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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Steven H. John, Circuit Court Judge

BILLY L. ALFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000731

APPENDIX

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) (2014-GS-26-01587)
3)
4 STATE)
5 VERSUS) TRANSCRIPT OF RECORD
6)
7 BILLY LEON ALFORD) May 14, 15, 2014
8) Conway, S. C.
9)

9 B E F O R E:

10 HONORABLE EDWARD B. COTTINGHAM, Judge; AND A JURY.
11

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

13 J. SCOTT HUCKS, ESQ.
14 M. TRAVIS HYMAN, ESQ.
15 ASSISTANTS SOLICITOR FOR HORRY COUNTY
16 ATTORNEYS FOR THE STATE

17 KENNETH R. MOSS, ESQ.
18 ATTORNEY FOR DEFENDANT
19
20
21

22 DIXIE COX EUBANK
23 CIRCUIT COURT REPORTER
24 FIFTEENTH JUDICIAL CIRCUIT
25

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1 (THE FOLLOWING TAKES PLACE ON MAY 14, 2014, BEFORE
2 SELECTION OF THE JURY PANEL, AND OUTSIDE THE PRESENCE OF THE
3 ENTIRE JURY VENIRE.)

4 MR. HUCKS: Your Honor, at this time the State would
5 call the case of the State of South Carolina versus Mr. Billy
6 Leon Alford, indictment number (2014-GS-26-01587). He's
7 charged with Sex Offender Registry violation, third or
8 subsequent offense.

9 COURT: For the record, who represents the Defendant?

10 MR. MOSS: Kenneth Moss of the Horry County Bar, Your
11 Honor. I'm appointed to represent the Defendant.

12 COURT: Is the Defendant ready for trial?

13 MR. MOSS: We are, Your Honor. We do have some motion
14 pretrial we would like to put them on the ---

15 COURT: I notice that the Defendant appears before me
16 still dressed in the uniform leaving from the Detention
17 Center. You had told me pretrial that that is agreeable to
18 you and to him; is that correct?

19 MR. MOSS: That's correct, Your Honor. And they did
20 accommodate us by removing ---

21 COURT: I will be glad to provide some clothing if
22 necessary, but it's perfectly proper, with his consent, to go
23 further and he's dressed appropriately.

24 Do you agree with that, Mr. Defendant?

25 MR. ALFORD: Yes sir, Mr. -- Your Honor.

1 **COURT:** All right, sir.

2 Are we ready to hear his motions?

3 **MR. HUCKS:** Yes sir, Your Honor. In light of some
4 evidence -- the Defendant's Exhibits we would like -- we would
5 have a motion at that the appropriate time on some evidentiary
6 issue as well.

7 **COURT:** I'm here to hear all motions now. I want them
8 off the record. I've got a jury waiting. As soon as I hear
9 the motions we are going to bring them up and start the trial
10 in this case.

11 **MR. HUCKS:** Yes sir.

12 **COURT:** Mr. Moss, I'll be glad to hear from you.

13 **MR. MOSS:** Your Honor, my client has asked me a
14 question about your comment. I think the motions are on the
15 record not off; is that correct?

16 **COURT:** Sir?

17 **MR. MOSS:** My client wants me to clarify that these
18 motions will be made on the record.

19 **COURT:** We are on the record in the courtroom. I don't
20 see how he can think otherwise. All the -- all his motions --
21 we've had a pretrial conference which was not on the record.

22 Your Honor lawyer told me at the time, and very properly
23 so, that all his motions were on the re -- going to be on the
24 record, and we are going to do it at this time.

25 **MR. ALFORD:** Amen.

1 **COURT:** You be assured that everything we do in this
2 case is going to be on the record so there will be no question
3 about it; you understand?

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

5 **COURT:** You are entitled to that.
6 All right, what you got?

7 **MR. MOSS:** I have a written motion I filed this morning
8 I would like to hand up a copy of, Your Honor.

9 **COURT:** Have you provided the State with copies of
10 them?

11 **MR. MOSS:** I have, Your Honor.

12 **COURT:** All right, sir.

13 **MR. MOSS:** Your Honor, before you is a motion to quash
14 the indictment, or to alter or amend the indictment that's
15 before you. The motion is based on a couple of different
16 grounds, first, Rule 3, and Rule 5 of the Rules of Criminal
17 Procedure.

18 **COURT:** Talk into the microphone for me.

19 **MR. MOSS:** Okay.

20 In the written motion you will see I referred to Rule
21 3(C), South Carolina Rules of Criminal Procedure, was required
22 that the Solicitor's Office was suppose to process the
23 indictment within ninety days.

24 In this case there was not an indictment had within that
25 ninety days, in fact it occurred on April 24th. The Defendant

1 was arrested on January 1st. In fact we served discovery
2 requests on March the 10th, and we received timely responses
3 on March 19th. The Solicitor's Office provided a response ---

4 COURT: What is your motion?

5 MR. MOSS: My motion is that the South Carolina Rules
6 of Criminal Procedure 3 was not complied with, specifically
7 Rule 3(C), and also Rule 3 ---

8 COURT: I understand the Rules. What grounds are you -
9 - please state your grounds.

10 MR. MOSS: Non-compliance with the Rules of Criminal
11 Procedure.

12 COURT: Sir?

13 MR. MOSS: Non-compliance with the Rules of Criminal
14 Procedure.

15 COURT: In what way do you say non-compliance with it?

16 MR. MOSS: Well, the Rule expressly provides that
17 within ninety days after an arrest the Solicitor's Office is
18 to process an arrest warrant by the presentation of an
19 indictment to the Grand Jury, and a true bill which was
20 returned is to be filed with the Clerk of Court. Here I was
21 given an indictment. I received it Monday of this week, which
22 was after the case was already on the trial roster, and
23 suppose to be tried last week, and so I received an indictment
24 that's not been filed with the Clerk of Court.

25 COURT: That indictment would have been available for

1 you at the Clerk's Office; would it not?

2 MR. MOSS: Actually no, Your Honor. I tried -- I
3 looked.

4 COURT: What's your reply to that?

5 MR. HUCKS: Your Honor, my understanding that an
6 argument under Rule 3(C), so we didn't have him arrested -- we
7 didn't have him indicted within ninety days of the time he was
8 arrested. The Rule 3(C) says that -- says that the
9 Solicitor's Office shall indict somebody within ninety days of
10 the arrest ---

11 COURT: I've read it many times.

12 MR. HUCKS: ---And the -- the controlling case on the
13 matter is State vs. Culbreth, I think it's 282 SC 38 which
14 says that the ninety day requirement does not -- is not
15 jurisdictional, that as long as they are indicted prior to --
16 pretrial, that the indictment is appropriate for proceeding at
17 trial, and that any -- that should the Court find a violation
18 of the Rule the appropriate -- and a willful and wanton
19 violation of the Rule that the appropriate remedy would not be
20 -- would not be to limit the indictment or keep it from trial,
21 but further could -- or be contempt proceedings for the person
22 who didn't get it ---

23 COURT: How long was he indicted? Your procedure very
24 seldom indicted in ninety days.

25 MR. HUCKS: Yes. He was indicted -- he was arrested on

1 New Years Day, and indicted in April, Your Honor.

2 COURT: I don't see any willful violation. That motion
3 is denied. That case clearly permits the juri -- some
4 additional time, Mr. Moss.

