Order For Arrest or your being jailed for civil contempt.

Date of Hearing <u>1-13-09</u>	Time Of Hearing <u>9.30</u> ☒ AM ☐ PM	Date Issued <u>12-12-08</u>
Place of Hearing <u>Col. Co Courthouse</u> <u>Whitesville, NC 28472</u>	Signature <u>Rama C Davis</u> ☐ Judge ☒ Assistant CSC ☐ Clerk of Superior Court	

DEFENDANT'S
EXHIBIT 2
4511
RECEIVED 000-000-0000

RETURN OF SERVICE

I certify that this Motion and Order was received and served as follows:

Date Served 1-2-09 Name Of Obligor Michael Turbenille

- ☐ By personally delivering to the obligor named above a copy of this Motion and Order.
- ☒ By leaving a copy of this Motion and Order at the dwelling house or usual place of abode of the obligor named above with a person of suitable age and discretion residing therein.

Name Of Person With Whom Copy Left Jenifer Turbenille (wife)

Address Where Copy Delivered Or Left

Date Accepted

1-2-09

Signature Of Person Who Served Motion And Order

[Signature]

- ☐ Other manner of service (specify):

- ☐ Obligor WAS NOT served for the following reason:

Date Received 12-15-08 Date of Return _____ Name Of Sheriff Chris Patton

Service Fee

\$

☐ Paid

☐ Due

County

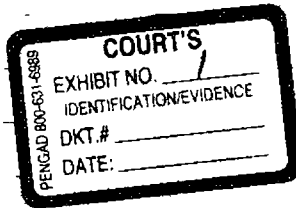
Columbus

Deputy Sheriff Making Return

5771

636

Keith BARTOLME - [REDACTED]



#205

637

David E. Merryman

PENGAD 800-631-6969

COURT'S	
EXHIBIT NO.	2
IDENTIFICATION/EVIDENCE	
DKT.#	
DATE:	

638

COPY OF TRANSCRIPT / NORMAN

~~PLAYER~~ FOR INTERVIEW

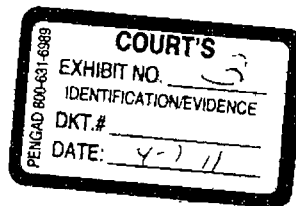
~~DATE~~

VIEW

Victim

TESTIMONY.

Keep ~~that~~



639

~~Transcribed ver~~

DO NOT NEED TO VIEW OR
READ NORM.

WHO LISTEN TO
LIVE TESTIMONY.

Victim

Kud R

PENGAD 800-631-6989	COURT'S
	EXHIBIT NO. <u>4</u>
	IDENTIFICATION/EVIDENCE
	DKT.#
DATE: <u>9-7-11</u>	



NGAD 800-631-6989

EXHIBIT

STAIRS

1

END

03-28-2011

Statement of **Victim**

COPY

Video Tape Interview of **Victim**

conducted on February 17, 2009

Interviewed by Dianne Nordeen

Q&A Court Reporting

Post Office Box 4563 (29502)

Florence, South Carolina

Toll Free (866) 673-9845 Local (843) 673-9845

Fax (843) 661-2960

Email: Info@qacourtreporting.com

Visit: www.qacourtreporting.com



1 Q Well, my name is Diane, Victim Nice
2 to meet you. How old are you?

3 A Seven.

4 Q Seven? Okay. Can you spell your name
5 for me? How do you spell your name?

6 A Victim

7 Q Victim That's neat. I've never
8 seen Victim spelled like that. That's a neat
9 spelling. And when's your birthday, Victim?

10 A

11 Q Okay. All right.
12 And let's see, Victim, seven. Are you in second
13 grade or first grade?

14 A Second.

15 Q Second grade, okay. What school do you
16 go to?

17 A Tabor City Elementary.

18 Q Tabor City Elementary. Okay. All
19 right. So and that's in North Carolina, huh?
20 Yeah, okay. What is your last name, Victim?

21 A Victim.

22 Q Victim? Victim, did I spell
23 that right? Victim. Victim?

24 Okay. That's a fine South Carolina name,

25 Victim. Did you know that? Yeah, okay. Now,

1 **Victim** did anybody tell you why you were coming to
2 talk with me today?

3 A No.

4 Q No? Did anybody tell you what to say
5 or what not to say to me today?

6 A (No verbal response.)

7 Q No? Okay.

8 A Said to tell -- tell you everything
9 that I said to the lady that was in there.

10 Q Okay. Said tell me everything that you
11 said to the lady that was in there -- the doctor?
12 Okay. All right. Now, we call this room our
13 truth room. So we talk about only the truth in
14 here, okay? Tell me in your own words what it
15 means to tell the truth.

16 A That you tell what really happened and
17 not -- and not tell a lie.

18 Q Okay. Okay. That's a good definition.
19 That's what it means to tell what really happened.
20 Talk about what's true and real and what really
21 happened. You're pretty smart. You know exactly
22 what that meant. Can you promise me today, **Victim**
23 that we'll talk about only the truth in here --
24 only what's true and real? What really happened?

25 A (No verbal response.)

1 Q Okay. All right. Let's see now,
2 that's your daddy out there with you? What's your
3 daddy's name?

4 A Chad -- Michael Chad Turbeville.

5 Q Michael Chad Turbeville?

6 A But people call him Chad.

7 Q Okay. All right. And while we're
8 talking, there's a camera right there. And it's
9 making a recording of everything we talk about,
10 okay? And the reason is so I don't have to write
11 a lot of notes down so I can really pay attention
12 to what we talk about. And, also, if there's
13 something that maybe the police need to know, they
14 can come here and watch it instead of you having
15 to tell them all over again, okay? Does that make
16 sense to you?

17 A (No verbal response.)

18 Q Okay. And so, also, while we're
19 talking, if I ask you something and you don't know
20 the answer or you don't remember, it's very
21 important that you just say I don't know or I
22 don't remember, okay? Because if you don't know
23 or if you don't remember, then that would be
24 telling the truth, right? Okay. And, also, if I
25 ask you something and you don't understand what

1 I'm asking, let me know so that I can say it in a
2 way that is easier for you to understand, okay?
3 And if I -- if you see me write something down or
4 if I say something and it's wrong, I want you to
5 correct me, okay?

6 A (No verbal response.)

7 Q All right. And you -- you -- it's --
8 it's real important for you to know that. You're
9 not in any trouble for anything, and you can say
10 anything in this room, and you don't get in any
11 trouble, okay? Okay? Okay. All right. Now, so
12 that's your dad that's out there? Do you live
13 with your dad, Victim?

14 A (No verbal response.)

15 Q Okay. And where do you guys live, you
16 and your dad?

17 A [REDACTED].

18 Q What is it?

19 A [REDACTED].

20 Q [REDACTED]? Okay.

21 A Uh-huh, in a little yellow house.

22 Q in a little yellow house, okay. And
23 what town is that in?

24 A Tabor City.

25 Q In Tabor City? Okay. And does anyone

1 else live at your house with you and your dad?

2 A (Inaudible) -- she has a daughter -

3 Q Okay.

4 A (Inaudible.)

5 Q Okay. That's Minor and Minor And

6 Minor your real sister. Do you and Minor have
7 the same mom?

8 A Uh-huh.

9 Q Uh-huh. Okay. Okay. And what is your
10 mom's name?

11 A Nicole.

12 Q Nicole. And where does your mom live?

13 A She lives over in -- in Myrtle Beach,
14 but I can't remember what road she lives on.

15 Q Okay. And who lives at Nicole's house?

16 A Me, Minor and Erica (Inaudible).

17 Q Okay. So you live at your mom's and
18 your dad's? You go back and forth? Okay.

19 A (Inaudible) they take me -- if I get
20 along (Inaudible).

21 Q Okay. Okay. So you just go to your
22 mom's on the weekend every two weeks?

23 A But I don't go anymore because what she
24 did to me.

25 Q Because what she did to you? Tell me

1 about that. What did she do to you?

2 A She put --- she put some Neosporin on
3 the carpet. She rubbed it in because she looked
4 at it. Now every time I get out of the bathtub
5 (Inaudible) sometimes after I got out of the
6 bathtub, she looked at it because sometimes she
7 (Inaudible) after I got out of the bathtub and
8 (Inaudible) she gave my cousin **Minor** (Inaudible)
9 **Minor** and (Inaudible).

10 Q Okay. So if you went to get out of the
11 bathtub, if it's red, she put Neosporin on it?

12 A (No verbal response.)

13 Q Okay. Well, it sounds like we're going
14 to be talking about some body parts. So I got a
15 picture here. Let me get this picture out. And
16 this is a picture of a what?

17 A Girl.

18 Q A girl. Uh-huh. And so we're going to
19 be talking about some body parts, okay? So I'm
20 going to need to know the names that you have for
21 some body parts so while we're talking we have the
22 same names so that we're having an understanding
23 of what we're talking about, okay? Okay. Now, do
24 you ever go swimming, **Victim**?

25 A (No verbal response.)

1 Q And what do you wear when you go
2 swimming?

3 A A one part bathing suit or a two part
4 bathing suit.

5 Q Okay. And when you wear those bathing
6 suits, they cover this part of your body and that
7 part of your body, right? And the two piece will
8 cover this part and that part, right? And then,
9 of course, they also cover this part. So we call
10 this part that are covered by bathing suits our
11 private areas. Private means just for you. Like
12 if you have a diary and you write in it, nobody's
13 supposed to look at it. Nobody can touch it
14 because it's private. That's the same thing with
15 those parts. They're your private areas. So what
16 I need to know is the names that you have for your
17 private areas. And any names that you have are
18 fine because lots of kids have lots of different
19 names for their private areas, okay? So what do
20 you call this part of your body?

21 A My boobies.

22 Q Boonies, okay. A lot of folks call it
23 a boobie. Okay. And what do you call this part?

24 A The private part.

25 Q The private part? Okay. And then what.

1 do you call this part?

2 A Bottom.

3 Q Bottom, okay. So you said when you
4 took a bath, your mom comes and dries you off.
5 And if it's red -- did you say if it's red? Then
6 she puts Neosporin on it. Which part does it --
7 what -- which part is red sometimes?

8 A The middle part private part.

9 Q In the middle of that private part?
10 Okay. Okay. I want to just write some notes
11 here -- bath, mom, dry you off. And if red,
12 middle of private. And you said she sends your
13 cousin and your sister out of the room?

14 A She's my step cousin.

15 Q Your step cousin.

16 A My think it's my mommy's step cousin
17 but her (Inaudible).

18 Q (Inaudible) And what is her -- and
19 what's her name?

20 A Minor .

21 Q Cindy?

22 A Minor .

23 Q Minor . Okay. And what is --

24 A I have (Inaudible).

25 Q What's your mom -- you said her -

1 her -- your mom's ex-husband is Tim? What's Tim's
2 last name?

3 A Young.

4 Q Young. Okay.

5 A Tim -- his real name is Timothy.

6 Q Timotny -- Timothy Young? Okay.

7 A People call him Tim.

8 Q People call him Tim. Okay. So, then,
9 mom -- okay. So Minor and Minor -- so she sends
10 them out. And then what does she have you do?

11 A She has me to lay on the bed
12 (Inaudible).

13 Q Okay. Lays on the bed and then you
14 put -- how you put your legs?

15 A Like this.

16 Q You do -- you know what, I have a little
17 doll here. It's not a doll that we play with.
18 It's just a doll that kids use to show me what
19 happened to them, okay. (Inaudible) And - and
20 so -- and these dolls have their parts just like
21 people, eyes and nose and mouth and arms and legs
22 and clothes that come on and off. And she has
23 boobies and private parts. And a bottom
24 (Inaudible) Okay. So show -- show me what your
25 how you mom made you put your legs.

1 A She put (Inaudible).

2 Q Okay. So she has you put your legs
3 like that?

4 A Bend them.

5 Q To bend them? Okay. And then -- then
6 you said she puts Neosporin on her knuckles?

7 Okay. And what does she do with her knuckles when
8 she puts it on?

9 A She rubs it through.

10 Q She rubs it through? What --

11 A (Inaudible) like that.

12 Q Like that? Okay. And how does that
13 feel when she does that?

14 A It hurts.

15 Q It hurts? Okay. When you take a bath,
16 do you use bubble bath?

17 A No.

18 Q No? Do you use any kind of soap when
19 you're in the tub?

20 A I use (Inaudible) and I clean it out
21 with a rag.

22 Q So you clean it out with a rag? Okay.
23 All right. And then let's see -- does your mom
24 ever do anything else with your private parts?

25 A (No verbal response.)

1 Q No? Okay. Now, we talked about these
2 parts being your private area, okay? The boobie
3 and private part of the bottom are your private
4 area. And I'm going to get a picture of a boy.
5 Little boys have two private areas. When they
6 wear a bathing suit, they cover this part on them
7 and this part on them, okay. And what do you call
8 this part on a boy?

9 A Private part.

10 Q Private part. And what do you call
11 this part on a boy?

12 A Bottom.

13 Q Bottom. Okay. So boys have two
14 private areas, the private part and the bottom.
15 And girls have three private areas, the boobies
16 and private part and your bottom, okay? So,

17 Victim in thinking about your private part and
18 your bottom and your boobies, has anyone else ever
19 touched you on any of those parts in a way that
20 hurt you, or in a way that made you a little
21 uncomfortable?

22 A Her ex-- (Inaudible).

23 Q Her ex-husband? What's his name?

24 A Tim -- Timothy Young.

25 Q Timothy Young. Okay. And what part

1 did he -- or parts did Timothy touch?

2 A My private parts.

3 Q Okay. And what did he touch your
4 private part with?

5 A His fingertip.

6 Q His fingertip? Okay. And did he touch
7 you on the outside of your clothes or the inside
8 of your clothes?

9 A ~~This part.~~ Inside

10 Q And did he touch you on the outside of
11 your private part or the inside of your private
12 part or both?

13 A Both.

14 Q Both? Okay. And what room were you
15 guys in when he did that?

16 A His room -- his bedroom.

17 Q His bedroom? Was anyone else home when
18 he did that?

19 A Mama was in the living room watching
20 T.V., and Minor was in our bedroom (Inaudible).

21 Q Okay. And did this happen one time or
22 more than one time?

23 A More than one time.

24 Q Okay. And do you think that it
25 happened more than five times or less than five

1 times?

2 A Less.

3 Q Less than five times? Okay. And did
4 all the times happen in his room, or did it happen
5 in other parts of the house?

6 A If mama did it in my room and mine and
7 Minor's room, and Tim did it in his room.

8 Q Okay. Mama did it in you're and

9 Minor's room, and Tim did it in his room. Okay.
10 And now do you know what the difference is between
11 how your mom touched you and how Tim touched you?

12 A (No verbal response.)

13 Q Did it feel different?

14 A (No verbal response.)

15 Q Okay. Did your mom say anything to you
16 when she was putting that Neosporin on you?

17 A She said it won't hurt. It's good for
18 it where -- to get it healed up.

19 Q She said it won't hurt at the part
20 where it can get healed up? Okay. And did Tim
21 say anything to you when he was touching you?

22 A He said don't tell anybody.

23 Q He said don't tell anybody?

24 A Or mom. If I told mama, him and mama
25 will break up.

1 Q If you tell mama, him and mama will
2 break up? Okay. Okay. And when Tim was touching
3 you on your private part, did he move his -- you
4 said he touched you with his fingertip, did he
5 move it around?

6 A (No verbal response.)

7 Q How did he move it? Can you show me
8 with your finger?

9 A Moved it like this.

10 Q ^{Moved it} ~~Not~~ like that, like around in a circle?

11 A (Inaudible).

12 Q And did he touch your private part with
13 anything else other than his finger?

14 A He (Inaudible) a little bit he licked
15 it.

16 Q And what -- what was that?

17 A He -- he - and a little bit above,
18 licked it.

19 Q And a little bit about he licked you?
20 Okay. And can you show me on this doll what part
21 he licked?

22 A (Inaudible).

23 Q Okay. So like it was right above your
24 private part? Okay. And did he say anything to
25 you when he licked it?

1 A No.

2 Q Did he say anything else to you when he
3 was touching you other than don't tell anybody?

4 A (No verbal response.)

5 Q Okay. Did he tell you why he was doing
6 that?

7 A He said it was because (Inaudible)
8 little girl.

9 Q He said he said because he liked ~~to~~ ^{doing it}
10 ~~lick~~ little girls. Okay. And how were your
11 clothes when he did that? When he -- when he was
12 touching you with his fingertip, how were your
13 clothes?

14 A I had a t-shirt on and pants and my
15 panties.

16 Q ~~Just your~~ ^{T-shirt} pants and panties? Okay.
17 And did your clothes stay on?

18 A Uh-huh.

19 Q They did? Okay. And describe to me
20 how he was able to touch you inside your clothes.
21 How did he touch you?

22 A He pulled down it, but not all.

23 Q He pulled down it, but not all. Which
24 part did he -- which did he pull down?

25 A My panties.

1 Q Your panties? Can you show me on this
2 doll how far he pulled your panties down? Okay.
3 And then where were you when you were in the room?

4 A On the bed.

5 Q On the bed? Okay. And how were you
6 positioned on the bed?

7 A Like ~~he~~^I dia mama.

8 Q Like ~~he~~^{You} dia mama? And did -- did he
9 tell you to do that? Did he tell you how to do
10 that or...

11 A He told me put (Inaudible) and then in
12 a little while I tried to close my legs, but he
13 spreaded his hand like that and (Inaudible).

14 Q Okay. So he -- he told you and then
15 you after a little while you tried to close your
16 legs, but he spreaded his hand like that to spread
17 them back out? Okay. And you said you couldn't
18 stop him? Okay. Tell me what that felt like when
19 he was touching with his fingertips?

20 A It felt uncomfortable.

21 Q It felt uncomfortable. And did you --
22 well could you see his hand? Could you see what
23 his hand was doing? Yeah. Could you see --
24 his -- his finger? What his finger was doing?
25 No.

His finger was doing like that 18
A ~~He hand was just (Inaudible).~~

1
2 Q Okay. And you said that he touched the
3 outside and he -- did you -- and you said he
4 touched the inside. When he touched the inside,
5 how did he touch the inside?

6 A He pulled (Inaudible).

7 Q Okay. With his fingertip? Okay. And
8 do you think his fingertip went inside of your
9 private part?

10 A That's what it felt like when he did
11 that.

12 Q That's what it felt like when he did
13 that? Okay. And do you remember what that felt
14 like when his fingertip went inside of your
15 private part?

16 A It felt like somebody was going in
17 there and (Inaudible).

18 Q You felt like somebody was going in
19 there, and he was the only one around so you guess
20 it was him? Okay. And when was the last time
21 that Tim did this to you?

22 A Two weeks before the last time.

23 Q Two weeks before the last time?

24 A That -- that I went over there.

25 Q That you went over there? Okay. Okay.

1 And did you ever see Tim go in the room with your
2 sister, Minor?

3 A (No verbal response.)

4 Q Okay. Did you ever see Tim go in the
5 room with Minor?

6 A (No verbal response.)

7 Q Uh-huh. Okay.

8 A He might have did (Inaudible).

9 Q He might have did when you went to
10 Walgreens with mama. Who stayed home with him
11 when you went to Walgreens with mama?

12 A Minor.

13 Q Minor.

14 A Plus Minor (Inaudible).

15 Q Okay. Okay. So let's see. Did you
16 ever see Tim do that to anybody else that he did
17 to you?

18 A (No verbal response.)

19 Q And did Tim ever make you look at his
20 private part?

21 A (No verbal response.)

22 Q Okay. Did Tim ever make you touch him?

23 A (No verbal response.)

24 Q No? Okay. Did Tim ever make you put
25 your mouth anywhere on his body?

1 A (No verbal response.)

2 Q Did anybody else ever touch you on your
3 private part?

4 A (No verbal response.)

5 Q Did anybody ever show you pictures of
6 people without their clothes on touching private
7 parts?

8 A (No verbal response.)

9 Q How about movies with people in them
10 without their clothes on? Did anybody ever show
11 you that?

12 A (No verbal response.)

13 Q Okay. How about something on a
14 computer? Has anyone ever shown you anything on
15 the computer of people touching private parts?

16 A (No verbal response.)

17 Q Okay. When Tim touched you with his
18 fingertip on your private part, did he put
19 anything on it when he touched you?

20 A Only mama.

21 Q Only mama? Okay. And you said Tim
22 told you don't tell anybody. And if you tell
23 mama, him and mama will break up?

24 A Ja-huh.

25 Q Okay. And then he said he did it

1 because he liked doing it to little girls?

2 A Yes.

3 Q Okay. Okay. Did you ever tell your
4 mom that Tim did that to you?

5 A (No verbal response.)

6 Q Okay. And did you ever tell Taylor or
7 Sidney that Tim did that.

8 A (No verbal response.)

9 Q Okay. Who's the first person you told
10 about that?

11 A Jeannie.

12 Q Who is that?

13 A Jeannie.

14 Q Jeannie? Who's Jeannie?

15 A Jeannie.

16 Q Who is it?

17 A Jenny.

18 Q Jenny? Who's Jenny?

19 A (Inaudible) my step mom.

20 Q Your step mom? Okay. Okay. And what
21 happened when you told Jenny?

22 A She cried.

23 Q She cried? Okay. Okay. Well, you did
24 the right thing to tell. Okay. **Victim** you know
25 why? Nobody's supposed to touch you on your

1 private part, your bottom or your boobies. Okay.
2 You definitely did the right thing to tell, okay?
3 And then nobody's supposed to make you touch them
4 on their private area, okay? Not girls or boys.
5 Nobody's supposed to touch you, and nobody's
6 supposed to make you touch them. Nobody's
7 supposed to put their mouth on your body. And
8 nobody's supposed to make you put your mouth on
9 their body, okay? So you did the right thing to
10 tell. And you didn't do anything wrong.
11 Sometimes big people do that to little kids, and
12 they're not supposed to, okay? So -- and you said
13 he did that more than one time, but you think that
14 it's less than five times?

15 A (No verbal response.)

16 Q Okay.

17 A Two or three times.

18 Q Two or three times? Okay. And how old
19 were you the first time that Tim touched you?

20 A (Inaudible) I think five or six.

21 Q Okay. Okay. All right. And let's
22 see. And you are seven now. And you turned seven
23 in June.

24 A (Inaudible) going to turn eight.

25 Q (Inaudible) going to turn eight. Okay.

1 All right. And let's see. Did Tim ever threaten
2 to hurt you?

3 A (Inaudible).

4 Q Did he -- like did he say like if you
5 tell I'm going to hurt you or...

6 A No.

7 Q No? Okay. Did Tim ever show you any
8 kind of gun or weapon or anything?

9 A (No verbal response.)

10 Q And did you ever see anybody use drugs?

11 A Mommy and Tim drink beer.

12 Q Mommy and Tim drink beer. What kind of
13 beer do they drink?

14 A Bud Light.

15 Q Okay. And did you ever see mom and Tim
16 fighting with each other?

17 A (No verbal response.)

18 Q What did they do when they fight?

19 A They screamed and cussed.

20 Q Do they ever hit each other?

21 A (No verbal response.)

22 Q And did you ever see your dad fighting
23 with Jenny?

24 A Sometimes when they get mad.

25 Q Sometimes, what did they do when they

1 fight?