5 MR. MOSS: Your Honor, the Rule -- the deciding case
6 does, frankly say that that is an administrative rule and you
7 cannot ---

8 COURT: I conclude that -- I conclude that the
9 indictment process was appropriate in this case.

10 Next motion, please.

11 MR. MOSS: Your Honor, the indictment is for failure to
12 register, third offense, under 23-3-470(B)(3). Now, in
13 looking at the statute the actual criminal definition is in
14 Sub-Section (A), and it provides expressly that, if an
15 offender fails to register, provide notification of change of
16 address, or notification of permanent or temporary change of
17 employment, or attendance, enrollment, employment, voluntary
18 status, intern status, or location ---

19 COURT: What is your position? I know what the statute
20 says, and I have it before me, sir.

21 MR. MOSS: All right, the statute says ---

22 COURT: I know what the statute says, but what is your
23 position?

24 MR. MOSS: My position is he can't be charged with a
25 third offense in South Carolina.

1 **COURT:** Why?

2 **MR. MOSS:** This statute regulates what has to happen in
3 South Carolina, and it defines what's criminal in South
4 Carolina. Now, in the definition section -- or not the
5 definition section, but in the registry section it provides
6 that, if you have a conviction in this State, or any other
7 state, or in one of the United States Courts of an offense
8 that is in the category that's defined in that laundry list
9 then you have to register here. That's what the policy in
10 South Carolina is, and every state is different, and our law
11 recognizes that other states might treat those registrations
12 different.

13 **COURT:** Our statute provides that upon conviction in
14 another state you must register here. You can't disagree with
15 that.

16 **MR. MOSS:** I do not disagree with that, and that is
17 what our statute ---

18 **COURT:** What is your position?

19 **MR. MOSS:** That that's different, very distinctly
20 different than the criminal element of our statute. Our
21 statute provides if you violate our statute for a third and
22 subsequent offense you ---

23 **COURT:** I think that statute providing for criminal
24 offense as contained in this Article, quote, unquote. You
25 look at that ---

1 **MR. MOSS:** It does say that, Your Honor ---

2 **COURT:** It sure does. Last time I read it it said it,
3 "as contained in this Article", and "as contained in this
4 Article" there is a proviso that out-of-state offenses must be
5 registered in South Carolina.

6 **MR. MOSS:** That's correct.

7 **COURT:** All right. And so when you get to the
8 criminal section it says, "as provided in this Article the
9 sentence shall be as follows". Clearly that embraces offenses
10 occurring outside the State of South Carolina. I can
11 interpret no other reading of that, sir.

12 **MR. MOSS:** May I be heard?

13 **COURT:** Sure. Briefly. I've got a jury waiting.

14 **MR. MOSS:** Our State has no business defining what's
15 required in other states. Now, the evidence in this case is
16 going to deal with State of Virginia conviction. Okay.
17 Virginia laws are different than South Carolina laws, and
18 whether or not he violated the law in Virginia is for Virginia
19 to prosecute and punish not South Carolina. What this article
20 requires, and the contents of this statute, is what you have
21 to do in South Carolina, and it's clear you have to register
22 in South Carolina if you have an out-of-state conviction, not
23 for failure to register, but an out-of-state conviction of one
24 of the laundry list of sex offenses. That's what this South
25 Carolina Statute regulates. It says ---

1 **COURT:** Let me get to the chase here. I understand
2 your position; you have eloquently argued it.

3 Let me hear the response of the Defendants (SIC).
4 There's no long -- going on this. I know what you are saying,
5 and I thank you for that.

6 **MR. HUCKS:** Your Honor, the statute clearly -- even the
7 penal section of the statute specifically incorporates this
8 Article, this Article - when it mentions this Article means
9 the whole thing - and it says that the out-of-states -- that
10 the out-of-state convictions count. If somebody gets
11 convicted of a drug offense in another state we specifically
12 count in as well, under similar wording.

13 **COURT:** The language is -- as I recall, "As contained
14 in this Article".

15 **MR. HUCKS:** Yes. It says "As in this Article". It
16 mentions this specific Article in the portion of the statute
17 that Mr. Moss quotes, and I believe it to be appropriate to
18 count prior -- an out-of-state crime.

19 **COURT:** Mr. Moss, I hear your argument. I just simply
20 disagree. Clearly reading the statute, on the four corners,
21 and all parameters, it was the intention of the Legislature,
22 when imposing an appropriate criminal sentence, to deal with
23 all matters as contained in this Article, and is contained in
24 this Article, the first paragraph as I recall, says that out-
25 of-state convictions will be registered with the Sheriff of

1 the county.

2 Now what is your next motion? And I thank you for your
3 motions. You are protected on the record, but the case law is
4 clear - there's no case law on it, but the statute is clear.

5 What's your next motion?

6 **MR. MOSS:** May I add to the record briefly, Your Honor,
7 a couple of sentences to that motion ---

8 **COURT:** Sir?

9 **MR. MOSS:** I would like to protect my record a little
10 more than I have, if you would permit me a couple more
11 sentences on this motion.

12 **COURT:** You may do -- I want you to protect it, but
13 clearly your interpretation, in my view, is erroneous.

14 Go ahead. I want you to protect the record.

15 **MR. MOSS:** This Article defines what has to happen in
16 South Carolina, and it provides the consequences for an
17 offense of this Article about what has to happen in South
18 Carolina. This Article does not have anything to do with what
19 happens in Virginia, and whether or not there was ---

20 **COURT:** Didn't you read the language as contained in
21 this Article, and in that Article out-of-state convictions are
22 mentioned?

23 **MR. MOSS:** Not only have I read it over, but
24 highlighted it and I've underlined it, Your Honor.

25 **COURT:** Did you underline that part as contain

1 this Article?

2 MR. MOSS: I did, Your Honor. And this Article has to
3 do with the business in South Carolina.

4 COURT: No sir. That Article deals with out-of-state
5 convictions.

6 MR. MOSS: I've protected my record, Your Honor. Thank
7 you for allowing me to do that.

8 COURT: I understand, and I appreciate that, but what's
9 your next ---

10 MR. MOSS: The next motion is a motion in limine, Your
11 Honor, to seek to exclude any evidence of prior convictions
12 that do not pertain to convictions of the required Sex
13 Offender Registry.

14 COURT: What do you say?

15 MR. HUCKS: Your Honor, the only prior conviction that
16 we intend to mention in any way, shape or form is the one that
17 put him on the registry. I believe that's the element of the
18 crime that we have to prove, is that he's on the registry. I
19 have a certified copy of that sentencing sheet.

20 COURT: This indictment -- does this indictment allege
21 third offense?

22 MR. HUCKS: It does not, Your Honor. It just -- it
23 just ---

24 MR. MOSS: It does, Your Honor.

25 COURT: Sir?

1 **MR. MOSS:** It cites the third offense ---

2 **COURT:** If it does I'm not going to ---

3 **MR. HUCKS:** It cites the CDR code and the sub-section
4 of the law. It does it in the body of the indictment but it
5 does not mention that it's a third offense.

6 **COURT:** Okay. He says it doesn't mention that it's a
7 third offense.

8 **MR. MOSS:** Well, it cites specifically the third
9 offense Sub-Section, (B)(3).

10 **COURT:** I can deal with that. I'm not going to send
11 the indictment back to the jury. I'll send them a verdict
12 form; is that all right?

13 **MR. HUCKS:** Yes sir.

14 **COURT:** No, he -- he's -- even though it's cited at all
15 that may put them on notice, and he's entitled to that
16 protection.

17 **MR. HUCKS:** And ---

18 **COURT:** This indictment has no word on third offense.

19 **MR. MOSS:** Your Honor, we ---

20 **COURT:** Sir?

21 **MR. MOSS:** This indictment, as I said, was just given
22 to me Monday of this week. We have known that this was a
23 charge of a third offense since I got involved in this case,
24 so that's not a surprise to us. In fact, I've argued the
25 motion that it shouldn't be third, that it should be second.

1 **COURT:** Why do you object to this indictment when
2 nowhere in there is the word third offense?

3 **MR. MOSS:** I don't object to the indictment, but ---

4 **COURT:** What are you objecting to?

5 **MR. MOSS:** The indictment has not been filed with the
6 Clerk of Court as it's suppose to be filed with the Clerk of
7 Court. I did not find this indictment in the records of the
8 Clerk of Court when I looked for it.

9 **COURT:** I'm not -- I'm not clear as to what your motion
10 is. He said to me he's not going to introduce the two prior
11 convictions, and that's what you want. Now what else do you
12 want?

13 **MR. MOSS:** I would like the indictment to be quashed,
14 and you've already ruled on that.

15 **COURT:** The indictment what?

16 **MR. MOSS:** To be quashed, and you've already ruled on
17 that, so I'm not ---

18 **COURT:** Are you questioning the sufficiency of the
19 indictment?

20 **MR. MOSS:** No, Your Honor. My client -- my client has
21 not been arraigned, but we understand the indictment and we
22 understand the charges that were made against my client. He
23 understands those charges.

24 **COURT:** So what is your position? I'm not sure ---

25 **MR. MOSS:** Your Honor, I wasn't making a motion. I had

1 finished my motion, and you had asked Mr. Hucks a question
2 about the indictment, and this inquiry stated as a result of
3 the question and that's ---

4 COURT: The indictment is clean. Mr. Hucks has said,
5 and I agree, the two prior records would only come in at the
6 time of his conviction, if any, and you are not to bring that
7 in in your trial; you understand that?

8 MR. HUCKS: Yes sir. It was not our intention ---

9 COURT: You are entitled to bring in the underlying
10 charge.

11 This indictment though is fine. It never mentions third
12 offense.

13 MR. HUCKS: The only place third offense is referenced
14 in the indictment, just for purpose of the record, the statute
15 numbered on the indictment is for a third offense.

16 COURT: I -- that gives him notice, but the jury don't
17 know what that is, so that's fine.

18 MR. HUCKS: And another thing, just for purpose of the
19 record, it is on file in the Clerk's Office because you've got
20 it in front of you, Judge ---

21 COURT: I understand.

22 MR. HUCKS: ---So it's on file in the Clerk's Office.

23 COURT: Clearly the indictment is sufficient because it
24 cites the exact statute upon which he's entitled ---

25 MR. MOSS: Your Honor, my client has a concern that it

1 has not be clock-stamped with the Clerk of Court and that
2 makes a difference, and I think he's got some ---

3 COURT: Has a concern of what?

4 MR. MOSS: The indictment has not been filed. There's
5 no evidence that it was filed with the Clerk of Court ---

6 COURT: Well, we'll file it. He's on notice -- clearly
7 you are on notice that -- for trial.

8 MR. MOSS: Actually I was not on notice -- I was on
9 notice today. This case was called for trial last week and my
10 motion last week ---

11 COURT: You were on the trial roster this week now; you
12 know that.

13 MR. MOSS: Last week my motion was to dismiss for
14 failure to have the indictment because one had not been
15 provided. I received one in the ---

16 COURT: What is your motion now? I'm not understanding
17 what you are say -- asking me.

18 MR. MOSS: I don't -- I've already argued my motion,
19 Your Honor. I'm responding to your question.

20 COURT: Well, let's go forward with the trial.
21 All right.

22 MR. HUCKS: Yes sir. The State would just like -- we
23 have a motion based on the Defendant's exhibits that we were
24 provided just a little bit ago. The Defense is exhibit --
25 Defense exhibits are records where he registered as a sex

1 offender in Florida after he -- after he didn't do what he was
2 suppose to do here. We have several different grounds; we
3 don't think they are admissible. I don't think they are
4 admissible because they are not certified. They are not
5 certified records from any other courts, if they were they
6 would be admissible on the face ---

7 They are not certified. It looks to me like they were
8 just printed out off the internet showing that he registered.

9 Secondly, I don't believe they are relevant to this case
10 whatsoever. The question is whether he was suppose to do
11 something here and didn't do it, and that's what we are here
12 for; we are not here for whether he registered in Florida
13 later.

14 COURT: I'll let him testify as to whatever he did down
15 there. I'm not going to put those records into evidence. No
16 sir.

17 MR. MOSS: With all due respect, Your Honor, if
18 something was -- if you inactively ---

19 COURT: Sir?

20 MR. MOSS: These documents were provided to the
21 Solicitor on May the -- Assistant Solicitor Scott Hucks on May
22 the 2nd, last week, immediately upon my receipt of them, so
23 they weren't just handed to him, and they are official
24 records; they are public records of the State of Florida, and
25 I believe they are appropriate and relevant.

1 **COURT:** Whether he registered or not, as I understand
2 it from pretrial, the crux of the State's case is that he was
3 required to inform the Sheriff of change of address, was
4 required to inform the Sheriff that he was leaving the State,
5 that he did not do that, and that's a violation of the
6 statute. Whether he attempted to sign up in Florida or not is
7 another issue. The issue is whether or not, in writing, he
8 provided the Sheriff of this County with notice, one, of his
9 proposed change of address, two, that he was moving to
10 Florida. Now either he did it or didn't do it. I'm going to
11 take the testimony and let the jury decide.

12 **MR. MOSS:** I'm not ---

13 **COURT:** It's irrelevant as to what he did later in
14 Florida if he didn't comply with the South Carolina statute.

15 **MR. ALFORD:** You can't plan every day.

16 **COURT:** I'm not asking you. You be quiet. You talk --
17 -

18 **MR. MOSS:** With all due respect, Your Honor ---

19 **COURT:** Well -- if anything you want to say to me you
20 say it to your attorney. I don't want you to say anything
21 that jeopardizes your rights, so if you need to speak - and I
22 want to hear your position - let your attorney express it for
23 you.

24 **MR. MOSS:** With all due respect, Your Honor, the
25 statute requires -- our statutes, this Article, requires that

1 you register in the State in the other jurisdiction when you
2 move. Now, it's an express requirement of our statute that
3 you do that. Now, if we are going to prosecute somebody for
4 third offenses for things that happened in other states we
5 sure ought to be able to know whether he registered in Florida
6 when this statute, in South Carolina, requires he register in
7 the foreign jurisdiction.