2 A They screamed and cussed.

3 Q Okay.

4 A The same thing.

5 Q The same thing. Okay. What did

6 they --

7 A (Inaudible) they stopped.

8 Q Okay. They -- they stopped. Okay.

9 Did you ever see your dad and mom -- or dad and
10 Jenny hit each other?

11 A (No verbal response.)

12 Q Okay. And do you remember when your
13 dad and mom were together?

14 A I wasn't even born.

15 Q You weren't even born? Oh, okay.

16 A I was in mom's stomach when they were
17 fighting (Inaudible).

18 Q Oh, okay. Okay. Okay. And do you
19 know why they split up? Did they ever talk to you
20 about that?

21 A They said that (Inaudible) they
22 stopped -- they weren't - they weren't
23 (Inaudible).

24 Q They (Inaudible) okay.

25 A They (Inaudible) is what mommy told me

1 about it (Inaudible).

2 Q Okay. Okay. And does your mom ever
3 say anything bad about your dad?

4 A She said he lies and but she
5 (Inaudible) try to keep (Inaudible) but she went
6 (Inaudible) to a Christmas party, but he
7 (Inaudible).

8 Q Okay.

9 A And he (Inaudible).

10 Q Okay. And does your dad ever say
11 anything bad about your mom?

12 A He said that she's bad for doing what
13 she did to me and Minor. She'll probably
14 (Inaudible) she (Inaudible) Minor when she was
15 using the toilet (Inaudible) after she got done
16 taking a lie test she (Inaudible).

17 Q Your mom did? Okay.

18 A But she never did that to me.

19 Q And your dad told you that?

20 A My mom did.

21 Q Your mom told you that your dad said
22 that?

23 A She -- she said it that's -- she said
24 that's what she did was (Inaudible).

25 Q Oh, she said that's what she did with

1 the hand. Did she say what it was that she stuck
2 up [Minor]'s butt?

3 A (No verbal response.)

4 Q Okay. Was [Minor] having a hard time
5 pooping?

6 A Yeah.

7 Q Yeah.

8 A She has diarrhea a lot.

9 Q She has diarrhea a lot? Okay.

10 A But she grew out of it.

11 Q Okay.

12 A (Inaudible).

13 Q Oh, okay.

14 A And then (Inaudible) medicine she has
15 gas really bad now, but that's going away.

16 Q Oh, okay.

17 A And she thought she had a virus when
18 she does it, but she didn't throw up. She didn't
19 throw up. She pooped it out.

20 Q She pooped it out? Okay. Okay. Okay.
21 So -- and -- but you said your mom never put
22 anything up your butt?

23 A No.

24 Q No? Okay. And is your butt the same
25 as your bottom? Is that the same part, your butt

1 and the bottom?

2 A (No verbal response.)

3 Q Okay. Okay. All right. You know, I
4 want to ~~see (inaudible)~~ ^{make sure I} you really understand what
5 Tim did to you. You said he touched you on your
6 private part with his fingertip inside your
7 clothes. He pulled your clothes down, and he
8 pulled your underwear down this far to your knees.
9 He touched you outside and inside of your private
10 part. And your mom was in the living room, and
11 **Minor** was in there -- in your room watching T.V.
12 He said don't tell anybody. If you tell your mom,
13 he and your mom will break up. And he -- he said,
14 you show me, and then rubbed it in a circle --
15 like in a circle around it. And then you said
16 that he put his mouth up here on your body?

17 A (No verbal response.)

18 Q Okay. And when -- when he put his
19 mouth on your body was that one time or more than
20 one time?

21 A One or two times.

22 Q One or two times? Okay. Okay. And
23 you said that was on the bed, and that it was the
24 same position as like what you did with your mama?

25 A (No verbal response.)

1 Q Okay. All right. And can you think of
2 anything else that I should know, Victim that Tim
3 did to you?

4 A Sometimes -- but not what Tim did to
5 me, but sometimes mama when she know I was in the
6 bathtub, she -- she tell us to close the door,
7 that she forgot something in the bathroom like a
8 blow dryer or something or another towel to do her
9 hair. Because sometimes she (Inaudible) towel in
10 the bathroom and when I take a bath (Inaudible)
11 bath and showers in and she (Inaudible) she
12 (Inaudible) she doesn't put a towel around her and
13 she just runs back naked.

14 Q She runs back to where?

15 A Her room to get (Inaudible) she keeps
16 her blow dryer (Inaudible) her hair straightener
17 and her brushes back there.

18 Q And -- and how does that make you feel
19 when she does that?

20 A Well, sometimes I say if she put her
21 clothes on now. And every time she didn't, I keep
22 on looking to see if she does and changed her
23 mind. And if she does -- and then if she did put
24 on her clothes. And every time she did. And so
25 we were starting to look, and she'd get mad if she

1 didn't have her clothes on and (Inaudible) that.

2 Q Oh, okay. And what room were you in
3 when she ran from the bathroom to her room?

4 A Living room.

5 Q Okay. And who else would be with you?

6 A Well, sometimes Minor was in the room
7 with me (Inaudible) and Chelsey (Inaudible).

8 Q Who's (Inaudible) and Chelsey?

9 A Well, she is just my dog and she's
10 black.

11 Q Okay.

12 A Chelsey is Victim dog (Inaudible).

13 Q They're both labs? Okay.

14 A But Chelsey is (Inaudible).

15 Q And do they live at your mom's house?

16 A And she said that call Tim (Inaudible)
17 broke up, but I didn't tell her. Then they
18 already broke up, and they were fighting about
19 something and (Inaudible).

20 Q Oh, they'll be okay. Okay.

21 A And then (Inaudible) back out.

22 Q They live inside? They're inside dogs?

23 A It changes.

24 Q Okay.

25 A Sometimes they (Inaudible) went to the

1 beach.

2 Q Did they?

3 A Sometimes **Minor** -- Champ ran off for
4 about a mile.

5 Q Oh, okay.

6 A We had to find them.

7 Q Yeah.

8 A But sometimes he's in the water.

9 Chelsey is terrified of the water now.

10 Q Oh, okay.

11 A And one time I found a cat, but it was
12 in the park -- in the park in front of our house.
13 And she took it -- and mama took it to the vet,
14 and it was 400 dollars to start off with.

15 Q Uh-huh.

16 A But they had to take it back to the vet
17 to get -- to get -- to get the cat some medicine
18 or else she'd die.

19 Q Oh, okay.

20 A And mama went (Inaudible).

21 Q Oh, does your mom like animals?

22 A (No verbal response.)

23 Q Okay.

24 A Especially turtles and dogs and
25 kittens.

1 Q Oh, okay.

2 A And that kitten had dirt, flies,
3 maggots and all that stuff.

4 Q Oh, it probably was sick then, huh?

5 A She told us that God told her to come
6 over here.

7 Q Okay. All right.

8 A And if (Inaudible).

9 Q Well, Victim does anybody ever hit you?

10 A Only Minor when she gets really mad at
11 me.

12 Q Okay. What happens when you get in
13 trouble at home?

14 A Well, daddy yells at us or spanks us.

15 Q Okay. And what does -- where does
16 daddy spank you?

17 A On my bottom or in my room. He spanks
18 me in my room.

19 Q Okay. And what -- what does he use to
20 spank you?

21 A His hand or his belt.

22 Q And does it leave marks when he spanks
23 you?

24 A (No verbal response.)

25 Q And what kind of marks do you get?

1 A A line or a (Inaudible) hand.

2 Q Okay. And does -- do you ever have
3 bruises on you?

4 A But it hurts. I -- I don't
5 (Inaudible).

6 Q Okay.

7 A But I might have to have a mark.
8 Sometimes I look and it doesn't have a bruise.
9 It's just a red mark.

10 Q Okay. And what are the kind of things
11 that ha--- that you do that make -- that you dad
12 will give you a -- a spanking with a belt for?

13 A (Inaudible) when he tells me to go get
14 in the bathroom, but I don't and sometimes he
15 yells at me and then he spansks me. (Inaudible)
16 that he said that what or why or hold on he'll
17 spank us because he doesn't want anybody to say
18 (Inaudible) he got it from his daddy.

19 Q Okay.

20 A But his daddy never lived with us.

21 Q His daddy never lived with you? Okay.

22 A He gets really mad.

23 Q He does?

24 A Because he wants to go get it done.

25 Q He wants to go get it done. Okay. And

1 does anybody else ever give you spankings?

2 A Sometimes Jenny does.

3 Q Sometimes Jenny does? Okay. What does
4 she spank you with?

5 A Her hand or the belt. Sometimes if we
6 do something really bad -- really, really bad, we
7 had done it before, he would spank us with his
8 prison belt (Inaudible).

9 Q He'll spank you with his prison belt
10 with nothing on it? Okay. And what does that
11 look like?

12 A That is (Inaudible) it's this tall and
13 (Inaudible).

14 Q Okay. And what does that feel like?

15 A He didn't actually do it.

16 Q Oh, he didn't actually do it? Okay.
17 But he did tell you he will?

18 A (No verbal response.)

19 Q Okay.

20 A Am I going to draw anything?

21 Q You can draw all you want. You can
22 draw anything you want with any of the markers
23 that you want to draw. Whatever you want. So
24 sometimes he tells you he's going to spank you
25 with his prison belt, but he doesn't actually do

1 it?

2 A (No verbal response.)

3 Q Okay. Does your mom ever spank you?

4 A She pops me, but it doesn't hurt bad.

5 Q Okay. And what does she pop you with?

6 A Her hand.

7 Q Okay. Did Tim ever spank you?

8 A (No verbal response.)

9 Q And when Jenny spansks you with -- with
10 her hand or the belt, does she ever leave marks on
11 you?

12 A (Inaudible).

13 Q Okay.

14 A It hurt (Inaudible).

15 Q It hurt?

16 A But she mostly did it about one or two
17 times a day (Inaudible).

18 Q Daddy mostly does it?

19 A (No verbal response.)

20 Q Okay. And how -- how many times would
21 you say your dad spanked you? Would you say that
22 it's more than five times or less than five times?

23 A About six.

24 Q Okay. And does it -- does it happen a
25 lot or is it just...

3b

1 A Just a little bit.

2 Q A little bit? Would you say that it
3 happens like once a year or more than that?

4 A Well, once or twice (Inaudible).

5 Q Once or twice --

6 A (Inaudible) a year.

7 Q Once or twice or three times a year.

8 Okay. And do you remember like how old you were
9 the first time that he spanked you?

10 A [Minor] gets spankings now.

11 Q [Minor] gets spankings now. Whose

12 [Minor] ?

13 A My half sister, but we call her
14 (Inaudible) everybody calls her my little sister.

15 Q Okay. And who is [Minor]'s mom?

16 A Jenny.

17 Q Jenny? Okay. So let's see. Who --

18 who's [Minor] and [Minor] ?

19 A They're my step sisters and they're --

20 Q Are they Jenny's children, [Minor] and

21 [Minor] ?

22 A They not my half or anything. I don't
23 (Inaudible) they don't have the same daddy.

24 Q Okay. Does [Minor] live at your dad's
25 house?

1 A (No verbal response.)

2 Q Okay. How old is Minor ?

3 A Two.

4 Q Two years old. Okay. And there's

5 Minor Minor Minor and you, Minor Are

6 there any other kids there?

7 A Well, we have a Minor -- I mean,

8 Minor and Minor (Inaudible) said they was

9 having a step cousin (Inaudible) she -- she lives

10 up there mostly every day, Minor does. Or she

11 (Inaudible).

12 Q How old is Minor ?

13 A She said that she's going to turn eight

14 in

15 Q Okay.

16 A She was born in 2002.

17 Q Okay. And she's there pretty much

18 everyday?

19 A (No verbal response.)

20 Q Okay.

21 A But sometimes when there's not rainy

22 days (Inaudible).

23 Q Okay. Okay.

24 A Her daddy (Inaudible).

25 Q Okay.

1 A She (Inaudible) breathing treatments.

2 Q Breathing treatment. Okay. Can you
3 think of anything else that I should know about
4 Tim touching you, Victim?

5 A (No verbal response.)

6 Q No? Okay. Did -- and you said Tim
7 never showed you his private part?

8 A (Inaudible).

9 Q Okay. And you said you didn't tell
10 anybody until you told Jenny. Do you remember
11 when -- after Tim touched you on your private
12 part, do you remember what it felt like when you
13 used the bathroom after that?

14 A (No verbal response.)

15 Q No? Do you remember if he -- do you
16 remember ever seeing anything in the -- on -- on
17 in your underwear or on the toilet paper after he
18 touched you?

19 A (Inaudible) a lot of stuff (Inaudible)
20 A lot of stuff on the paper, but I don't know
21 (Inaudible).

22 Q It was white stuff? Okay.

23 A Real chunky, white stuff.

24 Q Okay. So you had a little stuff?

25 A (Inaudible).

1 Q Okay. And -- and how do you feel?
2 Now, do you feel like it's -- you have itching --
3 itching problems or soreness or anything?

4 A Sometimes it hurts when I pee and wipe,
5 and it itches sometimes when I'm at school getting
6 my lunch. It's hard to hide it. I itch it
7 (Inaudible) --

8 Q Oh, okay.

9 A -- (Inaudible) in front of everybody.

10 Q Okay. All right. And do you have any
11 questions for me, Victim?

12 A (No verbal response.)

13 Q No? Okay. Well, do you want to just
14 keep drawing for a few more minutes. Okay. I'm
15 going to go to my office for something, and I'll
16 be right back. And you can just draw while I'm
17 gone, okay. I'll be right back. Okay. How are
18 you doing on your picture?

19 A Good.

20 Q Good. Well, now, let's see. All
21 right. Well, let's go out and talk to your dad
22 about what we should do. What we need to do from
23 here, okay? And you did a really good job. And,
24 you know, I want to remind you that -- oh, three
25 things that are really important, Victim, that we

1 didn't talk about yet, but we're going to talk
2 about. What to do if anybody else tries to touch
3 in your private parts.

4 A Well if I (Inaudible) tell my step mom
5 or tell daddy (Inaudible).

6 Q Okay. Well, if you're at somebody's
7 house or if you're at school or wherever and
8 somebody tries to touch you, I want you to look at
9 them and go, no. Okay? And you run away from
10 them, and you tell a grownup right away, okay?
11 Now, who are grownups that you could tell?

12 A My teacher, my principal or the
13 (Inaudible) like (Inaudible) Carla or Uncle Robbie
14 (Inaudible).

15 Q Okay. Good.

16 A Grandma, grandpa...

17 Q Teacher, who else at school?

18 A The principal.

19 Q Principal. And you said your dad and
20 Jenny and your aunt and uncle. Is that what you
21 said, aunt and uncle? And what are their names?

22 A Carla and Robbie.

23 Q Carla.

24 A And then (Inaudible) Carson.

25 Q They're as young as Carson, okay.

1 A And live right by the same grandma and
2 grandpa (Inaudible).

3 Q Okay.

4 A And my daddy (Inaudible) I meant and my
5 Jenny Aunt Carla and (Inaudible) and Haley, she --
6 they work at the daycare.

7 Q Okay. Okay. And if you tell somebody
8 and they don't do anything to help you, then you
9 tell somebody else. And you keep telling this
10 until somebody helps you, okay? You did the right
11 thing to tell Jenny and -- and that was the right
12 thing because that will make it stop. If some --
13 if -- if something happens and you're at your
14 mom's house and Tim comes over again, you get away
15 from him as fast as you can, okay?

16 If he tries to talk you into like letting
17 him touch you again, or tries to get you to go in
18 the room with him, you look at him and you say, no.
19 And you get away as fast as you can, okay? And you
20 tell your mom right away, okay? And if anybody else
21 tries to do it, you do the same thing, okay? Those
22 are the three rules. Yell no, run away and tell
23 somebody, okay? Do you think that you could teach
24 your sister and the other kids in your family about
25 that?

1 A I don't believe they know what
2 (Inaudible) mama and Tim did to me.

3 Q Okay. But I mean about being safe like
4 you tell them that parts of your body covered by
5 your bathing suit are your private areas. No
6 one's allowed to look at them and no one is
7 allowed to touch them. No one's allowed to make
8 you look there and touch there. And if they try
9 to do any of that, you go, no, and you run away
10 and you tell a grownup. You tell an adult, okay?

11 A But they're older than me, though.

12 Q Okay. Sometimes older people don't
13 know that they're allowed to say, no. You know,
14 because kids are taught that they're not supposed
15 to talk back to grownups. But if somebody's
16 trying to hurt you, you're allowed to yell them.
17 You're allowed to yell loud.

18 A That's what **Minor** does.

19 Q Good -- good -- good. Okay. Well, you
20 did a really good job. You want to take your
21 picture out here and finish drawing out here? You
22 want to go talk to your dad? We're going to see
23 if there is -- do you have somebody that you talk
24 to about -- about your feelings? Do you have a
25 therapist that you go to see?

1 A Ms. Denise.

2 Q Ms. Denise? Okay. And where is
3 Ms. Denise?

4 A She's in Wilmington or Whiteville.

5 Q In Wilmington or Whiteville. Okay.
6 But you already go to see her and talk to her
7 about your feelings?

8 A Denise.

9 Q Denise. Okay. We're going to have
10 your dad continue having you see Ms. Denise. And
11 then I'm going to have your dad -- see if I can
12 get your dad to buy you something that might make
13 your private area feel better -- make your private
14 part feel better.

15 A I already took something.

16 Q Yeah, there's a -- yeah, there's some
17 stuff that you can eat and it won't (Inaudible) Do
18 you like yogurt? Because there's some stuff in
19 yogurt that makes your private part feel better.
20 It makes it feel all better and your stomach, too.
21 If you have like an upset stomach, it will make
22 you --

23 A I have gas.

24 Q Yeah, you know what? There's some
25 (Inaudible).

1 A Vegetables (Inaudible).

2 Q Okay. I'm going to write on here
3 Activia.

4 A That's -- the doctor at the hospital
5 because they (Inaudible) and Jenny and daddy took
6 me to the hospital. And they said that I -- I
7 just had a lot of gas. That's what's making me
8 complain.

9 Q Okay.

10 A So I need to eat more vegetables and
11 fruits.

12 Q Okay. And sometimes that yogurt will
13 help you with not have as much gas, too, so --
14 okay. All right. You want to just sit in here
15 for a few more minutes and then come out? Okay.
16 I'm going to just leave the door open for you.
17 Okay. And I'm going this way and the door is
18 open, okay?

19

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25

Victim

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RECEIPT FOR EXHIBITS

2-10

CASE NO. 1165-26-188, 1089 JUDGE Wilbertson
 PLAINTIFF State PLTF'S ATTY. C. Wiley
 DEFENDANT: John Wayne Young DEF'D ATTY. P. Cannarella
 DATE TRIAL STARTED: 4-11-11 DATE TRIAL ENDED: 4-11-11

Received of John L. Hurley, Court Reporter for the above case, these exhibits:

		This space for Clerk of court's use
1.	<u>State's</u>	
2.	<u>MB Nausea - Photo, report</u>	
3.	<u>Sketch - ~~anatomical~~ anatomical drawing</u>	
4.	<u>in coronal (sagittal) slice</u>	
5.	<u>handwritten (copy) of drawing</u>	
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DVO

poster

This 11 day of April, 2011

Page 1 of 1

HORRY COUNTY CLERK OF COURT

By: [Signature]

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Timothy E. Young.....Appellant.

FINAL BRIEF OF APPELLANT

Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
843-626-2835

ATTORNEYS FOR APPELLANT

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STATEMENT OF THE ISSUE ON APPEAL

Should Appellant's case be remanded to the trial court for further proceedings due to an error of law committed by the trial judge when he categorically denied Appellant access to all notes in a file maintained by a therapist, who testified for the State, on the basis that the notes contained in her file were non-discoverable material?

STATEMENT OF THE CASE

Appellant was arrested on February 25, 2009 and charged with both Criminal Sexual Conduct in the First Degree and Lewd Act on a Minor. The Grand Jury indicted Appellant on both charges. Appellant requested a trial by jury.

Before his trial Appellant sought access to any exculpatory material in a file maintained by a therapist, who was a witness for the State at trial. With consent from the State and Appellant the trial judge reviewed the therapist's file for exculpatory material. (R. pp. 8-10). At a March 17, 2011 pre-trial hearing he denied Appellant access to the majority of the file. (R. p. 10, lines 7-10; R. p. 12, lines 15-16). On March 22, 2011 he issued a written order that sealed the documents to which Appellant was denied access. (R. p. 3).

Appellant's trial began on April 4, 2011. The jury returned a verdict of guilty on both charges on April 7, 2011, and Appellant received a total sentence of twenty-five years. (R. p. 207, lines 10-11; R. p. 208, lines 11-19). At the conclusion of a post-trial hearing conducted on June 16, 2011, the trial judge denied Appellant's motion for a new trial. (R. p. 209, lines 2-7). He issued a written order dated July 19, 2011. Appellant filed his Notice of Appeal with this Court on June 17, 2011.

STATEMENT OF THE FACTS

When she disclosed she was the victim of sexual abuse, the child who testified against Appellant was seven years old. (R. p. 15, lines 22-23; R. p. 88, lines 8-11). Her biological parents were divorced, and both had remarried. (R. p. 15, line 3-p. 16, line 25; R. p. 206, lines 3-6). This child and her nine year old sister lived with their biological father and stepmother in North Carolina. (R. p. 16, lines 9-15). They visited with their

biological mother, who was married to Appellant, in Myrtle Beach every other weekend. (R. p. 18, lines 1-11). The child's mother had been married to Appellant for just over two years at the time the first sexual abuse allegation surfaced. (R. p. 88, lines 8-11; R. p. 206, line 6).

In August 2008, the biological father arranged for his daughters to attend therapy sessions with a North Carolina licensed therapist. (R. p. 50, lines 9-10). It was not until November 2008 that the child disclosed an allegation of sexual abuse to her stepmother, not the therapist. (R. p. 39, lines 10-13, R. p. 170, lines 11-24). This disclosure was against Appellant's wife. (R. p. 28, lines 14-19; R. p. 117, lines 18-25). After his daughter's disclosure against his ex-wife, the biological father took his child to the therapist to document the disclosure. (R. p. 79, lines 2-4).

Visitation in Myrtle Beach ceased after this disclosure. (R. p. 28, lines 1-13). Then, in January 2009, while still attending therapy sessions, the child made a second disclosure of sexual abuse. (R. p. 88, lines 5-11). Again she made the disclosure to her stepmother, and this time the disclosure was against Appellant. Id. The child's biological father again took her to the same therapist to document this disclosure. (R. p. 90, line 16).

The file that Appellant sought to access for exculpatory material was the one maintained by the therapist to whom the child repeated the allegations of sexual abuse she first disclosed to her stepmother.