8 **COURT:** I see no reason in letting the jury know that
9 he tried to comply with the statute, Solicitor.

10 **MR. HUCKS:** But we are not alleging that that's the
11 part of the statute he violated, Judge. The only thing we are
12 alleging is that he didn't submit in writing that he was
13 moving to Florida, and the law requires he does it.

14 **COURT:** I'm not going to let that -- those documents
15 in. I will permit testimony about that. I will do it.

16 **MR. MOSS:** At the appropriate time, Your Honor, we will
17 make an offer of proof.

18 **COURT:** Yes sir. But I'm not going to let that --
19 those documents come in because it's irrelevant under their
20 theory of the case. I don't mind letting the jury know he
21 went down there and tried to do it, I don't mind doing that --
22 -

23 But that -- if it's true that's certainly not a defense
24 to the position that he did not, in writing, do what the
25 statute provides.

1 **MR. MOSS:** With all due respect, Your Honor, the
2 evidence in this case is going to demonstrate to you ---

3 **COURT:** Is what?

4 **MR. MOSS:** The evidence in this case will demonstrate
5 to you - in fact already ---

6 **COURT:** Well, I'll hear the evidence.

7 **MR. MOSS:** This motion should be made at the time that
8 document was offered into evidence. It's not being made at
9 this point, because it may or may not be relevant to the
10 particular question ---

11 **COURT:** If you want to make it at a later date you can
12 do that too. I want you protected for the record. My
13 inclination is to say to you that what he tried to do later in
14 Florida is irrelevant to the allegations that he failed to
15 provide the Sheriff of this County in writing with his
16 position.

17 **MR. MOSS:** Under our indictment that's before this
18 Court they have recited a laundry list of offenses. They
19 didn't cite one particular element of the statute. Under the
20 indictment that's before this Court ---

21 **COURT:** Let's hear the testimony and then I'll hear
22 your arguments at the end of the case if there be a
23 conviction. There may be an acquittal.

24 **MR. ALFORD:** I know that's right.

25 **MR. MOSS:** We can't ask for anything more fair.

1 **COURT:** Clearly this indictment puts you on notice as
2 to what he's charged with. You are an intelligent and
3 competent attorney.

4 **MR. MOSS:** It did as of Monday of this week.

5 **COURT:** Well, the indictment has been around. You had
6 an oppor -- well, are you saying you are not ready for trial?

7 **MR. MOSS:** Your Honor, I'm ready for trial, but here's
8 the thing. They are going to prosecute my client for not
9 following procedural rule, and it's been demonstrated in this
10 Court, the Solicitor's Office has not followed a bunch of
11 them.

12 **MR. ALFORD:** Yet they want to get me in a clause for not
13 filing and whatever, but y'all can't even file ---

14 **COURT:** Well, we'll see. Now before I bring the jury
15 out I want to tell this Defendant, your comments are totally
16 inappropriate at this time.

17 **MR. ALFORD:** I'm sorry, Your Honor.

18 **COURT:** I understand that, but I want to caution you,
19 they may adversely affect your position with the jury if you
20 continue to interrupt. I'm not going to permit it for your
21 protection.

22 **MR. ALFORD:** Can I just say something, Your Honor?

23 **COURT:** Talk to your lawyer and I'll listen to you.

24 **(DEFENDANT CONSULTS WITH HIS COUNSEL OFF THE RECORD.)**

25 **COURT:** Do you want to ---

1 **MR. MOSS:** Your Honor, I'm very uncomfortable offering
2 legal counsel to my client on the record.

3 **COURT:** Sir?

4 **MR. MOSS:** I'm very uncomfortable offering legal
5 counsel for my client on the record as he has asked. He's
6 asked me to answer the question to him on the record and I'm
7 very uncomfortable doing that, so I'm ---

8 **COURT:** I'm not sure what you are saying to me..

9 **MR. MOSS:** My client has asked me a question, and asked
10 me to put the answer on the record, and I'm not comfortable
11 doing that. I would like ---

12 **COURT:** You are the lawyer. Don't do it.

13 Now I want to tell him this. I foresee we are going to
14 have some difficulty with him, and I want this record to
15 reflect ---

16 **MR. ALFORD:** I want that on the record ---

17 **COURT:** Listen to me carefully, and I'm warning you
18 now, you are not to have this outburst, you are not to
19 interfere with these proceedings. If any comment you have to
20 make you make them to your client (SIC).

21 **MR. ALFORD:** I feel I'm ---

22 **COURT:** Listen to me carefully. There are several
23 procedures that I can use. One, I can always put you in jail
24 for contempt of Court, the second thing is, if you continue to
25 disrupt my trial, I can run you out of court and proceed in

1 your absence, and then the third thing I can do is bind you
2 and gag you. Not going to let you interfere with this court
3 proceeding. Now I caution you very politely so that you will
4 remember that. It's not in your interest to interrupt the
5 trial with this jury -- in the presence of the jury, so don't
6 do that.

7 MR. ALFORD: There's no jury, sir. I'm here talking to
8 you in this courtroom.

9 COURT: All right. I've told you now.

10 MR. ALFORD: I mean, my life is on the line here, sir.
11 I mean, I'm trying to protect my rights. Y'all getting on me
12 about a failure to apply -- I'm just going to ask you a
13 question, sir.

14 COURT: No sir.

15 MR. ALFORD: My lawyer is failing to ask the question.

16 COURT: No sir. We are going to go forward with this
17 trial. You go through your lawyer, and I urge you not to
18 interrupt the trial of this case.

19 MR. ALFORD: Yes sir, Your Honor.

20 COURT: And don't force me to take some strong measures
21 against you, which I will do, in the protection of you, and
22 our judicial system.

23 Is there any other motions?

24 MR. HUCKS: No sir.

25 COURT: Call down and bring the jury.

1 (DEFENDANT IS CONSULTING WITH HIS COUNSEL OFF THE
2 RECORD.)

3 COURT: Counsel, I believe you understand now, there's
4 a stung gun on him, and they will use it if necessary. He is
5 not going to disrupt this proceeding, and I've warned him.

6 MR. MOSS: Your Honor, with all due respect, you have
7 warned him, and I've heard it, and he's heard it, and I
8 totally understand the rules. My client has got what he
9 considers to be a legitimate question, and I've -- he wants it
10 on the record so I'll put the question in the record.

11 His question is, how in the world can he be prosecuted
12 for not complying with procedural rules when the Solicitor's
13 Office hasn't complied with them in the prosecution of this
14 case, and that's ---

15 COURT: He'll hear that in the testimony of the case.
16 He'll hear the full position -- and he's entitled to know
17 that, and he will hear that testimony, and the State's
18 position, in their presentation to the jury. That's why we
19 have a jury trial. He will have every opportunity to hear the
20 charges against him, why the State says he's -- why the
21 State's he's guilty, and through his learned counsel, you, he
22 will have a full opportunity to present his defense, but
23 he's -- it's not satisfactory for him to continue to keep
24 interrupting procedure when you've got -- you, in a fine
25 capacity, to represent him.