The State and Appellant entered into a consent order under which the therapist provided her file to the trial judge for an in camera review. (R. pp. 4-5). The purpose of the trial judge's review was to determine if the file contained exculpatory material to which Appellant was entitled. Id. The trial judge reviewed the file and excluded the vast

majority of its contents as notes that are not subject to disclosure. (R. p. 10, lines 7-10; R. p. 12, lines 15-16). The only document released to Appellant as a result of his motion was one letter from the therapist to a family court attorney in North Carolina. (R. p. 11, lines 18-23).

ARGUMENT

Appellant's position is that the trial judge failed to conduct a proper in camera review of the records in the therapist's file. The review that did occur exempted all notes in the file from discovery, simply because the trial judge identified those records as notes. This was a violation of Appellant's right to access exculpatory material under Brady v. Maryland. The trial judge's ruling was an abuse of discretion as he committed an error of law in applying a Rule 5 SCRCrimP analysis to Appellant's motion under Brady.

Standard of Review

The abuse of discretion standard controls the trial judge's pre-trial ruling on Appellant's motion for access to exculpatory material. "The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007) (citing State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id., 642 S.E.2d at 586 (citing State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002)).

I. The Trial Judge Committed An Error of Law When He Ruled Appellant Was Not Entitled To Access Any Notes In The Therapist's File.

"The rules encompassed in Brady, and its progeny, and Rule 5 are separate and impose different duties. Therefore, separate analysis must be used to determine if either

has been violated.” State v. Kennerly, 331 S.C. 442, 542, 503 S.E.2d 214, 219 (Ct. App. 1998). Under Brady, a defendant in a criminal case is entitled to evidence in the State’s possession that is favorable and material to guilt or punishment. Id., 503 S.E.2d at 220 (citing U.S. v. Bagley, 473 U.S. 667, 105 S.Ct. 3375 (1985)). “Once a Brady violation is established, reversal is required.” Id. at 453, 503 S.E.2d at 220 (citing Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995)). On the other hand, “[t]he requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings.” Id., 503 S.E.2d at 220.

On the record Appellant requested the judge “to peruse [the therapist’s file] to see if there’s anything exculpatory in there that I might be entitled to.” (R. p. 9, lines 16-18). Upon review the trial judge “excluded the vast majority of what was turned in to me because I do find that those were simply notes that are not subject to disclosure.” (R. p. 10, lines 8-10).

This ruling would have been a correct statement of the law in South Carolina had Appellant requested access to the therapist’s file under Rule 5 SCRCrimP. See State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996) (“The notes taken during an interview, particularly a mental examination, are merely the raw data from which the expert may later draw the conclusions. . . . [T]here was no violation of Rule 5(a)(1)(D).”).

In Trotter the defense argued a Rule 5 violation because the State failed to disclose an exam as required by Rule 5(a)(1)(D). Id. at 541, 473 S.E.2d at 454. The Supreme Court held “counseling sessions such as the ones in this case do not constitute physical or mental examinations. Even if they did, notes made from those examinations would not be subject to disclosure under Rule 5(a)(1)(D).” Id. at 542, 473 S.E.2d at 455

(emphasis in original). The trial judge never cited to Trotter, but his ruling is indicative of a Rule 5 SCRCrimP analysis.

A. Appellant Requested Access To Exculpatory Material In The Therapist's File Under Brady.

Unlike the defense request in Trotter, both Appellant's pre-trial motion and his oral argument at the pre-trial hearing focused on possible exculpatory material in the therapist's file. Appellant's written motion sought discovery of exculpatory material. (R. pp. 6-7). The consent order stated the trial judge would review the file for exculpatory material. (R. pp. 4-5). At the pre-trial hearing, Appellant's trial counsel requested that the judge "continue to peruse [the file] to see if there's anything exculpatory in there that I might be entitled to." (R. p. 9, lines 16-18). This was not a Rule 5, SCRCrimP request. Rather, it was a request pursuant to Brady v. Maryland.

In Brady the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1197 (1963). The rule exists to ensure a fair trial. Id., 83 S.Ct. at 1197. A criminal defendant asserting a Brady violation in South Carolina "must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching." State v. Moses, 309 S.C. 502, 515, 702 S.E.2d 395, 402 (Ct. App. 2010) (citing Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006)).

B. Under Brady The Trial Judge Should Have Reviewed The Notes In The File For Exculpatory Material.

Appellant asserts that his right to due process required the trial judge to conduct a full review of all the records in the therapist's file for exculpatory material – including the notes the file contained. Appellant's authority is found in the United States Supreme Court case of Pennsylvania v. Ritchie, a post Brady v. Maryland due process case.

Ritchie was accused of committing sex crimes against his daughter. Pennsylvania v. Ritchie, 480 U.S. 39, 44, 107 S.Ct. 989, 994 (1987). Before his trial began, Ritchie filed a motion to access any exculpatory material contained in the files of the state agency that investigated the sexual abuse allegations. Id., 107 S.Ct. at 994. At a hearing on the motion, the trial judge accepted the agency's statement about the lack of such material in the file, did not review the entire file himself, and denied the motion. Id., 107 S.C. at 994.

Portions of Ritchie are only joined by a plurality of Justices, but the following is from the majority opinion of the Court. "It is well settled that the government has the obligation to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment." Id. at 57, 107 S.Ct. at 1001 (citing Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1196). As to the meaning of material, "[e]vidence 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. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." Id., 107 S.Ct. at 1001 (quoting U.S. v. Bagley, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383 (1985)).

The Ritchie Court then noted the impossibility of determining whether any of the records in the state agency's file were material because "neither the prosecution nor defense counsel has seen the information, and the trial judge acknowledged that he had

not reviewed the full file.” Id., 107 S.Ct. at 1001. The Court concluded that on remand “Ritchie is entitled to have the [] file reviewed by the trial court to determine whether it contains information that probably would have changed the outcome of his trial. If it does, he must be given a new trial.” Id., 107 S.Ct. at 1000. But if on remand the trial judge was to find that the records “contain no such information, or if the non-disclosure was harmless beyond a reasonable doubt, the lower court will be free to reinstate the prior conviction.” Id., 107 S.Ct. at 1000. The Court never identified any subset of records within the file, such as counseling session notes, as completely off limits for review for possibly exculpatory evidence.

In Appellant’s case, the transcript from the pre-trial motion hearing supports the view that the trial judge simply refused to turn any notes over to Appellant regardless of whether they contained exculpatory evidence. Two separate times during the pre-trial hearing the trial judge stated, “I do find that those were simply notes that are not subject to disclosure,” (R. p. 10, lines 7-10), and “the rest are just notes that I find are not discoverable.” (R. p. 12, lines 15-16). He also issued a written order stating “the materials marked as ‘Court Exhibit #1’ are not discoverable.” (R. p. 3).

C. The Trial judge’s Failure To Conduct A Proper Review Of The File Was An Error of Law that Violated Appellant’s Right to Due Process and Brady.

To establish a Brady violation under South Carolina law Appellant must show that the evidence to which he was denied access: “(1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused’s guilt or innocence or was impeaching.” Moses, 309 S.C. at 515, 702 S.E.2d at 402 (citing Riddle, 369 S.C. at 44, 631 S.E.2d at 73 (2006)).

In Appellant's case, the therapist's file was turned over to the State and presented to the trial judge under seal for his review. (R. pp. 4-5). The State was aware of the therapist's file and assumed responsibility for delivering the file to the trial judge, so the second element of the Brady analysis is satisfied. The trial judge, not the prosecution, denied Appellant access to any notes contained in the file, but Appellant asserts that the third element of the Brady analysis is still satisfied. The result of the trial judge's pre-trial ruling was the suppression of exculpatory material to which Appellant may have been entitled.

For purposes of his direct appeal Appellant can only presume the contents of the therapist's file were both favorable to him and material to the outcome of his case. Given that the child merely parroted disclosures she first made to her stepmother when she met with the therapist, the notes in the therapist's file could contain a wealth of both material and favorable exculpatory information, which probably would have changed the outcome of Appellant's trial.

Since his appellate Motion to Unseal the Court Exhibit was denied, Appellant respectfully asks this Court to remand his case back to the trial judge with instruction for him to unseal "Court Exhibit #1" and review the notes in the file for exculpatory Brady material. As was the case in Ritchie, Appellant's trial judge is in the best position to determine whether the therapist's file contains information that probably would have changed the outcome of Appellant's trial. If the trial judge reaches this conclusion, then Appellant would be granted a new trial. By the same token the trial judge could also reinstate Appellant's conviction if he determines the notes in the therapist's file contain

no exculpatory Brady material or if the information in the file is not material to Appellant's guilt or innocence.

II. The Issue On Appeal Is Preserved For Appellate Review.

"In order for an issue to preserved for appellate review, it must have been raised to and ruled upon by the trial judge." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). Appellant filed a written motion seeking access to all exculpatory material contained in the therapist's file. (R. pp. 6-7). From this motion emerged a consent order under which the trial judge conducted a review of the file for exculpatory material. (R. pp. 4-5). His review partially took place at the March 17, 2011 pre-trial hearing.

During that hearing and speaking of the therapist's records in question, the trial judge asked, "I don't need to do an in camera review any more, or do you still want me to go through with that?" (R. p. 9, lines 3-5). In response, Appellant requested the trial judge to "continue to peruse [the records] to see if there's anything exculpatory in there that I might be entitled to." (R. p. 9, lines 16-18). Shortly thereafter, the trial judge stated he had reviewed the file and "excluded the vast majority of what was turned in to me because I do find that those were simply notes that are not subject to disclosure." (R. p. 10, lines 8-10).

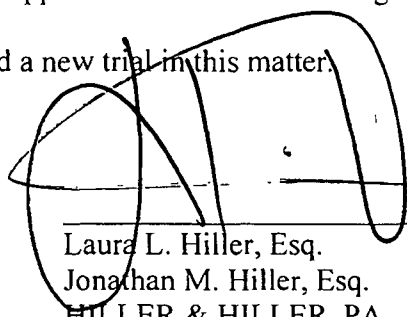
Appellant raised the issue on appeal when he requested that the trial judge review the therapist's records for exculpatory material. The trial judge then ruled on the issue when he decided what Appellant was entitled to access from the file. Further, on March 22, 2011 he issued a written order that stated "Court Exhibit #1" was not discoverable and sealed the therapist's file only to be opened at the "direction of an appellate court

with jurisdiction in this case.” (R. p. 3). As it was raised by Appellant and ruled upon by the trial judge, the issue is preserved for appellate review.

In a recent decision the Supreme Court noted “[e]rror preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.” State v. Brannon 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010) (citing State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). “Instead, a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue.” Id., 697 S.E.2d at 595-96 (citing Hubbard v. Rowe, 192 S.C. 12, 19, 5 S.E.2d 187, 189 (1939). Under this standard for issue preservation, the issue of Appellant’s entitlement to exculpatory material in the therapist’s file is properly before this Court.

CONCLUSION

Appellant respectfully requests this Court to remanded his case back to the trial judge with instructions for him to unseal “Court Exhibit #1” and review the entire file, especially the notes contained therein, for exculpatory material. If the trial judge determines the notes in the file are favorable to Appellant and material to his guilt or innocence, Appellant requests that he be granted a new trial in this matter.



Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
P: 843-626-2835
F: 843-626-9690

November 5, 2012

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Timothy E. Young Appellant.

PROOF OF SERVICE

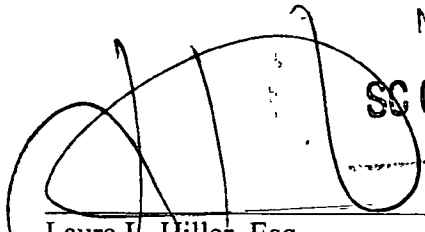
The undersigned attorney hereby certifies that on this, the 6th day of November, 2012, he served a true copy of the Final Brief of Appellant and a true copy of the Reply Brief of Appellant on Julie K. Keeney, Assistant Deputy Attorney General, by U.S Mail with proper postage affixed and addressed as follows:

Office of the Attorney General
PO Box 11549
Columbia, SC 29211

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NOV 07 2012

SC Court of Appeals



Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
P: 843-626-2835
F: 843-626-9690

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THE STATE OF SOUTH CAROLINA
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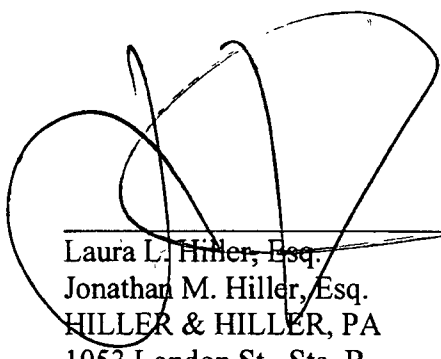
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Timothy E. Young Appellant.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.



Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
P: 843-626-2835
F: 843-626-9690

November 5, 2012

ATTORNEYS FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Tracking No: 2011119348

THE STATE,

Respondent,

vs.

TIMOTHY E. YOUNG,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General
Bar No. 100145

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

I.

Any issue regarding the sufficiency of the trial judge's review of the therapist's file for exculpatory material is not preserved for review. Furthermore, Appellant conceded that the trial judge reviewed the therapist's file for exculpatory material. Moreover, Appellant failed to show a Brady violation.

STATEMENT OF THE CASE

On March 31, 2011 a Horry County Grand Jury indicted Appellant for first-degree criminal sexual conduct with a minor and a lewd act on a minor. Paul V. Cannerella, Esquire represented Appellant in the circuit court proceedings, and Assistant Solicitor Candice Lively represented the State.

In May 2010, Appellant made a pre-trial motion, where Appellant sought access to all counseling and results or reports concerning the treatment of the victim, which were in possession of the victim's therapist, Denise Scarce. (R. p. 6.)

With consent from the State and Appellant, the Honorable Benjamin H. Culbertson conducted an *in camera* review of the therapist's file for exculpatory material. On March 17, 2011, Judge Culbertson held a pre-trial hearing where Appellant asked Judge Culbertson to review the therapist's file for exculpatory material. Judge Culbertson reviewed the file for exculpatory material and gave Appellant everything from the therapist's file except a Medicaid identification card and the therapist's notes. (R. p. 13.) On March 22, 2011, the trial judge issued a written order sealing the records that Appellant was denied access. Order to Seal Exhibit.)

On April 4, 2011, Appellant proceeded to trial. On April 7, 2011, the jury found Appellant guilty of both charges. (R. p. 207.) Thereafter, Judge Culbertson sentenced Appellant to a total of twenty-five years of imprisonment. (R. p. 208.)

On June 16, 2011, during a post-trial hearing, the trial judge denied Appellant's motion for a new trial. (R. p. 209.) On June 19, 2011, the trial judge issued a written order denying Appellant's motion for a new trial. On June 17, 2011, Appellant filed his Notice of Appeal. This appeal follows.

STATEMENT OF FACTS

The Sexual Assault

Appellant performed oral sex and digital penetration on the seven-year-old victim ("Victim"). (R. p. 119.)

Victim lived with her biological father ("Father") and stepmother ("Stepmother") in North Carolina. (R. p. 16.) However, Victim would visit her biological mother ("Mother"), who was married to Appellant, in Myrtle Beach every other weekend. (R. p. 18.)

In the summer of 2008, Father became concerned with Victim's behavior. Victim would constantly complain of stomachaches while she was at school. (R. p. 23.) In addition, Victim would lay in a fetal position while screaming and hollering. Victim would also use the bathroom in her pants. These problems would usually occur right after Victim returned from visiting Mother and Appellant. (R. p. 154.) On August 18, 2008, Father sent Victim to Denise Searce for therapy. (R. p. 25.)

On October 31, 2008, Victim visited Mother and Appellant in Myrtle Beach. On November 4, 2008, Victim disclosed to Stepmother that Mother sexually assaulted Victim. (R. p. 39; R. p. 78.) On November 6, 2008, Father and Stepmother took Victim to Searce for therapy. (R. p. 79.) Victim did not go back to Mother's house in Myrtle Beach after the disclosure.

On January 14, 2009, Victim made a second disclosure of sexual abuse to Stepmother. (R. p. 88.) However, this time, the disclosure was against Appellant. On November 6, 2008, Father and Stepmother took Victim back to Searce for additional therapy. (R. p. 156.) Searce wrote a report to the Department of Social Services in Columbus County regarding Victim's disclosure of the sexual assault committed by Appellant. (R. p. 165.) At trial, Searce testified

that there was no indication that Victim had been exposed to sexual conduct through pornography or on the internet. (R. p. 168.)

The Pre-Trial Hearing

In May 2010, Appellant made a pre-trial motion for access to all counseling results and reports in possession of Searce concerning the treatment of Victim. Appellant and the prosecutor entered into a consent order in January 2011, noting the prosecution's objection to Appellant's request because the records were not in the custody, possession or control of the State and did not fall within Rule 5, SCRCrimP, but agreeing that a copy of the records would be delivered to the trial court under seal and that the trial court would conduct a review of the records for possible exculpatory material and notify the parties if potentially exculpatory material was found. Both parties also agreed that a later hearing would be held regarding the relevancy/admissibility of any potentially exculpatory material identified. In addition, the State submitted a Motion *in limine* dated March 8, 2011, to exclude the therapist's records at trial and to deny Appellant access to the records pursuant to State v. Trotter, 322 S.C. 537, 473 S.E.2d 452 (1996).

During a pretrial hearing held on March 17, 2011, Appellant acknowledged that he received some discovery from the State that pertained to the therapist's records. Judge Culbertson, attempting to clarify Appellant's position as to the review of the records in light of Appellant's disclosure that he received material from the therapist's file, stated, "All right, so, am I still going through it and then I make a decision or are you withdrawing your request to get anything out of it?" (R. p. 9.) Appellant clarified that he still wanted the trial court to proceed with its review for exculpatory material. Thereafter, the trial judge stated that he did not know whether the parties were ready to discuss the matter at that time, but he had reviewed the material, he identified a few documents he thought might be subject to disclosure, and he would

hear the positions of the parties at that time as to the documents identified. (R. pp. 9-10.) The trial judge indicated that he excluded the vast majority of what the therapist provided him because those documents were notes that he concluded were not subject to disclosure. (R. p. 10.) The transcript from the hearing indicates that the material identified by the trial court as items possibly subject to disclosure had either already been provided to Appellant or was provided to Appellant at that time. (R. pp. 10-12.) The trial judge stated that the only material not provided were the therapist's notes and a Medicaid identification card. (R. p. 12.) The State suggested the trial court place the therapist's notes and Medicaid identification card under seal because the court reviewed the material *in camera*. (R. pp. 12-13.)

Appellant never objected at the pre-trial hearing or at trial on the ground that the trial judge failed to conduct a thorough and adequate examination of the records or on any other ground respecting the manner of review.

After the pre-trial hearing, the trial judge issued a written order finding the material marked as Court's Exhibit #1 as not discoverable. The order stated that the material should be sealed and not opened except by order of the court or at the direction of the appellate court. (R. p. 3.)

ARGUMENT

I.

Any issue regarding the sufficiency of the trial judge's review of the therapist's file for exculpatory material is not preserved for review. Furthermore, Appellant conceded that the trial judge reviewed the therapist's file for exculpatory material. Moreover, Appellant failed to show a Brady violation.

On appeal, Appellant asks this Court to remand this case back to the trial judge with instructions for him to unseal Court's Exhibit #1 and re-review the entire file for exculpatory material. Appellant contends the trial judge failed to conduct an adequate examination of the records and improperly denied him access to the notes because the trial judge only considered Rule 5, SCRCrimP. However, as Appellant requested, the trial judge reviewed the therapist's file for exculpatory material, and Appellant never objected to the sufficiency of the trial judge's review. Furthermore, Appellant concedes in his brief that the trial judge examined the therapist's file for exculpatory material. Thus, Appellant's contention that the trial judge only conducted a Rule 5 review is without merit. Moreover, Appellant failed to prove that the State committed a Brady violation. Therefore, this Court should affirm the trial judge's ruling.

A. Appellant never objected to the sufficiency of the trial judge's review of the therapist's file.

The consent order, pre-trial hearing transcript, and the trial transcript reflect that Appellant consented to and acquiesced in all procedures and rulings regarding the review of the therapist's file. Appellant asked the trial judge to conduct an *in camera* review of the therapist's file in order to determine if the file contained any exculpatory material. The trial judge did exactly what Appellant requested. (See R. pp. 9-13; App. B. p. 1; App. B. p. 8.) After the trial judge completed the *in camera* review, the trial judge asked Appellant's trial counsel if there

were any other issues regarding Appellant's motion for discovery. (R. p. 13.) Appellant's trial counsel replied: "About Counselor Searce, no, Your Honor."

Appellant never objected to the trial court's oral ruling or written order regarding the review of the therapist's file. The first time Appellant took exception to the trial judge's review of the file was when Appellant made a motion to this Court to unseal Court's Exhibit #1, which was served approximately seven months after the trial.

Accordingly, the issue Appellant now complains of on appeal is not preserved for appellate review. See State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (stating an issue conceded at trial cannot be raised on appeal); State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999) (a contemporaneous objection is required to preserve issues for appeal); see also State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995) (stating issues not raised to and ruled upon by the trial court will not be considered on appeal); Creech v. S.C. Wildlife and Marine Resources Dep't., 328 S.C. 24, 49 S.E.2d 571 (1977) (a defendant cannot argue on appeal an issue in support of a motion when the issue was not presented to the trial court); see also State v. Nichols, 325 S.C. 111, 481 S.E.2d 118 (1997) (objection must be entered on a specific ground at trial to preserve an appeal).

Moreover, it appears Appellant is attempting to engage in a fishing expedition that is contrary to the position he took at trial. Furthermore, Appellant is attempting to revoke his earlier consent by asking this Court to do what he could have requested of the trial court but did not. See State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996) (stating the government has no affirmative duty to undertake a fishing expedition to find impeaching evidence).

Because the issue Appellant now complains of on appeal has not been preserved, there is no reason for this Court to take the extraordinary measure of remanding the case to the trial court with instructions to unseal Court's Exhibit #1 in order to determine whether or not the therapist's file contains exculpatory material.

B. Appellant conceded that the trial judge reviewed the file for exculpatory material.

Appellant argues this Court should remand this case in order for the trial court to review the therapist's file for exculpatory material as required under Pennsylvania v. Ritchie, 480 U.S. 39 (1987). However, Appellant conceded in his brief that the trial judge has already examined the therapist's file for exculpatory material. (Appellant's Br. 1; Appellant's Br. 8.)

In support of Appellant's request to remand this case back to the trial court in order for the trial judge to review the therapist's file for exculpatory material, Appellant cites to Ritchie, 480 U.S. 39. In Ritchie, the Supreme Court held "Ritchie [was] entitled to have the . . . file reviewed by the trial court to determine whether it contain[ed] information that probably would have changed the outcome of his trial." As Appellant correctly noted in his brief, the trial judge in Ritchie **never** reviewed the file in question. Instead, the trial judge in Ritchie merely accepted the assertion that there was no medical report in the file.

Furthermore, in State v. Bryant, our Supreme Court noted that the trial court should not have ruled that the contested material was not exculpatory and therefore not subject to disclosure. 307 S.C. 458, 461-462, 415 S.E.2d 806, 808-809 (1992). The trial court did not review the contested material but instead merely relied on a State's witness' representation that material was not exculpatory.

In stark contrast to the facts in Ritchie and Bryant, the facts in this case clearly show that the trial judge reviewed the therapist's file for exculpatory material. Appellant's request to the trial judge to review the therapist's file for exculpatory material was clear. The trial judge understood what Appellant was looking for and nothing in the record suggests that the trial judge did not review the file for exculpatory material. Moreover, Appellant admits in his brief that the

trial judge reviewed the therapist's file for exculpatory material. See Thomas v. Dootson, 377 S.C. 293, 296, 659 S.E.2d 253, 254 (Ct. App. 2008) (holding a party is bound by a concession in his or her brief).

Thus, there is no need for this Court to remand this case back to the trial court in order for the trial court to review the therapist's file for exculpatory material. The trial court has **already** conducted such an examination.

C. Appellant failed to show a Brady¹ violation.

In Brady, the Supreme Court held the following: "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady, 373 U.S. at 87. Furthermore, "an individual asserting a Brady violation must demonstrate that the evidence: (1) was favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching." State v. Moses, 390 S.C. 502, 515, 702 S.E.2d 395, 402 (Ct. App. 2010).

First, Appellant failed to prove that the therapist's file contained evidence that was favorable to Appellant. In Appellant's brief, Appellant admits he does not know what is in the file and therefore "presume[s]" the therapist's file contains favorable evidence. (App. Br. 7.)

Second, the State did not have possession of the therapist's file. (See R. pp. 4-5.) Furthermore, the State delivered the records to the trial judge under seal for his review. Thus, there is no legitimate basis for believing the State knew that the therapist's file contained exculpatory material.

¹ Brady v. Maryland, 373 U.S. 83, 87 (1963).

Third, Appellant admits that the State did not suppress any material from the therapist's file. In fact, Appellant admits that the trial judge was the one that suppressed the material.

Fourth, Appellant, failed to prove that the therapist's file contained evidence that was material to Appellant's guilt or innocence or was impeaching. United States v. Bagley, 473 U.S. 667, 682 (1985) ("[E]vidence 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."); see also Riddle v. Ozmint, 369 S.C. 39, 45, 631 S.E.2d, 70, 73 (2006) ("The question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial 'resulting in a verdict worthy of confidence.' " (quoting Kyles v. Whitley, 514 U.S. 419, 434 (1995))). Once again, Appellant presumes the file contained a "wealth" of favorable and material evidence. However, such a presumption is completely speculative and without basis.

Thus, Appellant failed to prove all four elements of a Brady violation.

In summary, the trial judge has already conducted a review of the therapist's file for exculpatory material as required by Ritchie. Appellant never objected to the sufficiency of the trial judge's review. Furthermore, Appellant failed to prove a violation under Brady. Thus, there is no need for this Court to remand this case to the trial court in order for the trial court to conduct a Ritchie review for the second time.

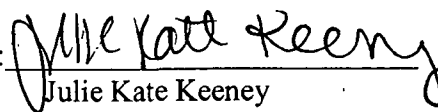
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: 
Julie Kate Keeney
Bar # 100145

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 8, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Tracking No: 2011119348

THE STATE,

Respondent,

vs.

TIMOTHY E. YOUNG,

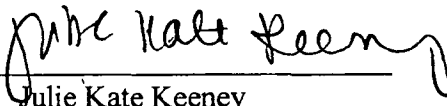
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: 

Julie Kate Keeney
Bar # 100145

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 8, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Tracking No: 2011119348

THE STATE,

Respondent,

vs.

TIMOTHY E. YOUNG,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Laura L. Hiller, Esquire
Jonathon M. Hiller, Esquire
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577

I further certify that all parties required by Rule to be served have been served.
This 8th day of November, 2012.



ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina Respondent,

v.

Timothy E. Young Appellant.

REPLY BRIEF OF APPELLANT

RECEIVED

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SC Court of Appeals

Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
843-626-2835

ATTORNEYS FOR APPELLANT

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The State first argues that the trial judge's review of the therapist's file was not preserved for appellate review by trial counsel. (Resp't's Br. 6-7). Appellant addressed issue preservation in his Final Brief. (Appellant's Br. 8-9). The State argues second that remand is not necessary as Appellant conceded on appeal that the trial judge has already examined the therapist's file for exculpatory material. (Resp't's Br. 8-9). The State's third argument is that Appellant cannot establish a violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). (Resp't's Br. 9-10). Appellant's reply to the State's second and third arguments follows.

I. Remand Of This Matter Is Necessary Due To The Error Of Law Made By The Trial Judge When He Conducted His Review Of The Therapist's File For Exculpatory Material.

Appellant disagrees with the State's allegation that he conceded the very issue he raises and argues on appeal. The record reveals that the trial judge's review of the therapist's file was a review pursuant to Brady for exculpatory material. (R. p. 9, lines 16-18). Appellant's position on appeal is that the trial judge committed an error of law when, during his review of the therapist's file, he denied Appellant access to all of the notes in the file for the simple reason that he identified the notes in the file as "not subject to disclosure." (R. p. 10, lines 7-10).

Even the State admits that "the trial judge indicated that he excluded the vast majority of what the therapist provided him because those documents were notes that he concluded were not subject to disclosure." (Resp't's Br. 5). Denying Appellant access to the vast majority of the file using classification-based logic without an examination of the substance of the notes was an error of law committed by the trial judge. This error was an abuse of discretion that violated Appellant's right to due process of law. Under Brady

and its progeny, Appellant was entitled to any exculpatory documents in the file without regard to the classification assigned by the trial judge. See Pennsylvania v. Ritchie, 480 U.S. 39, 57, 107 S.Ct. 989, 1001 (1987) (“Ritchie is entitled to have the [forensic] file reviewed by the trial court to determine whether it contains information that probably would have changed the outcome of his trial.”). In Ritchie, the Supreme Court did not exclude therapist’s notes, or any other subset of documents, from this review. Appellant’s trial judge categorically excluded the therapist’s notes from his review in violation of Appellant’s right to due process, and this error of law necessitates remand.

The State argues “nothing in the record suggests that the trial judge did not review the file for exculpatory material.” (Resp’t’s Br. 8). Appellant strongly disagrees with this statement. Twice during the pre-trial hearing, the trial judge stated the notes in the file were not subject to disclosure. (R. p. 10, lines 7-10; R. p. 12, lines 15-16). Thus, the record in this case provides strong support for Appellant’s position that the trial judge never reviewed the substance of the notes in the file for exculpatory content. The trial judge determined all notes in the file were simply not discoverable without giving any consideration to whether the notes, in terms of their substance and content, had exculpatory value. The trial judge reduced his oral ruling to a written, pre-trial order that sealed “Court Exhibit #1” and labeled it as “not discoverable.” (R. p. 3).

If Appellant had conceded that the trial judge’s review of the therapist’s file was proper under Brady and Ritchie, then the State’s second argument may have had some merit. However, as Appellant never conceded this point, the State’s second argument fails, and this case should be remanded to allow the trial judge to review the entire file for exculpatory material to which Appellant was and is entitled.

II. Remand Is Also Necessary Because Appellant Cannot Show A Brady Violation When He Is Denied Access To The Very Material In The Therapist's File He Needs To Show A Brady Violation.

The State argues that Appellant cannot establish a Brady violation as he must presume that the sealed therapist's file is favorable to him and material to his guilt or innocence and characterizes Appellant's presumption as "completely speculative and without basis." (Resp't's Br. 10). First, Appellant has a good faith basis for his forced presumption. The child delay-disclosed against Appellant to her stepmother, not the therapist, several months after she disclosed against Appellant's wife. (R. p. 26, line 19-p. 27, line 6; R. p. 88, lines 5-11). When taken to the therapist, the child understandably repeated what her stepmother claims she disclosed. Under these facts, the notes taken on the date of disclosure when compared with notes taken during other therapy sessions would almost certainly yield favorable, exculpatory information that is material to Appellant's guilt or innocence.

Second, the most serious concern inherent in the State's argument is the fact that Appellant cannot avoid presuming materiality and favorability under the circumstances of his case. This raises a second, related due process concern, in that Appellant is being asked to successfully argue a Brady violation blindly. Appellant has maintained throughout this appeal that he is without the ability to know the substance of the notes in the therapist's file, so he cannot conclusively state whether the content of the notes in the file are favorable to him. Similarly, he cannot demonstrate to this Court that the substance of the notes in the file is material to his guilt or innocence or impeaching.

Appellant is not alone in this dilemma. The therapist's file is sealed at this time, and neither Appellant nor the State, nor even this Court, can know whether the contents

of that file are favorable to Appellant and material to his guilt or innocence. Before he filed his briefs with this Court, Appellant filed a Motion to Unseal Court Exhibit and submitted a memorandum in support of his motion. Appellant asked this Court to unseal the therapist records during the pendency of this appeal. Alternatively, Appellant sought leave to presume the records were favorable to Appellant and material to his guilt or innocence as required to establish a Brady violation. See State v. Moses, 390 S.C. 502, 515, 702 S.E.2d 395, 402 (Ct. App. 2010) (holding a Brady violation requires a demonstration that the evidence was “(1) favorable to the accused; (2) was in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused’s guilt or innocence or was impeaching.”). This Court did not grant Appellant’s motion and declined to address the alternative relief Appellant sought in his motion.

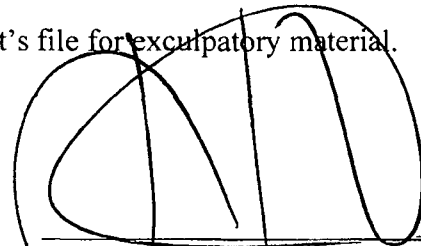
At this juncture Appellant respectfully submits that the best way to determine whether his due process rights were violated is to remand this case back to the trial judge with instruction to unseal the court exhibit and examine the totality of the therapist’s file for exculpatory material to which Appellant was entitled under Brady.

The State argues that the trial judge suppressed the notes in the therapist’s file, not the prosecution. (Resp’t’s Br. 10). This argument completely ignores and overlooks the fact that the prosecution asked the trial judge to suppress the material. As the State’s brief notes, “the State submitted a motion in limine dated March 8, 2011, to exclude the therapist’s records at trial and to deny Appellant access to the records pursuant to State v. Trotter.” (Resp’t’s Br. 4). It is disingenuous to argue that no Brady violation occurred

because the State was not the suppressing agency when the prosecution both consented to the process by which the trial judge suppressed the records and argued for suppression.

CONCLUSION

The record demonstrates that the trial judge's review of the therapist's file did not include a consideration of the content or substance of the notes contained therein. During his review, the trial judge classified the notes as such and then denied Appellant access to all notes based on the classification he assigned, with no analysis of whether the content and substance of the notes had exculpatory value to Appellant. The trial judge's review of the file thus violated Appellant's rights under Brady. The issue of Appellant's access to exculpatory material in the file was raised by Appellant pre-trial and ruled on by the trial judge with finality before the start of trial. Appellant respectfully requests this Court to remand the case back to the trial judge with instructions to unseal and review the content and substance of the notes in the therapist's file for exculpatory material.



Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
P: 843-626-2835
F: 843-626-9690

November 5, 2012

ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

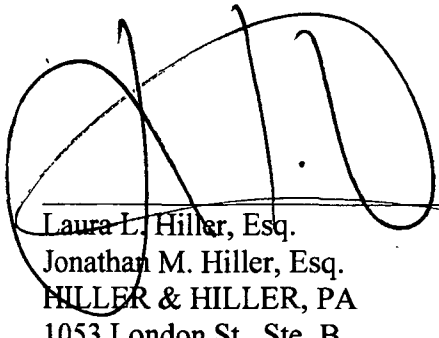
The State of South Carolina.....Respondent,

v.

Timothy E. Young Appellant.

CERTIFICATE OF COUNSEL

The undersigned attorney hereby certifies that the Reply Brief of Appellant complies with Rule 211(b), SCACR.



 Laura L. Hiller, Esq.
 Jonathan M. Hiller, Esq.
 HILLER & HILLER, PA
 1053 London St., Ste. B
 Myrtle Beach, SC 29577
 P: 843-626-2835
 F: 843-626-9690

November 5, 2012

ATTORNEYS FOR APPELLANT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy Young, Appellant.

Appellate Case No. 2011-194348

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2013-UP-236
Submitted April 1, 2013 – Filed June 5, 2013

AFFIRMED

Laura L. Hiller, of Hiller & Hiller, PA, and Jonathan
Micah Hiller, of Hiller & Hiller, PA, both of Myrtle
Beach, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Julie Kate Keeney, both of Columbia,
for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In

order for an issue to be preserved for appellate review, it must have been raised to *and ruled upon by the trial [court].*" (emphasis added)); *In re Care & Treatment of Corley*, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal.").

AFFIRMED.¹

SHORT, THOMAS, and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina..... Respondent,

v.

Timothy E. Young Appellant.

MOTION TO RECONSIDER

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JUN 20 2013

SC Court of Appeals

Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London St., Ste. B
Myrtle Beach, SC 29577
843-626-2835

ATTORNEYS FOR APPELLANT

Appellant respectfully requests this Court to reconsider the decision entered in this matter on June 5, 2013. In an unpublished opinion, this Court concluded that the issue Appellant raised on direct appeal was not preserved for appellate review. The Court's decision cites to both State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) and In re Care & Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) for the proposition that, to be preserved for appellate review, an issue – even of constitutional magnitude – must be raised to and ruled upon by the trial judge.

This Court has previously held that “[a] party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground.” State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) (emphasis supplied). At a pre-trial hearing, Appellant's trial counsel raised the issue of access to any exculpatory material in a file maintained by a therapist. On appeal Appellant maintained that this request for exculpatory material in that file was brought pursuant to Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 1197 (1963). Appellant further argued that the trial judge erred when he denied Appellant access to the notes in the file based on his conclusion that none of the notes contained in the therapist's file were discoverable, regardless of whether they were of exculpatory value to Appellant.

Though not by name, Appellant raised a Brady issue on the record. See ROA p. 9, lines 16-18. Both on the record and in a written order the trial judge ruled that the notes contained in the file were not subject to discovery. As such, Appellant respectfully submits that the issue he raised on direct appeal is preserved of appellate review and asks this Court to reconsider the merit of his appeal.

[Signature Page Follows]

June 19 2013

A handwritten signature in black ink, appearing to read 'Jonathan M. Hiller', written over a horizontal line.

Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London Street
Myrtle Beach, SC 29577
843-626-2835
ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Benjamin H. Culbertson, Circuit Court Judge

The State of South Carolina..... Respondent,

v.

Timothy E. Young..... Appellant.

PROOF OF SERVICE

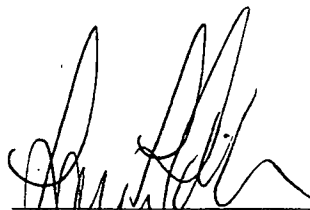
The undersigned attorney hereby certifies that on this, the 18th day of June, 2013, she served a true copy the Appellant's Motion to Reconsider on Julie K. Keeney, Assistant Attorney General, by mailing the same via United States Postal Service Express Mail to the following address with sufficient postage attached:

Office of the Attorney General
PO Box 11549
Columbia, SC 29211

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JUN 20 2013

SC Court of Appeals



Laura L. Hiller, Esq.
Jonathan M. Hiller, Esq.
HILLER & HILLER, PA
1053 London Street
Myrtle Beach, SC 29577
843-626-2835

June 18, 2013

ATTORNEYS FOR APPELLANT

The South Carolina Court of Appeals

The State, Respondent

v.

Timothy Young, Appellant.

Appellate Case No. 2011-194348

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Short, Jr. J.
Paul C. Thomas J.
Daniel G. Pieper J.

Columbia, South Carolina

cc: Julie Kate Keeney

Laura L. Hiller

Jonathan Micah Hiller

FILED

22 August 2013

The Supreme Court of South Carolina

The State, Respondent

v.

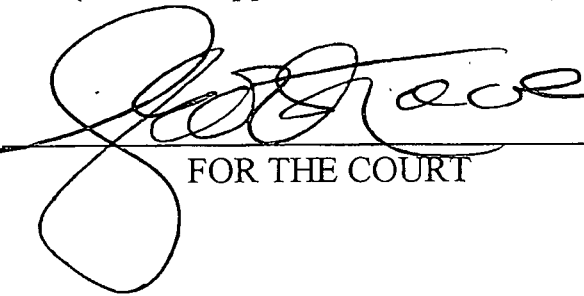
Timothy Young, Petitioner.

Appellate Case No. 2013-002012

Lower Court Case No. 2009GS2601684

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' opinion in, *State v. Young*, Op. No. 2013-UP-236 (S.C. Ct. App. filed June 5, 2013). We deny the petition.


C.J.
FOR THE COURT

Columbia, South Carolina

January 8, 2014

cc:

The Honorable Jenny Kitchings

Julie Kate Keeney, Esquire

Laura L. Hiller, Esquire

Jonathan Micah Hiller, Esquire

The Honorable Melanie Huggins-Ward

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JAN 07 2014
SC Court of Appeals



The South Carolina Court of Appeals

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V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

January 31, 2014

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Young, Timothy
Lower Court Case No. 2009GS2601684
Appellate Case No. 2011-194348

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Timothy E. Young, 345620
Julie Kate Keeney, Esquire
Laura L. Hiller, Esquire
Jonathan Micah Hiller, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TIMOTHY YOUNG, #345620)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 14 CP26 1509

APPLICATION FOR

POST-CONVICTION RELIEF

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
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-26-01088-Criminal Sexual Conduct w/a Minor 1st Degree
 - (b) 2011-GS-26-01089-Lewd Act on a Minor
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 7, 2011

- (b) N/A
- (c) N/A
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty N/A
 - (b) after a plea of not guilty x
 - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. S.C. Court of Appeals
 - ii. S.C. Supreme Court
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed in an unpublished opinion
 - ii. Cert. denied
 - iii. N/A
 - (c) the date of each such result:
 - i. June 5, 2013
 - ii. January 8, 2014
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2013-UP-236
 - ii. N/A
 - iii. N/A
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) N/A
 - (c) N/A
- 10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) Ineffective assistance of counsel for failure to make contemporaneous objections to errors at trial
- (b) Ineffective assistance of counsel for failing to conduct a meaningful and thorough cross examination of the alleged victim
- (c) Ineffective assistance of counsel for failing to call a key witness who could have told the jury that the alleged victim said the Defendant never sexually abused her

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

- (a) Ct. of Appeals declined to review issues raised due to lack of contemporaneous objections
- (b) Counsel failed to engage in a line of questioning with the alleged victim about an assertion she made to a social worker that the Defendant never sexually abused her
- (c) Counsel failed to call social worker who alleged victim informed that the Defendant never sexually abused her, even though she was under subpoena

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. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A

- ii. N/A
 - iii. N/A
 - iv. N/A
 - (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ground only able to be raised in collateral appeal
 - (b) Ground only able to be raised in collateral appeal
 - (c) Ground only able to be raised in collateral appeal
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Paul V. Cannarella, P.A. P.O. Box 38 Hartsville, SC 29551
 - ii. Jonathan & Laura Hiller Hiller & Hiller, P.A. 1053 London St., Suite A, Myrtle Beach, SC29577
 - iii. David B. Tarr, LLC. 1313 Elmwood Avenue, Columbia, SC 29201
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial and sentencing
 - ii. Appeal to Court of Appeals
 - iii. Present PCR applicaiton
19. State clearly the relief you seek in filing this application:
New trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION
20 14 CP267509

I, David B. Tarr, 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.

DB Tarr

SWORN to and subscribed before me this 21st
day of NOVEMBER, 2014.

Sam R. Nottingham (L.S.)
Notary Public

My Commission Expires: 10-1-2019

HORRY COUNTY
14 NOV -6 PM 3:07
CLERK OF COURT
HELANE HARRIS-WARD

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

I, _____, 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.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2_____.

Notary Public

My Commission Expires: _____

CLERK OF COURT**MELANIE HUGGINS-WARD**

CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5080 • Fax: (843) 915-6081

NOVEMBER 17, 2014

ATTORNEY JOSHUA L. THOMAS
OFFICE OF ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211

RE: TIMOTHY YOUNG # 345620
CASE #: 2014-CP-26-07509

PLEASE BE ADVISED THAT THE ABOVE REFERENCED INDIVIDUAL HAS
MADE APPLICATION FOR POST-CONVICTION RELIEF IN OUR COUNTY.

ENCLOSED YOU WILL FIND A COPY OF THE POST-CONVICTION RELIEF
APPLICATION, ALONG WITH TRUE COPIES OF THE WARRANT, VERDICT
FORM (IF TRIAL BY JURY), SENTENCE SHEET, AND THE INDICTMENT
ON THE ABOVE REFERENCED INDIVIDUAL.

IF WE MAY BE OF FURTHER ASSISTANCE, PLEASE ADVISE.