1 **MR. ALFORD:** We apologize, Your Honor.

2 **COURT:** Please caution him. I'm trying to protect him,
3 but you know a jury would hold it against him if he continues
4 to interrupt here.

5 All right.

6 **(AT THIS TIME THE JURY VENIRE ENTERS THE COURTROOM AND**
7 **THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)**

8 **COURT:** Good morning, ladies and gentlemen. I
9 apologize for having to keep you waiting downstairs, but we've
10 been dealing with other issues not involving this case, and
11 thus we were delayed in the trial of this case.

12 I had the pleasure of working with some of you early in
13 the week on another occasion, and I look forward to working
14 with that group and all of you again.

15 I'm Judge Cottingham from Marlboro County. This is my
16 Associate Law Clerk, John McLeod. John is from Chesterfield,
17 recent graduate of the University, and a member of the South
18 Carolina Bar.

19 We are here today to try this Defendant upon an
20 indictment which will be explained to you by the Solicitor.
21 The State of South Carolina and this Defendant want, from your
22 numbers, twelve jurors and one alternate, twelve folks who can
23 say, I have no friends to reward, no enemies to punish, if I
24 am selected as one of the twelve jurors I say to you under my
25 oath that I will base my verdict on the law and evidence in

1 this courtroom, and from no other source.

2 We will keep you fully advised with reference to the
3 charges, and your duties too.

4 Solicitor, call your case.

5 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

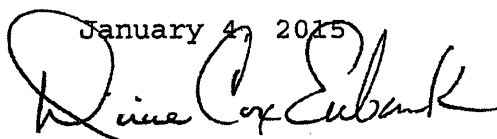
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the MOTION HEARING of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 14th day of May, 2014.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

January 4, 2015


DIXIE COX EUBANK

CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2 COUNTY OF HORRY) (2014-GS-26-01587)
 3)
 4 STATE)
 5)
 6)
 7 VERSUS) TRANSCRIPT OF RECORD
 8)
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B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Judge; AND A JURY.

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

SCOTT HUCKS, ESQ.
 TRAVIS HYMAN, ESQ.
 ASSISTANTS SOLICITOR FOR HORRY COUNTY
 ATTORNEYS FOR THE STATE

KENNETH MOSS, ESQ.
 ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK
 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

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JURY VOIR DIRE/JURY SELECTION

5

1 (THE FOLLOWING TAKES PLACE AFTER QUALIFICATION OF THE
2 JURY VENIRE, AND WITHIN THE PRESENCE OF THE JURY VENIRE.)

3 COURT: Solicitor, call your case.

4 MR. HUCKS: Your Honor, at this time the State of South
5 Carolina would call the case of the State of South Carolina
6 versus Billy Leon Alford. He is charged, Your Honor, with
7 violating the Sex Offender Registry statute, and it is
8 indictment (2014-GS-26-01587) and has been true-billed by the
9 Horry County Grand Jury.

10 COURT: Is the Defendant ready for trial?

11 MR. MOSS: We are, Your Honor.

12 COURT: All right, sir.

13 Ladies and gentlemen, please respond to the following
14 voir dire.

15 The Defendant in these proceedings is Billy Leon Alford.

16 Mr. Alford, please stand and face the jury for me.

17 Are any of you related by blood, connected by marriage
18 to Mr. Alford.

19 (NO JUROR STOOD)

20 COURT: Do any of you have any close conditions,
21 situation with Mr. Alford?

22 One. Come forward, please.

23 Join me, counsel, at the bench.

24 And as I ask this question, do any of you know Mr.
25 Alford in any capacity whatsoever, please stand.

1 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

2 (AT THIS TIME JUROR NUMBER 132 WAS EXCUSED FROM THE
3 TRIAL OF THIS CASE.)

4 COURT: The statutory laws of South Carolina provide,
5 under certain circumstances, that an individual, as a sexual
6 offender, must register with the State of South Carolina. The
7 allegations are - which are specifically denied by the
8 Defendant - that he failed by the provisions of that statute.

9 Now, this involves the failure of a sexual offender to
10 register. My question, as you know in life we develop certain
11 vices and prejudices. I use this as an example, and an
12 example only. Some years ago I was trying a young man for DUI
13 seven, having been alleged that he killed a young girl while
14 drunk driving. I asked the jury generally would they have any
15 biases or prejudices either way in trying such a case. A lady
16 got up - and I never will forget - in the back, and said,
17 Judge, I can't be fair to this defendant; my daughter was
18 killed by a drunk driver a year ago, I can't be fair. I
19 understood that, and I discharged her. Amazing enough, in
20 that same group, a gentleman got up and said, Judge, I can't
21 be fair to the State of South Carolina in the process either.
22 I said why. He said they prosecuted my son three times for
23 the same thing, when they knew that the first two trials were
24 eleven to one for acquittal, and yet they made him and me go
25 through the third trial where he was released, found not

JURY VOIR DIRE/JURY SELECTION

7

1 guilty in thirty minutes; I just can't be fair to the
2 prosecution because I don't think they were fair to me and to
3 my son.

4 And thus it is I ask of you, this case involves the
5 failure to register of an alleged sexual offender. Based on
6 your prior experiences, personally, or with members of your
7 immediate family, would any of you have such biases or
8 prejudices that you conclude that you cannot give the State of
9 South Carolina and the Defendant a fair trial on these issues.
10 If you feel that way please stand and I will discuss it with
11 you.

12 Come forward.

13 Everybody come -- bailiff, I want them to come forward
14 one at a time.

15 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

16 (AT THIS TIME JUROR NUMBER 349 WAS EXCUSED FROM THE
17 TRIAL OF THIS CASE.)

18 COURT: Next, please.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 (AT THIS TIME JUROR NUMBER 257 WAS EXCUSED FROM THE
21 TRIAL OF THIS CASE.)

22 (AT THIS TIME JUROR NUMBER 35 WAS EXCUSED FROM THE TRIAL
23 OF THIS CASE.)

24 COURT: Another inquiry. The State is prosecuted (SIC)
25 by the Solicitor's Office for the Fifteenth Circuit. Any of

1 you have any close relatives working with the Solicitor's
2 Office, or have any close relationship with them?

3 (NO JUROR STOOD)

4 COURT: Scott Hucks is the attorney trying this case.
5 Any of you have any close relationship with him?

6 (NO JUROR STOOD)

7 COURT: Mr. Moss, identify yourself.

8 MR. MOSS: I'm Kenneth Moss. My office is in North
9 Myrtle Beach. I'm with the firm of Wright, Worley, Pope,
10 Ekster & Moss. We've got fifteen lawyers. I'll try to
11 remember all of them. Richard Wright from Tabor City, and
12 Dennis Worley, and Paul Eckster from Tabor City, Butch Pope
13 over in Whiteville, we've got Napoleon Barefoot, *****
14 Barefoot in Brunswick County, as well as Richard Parrotte and
15 Preston Hilton, Melanie Nicholson here in Horry County, Mike
16 Smith in Horry County, myself and also Kelly Galley in Horry
17 County. Those are the members of my firm.