SINCERELY,

Melanie Huggins-Ward

MELANIE HUGGINS-WARD
CLERK OF COURT

MHW/fhn
ENCLOSURES

2014 NOV 17 PM 2:11
MELANIE HUGGINS-WARD
CLERK OF COURT

1-1-11
11-17-14

CLERK OF COURT**MELANIE HUGGINS-WARD**

CLERK OF COURT
1301 2ND AVENUE
CONWAY, SC 29526
(843) 915-5080 • Fax: (843) 915-6081

2014 NOV 17 PM 2:11
MELANIE HUGGINS-WARD
CLERK OF COURT

NOVEMBER 17, 2014

**TIMOTHY YOUNG # 345620
LEE CORRECTIONAL INSTITUTION
990 WISACKY HWY
BISHOPVILLE, SC 29010**

**RE: POST-CONVICTION RELIEF
CIVIL ACTION #2014-CP-26-07509**

DEAR MR. YOUNG,

**THE POST-CONVICTION RELIEF APPLICATION HAS BEEN FILED AND
ASSIGNED THE ABOVE CIVIL ACTION NUMBER FOR THE DOCKET.
YOUR COPY IS ENCLOSED WITH THE ABOVE INFORMATION SHOWN.
COPIES HAVE BEEN FORWARDED TO THE OFFICE OF THE ATTORNEY
GENERAL. THAT OFFICE WILL BE PROCESSING YOUR CASE FOR
COURT PROCEEDINGS.**

SINCERELY,

Melanie Huggins-Ward

**MELANIE HUGGINS-WARD
CLERK OF COURT**

**MHW/fhn
ENCLOSURES**

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TIMOTHY YOUNG, #345620)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

AMENDED
APPLICATION FOR

POST-CONVICTION RELIEF

2014-CP-26759

HORRY COUNTY
2014 MAY 22 AM 8:32
CLERK OF COURTINSTRUCTIONS - 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
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-26-01088-Criminal Sexual Conduct w/a Minor 1st Degree
 - (b) 2011-GS-26-01089-Lewd Act on a Minor
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 7, 2011. Criminal Sexual Conduct with a Minor, 1st Degree: 25 years.

copy

- (b) April 7, 2001. Lewd Act on a Minor: 10 years. Concurrent
 - (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
 - (b) after a plea of not guilty x
 - (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. S.C. Court of Appeals
 - ii. S.C. Supreme Court
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed in an unpublished opinion
 - ii. Cert. denied
 - iii. N/A
 - (c) the date of each such result:
 - i. June 5, 2013
 - ii. January 8, 2014
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2013-UP-236
 - ii. N/A
 - iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
 - (b) N/A
 - (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective assistance of counsel for failure to make contemporaneous objection to Trial Court ruling Denise Searce's notes were "not discoverable" because they were "notes"

(b) Ineffective assistance of counsel for failing to conduct a meaningful and thorough cross examination of the alleged victim

(c) Ineffective assistance of counsel for failing to call a key witness who could have told the jury that the alleged victim said the Defendant never sexually abused her

(d) Ineffective assistance of counsel for failing to object to Denise Searce being qualified as an expert in child abuse assessment when there was no testimony offered as to her "reliability" which resulted in improperly admitted testimony that bolstered the victim's testimony

(e) Ineffective assistance of counsel for failing to object to Diane Nordeen being qualified as an expert in child development as it relates to forensic interviewing when there was no testimony offered as to her "reliability" which resulted in improperly admitted testimony that bolstered the victim's testimony

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

(a) Ct. of Appeals declined to review the issue raised due to lack of a contemporaneous objection

(b) Counsel failed to engage in a line of questioning with the alleged victim about an assertion she made to a social worker that the Defendant never sexually abused her

(c) Counsel failed to call social worker who alleged victim informed that the Defendant never sexually abused her, even though she was under subpoena

(d) Counsel did not object to the qualification of Denise Searce as an expert when there was no testimony, or other evidence, offered that her work had ever been published or peer reviewed in any way in violation of State v. Chavis (2015) and State v. White(2009)

(e) Counsel did not object to the qualification of Diane Nordeen as an expert when there was no testimony, or other evidence, offered that her work had ever been published or peer reviewed in any way in violation of State v. Chavis (2015) and State v. White (2009)

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. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A

- iii. N/A
- iv. N/A
- 14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
- 15. If you answered "yes" to (14) identify:
 - (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) Ground only able to be raised in collateral appeal
 - (b) Ground only able to be raised in collateral appeal
 - (c) Ground only able to be raised in collateral appeal
 - (d) Ground only able to be raised in collateral appeal
 - (e) Ground only able to be raised in collateral appeal
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? N/A
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
- 18. If you answered "yes" to one or more parts of (17), list:

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

i. Paul V. Cannarella, P.A. P.O. Box 38 Hartsville, SC 29551

ii. Jonathan & Laura Hiller Hiller & Hiller, P.A. 1053 London St., Suite A, Myrtle Beach, SC29577

iii. David B. Tarr, LLC. 1313 Elmwood Avenue, Columbia, SC 29201

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

i. Trial and sentencing

ii. Appeal to Court of Appeals

iii. Present PCR applicaiton

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

New trial

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

No

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

I, David B. Tarr, 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.

David B. Tarr

SWORN to and subscribed before me this 9th
day of May, 2016.

Sam R. Nottingham (L.S.)
Notary Public

My Commission Expires: 10-1-2019

HORRY COUNTY
2016 MAY 12 AM 8:32
MELANIE JOHNSON, CLERK OF COURT



ALAN WILSON
ATTORNEY GENERAL

April 1, 2016

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528-0677

HORRY COUNTY
2016 APR -4 PM 2:14
MELANIE HUGGINS-WARD
CLERK OF COURT

Re: Timothy Young, #345620 v. State of South Carolina
2014-CP-26-7509

Dear Ms. Huggins-Ward:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Jessica E. Kinard
Assistant Attorney General

JEK/nb

Enclosure

Horry County Clerks Records
SCDC Records
PCR Application
Trial Transcript
Applicant's Appellate Records (to be sent)

cc: David B. Tarr, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
Timothy Young, #345620,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) Case No. 2014-CP-26-7509
)
)
)
)
)
)
)
)
)

RETURN

HORRY COUNTY
2016 APR -4 PM 2:14
FILED
CLERK OF COURT

Respondent, making its Return to the Application for Post-Conviction Relief filed November 6, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2011, the Horry County Grand Jury indicted Applicant for criminal sexual conduct with a minor, first degree (2011-GS-26-1088) and lewd act on a minor child (2011-GS-26-1089). Paul Cannarella, Esquire, represented Applicant. On April 04, 2011, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty as indicted. Judge Culbertson sentenced Applicant to twenty-five (25) years imprisonment for criminal sexual conduct with a minor, first degree, and ten (10) years imprisonment for a lewd act on a minor child, to be served concurrently.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 5, 2013. State v. Young, Op. No. 2013-UP-236 (S.C. Ct. App. Filed June 5, 2013). On August 22, 2013, the Court of Appeals denied Applicant's petition for rehearing. On September 23, 2013, Petitioner served a petition for certiorari. The Supreme Court of South Carolina denied certiorari on January 8, 2014.

II.

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

1. "Ineffective assistance of counsel"
 - a. "failure to make contemporaneous objections"
 - b. "failing to conduct meaningful and thorough cross examination"
 - c. "failing to call a key witness"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCR.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The 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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

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

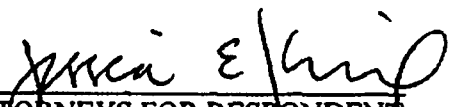
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

April 1, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

TIMOTHY YOUNG, #345620)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2014-CP-26-7509

AFFIDAVIT OF SERVICE BY MAIL

CLERK OF COURT
 2016 APR -4 PM 2:14
 HORRY COUNTY

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 B. Tarr, Esquire
 1313 Elmwood Dr., Suite B
 Columbia, SC 29201

DATED this 1st day of April, 2016.


 Norma Bigbee, Legal Assistant
 For Respondent

1

2 State of South Carolina) Court of Common Pleas
3 County of Horry) 2014-CP-26-07509

4

5

6 Timothy Young)
7 vs.) Transcript of Record
8 State of South Carolina)

9

10

May 12, 2016
Conway, South Carolina

11

12

BEFORE:

13

Honorable Paul M. Burch, Judge.

14

15

APPEARANCES:

16

David B. Tarr, Esq.
Attorney for the Applicant

17

18

Jessica E. Kinard, Esq.
Office of the Attorney General
Attorney for the Respondent

19

20

21

22

23

Teresa J. F. Bautz, RPR
Official Court Reporter

24

25

26

I N D E X

APPLICANT	DIRECT	CROSS	REDIRECT	RECROSS
Paul Cannarella				
Mr. Tarr	5	--	44	--
Ms. Kinard	--	37	--	--
Timothy E. Young				
Mr. Tarr	46	--	--	--
Ms. Kinard	--	--	--	--

E X H I B I T S

NO.	DESCRIPTION	ID	EV
No exhibits submitted.			

1 (The hearing commenced at approximately
2 11:19 a.m.)

3 MS. KINARD: I apologize to keep you waiting.
4 This is the matter of Timothy Young versus the State of
5 South Carolina, Case No. 2014-CP-26-7509. The
6 Applicant is presently confined in the South Carolina
7 Department of Corrections pursuant to orders of
8 commitment from the Horry County Clerk of Court. In
9 March 2011 the Horry County Grand Jury indicted the
10 Applicant for criminal sexual contact with a minor,
11 first degree, and lewd act on a minor. Paul Cannarella
12 represented the Applicant.

13 On April 4th, 2011, the Applicant proceeded to
14 trial before the Honorable Benjamin H. Culbertson and a
15 jury. The jury found the Applicant guilty as indicted.
16 Judge Culbertson sentenced him to 25 years imprisonment
17 for criminal sexual contact with a minor, first degree,
18 and ten years in prison for a lewd act on a minor child
19 to be served concurrently.

20 The Applicant filed a timely notice of appeal.
21 His conviction was affirmed by the South Carolina Court
22 of Appeals on June 5th, 2013. On August 22nd, 2013,
23 the Court of Appeals denied his petition for a
24 re-hearing. On September 23rd, 2013, he served a
25 petition for certiorari on the Supreme Court who denied

1 it January 8th, 2014. The State is present and ready
2 to proceed. The Applicant is present and represented
3 by David Tarr.

4 THE COURT: All right. Counsel.

5 MR. TARR: Thank you, Your Honor. I want to make
6 sure the Court got the amended application that I filed
7 this morning. There are two new grounds that were not
8 previously alleged in the original.

9 THE COURT: I don't believe I have.

10 MS. KINARD: Yes, sir. I inserted it in your
11 judge's packet.

12 THE COURT: All right. I got it.

13 MR. TARR: Thank you, Your Honor. It's got the
14 three original issues that were raised.

15 THE COURT: Okay.

16 MR. TARR: And then two additional.

17 THE COURT: All right.

18 MR. TARR: Your Honor, at this time we'd call Paul
19 Cannarella. He went to the restroom.

20 THE COURT: Stand at ease until he gets back.

21 (Discussion off the record.)

22 THE COURT: Come around and be sworn,
23 Mr. Cannarella.

24 PAUL CANNARELLA, after being duly sworn, testified
25 as follows:

PAUL CANNARELA-DIRECT BY MR. TARR

1 THE CLERK: Take a seat and state your name for
2 the Court, please.

3 THE APPLICANT: My name is Paul Cannarella,
4 C-A-N-N-A-R-E-L-L-A, Cannarella.

5 DIRECT EXAMINATION

6 BY MR. TARR:

7 Q How you doing, Mr. Cannarella?

8 A I'm fine.

9 Q I just want to ask you some introductory questions
10 to kind of orientate the Court to have a proper context
11 of this case and the players in the case, so that His
12 Honor will know what we're talking about today.

13 A Certainly.

14 Q First off, I want to ask you in regards to these
15 two charges that Tim was convicted of, he went to trial
16 on those?

17 A Yes, sir.

18 Q And at any time during your representation or
19 during the trial, did he ever say, I did this?

20 A No, sir.

21 Q Okay. So he's maintained his innocence the entire
22 time?

23 A Yes, sir. I can give you an example if you want
24 me to.

25 Q Sure.

1 A We came for an arraignment and he was offered
2 seven years. He turned it down and said, I didn't do
3 it so I'm not pleading to it.

4 Q Okay. So he was offered seven years and said, I'm
5 still not taking it?

6 A He turned seven years down.

7 Q Okay. And in terms of the evidence leading up to
8 this case that you were provided and the evidence
9 offered at trial, was there any evidence other than the
10 testimony of a nine-year-old stepdaughter and a
11 forensic interview video that was played offered in
12 this case to show evidence of guilt?

13 A No, sir. That was it. It was Tim said, I didn't
14 do it, and the child said he did. So there was no
15 other corroborating evidence at all to support the
16 child's position against him.

17 Q Okay. So there was no physical exam evidence from
18 a medical exam, no --

19 A Yeah, no physical evidence from a medical exam
20 that would in any way corroborate any testimony about
21 something happened to her.

22 Q Okay.

23 A And I feel like I made sure that I didn't allow
24 the prosecutor to let the forensic examiner say, hey,
25 just because there's no evidence of anybody bothering

PAUL CANNAREIA-DIRECT BY MR. TARR

7

1 the child, that doesn't mean that it didn't happen.
2 Because I wouldn't have wanted that to be said because
3 that would be improper vouching for a witness.

4 Q Right. So in cases where the credibility of a
5 witness who is the only evidence in the case or in
6 question, any attempt to improperly bolster or vouch
7 for that testimony could be very dangerous?

8 A It's -- yeah, it's very important, it's very
9 important for the Defense lawyer to make sure that
10 there is no improper vouching or otherwise trying to
11 support a witness' testimony through some evidence
12 that's not really competent to do so.

13 Q Right. But in terms of any other evidence, there
14 was no DNA evidence?

15 A No, sir.

16 Q There were no other witnesses that could
17 corroborate the stepdaughter?

18 A No. There was like no -- in terms of there would
19 be -- there was no eye witness that could say, oh, I
20 saw Tim do what she said he did. That's right, none of
21 that.

22 Q And there was no physical evidence?

23 A No, sir.

24 Q Okay. So the only evidence was the testimony of
25 one girl?

1 A Yes, sir.

2 Q Okay. Now, could you tell the Court how long
3 you've been practicing law.

4 A Since 1980.

5 Q And where do you practice law?

6 A In my hometown of Hartsville.

7 Q Okay. And how did you come about being -- were
8 you retained or appointed?

9 A I was retained. His mother paid me.

10 Q Okay. And so do you remember when that was, when
11 you were retained?

12 A It was after he'd got out on bond because -- you
13 know, shortly after Tim got out on bond because we had
14 a preliminary hearing we came down here to.

15 Q Do you remember when that was that he was
16 arrested?

17 A It was in 2000 -- I can't remember if it's nine or
18 ten, or I can't remember that now.

19 Q Would 2009 sound accurate?

20 A If that's -- yes, sir.

21 Q Okay. So you were shortly after he was arrested
22 you were retained?

23 A Yeah. We got on board right away.

24 Q Okay. And you had an opportunity to meet with Tim
25 multiple times?

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9

1 A Yeah. I think we met -- yeah, we met a lot. You
2 know, we met down here and we met at my office.

3 Q Okay. Could you talk a little bit about what was
4 going on surrounding this case. Now, who was the
5 alleged victim?

6 A Okay. That was his stepdaughter.

7 Q And what was her name?

8 A Victim .

9 Q Victim [REDACTED] ?

10 A Yeah. You might have to help me with some of the
11 names and stuff. So what we had she was involved in a
12 high conflict divorce. And there was another child
13 too, her daughter.

14 Q Her sister.

15 A I mean her sister, yes, sir.

16 Q Okay.

17 A So when this -- when Tim was arrested, the mom and
18 the daddy had already divorced and remarried. Tim's
19 stepchildren, one of which was the complaining
20 witness --

21 Q I'm sorry to interrupt, but was Tim married to the
22 biological mother of the child?

23 A Yes. Right, that's right. So Tim married the
24 momma.

25 Q And that would be Nicole Young?

1 A That's right. And the daddy lived in North
2 Carolina, the daddy, and he had custody of those
3 children.

4 Q Okay. His name was Chad Turbeville?

5 A Chad Turbeville.

6 Q Married to Jennifer Turbeville?

7 A Okay, right. So in North Carolina lived the daddy
8 with the step momma because he was married. And the
9 two children lived there with their daddy. And Tim was
10 married to Nicole, their momma, and they're down here
11 at the beach. And Nicole had visitation privileges.

12 Q So would the two girls come down to Myrtle Beach?

13 A Yeah, that's right. The two girls would come
14 visit Nicole and Tim, okay. And then after that -- and
15 there was some conflict going on between the --

16 Q So were there custody disputes going on about who
17 should have the girls?

18 A I think -- no, at that time I believe custody was
19 already decided, but Nicole had visitation privileges.

20 Q But they were going back and forth to court in
21 family court in North Carolina?

22 A Yeah, there was some -- some tension was still
23 ongoing, as I remember it.

24 Q In fact, the day before **Victim** made the disclosure
25 about the alleged actions of Tim, wasn't there a

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11

1 hearing that day before?

2 A Right.

3 Q In North Carolina family court?

4 A Right, there was -- yeah. Yeah, I remember that.

5 Something was going on that suggested to me that,

6 **Victim** allegations may be coming out of this high

7 conflict divorce, could have been in some way connected

8 with somebody getting ruled back into court for

9 something. I can't remember precisely what it was, but

10 I remember it being investigated by us and coming out

11 in the trial.

12 Q Well, let's go back. Would January 14th, 2009

13 sound like about the time that she would have disclosed

14 about Tim?

15 A That -- yes, sir.

16 Q Okay. Were you aware of a prior disclosure that

17 she made in November of 2008, some month and a half

18 before, about her mother doing something inappropriate

19 to her genital area?

20 A Yes, sir. Yes, sir. You want me to elaborate on

21 that?

22 Q Yes.

23 A I believe that sometime even prior to that there

24 were allegations made by this child against her momma,

25 okay. And then I believe there are another set of

1 allegations made by this child against her momma, and
2 that's the ones you're talking about.

3 Q Yes.

4 A And since the children lived in North Carolina
5 right across the line in Loris, DSS, North Carolina
6 DSS, was investigating those allegations against the
7 momma by --

8 Q Was there a woman named Yolanda Daniels that was a
9 social worker in that office?

10 A That was -- was that the one in North Carolina
11 DSS?

12 Q Yes.

13 A Okay. Yes, sir. And I was provided with a tape,
14 one of those forensic interview tapes, from North
15 Carolina of the North Carolina DSS lady's interview.
16 And in that interview, whatever her name is, Yolanda,
17 cause I did an out-of-state subpoena, got all that
18 lined up --

19 Q Yes.

20 A -- in anticipation of trial. And in that DSS
21 interview she was asked by the lady, the DSS lady,
22 well, now, is your momma -- essentially, your momma
23 bother you. And to my best recollection she said,
24 yeah, and maybe she described it, you know. All right.
25 Now, did Tim bother you, and she said no.

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1 Q And that was November, one and a half months prior
2 to her saying that Tim did do something to her, that
3 she said he didn't?

4 A I'm not going to disagree with that. But I don't
5 remember the times now.

6 Q Well, that's in the transcript.

7 A Okay, that's fine.

8 Q Okay.

9 A Good. I just don't remember the specific.

10 Q But isn't it true also that the last time Tim had
11 any contact with these girls or **Victim** in specifically
12 was Halloween prior to that?

13 A That's -- that might have -- I'm going to say yes
14 if that's what Tim told me, or if there's some
15 documents of record that would say that, yes. I don't
16 disagree with that.

17 Q So basically in between the November interview
18 where **Victim** said, Tim never touched me, and
19 January 14th, the day after that family court hearing
20 where she said, he did touch me, he didn't have any
21 contact with her?

22 A Right. There was no visitation in between those
23 periods.

24 Q They had stopped being brought down here because
25 of the mother's abuse?

1 A Right. They like just arbitrarily suspended his
2 -- I'm going to say that the -- I don't know if the
3 Court -- I don't think the Court did, I think the --

4 Q Was it in fact due to Nicole, the mother's -- the
5 allegations against her for inappropriately touching?

6 A Yeah, probably.

7 Q So that's when visitation stopped?

8 A That's probably -- that's right.

9 Q So in between her saying Tim did nothing and her
10 saying he did something, there was no contact?

11 A There was no contact.

12 Q So whatever she was talking about would have had
13 to occurred before that?

14 A Right.

15 Q And she had already said he didn't do anything?

16 A Right, that's right.

17 Q Now, in terms of Yolanda Daniels, one of the
18 issues we have in this case is that you did go through
19 the trouble, and it is a lot of trouble to get an
20 out-of-state subpoena.

21 A Right.

22 Q You know, that's a big process to go through.

23 A Right.

24 Q And you went through that and you got all the
25 requisite signatures from judges in South Carolina and

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1 North Carolina. And she was actually prepared to come
2 down to court and testify to the fact that Tim had told
3 her -- or **Victim** had told her that Tim didn't touch her?

4 A Right.

5 Q And at some point you called her and told her not
6 to worry about coming. Could you explain why you did
7 that.

8 A Yeah. I was able to cross-examine the chief
9 investigating officer in the case. And through my
10 cross-examination of him, he admitted to me that he
11 knew that the child had said, no, he didn't -- Tim
12 didn't touch me, okay. And so I felt like I got,
13 rightly or wrongly, I felt like I got the prior
14 inconsistent statement out of the police officer, okay.

15 And to me, the jury hears it from him, then I'm
16 kind of thinking, well, you know, the officer's
17 admitting to the jury that he knows that the child
18 might be a liar, okay. So rightly or wrongly, I made
19 the decision at that time, well, let's just leave it
20 like it is because I was able to argue that, you know,
21 totally and thoroughly throughout the entire trial.
22 And I just feel like the jury clearly got the point
23 that she made an inconsistent statement.

24 Q Okay. Could you see how it might be more
25 beneficial to have the woman who is a social worker who

1 was told to her face by the alleged victim that he
2 didn't do anything to me, to have her in court to look
3 at the 12 members of the jury and say that she told me
4 he didn't do it?

5 A Yeah, I can't deny that, I can't deny that. But I
6 feel like, yeah, in terms of effectiveness, you know,
7 it's kind of like, and maybe this is not a good
8 comparison but, you know, I might not have thrown a
9 tight spiral, you know.

10 Q Right.

11 A But at least it got there, and I felt like we
12 scored --

13 Q You felt like you got it out in the evidence?

14 A We scored what we needed to score, yeah.

15 Q I'm sorry to interrupt you.

16 A No, that's okay. And this would be just
17 speculation on my part, but you know, you kind of don't
18 really -- I don't know, I got that through that
19 officer. You know, I didn't ever meet the DSS lady in
20 North Carolina. She had to stick by what she said,
21 what she saw in her interview. But, you know, I've got
22 it -- I got it where I wanted it, so I felt like that
23 was fairly safe.

24 And not that I would run into any problems with
25 the North Carolina lady, but I avoided any potential

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1 problems with not knowing what she might say, you know.

2 Oh, well, they -- that's not unusual.

3 Q Well, did you talk to her or an investigator talk
4 to her?

5 A No. I don't know if the investigator here talked
6 to her, but she was real hard to -- I had to really,
7 really push a lot to get all that stuff through because
8 they didn't really -- they didn't really cooperate with
9 me to begin with.

10 Q But you did go through the trouble to get the
11 out-of-state subpoena?

12 A I did.

13 Q And you're aware that you can get out-of-state
14 subpoenas in General Sessions court because you did
15 that?

16 A Yeah, yeah.

17 Q But you can't -- in Common Pleas court like this
18 forum right here with PCR's, we're not -- we don't have
19 that option, we cannot issue an out-of-state subpoena
20 to get a witness here for this hearing. So Yolanda
21 Daniels could not be forced to come here by us today,
22 but you could have had her at his trial?

23 A Right, right.

24 Q In 2011?

25 A Yeah. I'm agreeing with you on that one, I didn't

1 really know that.

2 Q All right. Along these same lines, another issue
3 that we're bringing up, regarding your
4 cross-examination of **Victim**, the young girl who she
5 would have been seven at the time that she said this
6 happened.

7 A Um-hum.

8 Q Nine at the time of trial. Do you feel like that
9 your cross-examination of her was sufficient, seeing as
10 how she -- her testimony was the only evidence in the
11 case?

12 A Well, you know, sitting back and reflecting back
13 on it, you know, Monday morning quarterbacking myself,
14 maybe yes. But here's what, when you get right in the
15 heat of that moment in that battle, that situation, you
16 know, I don't know what she is going to say to me. And
17 I would rather be providing this explanation now than
18 having to read a transcript that went something like
19 this.

20 Yes, I do admit that I told the lady in North
21 Carolina that Tim didn't bother me. But I just didn't
22 want to get Tim in trouble because I like Tim. I like
23 coming down to the beach. You know, see, I didn't know
24 if she might say that or not, you know, David.

25 And I could get that inconsistent thing in through

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1 that officer. You know, so I felt really it was safer
2 arguing that than giving her a chance to provide an
3 explanation that the jury might could have believed.
4 So, I mean, that was kind of a -- maybe I should have
5 jumped on her and got in her face.

6 Q You would agree that there's a big difference
7 between jumping on a poor innocent little girl and
8 simply asking her, didn't you tell a social worker --

9 A Right.

10 Q -- that Tim did not touch you?

11 A Right.

12 Q I mean, that's -- you don't have to jump on her is
13 what I'm saying; correct?

14 A That's right, you're right.

15 Q But you, your strategy reason, I believe you
16 testified, was that you did not ask her about her prior
17 inconsistent statement just because you weren't sure
18 what she was going to say?

19 A I was afraid of what she was going to say. I
20 mean, I figured Candice Lively had her pretty much
21 ready for it.

22 Q Now, you've already referred a little bit to the
23 forensic interviewer. And I want to talk about her and
24 also another witness who was qualified as an expert by
25 the State. We'll deal with the first one first. Ms.

1 Denise Scarce. Do you know who she was?

2 A She was a forensic therapist or psychotherapist.

3 Q She was a -- would you agree she was a therapist
4 in North Carolina --

5 A Right.

6 Q -- that DSS referred **Victim** to, to meet with after
7 there were the allegations against **Victim**'s mother?

8 A Okay.

9 Q Does that meet your recollection?

10 A Yeah, that's right.

11 Q And then she's also the one later on that after
12 **Victim** said, Tim didn't touch me, she told her that he
13 did in January, a month and a half later in
14 January 2009?

15 A Yeah. Was that -- I think that was in Denise
16 Scarce's notes. I don't know if in there she -- the
17 little child first interview -- first session with
18 Scarce, she said something, that the child made some
19 allegations about her momma. In the next -- seemed
20 like the next therapy session with the child with
21 Denise Scarce, that is when the child said Tim did do
22 something to me.

23 Q Which would have been in January '16?

24 A Okay, right. Yeah, it was -- the point I'm trying
25 to make is I don't remember if the child was asked in

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1 the first interview by Denise Scarce, the therapist
2 now, like in Denise Scarce's office, I don't know if
3 she was asked, if the child was asked did Tim bother
4 her or not. I know she said Tim bothered her in a
5 subsequent therapy session.

6 Q Okay. In any event, Ms. Scarce was brought down
7 by the State to testify?

8 A Right.

9 Q And was actually qualified as an expert in child
10 abuse counselling and treatment; do you recall that?

11 A If it's in the transcript, yeah, I do.

12 Q Okay. Have you taken a look at this transcript
13 since in the last few days --

14 A No.

15 Q -- to look at their qualification process? And do
16 you have --

17 A You talking about, now, you mean looking at the
18 transcript itself from the trial, is that what you're
19 talking about?

20 Q Yes.

21 A No, sir.

22 Q Okay. Do you recall going through a qualification
23 process when Ms. Scarce was proffered by the State and
24 you had a chance to cross-examine her and voir dire her
25 on her qualifications?

1 A Yes, sir.

2 Q Okay. And in preparation for this hearing, did
3 you review a couple of cases that I had provided you?

4 A I looked at State versus White.

5 Q Yes, sir.

6 A Is that one of the them, State versus -- that's a
7 2009 case.

8 Q Yes.

9 A And a 2015 case, State versus Chase.

10 Q And would you agree that State versus White lays
11 out the procedure for the Court to determine whether or
12 not a nonscientific expert should be qualified as an
13 expert?

14 A Yes. That's the -- is that the bloodhound --
15 that's the bloodhound case; right?

16 Q Yes, it is.

17 A Whether or not the dog was -- yeah, the dog, make
18 sure he's reliable.

19 Q Yes. And that there is a two-prong test in the
20 Court's gatekeeping function in determining whether or
21 not to qualify this expert. One is the qualifications
22 of the expert?

23 A Um-hum.

24 Q Okay. Like education, experience, training and
25 things like that; correct?

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1 A Right.

2 Q And the second one is the reliability or the
3 accuracy of them?

4 A Yeah, yeah, based on what their training has been.

5 Q And basically whether or not anybody, any other
6 expert, any of their peers had ever reviewed their
7 work?

8 A Right.

9 Q Okay. And would you agree with me that there was
10 testimony regarding Denise Scarce's qualifications in
11 terms of her education, the degree she possessed, the
12 number of years she's worked in this field and things
13 of that nature, but there was absolutely zero testimony
14 as to her reliability, basically no testimony that
15 could tell the jury that she knows what she's talking
16 about; would you agree with that?

17 A Well, yeah. You mean that she didn't provide
18 any -- no information was provided about how many times
19 she's been relied upon by a Court?

20 Q Or whether anybody has ever reviewed her work for
21 its accuracy.

22 A No, there was no information about that.

23 Q Okay. And do you believe after reviewing State
24 versus White that you should have objected to there
25 being no testimony regarding her reliability?

1 A Yeah. You know, looking back at it, I could have
2 made that argument insofar as testing and all whether
3 or not she should be qualified as an expert to give her
4 opinion as to whatever opinion they wanted to solicit
5 from her.

6 Q Basically this expert testified about a number of
7 things, but some of what she testified was her expert
8 opinion about the delayed disclosure and how it applies
9 to this case, about how **Victim** had said he didn't do
10 anything and then later on disclosed that he did.

11 A Right.

12 Q Trying to explain why that happened in her expert
13 opinion. She wouldn't have been able to do that if she
14 hadn't been qualified as an expert; would she?

15 A No. Did I object to that. though?

16 Q No, not to that portion.

17 A I didn't object to the qualifications?

18 Q You didn't object to the qualification or any
19 other testimony about --

20 A About her being able to give her opinion.

21 Q Yeah. Now, I will point your attention to the end
22 of her testimony where you did object. In that
23 particular portion, and I'm looking on pages 266
24 through about 269 of the trial transcript, start with
25 the very bottom of 266. This is where the solicitor

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1 Candice Lively is attempting to get an expert opinion
2 from Ms. Scarce about whether or not **Victim** symptoms
3 are consistent with someone who's been abused. And
4 I'll read you this question.

5 And in your expert opinion, were your symptoms
6 consistent with what you would normally have to deal
7 with in the treatment for sexual abuse? She said, yes.
8 And you objected and it was sustained. Do you recall
9 that?

10 A No. I don't recall it, I don't really recall it.
11 But, I mean, that's trying to turn Mrs. Scarce into a
12 human polygraph. I think, you know, I mean, how can
13 she know that. That's how I approached it.

14 Q I'm going to take you down to the next question
15 where she's trying to get this in. Okay. And in post
16 traumatic stress disorder, is that a symptom or a
17 diagnosis that's consistent with a child that's
18 suffered abuse? Yes. You object again. Sustained.
19 Do you recall that attempt?

20 A Well, I believe it's there in the transcript.

21 Q Okay. Now, finally, they ask one more time, in
22 your expertise of child sexual abuse counseling and
23 treatment and your treatment of **Victim** were her
24 symptoms and behaviors that you personally observed
25 consistent with a child whose been abused? You object

1 again and it's sustained.

2 Finally at the bottom of page 268, the Court ends
3 up allowing her to reference another doctor, a Dr.
4 Frank Stevens who did not testify, bring out his
5 opinion through hearsay because experts can rely on
6 hearsay under Rule 703.

7 A Right.

8 Q Do you recall that?

9 A If it's in there, I don't -- if it's in there, I
10 mean, the transcript's accurate.

11 Q Okay. In the transcript, the bottom line is the
12 judge, Judge Culbertson, ultimately allows this
13 testimony by bringing in hearsay through another
14 witness who didn't testify, that would not have been
15 allowed had she not been qualified as an expert?

16 A Qualified as an expert, right.

17 Q So --

18 A Go ahead.

19 Q No, go ahead, I'm sorry.

20 A You know, yeah, in retrospect, obviously. But I
21 believed, I didn't have any reason to believe that he
22 wouldn't qualify her as an expert, even though maybe I
23 should have objected to her qualifications as an
24 expert. But, you know, she was also -- you know, when
25 we set up the video conference, you know, she had to

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1 come in here and testify about the child needing to
2 have outside the courtroom testimony next door. Okay.
3 So I think they took -- he had listened to some of her
4 background information then too.

5 The point that I'm trying to make, I guess, is,
6 you know, in retrospect, yes, maybe I should have
7 fought hard to get her to be not qualified as an expert
8 or vet her or voir dire her. You know, but you're kind
9 of doing that, I mean, most of that voir dire takes
10 place -- I didn't want to do anything to make that jury
11 think that she's some great kind of witness, you know,
12 that's got all this expertise that if she thinks the
13 symptoms are consistent, then yeah, the child did it.
14 Those are the kind of things --

15 Q I understand your objections. But if you had
16 objected to her being qualified as a witness for lack
17 of any testimony of reliability, then they never would
18 have heard that anyway.

19 A If the judge would have gone along with my
20 objection.

21 Q Okay. Did you also look at the State v. Chavis
22 that I sent you?

23 A Yeah. 2015 case?

24 Q Yes. Do you realize that that case was tried in
25 2011, the same time this was tried?

1 MS. KINARD: Your Honor, regardless of that fact,
2 it is a 2015 case and Mr. Cannarella cannot be expected
3 to have known or foreseen the outcome of that case to
4 prepare in accordance with it in this matter.

5 THE COURT: All right. But go ahead with what
6 you're going to say.

7 MR. TARR: Your Honor, that, State v. Chavis cites
8 State v. Wyatt from 2009, and that is the basis of the
9 holding.

10 Q I want to ask you this. In the State v. Chavis
11 case which is almost identical to this case, the lawyer
12 in that case objected to the witness being qualified as
13 an expert, and it was overruled. But then the Court
14 found that it was error that that witness be qualified.

15 A Yeah. The Supreme Court overruled the trial
16 court; right?

17 Q They didn't overrule it, but they found it was
18 error, they found that it was harmless error because
19 there was a whole bunch of other evidence of guilt in
20 that case?

21 A Right, okay. In other words -- right, right -- in
22 this Chavis case, the appellate court, I think, didn't
23 they say that that particular person should not have
24 been qualified --

25 Q They did say that.

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1 A -- as an expert? But because there was other
2 evidence like -- there was other evidence to
3 corroborate maybe a fact witness that has seen
4 something. So they said, well, that didn't really
5 matter because the jury could have based its verdict on
6 this other evidence and just totally disregarded what
7 the expert said.

8 Q They said that there was actually -- there are
9 four different pieces of cumulative evidence of guilt
10 besides this expert, so that it was just merely
11 harmless error.

12 A Right.

13 Q But in that particular case, which was tried the
14 same year as this case was tried in 2011, those lawyers
15 objected to that qualification, and that Court found
16 that it was error. And they did not reverse it because
17 of the other evidence of guilt.

18 A Right.

19 Q And you would agree that in this case there is no
20 other evidence of guilt other than the credibility and
21 testimony of the one witness?

22 A Him saying -- she testified he did, and Tim
23 testified in front of the jury that he didn't.

24 Q Correct. I would like to move on to another
25 issue, it's almost exactly like this one, but it

1 involves another witness for the State, the forensic
2 interviewer, Diane Nordine who was qualified as an
3 expert. Her qualifications, they go through a
4 transcript, pages 317 through 321. Again, do you
5 recall that you conducted a cross-examination of this
6 witness regarding her qualifications to be an expert?

7 A Okay.

8 Q Okay. And there was a lot of testimony elicited
9 about her experience, training and education. But
10 there was no testimony elicited about the reliability
11 of her opinion.

12 A Okay.

13 Q Do you agree with that?

14 A You mean in terms of --

15 Q If it's in the transcript?

16 A You mean in terms of me or the other side offering
17 anything about how reliable?

18 Q Yes.

19 A Yes, I -- no. But I'm not real sure about how you
20 know -- how do you reach that determination that
21 someone is reliable based on historical information,
22 though, or what. I mean, I don't know how you do it.
23 How do you do it?

24 Q She testified that she kept up with the literature
25 regard to forensic interviewing and child development

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1 and that she went to conferences and things like that.

2 A Okay.

3 Q But there's no testimony that she had ever
4 published anything of her own that had ever been peer
5 reviewed by other expert. And therefore, it doesn't
6 really matter how much training you have or experience,
7 if you don't -- if people say you don't know what
8 you're talking about and they are experts, then you
9 wouldn't be reliable; correct?

10 A If you, yourself -- if one like that -- I'm trying
11 to understand where you're headed, okay.

12 Q Yeah.

13 A I mean, In other words, that person needs to be
14 vetted or whatever that word is. Their reliability
15 needs to be tested.

16 Q They need to offer -- you would agree that they
17 need -- under State v. Wyatt they need to offer some
18 evidence of their reliability, not just that they been
19 to a lot of seminars and read a lot of books that other
20 experts have written. Would you agree that's what
21 State v. Wyatt holds?

22 A Okay, yeah. And how does -- but how do we
23 determine if somebody is reliable? You know, if
24 they're going to give testimony about something that's
25 going to be harmful to us, and we want -- how do -- I

1 guess what test do we use to look to see if they have
2 been deemed reliable in the past?

3 Q Well, was there any testimony offered that they
4 had been deemed reliable?

5 A No, I don't think so. But I don't know what --

6 Q Okay. Well, that's all you need.

7 A I don't know what that would be.

8 Q That's the question.

9 A I don't know how you would make them reliable.
10 I'm with you, but I don't know how you, you know...

11 Q Well, I mean, she testified that she had read a
12 lot of books that other experts have written. Okay,
13 those people have written books and people have read
14 them, and the people can say whether or not the guy
15 knows what he's talking about?

16 A They give their opinion on their rely --

17 Q There's no testimony that she's put any work out
18 there that's ever been critiqued, nobody's ever said
19 one word based on her testimony about whether she is
20 reliable herself?

21 A Right, yeah. Nobody ever had given an opinion of
22 whether they thought she was reliable or not.

23 Q Correct.

24 A Okay.

25 THE COURT: Basically, the answer to it is,

PAUL CANNARELA-DIRECT BY MR. TARR

1 because I dealt with this in a case in York County
2 involving bloodhounds. Prior, you can do it by prior
3 experience and the reliability gained from the actual
4 experience.

5 And then, you know, the problem is that you got
6 novices coming in that can't relate back to prior
7 experience. So the other avenue is peer review and
8 practice testing, basically is the way I understood it.
9 Go ahead.

10 MR. TARR: Yes, Your Honor. I would totally
11 agree.

12 Q In fact, during the qualification of Ms. Nordine,
13 you openly questioned whether or not she even needed to
14 be called as an expert due to our Courts generally
15 disapproving of them being qualified because they are
16 not giving any opinions, they're merely stating
17 facts --

18 A Yeah.

19 Q -- as forensic interviewers?

20 A Yeah. What would you want to qualify her for if
21 you weren't going -- if she wasn't going to give an
22 opinion. And if she was going to give an opinion, what
23 was the opinion going to be.

24 Q And you were concerned about her being used as a
25 human truth detector?

1 A Yeah.

2 Q Okay. One other issue that I want to talk to you
3 about concerns the direct appeal of this case. And we
4 heard Ms. Kinard state that the appeal was affirmed.
5 In fact, wasn't this appeal affirmed merely because
6 there was not contemporaneous objection to the alleged
7 error in the case?

8 A Then that -- I don't know, I guess so, I've
9 never --

10 Q No, this is in reference to -- the allegation or
11 issue raised on appeal was that the judge had erred by
12 not reviewing Denise Scarce's notes --

13 A But there was no --

14 Q -- for whether or not there was any favorable
15 material to the Defense, any Brady material. You had
16 asked the Court to review them in camera --

17 A Right.

18 Q -- to see if there is any Brady material. And
19 then -- is that correct?

20 A Yeah, I remember that, yeah.

21 Q And there was even a pretrial hearing on this.
22 And I believe on -- this is a pretrial hearing from
23 March 17th, 2011. The Court, Judge Culbertson, says
24 that, I've reviewed those notes and that they are only
25 notes and they are not discoverable.

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35

1 And basically the issue raised on appeal was that
2 that wasn't the question, the question was doesn't
3 matter whether they are notes, if they are Brady, they
4 still should be turned over even if they're not
5 discoverable under Rule 5; correct?

6 A Right.

7 Q Okay. And the Court found that because you did
8 not object when he made that statement that you did not
9 issue a contemporaneous objection, and therefore they
10 were procedurally barred the Miller Law Firm was
11 procedurally barred from raising that issue. And so
12 they just affirmed the conviction without even hearing
13 the issue.

14 A And that was because I failed to object to the
15 judge's finding as to it just being notes and not --

16 Q Yes. That you didn't raise -- that you didn't
17 say, Your Honor, I understand they are just notes,
18 we're not asking for this under Rule 5, we are alleging
19 that these could be Brady materials which it doesn't
20 matter whether they are notes, they still -- they're
21 favorable to my client, they should be --

22 A Right, right.

23 Q Okay.

24 A Well, I mean, but I -- he reviewed them in camera.

25 Q Yes.

1 A I don't see where there would be any real
2 distinction. There might be a difference without a
3 real distinction. If it's Rule 5 or Brady and if he
4 sees anything in camera, because I don't have the
5 benefit of looking at it, I don't -- you know, I don't
6 know why my failure to object would have made any
7 difference in terms of an appellate review.

8 Because I thought that those notes were made
9 Court's exhibits or I thought there was something -- I
10 thought I did something to preserve the right to have
11 those reviewed by the appellate court to see if there
12 was anything in there.

13 Q Well, are you not aware that that is the reason
14 why they didn't hear the appeal?

15 A No, I wasn't -- no, I wasn't aware of that.

16 Q Okay. Well, that answers that question.

17 MR. TARR: Just one moment, Your Honor. That's
18 all the questions I have, Your Honor.

19 THE COURT: We need to take a brief recess.

20 MS. KINARD: Yes, Your Honor.

21 THE COURT: Mr. Cannarella, you're not to speak
22 with anyone during the recess, you're welcome. Let's
23 take about ten minutes.

24 (WHEREUPON, a brief recess was taken at
25 12:04 p.m.)

PAUL CANNARELA-CROSS BY MS. KINARD

1 THE COURT: You may be seated. Thank you.

2 MS. KINARD: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. KINARD:

5 Q Good afternoon. I just want to go briefly back
6 over some factors from early in the case. When you
7 first started meeting with Mr. Young, did you go over
8 all the charges he was facing?

9 A Yes, ma'am.

10 Q Did you go through all the elements that the State
11 would have to prove?

12 A Yes, ma'am.

13 Q And he was aware of all the possible punishments
14 he faced for these charges?

15 A Yes, ma'am.

16 Q Did you inform him of all of his constitutional
17 rights, whether he went to trial or to plea such as the
18 right to a jury trial, the right to testify, right to
19 confront accusers and so forth?

20 A Yes, ma'am.

21 Q Did you discuss with him the State's burden of
22 proving guilt beyond a reasonable doubt?

23 A Yes, ma'am.

24 Q Did you discuss his version of the facts of the
25 case?

1 A Yes, ma'am.

2 Q What did he tell you?

3 A That he didn't do it, that there was nothing else
4 other than, no, I didn't do that.

5 Q Is that what you felt like the evidence supported?

6 A Well, other than Tim saying, I didn't do it, she
7 said I did it. And then you got these -- this
8 psychotherapist, you know, talking with the child, and
9 the psychotherapist's opinion being that the child's
10 situation was consistent with abuse.

11 But, see, this was such a high conflict divorce
12 case. You know, and in retrospect, Monday morning
13 quarterbacking myself, you know, what kind of abuse are
14 we talking about really. Is it really sexual abuse or
15 is it just being in that abusive situation. And I
16 don't mean to narrate on, but may I, if nobody has any
17 objections. You know, you got this momma, and she's
18 Tim's wife, she is being accused of messing with the
19 child. It's just such an unusual situation.

20 So that's the only thing that just, I didn't do
21 it. Yes, you did.

22 Q Was there ever any indication that Mr. Young did
23 not understand your discussions or conversations at any
24 point?

25 A No.

PAUL CANNARELA-CROSS BY MS. KINARD

1 Q He is fully aware of everything that was going on?

2 A (Nodding.)

3 Q And I believe you discussed discovery briefly.

4 You stated that you filed a motion, I believe, Brady or

5 Rule 5 motion. And did you receive everything that you

6 expected to receive?

7 A Yes, ma'am.

8 Q Is there anything that you thought was missing?

9 A No, ma'am.

10 Q Did you review the discovery with Mr. Young?

11 A Yes, ma'am.

12 Q Did he present to you any fact witnesses that

13 could be of any help?

14 A His wife. And I think she testified, hey,

15 nobody's ever complained to me, my child hasn't

16 complained to me. I think Nicole testified. You know,

17 but that was a dicey situation putting her up there

18 too.

19 Q Can you explain that, please.

20 A Well, I mean, you know, she is being -- her

21 daughter is accusing her of molesting her. You know,

22 and I worked with Nicole in terms of getting prepared

23 for trial for that. But I never really knew how that

24 was going to be perceived by the jury. So to me,

25 inside of my heart, that was a little risky situation

1 too. But Nicole testified and Nicole said -- Nicole's
2 testimony would exonerate Tim.

3 Q Let's go ahead and dive into the allegations in
4 this case. You mentioned regarding the
5 cross-examination of **Victim** that your decision to
6 perform the cross-examination the way you did was a
7 strategic one; is that correct?

8 A Yes, ma'am. I was afraid of what she was going to
9 say. And in being fair to both sides, now, you know, I
10 went and hired on my own Dr. Martin in Columbia to look
11 at everything I had, to try to do the best job I could
12 do. And as a result him reviewing what he reviewed,
13 there was nothing that he said he could do to help me,
14 okay. So I just left it at that.

15 Q So you felt like you were as prepared as possible
16 for the experience of cross-examining a complaining
17 child witness?

18 A I've done it before. And I just believed that --
19 I just believed that I -- I really didn't want to give
20 her an opportunity to explain why she was delayed, why
21 she delayed reporting. Because I believe that they
22 would have had her ready to say something that I didn't
23 want to hear. So I didn't want to do that.

24 Q Do you recall Kayla's explanation for not
25 disclosing regarding Mr. Young when she disclosed

PAUL CANNARELA-CROSS BY MS. KINARD

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1 regarding her mom?

2 A No, ma'am.

3 Q I'll move on. A lot has been said today about
4 reliability of experts. Is it fair to say that both
5 Ms. Scarce and Ms. Nordine, the work that they do is
6 typically held confidential?

7 A I guess, yeah. I would think so.

8 Q Because it's of a psychological nature, typically
9 they would probably have some duty of some sort of
10 confidentiality?

11 A I think so.

12 Q Do you think that would hinder any tests of
13 reliability?

14 A You mean not -- well, you mean since I wouldn't
15 have a chance to look at what was confidential that I
16 wasn't otherwise entitled to, to be able to pass my own
17 judgment on what -- how I thought -- how reliable I
18 thought that information was?

19 Q You or anyone in your shoes.

20 A No. But see, I wouldn't be an expert in that
21 area, I'd only have to look at it. And maybe I'm on
22 another planet, y'all, but I'd be sitting there, and
23 I'd read something, whatever she wrote in there, and I
24 would have to get somebody else's opinion as to what
25 the value of it was or was not for me. So that's why I

1 went to another source to get an opinion about some
2 things in this case.