18 COURT: Any of you closely related to this attorney, or
19 have any personal close relationship with him or his firm?

20 MR. HUCKS: Your Honor, just for purposes of the
21 record, Mr. Travis Hyman with our office will also be
22 prosecuting ---

23 COURT: I'm satisfied with my inquiry regarding your
24 office.

25 MR. HUCKS: Yes sir.

JURY VOIR DIRE/JURY SELECTION

9

1 **COURT:** All right, sir. Is there any witness list that
2 I need to mention?

3 **MR. HUCKS:** I put it on your desk already, Judge.

4 **COURT:** Mr. Moss, you have a witness list?

5 **MR. MOSS:** Your Honor, all -- I only have the
6 Defendant.

7 **COURT:** Ladies and gentlemen, my Law Clerk now is going
8 to call the names of some potential witnesses that may or may
9 not participate in the trial of this case. My interest is in
10 knowing, do any of you have any close, personal relationships
11 with these potential witnesses, or any -- connected with them,
12 by blood or marriage. Now the fact that you may casually know
13 them, I'm not interested in that. If there's some personal
14 relationship I need to know that.

15 **JOHN McLEOD, LAW CLERK:** Sergeant Lori Avant of the
16 Horry County Sheriff's Office, Mark Lynn, Terry Chatfield-
17 Doneff, Renee Elvis of the Horry County Sheriff's Office, and
18 Paulette Rathbun of the Horry County Sheriff's Office.

19 **COURT:** Is there any other inquiry requested by the
20 State?

21 **MR. HUCKS:** No sir.

22 **COURT:** Mr. Moss?

23 **MR. MOSS:** The only inquiry of the witnesses by the
24 State, although I would like to bring a matter to the Court's
25 attention at the appropriate time outside the jury's ---

JURY VOIR DIRE/JURY SELECTION

10

1 **COURT:** Do what? What?

2 **MR. MOSS:** I do have a matter to bring to the Court's
3 attention, outside of the presence of the jury, when it's
4 appropriate.

5 **COURT:** It will be appropriate as soon as I select the
6 jury, have them come back, and leave them unsworn.

7 Let's go ahead and select the jury. Proceed.

8 **DEPUTY CLERK OF COURT:** When I call your juror name and
9 juror number if you will please come to the front of the
10 courtroom, turn around and face the back of the courtroom, and
11 bring any belongings that you have with you.

12 Juror number 128, Jennifer Dupuis.

13 **(JUROR APPROACHES)**

14 **DEPUTY CLERK OF COURT:** What say the State?

15 **MR. HUCKS:** Please present the juror.

16 **DEPUTY CLERK OF COURT:** Defense?

17 **MR. MOSS:** Please seat the juror.

18 **DEPUTY CLERK OF COURT:** Please be seated in the jury
19 box.

20 304, Teresa Memoli.

21 **(JUROR APPROACHES)**

22 **DEPUTY CLERK OF COURT:** What say the State?

23 **MR. HUCKS:** Please present the juror.

24 **DEPUTY CLERK OF COURT:** Defense?

25 **MR. MOSS:** Please seat Ms. Memoli.

JURY VOIR DIRE/JURY SELECTION

11

1 DEPUTY CLERK OF COURT: Please be seated in the jury
2 box.

3 5, Theo Adams, Jr..

4 (JUROR APPROACHES)

5 DEPUTY CLERK OF COURT: What say the State?

6 MR. HUCKS: Please present the juror.

7 DEPUTY CLERK OF COURT: Defense?

8 MR. MOSS: Please seat Mr. Adams.

9 DEPUTY CLERK OF COURT: Please be seated in the jury
10 box.

11 37, Gloria Black.

12 (JUROR APPROACHES)

13 DEPUTY CLERK OF COURT: What say the State?

14 MR. HUCKS: Please present Ms. Black.

15 DEPUTY CLERK OF COURT: Defense?

16 MR. MOSS: Please seat Ms. Black.

17 DEPUTY CLERK OF COURT: Please be seated in the jury
18 box.

19 199, Wilford Harrelson.

20 (JUROR APPROACHES)

21 DEPUTY CLERK OF COURT: What say the State?

22 MR. HUCKS: Please present Mr. Harrelson.

23 DEPUTY CLERK OF COURT: Defense?

24 MR. MOSS: Please excuse Mr. Harrelson.

25 DEPUTY CLERK OF COURT: You are excused from this

1 particular case.

2 30, Evans Bellamy.

3 (JUROR APPROACHES)

4 DEPUTY CLERK OF COURT: What say the State?

5 MR. HUCKS: May I inquire as to his number again. I'm

6 just ---

7 DEPUTY CLERK OF COURT: It's juror number 30.

8 MR. HUCKS: Thank you.

9 Please excuse Mr. Bellamy in the trial of this

10 particular case.

11 DEPUTY CLERK OF COURT: You are excused from this

12 particular case.

13 65 Deborah Carroll.

14 (JUROR APPROACHES)

15 DEPUTY CLERK OF COURT: What say the State?

16 MR. HUCKS: Please present the juror.

17 DEPUTY CLERK OF COURT: Defense.

18 MR. MOSS: Please excuse Ms. Carroll.

19 DEPUTY CLERK OF COURT: You are excused from this

20 particular case.

21 331, Clarence Northington, Jr..

22 (JUROR APPROACHES)

23 DEPUTY CLERK OF COURT: What say the State?

24 MR. HUCKS: Please present the juror.

25 DEPUTY CLERK OF COURT: Defense?

JURY VOIR DIRE/JURY SELECTION

13

1 **MR. MOSS:** Please seat Mr. Northington.

2 **DEPUTY CLERK OF COURT:** Please be seated in the jury
3 box.

4 233, Elvie Johnson.

5 **(JUROR APPROACHES)**

6 **DEPUTY CLERK OF COURT:** What say the State?

7 **MR. HUCKS:** Please present Mr. Johnson.

8 **DEPUTY CLERK OF COURT:** Defense?

9 **MR. MOSS:** Please seat Mr. Johnson.

10 **DEPUTY CLERK OF COURT:** Please be seated in the jury
11 box.

12 52, Sandra Brown.

13 **(JUROR APPROACHES)**

14 **DEPUTY CLERK OF COURT:** What say the State?

15 **MR. HUCKS:** Please present Ms. Brown.

16 **DEPUTY CLERK OF COURT:** Defense?

17 **MR. MOSS:** Please seat Ms. Brown.

18 **DEPUTY CLERK OF COURT:** Please be seated in the jury
19 box.

20 265, Cathy Kodra.

21 **(JUROR APPROACHES)**

22 **DEPUTY CLERK OF COURT:** What say the State?

23 **MR. HUCKS:** Please present Ms. Kodra.

24 **DEPUTY CLERK OF COURT:** Defense?

25 **MR. MOSS:** Please excuse Ms. Kodra.

1 DEPUTY CLERK OF COURT: You are excused from this
2 particular case.

3 98, Shawn Crisali.

4 (JUROR APPROACHES)

5 DEPUTY CLERK OF COURT: What say the State?

6 MR. HUCKS: Please excuse Mr. Crisali from the trial of
7 this particular case.

8 DEPUTY CLERK OF COURT: You are excused from this
9 particular case.

10 206, Betty Headley.

11 (JUROR APPROACHES)

12 DEPUTY CLERK OF COURT: What say the State?

13 MR. HUCKS: Please present Ms. Headley.

14 DEPUTY CLERK OF COURT: Defense?

15 MR. MOSS: Please seat Ms. Headley.

16 DEPUTY CLERK OF COURT: Please be seated in the jury
17 box.

18 198, Mary Harless.

19 MR. MOSS: I'm sorry. Can you repeat that, Ms. ---

20 DEPUTY CLERK OF COURT: 198.

21 MR. MOSS: And the name?

22 DEPUTY CLERK OF COURT: Mary Harless.

23 MR. MOSS: Thank you, Ma'am. Harless.

24 DEPUTY CLERK OF COURT: Harless, H-A-R-L-E-S-S.

25 MR. HUCKS: Please seat Ms. Harless.

JURY VOIR DIRE/JURY SELECTION

15

1 DEPUTY CLERK OF COURT: Defense?
2 MR. MOSS: Please seat Ms. Harless.
3 DEPUTY CLERK OF COURT: Please be seated in the jury
4 box.
5 315, Marybeth Morea.
6 (JUROR APPROACHES)
7 DEPUTY CLERK OF COURT: What say the State?
8 MR. HUCKS: Please present Ms. Morea.
9 DEPUTY CLERK OF COURT: Defense?
10 MR. MOSS: Please excuse the juror.
11 DEPUTY CLERK OF COURT: You are excused from this
12 particular case.
13 217, Jennifer Houston.
14 (JUROR APPROACHES)
15 DEPUTY CLERK OF COURT: What say the State?
16 MR. HUCKS: Please present Ms. Houston.
17 DEPUTY CLERK OF COURT: Defense?
18 MR. MOSS: Defense would ask that Ms. Houston be
19 excused.
20 DEPUTY CLERK OF COURT: You are excused from this
21 particular case.
22 79, Jesse Clark.
23 (JUROR APPROACHES)
24 DEPUTY CLERK OF COURT: What say the State?
25 MR. HUCKS: Please present Mr. Clark.

1 DEPUTY CLERK OF COURT: Defense?

2 MR. MOSS: Please seat Mr. Clark.

3 DEPUTY CLERK OF COURT: Please be seated in the jury
4 box.

5 262, Roger Kline.

6 (JUROR APPROACHES)

7 DEPUTY CLERK OF COURT: What say the State?

8 MR. HUCKS: Please present Mr. Kline.

9 DEPUTY CLERK OF COURT: Defense.

10 MR. MOSS: Please seat Mr. Kline.

11 DEPUTY CLERK OF COURT: Please be seated in the jury
12 box.

13 377, Bessie Ray.

14 (JUROR APPROACHES)

15 DEPUTY CLERK OF COURT: What say the State?

16 MR. HUCKS: Please present Ms. Ray.

17 DEPUTY CLERK OF COURT: Defense?

18 MR. MOSS: Please excuse Ms. Ray.

19 MR. HUCKS: Your Honor, may we approach very briefly?

20 COURT: Yes.

21 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

22 DEPUTY CLERK OF COURT: You are excused from this
23 particular case.

24 166, Mandy Gause.

25 (JUROR APPROACHES)

JURY VOIR DIRE/JURY SELECTION

17

1 DEPUTY CLERK OF COURT: What say the State?

2 MR. HUCKS: Please present Ms. Gause.

3 MR. MOSS: Please seat Ms. Gause.

4 DEPUTY CLERK OF COURT: Please be seated in the jury
5 box.

6 One alternate?

7 COURT: One alternate. Now, as to one -- as to this
8 one alternate, the strikes are five and ten.

9 DEPUTY CLERK OF COURT: Juror Number 73, Scarlet
10 Chestnut.

11 COURT: I'm sorry. The strikes are one and two. I'm
12 sorry.

13 MR. HUCKS: Yes sir.

14 (JUROR APPROACHES)

15 COURT: You understand, Mr. Moss?

16 MR. MOSS: I do, Your Honor.

17 COURT: One and two.

18 DEPUTY CLERK OF COURT: What say the State?

19 MR. HUCKS: Please excuse Ms. Chestnut in this
20 particular case.

21 DEPUTY CLERK OF COURT: You are excused from this
22 particular case.

23 415, Andrea Smith.

24 (JUROR APPROACHES)

25 DEPUTY CLERK OF COURT: What say the State?

1 **MR. HUCKS:** Please present Ms. Smith.

2 **DEPUTY CLERK OF COURT:** Defense?

3 **MR. MOSS:** Please seat Ms. Smith.

4 **DEPUTY CLERK OF COURT:** Please be seated in the jury
5 box.

6 **COURT:** Now, please, Dana, have her sit in the
7 alternate's chair.

8 **BAILIFF:** She is.

9 **(BAILIFF CONFERRING WITH THE COURT OFF THE RECORD.)**

10 **COURT:** It's not necessarily important. I understand
11 that you knew Mr. Moss. Is that a close personal
12 relationship?

13 **JUROR NUMBER 33, NORTHINGTON:** It was business.

14 **COURT:** Sir?

15 **JUROR NUMBER 33, NORTHINGTON:** Business, not close
16 personal ---

17 **COURT:** Would that affect your ability to be a fair --
18 give the State of South Carolina a fair trial?

19 **JUROR NUMBER 33, NORTHINGTON:** No sir.

20 **COURT:** Sir?

21 **JUROR NUMBER 33, NORTHINGTON:** No sir.

22 **COURT:** I think it would not. You will be fine.

23 My concern is only whatever your verdict is. It's not -- so
24 the law and evidence in this case, certainly not any
25 connection you may have had with the attorneys; you understand

1 that.

2 Under our procedure we select a foreperson, man or
3 woman, to serve as the jury's spokesman in the courtroom, and
4 to be the jury's spokesman in the deliberations. In just a
5 moment I want you to go back and, from your number, elect a
6 foreperson who wishes to serve.

7 I had an occasion sometime ago when I asked them to
8 elect the foreman, and they put all the names in a hat and
9 drew out one, and he didn't want to serve, so if you select a
10 foreperson, man or woman, make sure that they are willing to
11 serve, preside during your deliberations, and to be the jury
12 (SIC) in the courtroom. If you have any questions about it
13 one of your jurors has currently -- recently served as
14 foreman, and he can tell you about the process, but go back
15 there and, among your number, select as a foreperson somebody
16 who desires and capable of serving.

17 Please go to the jury room.

18 Dana, let me know who they select.

19 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY.)

21 COURT: Mr. Moss, you indicated that you had a further
22 motion you wished to make?

23 MR. MOSS: I do, Your Honor. I was going ---

24 COURT: Let me hear it outside the presence of the jury
25 who remains unsworn. Go ahead.

1 **MR. MOSS:** I'm not going to make it at this time,
2 because I had a chance to review my -- go over the jury. I'm
3 satisfied.

4 **COURT:** Sir?

5 **MR. MOSS:** I'm not going to make one at this time, but
6 thank you for the opportunity.