3 Q Based on your experience at the time of this
4 trial, were you satisfied with the voir dire that you
5 performed and that happened at this trial?

6 A You talking the voir dire of the experts?

7 Q Let's separate it, you're right. Let's talk about
8 Scarce first. And her qualifications, how did you --

9 A I figured she was going to -- rightly or wrongly,
10 I figured she was going to get qualified. You know,
11 if -- I just figured she was. But at least I did come
12 back and object to her trying to give her opinion on
13 the ultimate issue, though.

14 Q But other than that, you don't think that any way
15 that you performed was abnormal or deficient because
16 you performed a similar voir dire that you would with
17 any other expert; is that correct?

18 A I guess so.

19 Q Could the same be said for Nordine, that you
20 performed a similar voir dire and examination on
21 proffer and on --

22 A I'd say yes. And you know, my mindset back then
23 was, you know, the Courts tend to want to protect
24 children. So I feel like they exercise their
25 discretion towards allowing those people to be

PAUL CANNARELA-CROSS BY MS. KINARD

1 qualified to give their opinion. That's what I felt.

2 Q Do you recall during the proffer outside of the
3 jury's presence on Ms. Nordine requesting more
4 foundation regarding her potential qualification as an
5 expert?

6 A Right, to give an opinion.

7 Q And do you recall that she was actually qualified
8 as an expert in child development, not in forensic
9 interviewing?

10 A Right.

11 Q Do you think that limited her capacity as much as
12 you could have it limited --

13 A I thought --

14 Q -- in providing her testimony?

15 A I thought it did.

16 Q Then, lastly, regarding not calling Ms. Daniels,
17 the North Carolina social services worker, you
18 testified that you thought getting that information in
19 through the police officer was actually more effective?

20 A Well, I don't know if it was more effective or
21 not, but I thought it was good to get him to, you know,
22 come to the point where, yes, I know she gave a prior
23 inconsistent statement. So that to me was pretty good,
24 if the cop admitted he knew she lied before and was
25 lying then.

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1 Q I don't have any further questions. Though, if
2 you would have any statements that you would like to
3 make regarding your representation, I believe, since
4 technically this is your direct.

5 A No. I tried to narrate as much as I can. I'm
6 fine, I'm okay.

7 MS. KINARD: No further questions.

8 THE WITNESS: I'll answer any more questions
9 David's got.

10 REDIRECT EXAMINATION

11 BY MR. TARR:

12 Q The assistant attorney general asked you if the
13 evidence supported Tim's claim of innocence. Did
14 Victim sister Minor 1 ever make any allegations of
15 abuse against those two?

16 A No. Neither did the mother, you know, the mother
17 didn't know of any.

18 Q Okay. And speaking of your strategic decisions on
19 your cross-examination of Victim [REDACTED], are you
20 familiar with the SCACDL, the South Carolina
21 Association of Criminal Defense Lawyers Listserv?

22 A Um-hum.

23 Q And do you sometimes post on there?

24 A Yeah.

25 Q Do you recall posting in relation to this case, if

PAUL CANNARELA--REDIRECT BY MR. TARR

15

1 I ever try a case like this again, I ain't holding back
2 on cross. She can cry all the --

3 A Yeah.

4 Q -- "F" she wants, as my client drives all the way
5 home?

6 MS. KINARD: Objection, that's inflammatory.

7 THE WITNESS: Well, hey, look, yeah, I'll answer
8 that if you want me to answer that and explain.

9 Q Yeah, yeah.

10 A Yes. Because, see, I didn't feel comfortable with
11 the information I got from Dr. Martin that I hired,
12 see. He looked at everything.

13 Q Right.

14 A And I didn't -- you know.

15 Q Okay.

16 A In fairness to both sides here now.

17 Q Okay. And as far as qualifications of the
18 experts, were you aware that Denise Scarce at the time
19 of this trial in 2011 had only been qualified one time
20 in a criminal case?

21 A I wasn't aware of that, or if that came out in the
22 trial, I don't remember.

23 Q It did. And on direct, didn't you admit that you
24 should have objected to these experts being qualified
25 based on a lack of --

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1 A Right.

2 Q -- testimony of reliability?

3 A In hindsight, yeah.

4 MR. TARR: Okay. That's all I have, Your Honor.

5 MS. KINARD: Nothing further, Your Honor. That's

6 the State's case.

7 THE COURT: You may step down. Thank you.

8 MR. TARR: No objection.

9 (Witness excused.)

10 (Discussion off the record.)

11 THE COURT: You're excused.

12 MR. TARR: Is the Court ready for me to proceed?

13 THE COURT: Yes, sir.

14 MR. TARR: We call Timothy Young.

15 THE COURT: Come around and be sworn, please,

16 Mr. Young.

17 TIMOTHY E. YOUNG, after being duly sworn,

18 testified as follows:

19 THE CLERK: You may be seated, and state your name
20 for the Court.

21 THE APPLICANT: Thank you. Appreciate it. My
22 name is Timothy Eugene Young.

23 DIRECT EXAMINATION

24 BY MR. TARR:

25 Q Tim, where are you incarcerated right now?

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1 A Lee Correctional Institution.

2 Q And what is your sentence?

3 A 25 years.

4 Q Okay. What's the classification of that in terms
5 of parole eligibility?

6 A There's isn't, there's none.

7 Q And that is a result of a conviction of a trial
8 you had involving your stepdaughter in 2011?

9 A That's correct.

10 Q Okay. Let me ask you, from the moment there were
11 allegations made against you in this case until right
12 now, have you ever had any statement on this case other
13 than, I didn't do this?

14 A No, sir, I didn't do this. I'm an innocent man.

15 Q Okay. Now, I'll talk to you a little bit about
16 your background. Back when this allegation was first
17 made against you in 2009, how old were you?

18 A 2009, I would have been 45.

19 Q 45. At that time and now other than this
20 conviction after trial for the CSC with a minor lewd
21 act, had you ever been in trouble before?

22 A Nothing serious, no, sir.

23 Q I mean, had you ever been convicted of anything
24 before?

25 A Just in 1993 I had a DUI.

1 Q Okay. Nothing -- never had any allegations
2 against you involving anything of a sexual nature or
3 violent nature?

4 A No, sir.

5 Q At the time this allegation was made, where were
6 you living?

7 A In Myrtle Beach.

8 Q And who were you living with?

9 A Nicole.

10 Q Okay. And was that your wife?

11 A Yes, sir.

12 Q How long had you been married at that time?

13 A In 2009?

14 Q Yes.

15 A Three years.

16 Q Okay. And did she have two stepdaughters?

17 A Correct.

18 Q One of whom was **Victim** who you were convicted of
19 touching inappropriately?

20 A Correct.

21 Q And then a sister named **Minor 1**?

22 A Correct.

23 Q Okay. Was there ever any allegation of anything
24 improper with **Minor 1**?

25 A No, sir.

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1 Q Let me ask you, in terms of your relationship with
2 **Victim** and **Minor 1** and Nicole, what types of things would
3 you do when they came down for visitation with their
4 mom?

5 A Basically anything they wanted to. We would go to
6 Family Kingdom, Compass Cove, Swimming Cove, Medieval
7 Times, whatever to get them an enjoyable weekend.

8 Q Okay. Did you ever even have any time alone with
9 just you and **Victim**

10 A No, sir, never happened.

11 Q And why was that?

12 A She was always with her mother all the time, she
13 always wanted to hang around with her mother.

14 Q What about you and Taylor?

15 A **Minor 1** was left with me several times.

16 Q And no allegation of any type of abuse?

17 A No, sir, never happened, no.

18 Q What type of relationship did your wife, Nicole,
19 have with her ex-husband, Chad?

20 A Oh. It was rotten.

21 Q Could you explain what you mean by that.

22 A They were always fussing and fighting with each
23 other over the kids about who's going to have them and
24 you can't have them because I got Bible study. And it
25 was just -- it was every time she got the kids they

1 were they always bickering with each other about
2 something. It was just -- and it was something I ain't
3 never experienced in my life. I mean, it was -- I
4 couldn't see how you put a kid through that.

5 Q Well, how long had they been divorced at that
6 time?

7 A The best of my recollection, from what I gather,
8 I'm going to say around four or five years.

9 Q So even after four or five years, you're saying
10 that there was still a lot of contention there between
11 the two of them?

12 A It was very dramatic, I promise you, I experienced
13 it, it was -- them two was something else.

14 Q Were they constantly making allegations against
15 the other?

16 A Are you referring to derogatory comments?

17 Q Or just in court.

18 A Oh, all the time.

19 Q Did they go into court, in family court?

20 A Yes. Every time you turn around Nicole was
21 bringing home paperwork from the mailbox where she was
22 summoned to go to court or she was doing something to
23 Chad, and it was a constant bickering.

24 Q And do you recall a time being made aware that
25 Kayla had made an allegation against her mother,

TIMOTHY E. YOUNG-DIRECT BY MR. TARR

1 Nicole, for inappropriately touching her?

2 A No. When I first came aware of it is when a DSS
3 worker, Mr. Tim Reagan, came to the house and asked to
4 speak to Nicole. That was in November of '08.

5 Q Okay.

6 A And that's when I had first heard about it.

7 Q All right. Did they ask you whether you had done
8 anything at all?

9 A Never -- my name was never even brought up.

10 Q Okay. What did you tell them about that situation
11 with Nicole?

12 A With Nicole? Well, I don't -- under my assumption
13 as being the stepfather which that's a mother-daughter
14 thing, I was assuming that Nicole and the relationship
15 between them, it was false to what the allegation was
16 against Nicole. I never knew anything about that.

17 Q Okay. And were you made aware later that during
18 therapy for that in North Carolina, that **Victim** was
19 specifically asked whether or not you had ever touched
20 her inappropriately, and she said no?

21 A Later on I was aware of it, yes, sir.

22 Q When was the last time you ever had contact with
23 **Victim** ?

24 A The last time they was over our house was
25 October 31st, 2008, Halloween weekend.

1 Q That was right before you found out about the
2 allegation against Nicole?

3 A That is correct.

4 Q And then wasn't it like a month and a half later
5 in January when you were made aware that she'd made an
6 allegation against you?

7 A Yes, sir. It was, and again, Mr. Tim Reagan had
8 returned to my home. And I thought he was wanting to
9 speak to Nicole, at that time we wasn't together. And
10 he said, no, Tim, I need to speak to you. I said,
11 about what. And he came in and he told me what had
12 went on, and I flipped out, I mean. Not violently or
13 anything, I was just like, what are you talking about.
14 And he made these allegations, I'm like there's no way.

15 But then as he carried on his conversation with
16 me, I saw the picture that was drawn out, you know,
17 against me. Because those kids love me and, I mean,
18 they -- I spent -- excuse me. Sorry.

19 They spent a lot of time with me. And I didn't do
20 this. And he didn't -- honestly, my opinion is he
21 didn't believe it neither. Because he kind of made a
22 smirky remark about it when he left he said -- and he
23 said, this is something else. And that was basically
24 the end of it. And the next thing I know I'm going to
25 jail one month later on a false allegation.

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1 Q Did you ever -- before you were arrested a month
2 later, did you ever speak with an investigator or give
3 your side of the story or get a statement or anything
4 like that?

5 A Yes, sir. The next morning after they came to my
6 house on February the 25th at 9 o'clock that night.
7 Mr. Joe Graham came in the next day around 12-ish --

8 Q And who is Joe Graham?

9 A He is a detective from Myrtle Beach Police
10 Department.

11 Q Okay.

12 A And he came in and talked with me. And the
13 interview didn't last long, but the thing that caught
14 my attention was the man never -- Mr. Graham never
15 asked me one time did I do anything to her. He never
16 asked me if I touched her or anything. His
17 conversation started off with the charges against me,
18 and upon later talking it led -- everything led into
19 Nicole and her situation with Chad.

20 But basically about me, he never asked me anything
21 about, Tim, did you do this or you sure you didn't, he
22 never asked me anything like that.

23 Q Did you volunteer information that you were not
24 guilty?

25 A Yes, sir, I most definitely did. I have nothing

1 to hide, I haven't done anything wrong.

2 Q Did you expect them to come back ever and arrest
3 you?

4 A Well, I was already arrested at that time.

5 Q I'm sorry, I apologize. I thought you said it was
6 a month later after the DSS worker came out?

7 A Yes, sir. Yes, sir, it was in January when
8 Mr. Reagan came, and the next month in February is when
9 Myrtle Beach came and arrested me.

10 Q Okay. I thought you said the next day.

11 A No, I apologize if there was any misunderstanding.

12 Q All right. So they came out a month later, and
13 then you were arrested the next day?

14 A Yes, sir.

15 Q After you talked to him?

16 A No. He came to see me in January, one month later
17 on February the 25th they came to my house and arrested
18 me.

19 Q Okay. And then you talked to?

20 A On the 26th, yes, sir, the next day.

21 Q Okay, all right. At some point after that did
22 your family hire Paul Cannarella to represent you?

23 A Yes, sir. If I'm correct, I think it was around
24 May the 2nd is when I think my mother had talked with
25 Mr. Cannarella.

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1 Q Okay. And did you tell him that you did not do
2 what they say you did?

3 A That is correct.

4 Q Okay. Did you cooperate with Mr. Cannarella
5 during the course of his preparation for your trial?

6 A Yes, sir, I sure did.

7 Q Meet with him and talk to him when he wanted to
8 speak with you?

9 A Yes.

10 Q Okay. At some point there was an offer made for a
11 seven-year sentence, was that offer forwarded to you
12 for your consideration?

13 A Verbally I was. But document wise, I never saw
14 anything.

15 Q Well, you were told that there was an offer?

16 A Correct, yes, sir.

17 Q What was your response to that?

18 A I said, no, sir, I'm not pleading anything because
19 I haven't done anything wrong.

20 Q And you've been incarcerated now how long?

21 A Five years.

22 Q So this trial was in April of 2011?

23 A Correct.

24 Q So just over five years. You were out on bond
25 prior to the trial?

1 A Yes, sir. I was out basically around 26 months.

2 Q At any time since you've been incarcerated the
3 last five years have you wavered at all in your
4 assertion and belief that you're innocent?

5 A No. I steadfast on the question that I am
6 innocent.

7 Q Okay. And all these documents on this table, is
8 this work that you've done on your behalf to look at
9 every -- under every rock and every nook and cranny in
10 your case trying to find something to help you get a
11 new trial?

12 A Yes, sir. I've spent the last couple of years or
13 so gathering up this documentation to prove my
14 innocence for something I didn't do. And I've set up
15 numerous nights locked in the cell, and it's not a fun
16 feeling. But when you get an opportunity to fight for
17 your innocence, you have to do it. And that's what I
18 did.

19 Q Are you angry?

20 A No, sir, I'm not angry. I'm disappointed and
21 heartbroken because, you know, I lost my son in 2002 in
22 a car wreck. And I was living in Pageland. And you
23 know, I've always loved kids. I thought -- when I met
24 Nicole, I thought it was just an opportunity that -- I
25 never thought it was a possibility, I probably wouldn't

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1 never have any, but I had an opportunity to have two
2 around that I could help with or help stabilize a
3 father in their life without a bunch of fussing and
4 hollering going on. You know, I met Nicole, we got
5 along, and everything seemed to be going good.

6 But I didn't understand because I didn't really
7 worry about the dramatics that I was stepping into.
8 And it was unreal.

9 Q Well, other than being around **Minor 1**, her sister,
10 and having no allegations of abuse, have you had
11 occasion to be around other children over the years?

12 A Oh, of course.

13 MS. KINARD: Your Honor, I would like to object.
14 I understand that a foundation was being laid, but now
15 I don't think that any of this is really relevant to
16 the ineffective assistance of counsel allegations.

17 THE COURT: I think she's right.

18 MR. TARR: Okay, I'll withdraw it.

19 THE APPLICANT: Okay.

20 Q Since you've been incarcerated, other than working
21 on your case and preparing and hoping that you get an
22 opportunity to have a new trial, have you done other
23 things while incarcerated to better yourself?

24 A Yes, sir. I've gotten my GED since I been
25 incarcerated. We have a BLIK program that was created

1 by Mr. Malcolm McCall, and it gives you an opportunity
2 to better yourself while you're incarcerated with
3 different classes, learn music, to establish a work
4 ethic so when you get out that you'll have some kind of
5 background to fall back on.

6 And I went through several classes, a musical
7 class and now I'm enrolled in electrical and
8 electronics class now.

9 Q And you've gotten a number of certificates for
10 your work?

11 A Yes, sir, I sure have.

12 MS. KINARD: I renew my objection, Your Honor.

13 Q Tim, looks like we got a whole courtroom here, is
14 this your family that's back here?

15 A Everyone that's on the right side, all of those
16 are my kin people.

17 Q And where are where you from?

18 A I'm from Jefferson.

19 Q Okay.

20 A South Carolina.

21 Q And we got some people here from Jefferson,
22 Pageland, Kershaw?

23 A Hartsville and Chesterfield and Jefferson.

24 Q Okay.

25 MR. TARR: Your Honor, that's all I have. My

1 client does have a statement that he typed that he
2 would like to read at some point. It could be after
3 cross or now. It's a short one-page.

4 MS. KINARD: I really don't have any cross because
5 I don't believe much has been represented regarding the
6 allegations, so no cross-examination.

7 THE COURT: I'll be glad to hear from you.

8 THE APPLICANT: This is, I would like to thank
9 you, Your Honor, and everyone involved in this case for
10 allowing me -- excuse me -- allowing me the opportunity
11 to prove my innocence of these charges. There is no
12 excuse for the events that have transpired in this
13 case. I hope that you will not ignore the clear facts
14 of this case, because to do so were because of
15 omissions by the Defense attorney.

16 I cannot emphasize enough how unpredictable this
17 was for me and my family to be put in a tragic
18 situation like this. It's a very emotional and
19 draining experience to suffer like this because of lies
20 that someone has presented. To be wrongly accused, to
21 be undermined and put in prison like this is unjust.

22 I have an extremely high level of rationality, but
23 I do think that it's highly unusual that the State had
24 no physical evidence to make a case or convict for a
25 crime that was never committed. What the State has

1 done to me is slander and defamation of character,
2 seriously impaired my chance to earn a living. Excuse
3 me.

4 Prohibited me from holding a good job. The
5 consequences are serious. The stigma that this case
6 has imposed on me has seriously damaged my standings --
7 excuse me, I'm sorry -- and associations in my
8 community. The State has condemned me for a crime when
9 in fact no crime has been committed at all. It's hard
10 to endure the ordeals of prison, the whole scenario is
11 frustrating.

12 I hope this letter provides you with final impetus
13 needed to bring your focus to the truth of what is
14 presented here today, which is the evidence of my
15 innocence. I will end this letter the way it began,
16 thank you, Your Honor and everyone else in my family
17 for your time and attention in this serious matter. I,
18 Timothy Young, Eugene Young, hopes for a favorable
19 result.

20 MR. TARR: That's all the questions I have, Your
21 Honor.

22 MS. KINARD: Your Honor, had there been a jury
23 here, I would have objected during that statement. I
24 just don't believe any of it is relevant. However, as
25 you are the finder of facts, I would just ask you to

1 give it the weight it deserves.

2 THE APPLICANT: Thank you, Your Honor.

3 THE COURT: Be careful with that step down.

4 THE APPLICANT: Thank you.

5 (Witness excused.)

6 MR. TARR: Your Honor, I would be happy to sum up
7 briefly. I would ask the Court, given the volume of
8 the issues and the complexity of them, for the
9 opportunity for both sides to either brief these issues
10 or prepare proposed orders. I think that would be
11 helpful to the Court.

12 I will say that while I believe in all of the five
13 issues that we've raised, and I believe they are all
14 good issues, I can certainly see how the first three,
15 even if this Court found that Mr. Cannarella was
16 deficient in any way, that may not have changed the
17 outcome, I could see both sides to those issues.

18 However, the final two issues that I have raised
19 in the amended application, I don't think there's any
20 way around them, Your Honor. I think it's reversible
21 error for Paul not to have objected to those two
22 witnesses being qualified as experts.

23 The State v. Chavis 2015 case, which was tried the
24 exact same year that this case was tried, in 2011, the
25 attorneys in that case objected because two witnesses

1 who were both forensic interviewers were qualified
2 without any evidence of their reliability. The Court
3 found that be to clear error. And the only reason that
4 they -- and this case is almost identical to this case
5 in terms of the facts -- the only reason that they did
6 not reverse is because there were four pieces of
7 evidence that were clear evidence of guilt that the
8 jury could have found the Defendant Chavis guilty on.

9 You had physical evidence of pictures found on the
10 Defendant's computer depicting the victims in various
11 stages of undress. You had victim's sister complained
12 also of being abused, and they both corroborated each
13 other's testimony. You had a medical exam that showed
14 positive for chlamydia, and the Appellant was taking
15 drugs for that same disease. And that's basically it.

16 But it was numerous pieces of evidence such that
17 this was merely cumulative evidence. And there was so
18 much evidence of guilt that it was just ruled harmless
19 error.

20 In this case there is no harmless error. There's
21 only one piece of evidence that's provided to this
22 jury, that was provided, and that is the testimony of
23 the young girl; no corroboration, no physical evidence,
24 no other witnesses, nothing. So any error in this case
25 could not be harmless. And we believe, much like in

1 the Chavis case, one of the witnesses was allowed to
2 bring in hearsay evidence that's normally relied upon
3 by an expert in the field at the end of the trial as
4 was done in this case. And the only reason she was
5 allowed to do it was because she was qualified as an
6 expert.

7 In this case, Denise Scarce was able to bring in
8 through the back door hearsay evidence of a diagnosis
9 by a Dr. Stevens. Just like in the Chavis case, we
10 believe it's clear error and that because Paul did not
11 object, that was deficient. And it's not harmless and
12 the outcome of the case could have been very different
13 if there had not been two expert witnesses that were
14 brought in to try to bolster and enhance the
15 credibility of the victim. And that would be our
16 position, Your Honor.

17 MS. KINARD: Thank you, Your Honor. Though Mr.
18 Tarr briefly skimmed over the first three issues, I
19 would like to address them briefly and state basically
20 that Mr. Cannarella successfully, I believe, testified
21 to all of those as valid trial strategy decisions. And
22 we have multiple cases that are directly on point
23 saying that if a valid trial strategy is described, it
24 should not be found as ineffective assistance.

25 Furthermore, Courts must be wary of second

1 guessing counsel's trial tactics. There are multiple
2 cases that say if it can be described as valid case
3 strategy, it should not be questioned.

4 I think that both the issues regarding the
5 cross-examination of the victim as well as the --
6 pardon me -- the not calling the North Carolina social
7 services worker because the cop had testified to that
8 same information, both of those could be explained as
9 trial decisions and should not be questioned because of
10 that fact.

11 Furthermore, regarding Mr. Tarr just mentioned
12 that the child witness' testimony was not corroborated,
13 and I believe under the statute corroboration is not
14 required for a complaining witness in a sexual conduct
15 case.

16 Turning to the issue of reliability, I would again
17 renew my objection, for lack of a better word, to the
18 use and consideration of the Chavis matter considering
19 that it was just ruled on last year by our courts. I
20 understand that it does rely on the earlier White
21 decision regarding reliability. And I ask the Court to
22 place great consideration on this factor because of the
23 nature of the two experts that we're talking about.

24 These women specialize in having confidential
25 conversations with primarily children. And the way to

1 conduct a peer review of this would be very difficult.
2 It's not that it's as easy as getting someone in to
3 look at all of their cases and saying, yeah, seems like
4 she's right usually. Mr. Cannarella couldn't do that,
5 the State couldn't do that.

6 And to insinuate that one of these women must have
7 published things that were peer reviewed or presented
8 something else for -- or to subject themselves to
9 criticism of others in the field, insinuates that they
10 would have to take time out of their practice in order
11 to do this. And I think we routinely qualify experts
12 that do not publish, we routinely qualify experts that
13 could not be peer reviewed in many of these cases.

14 So while I understand the case law and realize
15 that that is the issue, I ask the Court to consider
16 just how these women could have been proved to be
17 reliable. In both of their cases, well, especially in
18 Ms. Nordine's case, she has several years of
19 experience, hundreds of interviews, has been qualified
20 before. And if that doesn't speak to her experience
21 and her reliability, I'm not sure what else could in
22 this situation.

23 The last thing, I just wanted to speak to the idea
24 of hindsight. Strickland v. Washington, which as you
25 know governs these cases for the most part,

1 specifically says that a fair assessment of any
2 attorney's behavior in post-conviction relief requires
3 that every effort be made to eliminate the distorting
4 effects of hindsight and to reconstruct the
5 circumstances the attorney was under and evaluate their
6 conduct from that perspective.

7 And while Mr. Cannarella did very candidly admit
8 perhaps he could have done things differently, and now
9 with several years of hindsight he realizes what those
10 could be, that doesn't mean that what he did and how he
11 tried this case was deficient or prejudicial in any
12 way.

13 So for those reasons, we do not believe that the
14 Applicant has carried the burden in order to prove that
15 Mr. Cannarella was deficient or prejudicial in this
16 matter, and we would respectfully request that this
17 court deny any relief requested. Thank you.

18 THE COURT: All right. I'm going to keep this
19 folder since this transcript is on this.

20 MS. KINARD: Yes, sir.

21 THE COURT: Tell me if I'm restricting your time
22 too much on this, but I would certainly invite proposed
23 orders and briefs within 30 days.

24 MR. TARR: Your Honor, the only -- that would not
25 be a problem, but I've spoken with the court reporter,

1 and I would really need this transcript to do it. And
2 it's going to be about 30 days before we can get it.
3 If we could have 60, then I know that we could get it
4 done.

5 THE COURT: That's fine.

6 MR. TARR: Thank you.

7 THE COURT: Y'all are going to have to exchange
8 now because I won't sign off on anything until I know
9 that y'all have exchanged and looked at each other's
10 work.

11 MR. TARR: So you would like proposed orders from
12 each of us and given copies of each and to you within
13 60 days?

14 THE COURT: Yes, if we can get it in Word form
15 too.

16 MR. TARR: Yes, Your Honor.

17 MS. KINARD: Absolutely.

18 (The hearing concluded at approximately
19 12:56 p.m.)

20 (End of Transcript of record.)

21 - - -

22

23

24

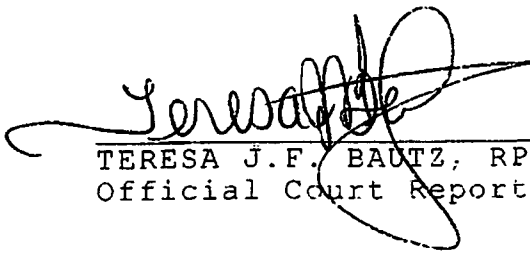
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)
5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 23rd day of July, 2016.
14

15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.
17

18
19 
20 TERESA J.F. BAUTZ, RPR
21 Official Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Timothy Young, #345620,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT

) Case Number: 2014-CP-26-007509

) ORDER GRANTING APPLICATION
) FOR POST-CONVICTION RELIEF2017 MAR -6 PM 3:14
CLERK OF COURT
HORRY COUNTY, SOUTH CAROLINA

This matter came before the Court by way of an Application for Post-Conviction Relief ("PCR") filed November 6, 2014. Respondent filed a return on or about March 5, 2015. The Court convened an evidentiary hearing into the matter where Applicant was represented by David Tarr, Esquire, and Jessica E. Kinard, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the hearing, testimony was received from Applicant, Tim Young, as well as from his trial counsel, Paul Cannerella, Esquire. The Court received testimony relating to all of the issues raised, as well as received arguments by the applicant's attorney and from the State. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

I. FACTUAL AND PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2011, the Horry County Grand Jury indicted Applicant for one (1) count of Criminal Sexual Conduct, First Degree (2011-GS-26-01088) and one (1) count of Lewd Act on a Minor Child (2011-GS-26-01089).

Paul V. Cannarella, Esquire represented Applicant. On April 7, 2011, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty as indicted on all charges. Judge Culbertson sentenced Applicant to imprisonment for twenty-five (25) years for the count of Criminal Sexual Conduct, First Degree and ten (10) years for the count of a Lewd Act on a Minor Child. The sentences are set to run concurrently.

Applicant filed a timely notice of appeal. Laura L. Hiller, Esquire and Jonathan M. Hiller, Esquire, both of Hiller & Hiller, P.A., perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence after review on June 5, 2013. State v. Young, Op. No. 2013-UP-236 (S.C. Ct. App. filed June 5, 2013). On August 22, 2013, the Court of Appeals denied Applicant's petition for rehearing. On September 23, 2013, Petitioner served a petition for certiorari. The Supreme Court of South Carolina denied certiorari on January 8, 2014.

The applicant, through his attorney, David Tarr, Esquire, filed an application for Post-Conviction Relief on November 6, 2014. On May 12, 2016, counsel filed an Amended Application for Post-Conviction Relief. The grounds are as follows:

- (a) Ineffective assistance of counsel for failure to make contemporaneous objection to Trial Court ruling Denise Searce's notes were "not discoverable" because they were "notes";
- (b) Ineffective assistance of counsel for failing to conduct a meaningful and thorough cross examination of the alleged victim;
- (c) Ineffective assistance of counsel for counsel failing to call a key witness who could have told the jury that the alleged victim said the Defendant never sexually abused her;
- (d) Ineffective assistance of counsel for failing to object to Denise Searce being qualified as an expert in child abuse assessment when there was no

¹ Anders v. California, 386 U.S. 738 (1967).

testimony offered as to her "reliability" which resulted in improperly admitted testimony that bolstered the victim's testimony;

- (e) Ineffective assistance of counsel for failing to object to Diane Nordeen being qualified as an expert in child development as it relates to forensic interviewing when there was no testimony offered as to her "reliability" which resulted in improperly admitted testimony that bolstered the victim's testimony.

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe the witnesses who testified at the hearing, and to closely pass upon their credibility. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland,

466 U.S. at 690). 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).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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." Id. at 117-18, 386 S.E.2d at 625.

A. Ineffective assistance of counsel for failure to make contemporaneous objection to Trial Court ruling Denise Searce's notes were "not discoverable" because they were "notes;"

Prior to trial, the trial court was asked to conduct an *in camera* review of the notes of Ms. Denise Searce, one of the counselors that treated the alleged victim, to determine if they should be provided to the defense. After reviewing the documents, the court ruled that they were "not discoverable". Motion Hearing Tr. pp. 3-7. Trial counsel did not object. On appeal, Applicant's appellate counsel attempted to argue that the documents should have been reviewed under Pennsylvania v. Ritchie, 480 U.S. 39 (1987) to see if there was evidence favorable to the defense that should have been provided under Brady. However, the Court of Appeals ruled that this was not preserved for appeal due to the fact that trial counsel did not issue a contemporaneous objection.

Trial counsel testified that he believed at the time that the trial judge had reviewed all of the material. At no time did trial counsel indicate that he believed the trial judge was anything less than thorough in his review of Ms. Searce's file. Trial counsel calls the fact that these may have been discoverable under Brady but not under Rule 5, SCRPC, "a difference without a real distinction" in that the trial judge was not inclined to allow them to be shared through discovery. PCR Tr. p.36; 2-3. He further recalled that the notes were made court's exhibits, however, they were not.

When reviewing trial counsel's performance, "[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland v. Washington, 466 U.S. at 689. It is apparent from testimony that trial counsel believed he had taken every necessary step and precaution to attempt to obtain any discoverable information in these records. For these reasons, his conduct cannot be seen as deficient.

B. Ineffective assistance of counsel for failing to conduct a meaningful and thorough cross examination of the alleged victim;

Regarding trial counsel's cross-examination of the alleged victim, he testified that he was afraid of what she may say, which led him to be very careful during his examination. He instead relied on the testimony of other witnesses to show that the victim had provided inconsistent statements, rather than attempting to solicit the information from her. PCR Tr. p. 15. Trial counsel's testimony revealed that, between his uncertainty of the victim's testimony and the potential for coming across as a bully, he erred on the side of caution when examining the child victim. PCR Tr. p.18 – 19, 40, and 44 – 45.

Governing case law holds that, where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not effective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The Court finds no reason to second-guess trial counsel's approach with this witness.

C. Ineffective assistance of counsel for counsel failing to call a key witness who could have told the jury that the alleged victim said the Defendant never sexually abused her;

In August of 2008, the alleged victim began seeing counselor Ms. Denise Searce. Tr. Tr. p. 248. In November of 2008, she disclosed to Ms. Searce that her mother had touched her genitals inappropriately. Id. p. 251. Thereafter, she was referred to North Carolina DSS and was interviewed by Ms. Yolanda Daniels. Id. Ms. Daniels asked the alleged victim if Applicant had ever touched her inappropriately and she said no. PCR Tr. p. 12-13.

Trial counsel obtained an out-of-state subpoena for Ms. Daniels in order for her to testify that the victim had informed Ms. Daniels that Applicant did not abuse her. Ultimately, trial counsel decided not to call Ms. Daniels. Rather than asking Ms. Daniels to testify, trial counsel chose to enter evidence of this statement through a law enforcement witness. When asked why this was his strategy, trial counsel testified that he was not entirely comfortable with Ms. Daniels' testimony, particularly because he had not been able to meet with her before the trial. PCR Tr. p. 15 – 17. The Court again declines to find that this was an unreasonable strategy.

D. Ineffective assistance of counsel for failing to object to Denise Scearce being qualified as an expert in child abuse assessment when there was no testimony offered as to her “reliability” which resulted in improperly admitted testimony that bolstered the victim’s testimony;

At the trial of this case, Ms. Denise Scearce was qualified as an expert in child abuse counseling and treatment. Tr.Tr. pp.247-248. The bolstering of alleged child abuse victims through the testimony of such expert witnesses is a practice that is at times frowned upon and discouraged by appellate courts.

In State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), our Supreme Court established the standard that should be used in determining whether to qualify witnesses providing non-scientific testimony as experts.² Under White, there is a two pronged test that must be met before a witness providing non-scientific testimony may be qualified as an expert witness. First, the qualifications of the witness must be sufficient. Second, there must be a determination that the expert’s testimony will be reliable. For purposes of this hearing, this Court finds that the parties agree that this witness had sufficient qualifications. However, this Court finds a lack of testimony regarding reliability. See Tr. Tr.

At the evidentiary hearing, trial counsel acknowledged that he did not object to the lack of testimony provided during *voir dire* of the witness pre-qualification regarding her reliability. PCR Tr. p. 24. He testified that he was familiar with State v. White. Id. at p. 22. However, he acknowledged that there was no testimony offered as to Ms. Scearce’s reliability but he failed to object. This Court finds that counsel’s failure to object was deficient and that because of the nature of the evidence in this case, was clearly prejudicial.

² Subsequently, in State v. Chavis, 412 S.C. 101, 106, 771 SE2d 336, 338 (2015), our Supreme Court found that child abuse assessment experts and forensic interviewers provide non-scientific testimony. The State argued at the PCR hearing that Chavis should not apply because it was decided in 2015, four years after the trial in this case. However, it is notable that both this trial and the trial in Chavis took place in 2011. The only difference is in Chavis, trial counsel objected to the experts being qualified. Here, trial counsel did not.

- E. Ineffective assistance of counsel for failing to object to Diane Nordeen being qualified as an expert in child development as it relates to forensic interviewing when there was no testimony offered as to her "reliability" which resulted in improperly admitted testimony that bolstered the victim's testimony.**

At the trial of this case, Ms. Diane Nordeen was qualified as an expert in child abuse assessment as it relates to forensic interviewing. Tr. Tr. p. 335. At the evidentiary hearing, Mr. Cannerella acknowledged that he did not object to the lack of testimony provided during *voir dire* of the witness pre-qualification regarding her reliability. PCR Tr. p. 24. He testified that he was familiar with State v. White. However, he acknowledged that there was no testimony offered as to Ms. Nordeen's reliability and yet he did not object. This Court finds that counsel's failure to object was deficient and that because of the nature of the evidence in this case, was clearly prejudicial.

III. CONCLUSION

THEREFORE this Court finds that this matter should be, and is hereby, remanded for a new trial.

AND IT IS SO ORDERED.


The Honorable Paul M. Burch
Presiding Judge

Pageland, South Carolina
January 3, 2017

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Timothy Eugene Young

AKA:

Race: W Sex: M Age: 44

DOB:

Address:

City, S

DL#:

SID#:

*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 w/ Minor 1st Degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

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

ATTEST: [Signature] 12123 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant 1104 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended probation for X

with 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: 4/7/2011
☒ 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

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. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter

IN THE COURT OF GENERAL SESSION 41

INDICTMENT/CASE#: 2011GS2601088

A/W#: 2011GS2601088

Date of Offense: 8/18/2008

S.C. Code § 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd in equal, consecutive weekly install-
pmts. of \$ 25.00 beginning 09/07/2008

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge. § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

Miriam C. Culbertson
2148
April 7, 2011

842 WITNESSES

Graham Myrtle Beach Police Department

DOCKET NO. 2011-GS-26-01088

CX The State of South Carolina

County of Horry

Candice Lively

09H00841

COURT OF GENERAL SESSIONS

March, 2011 TERM

ARREST WARRANT NUMBER

011GS2601088

DR: 0385 16-03-0655(A)(1)

OA: 2/26/2009

THE STATE

vs.

Timothy Eugene Young

W/ M

ve
7

ACTION OF GRAND JURY

TRUE BILL

Bruce Rine
Foreperson of Grand Jury
Date:

MAR 31 2011

VERDICT

Gilty

Neal Bostick

Foreperson of Petit Jury
Date:

ATTORNEY: Cannarella, Paul V.

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR
FIRST DEGREE

ORIGINAL

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

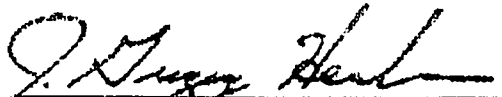
At a Court of General Sessions, convened on March 31, 2011, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Timothy Eugene Young did in Horry County, State of South Carolina, between May 2008 and November 2008, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: C.T., whose date of birth is 6/16/2001, by digitally penetrating the victim and/or licking her genitalia; in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Timothy Eugene Young

AKA:

Race: W Sex: M Age: 44

DOB:

Adm:

Cit:

DL#: SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act. committing or attempting lewd act upon child under 16 (June 1, 1996)

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468

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

w/minor 1st or Lewd Act)

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

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

ATTEST:

Lively, Candice

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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended probation for X

months/years and subject with 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

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. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter

Melanie Huggins-Ward
Grace Hickey

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2601089

A/W#: 2011GS2601089

Date of Offense: 8/1/2008

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(June 1, 1996)

CDR Code # 2468

☒ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lewd Act)

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

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

ATTEST:

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended probation for X

months/years and subject with South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
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3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter

Melanie Huggins-Ward
Grace Hickey

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2601089

A/W#: 2011GS2601089

Date of Offense: 8/1/2008

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

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(June 1, 1996)

CDR Code # 2468

☒ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lewd Act)

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

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ATTEST:

Attorney for Defendant

SC Bar#

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for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

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months/years and subject with South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter

Melanie Huggins-Ward
Grace Hickey

Presiding Judge

Judge Code:

Sentence Date:

2148
April 7, 2011

DOCKET NO. 2011-GS-26-01089

WITNESSES

J Graham Myrtle Beach Police Department

The State of South Carolina
County of Horry

Candice Lively

09H00841

COURT OF GENERAL SESSIONS

March, 2011 TERM

ARREST WARRANT NUMBER

2011GS2601089

CDR: 2468 16-15-0140

DOA: 2/26/2009

THE STATE

VS.

Timothy Eugene Young
W/ M

ATTORNEY: Cannarella, Paul V.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 31 2011

VERDICT

Guilty

Keith Battista

Foreperson of Petit Jury
Date:

Indictment for

LEWD ACT ON A MINOR CHILD

ORIGINAL

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

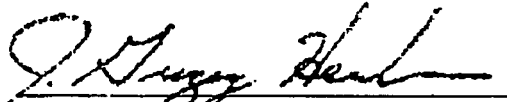
At a Court of General Sessions, convened on March 31, 2011, the Grand Jurors of Horry County present upon their oath:

LEWD ACT ON A MINOR CHILD

CDR: 2468 16-15-0140

That Timothy Eugene Young, being over fourteen years of age, did in Horry County between May 2008 and November 2008, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: C.T., Date of Birth 6/16/2001, by fondling her genetalia with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, in violation of Section 16-15-0140, S. C. 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.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

10:01:21 Wednesday, June 24, 2015

847

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 06/24/15
OMCOMITA RELEASE DATE SCREEN C056368
SCDC# > 345620 LOC: LEE
YOUNG, TIMOTHY EUGENE SCDC CLASSIFICATION...: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y
SEXUAL PREDATOR...: PENDING
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: Y
PREA DECISION...:
CURRENT SENTENCE: 025-00-000 CONSECUTIVE SENTENCE ...: N
025-00-000 CURRENT SENT START DATE: 04/07/2011
PROJECTED COMPLETION DATES
MAXOUT DATE: 03/31/2036 CURRENT EWC ..: 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: B4
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000361 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000086 CURRENT OR PRIOR SEX CONDUCT CONVICT
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ..: 001517 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Wednesday, June 24, 2015

Classification Summary Reports

Inmate Number 345620

Submit

Classification Summary Report for YOUNG, TIMOTHY EUGENE :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 06/24/2015

SCDC# 00345620

YOUNG, TIMOTHY EUGENE

FBI# 780402TA8

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: LEE

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC 25 YRS 0 MOS 0
SENT: DAYSVICTIM
WITNESS: ☒ SEPREQ:NMED NO MED PROB/NO WORK
CLASS: RESTRINST
RESTRICT: NO RESTRICTIONMENTAL
CLASS: ~~MENTAL~~CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 48

RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: FLO 1227 T

PROJ MAXOUT
DATE: 03/31/2036

PROJ PAROLE DATE: -

EWC JOB: GENERAL WORKER

ASSIGNMENT: FLORENCE UNIT

EWC
LEVEL: 3F5 EEC LEVEL:EDUC GED/HS GRAD INDEPEND
PGM: STUD

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	START	SENTENCE	V/NV	CAT	INDICT
CRIM SEX COND. W/MINOR(1S	25	0	0	HORRY	04/07/2011	V	5	11GS2601088	

LEWD ACT/CHILD UNDER 16	10	0	0	HORRY	04/07/2011 N	4	11GS2601089

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

HOLD	IRO	CATEG:

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

08/24/2011	POSSESSION OF CONTRABAND	DISMISSED	ADMINISTRATIVE RESOLUTION

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

06/17/2015	LEE	INCARCERATED	ADMINISTRATIVE
06/17/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
03/20/2015	LEE	INCARCERATED	ADMINISTRATIVE
03/20/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
02/13/2015	LEE	INCARCERATED	ADMINISTRATIVE
02/13/2015	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
12/23/2014	LEE	INCARCERATED	ADMINISTRATIVE
12/22/2014	KIRKLAND	INCARCERATED	MEDICAL
12/02/2014	LEE	INCARCERATED	ADMINISTRATIVE
12/02/2014	KIRKLAND	INCARCERATED	MEDICAL
04/27/2012	LEE	INCARCERATED	ADMINISTRATIVE
04/27/2012	EVANS	INCARCERATED	MEDICAL
01/18/2012	LEE	INCARCERATED	ADMINISTRATIVE
01/18/2012	TUOMEY REGIONAL	AUTH ABSENCE (AWL)	MEDICAL
06/30/2011	LEE	INCARCERATED	ADMINISTRATIVE
06/16/2011	KIRKLAND	INCARCERATED	RETURN FROM COURT
06/16/2011	HORRY CO	AUTH ABSENCE (AWL)	TO COURT
04/13/2011	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	07/03/2014	-		3F5

GENERAL WORKER	05/29/2014	07/02/2014	COMPLETED EDUC PROGRAM	3F5
CARPENTER HELPER	05/28/2013	05/28/2014	LATERAL TRANSFER	3F5
CANTEEN OPERATOR HELPER	10/25/2012	05/27/2013	LATERAL TRANSFER	3F5
ELECTRICIAN HELPER	07/05/2011	10/24/2012	LATERAL TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 4-7 HRS/WK	07/03/2014	-	
BONUS 15 OR MORE	05/28/2013	07/02/2014	COMPLETED EDUC PROGRAM
BONUS 4-7 HRS/WK	09/02/2011	05/27/2013	LATERAL TRANSFER

***** END OF REPORT *****

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Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 08:55:26 AM]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Horry

VS.

Timothy Eugene Young

AKA:

Race: W Sex: M Age: 44

DOB:

Address:

City, St:

DL#:

SID#:

*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 w/ Minor 1st Degree

INDICTMENT/CASE#: 2011GS2601088

A/W#: 2011GS2601088

Date of Offense: 8/18/2008

S.C. Code §: 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

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

ATTEST

Lively, Candice

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 25 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended probation for Xwith
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: 4/7/2011
☒ 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

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	\$
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§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk
Court Reporter

Melanie Huggins Ward

Grace Hurley

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25.00 beginning 04/07/2011

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge
Judge Code: 2148

Sentence Date:

April 7, 2011

STATE OF **852** CAROLINACOUNTY OF
STATE

Horry

VS.

Timothy Eugene Young

AKA:

Race: W Sex: M Age: 44

DOB: [REDACTED]

Address: [REDACTED]

City, S: [REDACTED]

DL#:

SID#:

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

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act. committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code # 2468

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

ATTEST:

Lively, Candice

SC Bar# 12123

Defendant

Attorney for Defendant

SC Bar# 1104

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended probation for X

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: 4/7/2011☒ 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

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. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 183.90

Clerk of Court/ Deputy Clerk
Court Reporter

Melanie Huggins Ward

Grace Hurley

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2601089

A/W#: 2011GS2601089

Date of Offense: 8/1/2008

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 4/7/2011

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge. § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel. § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2148

Sentence Date: April 7, 2011