7 **COURT:** I afford you that opportunity now, you
8 understand?

9 **MR. MOSS:** I do understand that, Your Honor. Thank you
10 for doing that.

11 **COURT:** Is it a motion that I need to resolve before we
12 begin the trial of this case?

13 **MR. MOSS:** No, Your Honor. I had some concern about
14 one of the witnesses on the witness list that ---

15 **COURT:** Well, we'll see how it goes.

16 **MR. MOSS:** ---But I've resolved my concern, Your Honor.

17 **COURT:** All right. That's fine.

18 All right. As soon as I get information -- now, ladies
19 and gentlemen, first, is there any position with regards to
20 the composition of the jury? What says the State?

21 **MR. HUCKS:** None whatsoever.

22 **COURT:** Mr. Moss, what ---

23 **MR. MOSS:** No objection, Your Honor, to the composition
24 of the jury.

25 **COURT:** The jury then will stand as selected.

JURY IN/SWORN
STATE'S OPENING (HYMAN)

21

1 (AT THIS TIME THE REMAINING MEMBERS OF THE JURY VENIRE
2 WERE EXCUSED.)

3 COURT: Roger Kline, the jury has selected as
4 foreperson, Dixie.

5 All right. Are we ready the proceed?

6 MR. HUCKS: Yes sir, Judge. Mr. Hyman is going to do
7 the opening for our side.

8 COURT: Well, I'll be glad to hear Mr. Hyman.

9 Mr. Hyman ---

10 MR. HYMAN: Yes sir.

11 COURT: I don't like long-winded openings.

12 MR. HYMAN: I'm not long-winded, Judge.

13 MR. HUCKS: That's why I'm letting him do it, Judge.
14 You have a tendency to shut me down.

15 COURT: Well, you did good.

16 Are you ready, Mr. Moss?

17 MR. MOSS: Yes, Your Honor.

18 COURT: Bring the jury in.

19 Glad to have you, Mr. Hyman.

20 MR. HYMAN: Thank you.

21 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
22 PRESENCE OF THE JURY.)

23 COURT: I understand that this jury has selected Mr.
24 Kline as foreperson of this jury.

25 Mr. Kline, congratulations.

JURY IN/SWORN
STATE'S OPENING (HYMAN)

22

1 **FOREMAN:** Thank you much.

2 **COURT:** I recall that you were selected yesterday as
3 foreman of the jury, and so I'm delighted that the jury has
4 chose somebody with some experience with regards to our
5 procedure.

6 Heather.

7 **DEPUTY CLERK OF COURT:** Please stand and raise your
8 right hand.

9 **(AT THIS TIME THE JURY PANEL WAS SWORN.)**

10 **COURT:** Prior to beginning let me make a few remarks to
11 you, recognizing that many of you have never had the
12 opportunity to serve in criminal case. I had your foreman
13 here before, but I need to recite the same things again for
14 those who have never served before.

15 This Defendant, and all defendants, come into court
16 under an instrument known as an indictment, whereby there are
17 certain allegations that give rise to their position that he's
18 committed a crime. These allegations are, in no sense,
19 evidence. The evidence comes from this witness stand. To
20 these allegations, and to this indictment, this Defendant
21 specifically pleads not guilty, thereby placing the burden of
22 proof of proving him guilty, if they can, to your
23 satisfaction, unanimously, beyond a reasonable doubt.

24 At the conclusion of the testimony I will be defining
25 for you reasonable doubt, and defining for you the law with

JURY IN/SWORN
STATE'S OPENING (HYMAN)

23

1 regards to issues that arise in this case. There are several
2 things that you need to know even in the beginning. You
3 twelve, and you alone, are the sole and only finders of the
4 facts in this case. I am not entitled to opinion, and I have
5 none. There is nobody in this wide world that can now tell
6 you what the facts are. That's your responsibility. You may
7 say, well, Judge, I just heard this case; well, how in the
8 world am I going to be the finder of the facts, and that's a
9 fair question. In our procedure we have witnesses who testify
10 under oath, and as they testify you are the sole judges of
11 their credibility and believability. You may believe, if you
12 choose, all of what the witness says, or none. You may
13 believe a small portion and disregard the larger. Obviously
14 you would not determine the truth or falsity of a matter by
15 counting up the number of witnesses who may have testified on
16 one side or the other. You are the sole finders of the facts;
17 you are the judges of the credibility. You will hear
18 testimony from various witnesses that you will consider with
19 all other questions on the issues involved.

20 In addition to that there may or may not be documents,
21 photographs or otherwise introduced into evidence. Those
22 matters that I permit into evidence will be with you in the
23 jury room.

24 Now, you must not discuss this case with anyone, let no
25 one discuss it with you. You re prohibited from discussing it

JURY IN/SWORN
STATE'S OPENING (HYMAN)

24

1 even among yourselves until I have given you the case for your
2 deliberation. You may say -- sometimes jurors will be prone
3 to discuss an issue in the case outside the presence of the
4 jury; there may be three or four. That's wrong because
5 whatever your verdict is it's got to be a unanimous verdict,
6 and they are entitled to your thoughts on the issues, and
7 that's why we say that you cannot discuss the issues until you
8 have heard all the testimony and final summation of counsel.

9 One other issue. In this day of internet all of us have
10 iphones, and from these iphones and internets we can get
11 information on any conceivable subject. That is improper in
12 our judicial system. Our Law says that the State is entitled
13 to a fair trial, and the defendant is entitled to a fair
14 trial, and it must be based on law and evidence in this case.
15 I tell the jury, as I did yesterday, I've had an incident
16 where we were trying a case for two weeks. The bailiff came
17 to me and said, Judge, we've got a problem. I said, what is
18 it. He said, one of the jurors stopped, and had a list of
19 things, and said she had gotten more information on the issues
20 off the internet, which is totally improper. Fortunately she
21 had not shared that with the jury. Had that happened I would
22 have had to miss-try that jury, go through the whole
23 proceeding again for another two weeks. So on your oath, it
24 is totally improper for you to make any inquiry on any issue
25 in this case, from any source, and certainly off your Ipod or

JURY IN/SWORN
STATE'S OPENING (HYMAN)

25

1 your internet. Please abide by these admonitions.

2 Let me say that we will proceed in the following way.

3 The State, who has the burden of proof, will make a short
4 opening statement to you as to what they say they can prove.

5 This is a guideline to help you follow the testimony as it
6 progresses. The Defendant is entitled to make an opening
7 statement as to his position. We then will take the testimony
8 of various witnesses, and at the conclusion I will charge you
9 the law of the case with regards to the issues, and I will
10 charge you what facts, or alleged facts, that the State must
11 prove beyond a reasonable doubt, and at the conclusion of the
12 testimony you will have the benefit of final summation of
13 counsel for both sides, that they may give you their views.

14 Now what the lawyers say to you in opening statement or
15 in closing statement is not evidence. ***** Evidence comes
16 from this witness stand. This Defendant comes into the Court
17 presumed innocent. The State has got to prove him guilty
18 beyond a reasonable doubt.

19 Counsel, you may proceed.

20 **MR. HYMAN:** Thank you, Your Honor.

21 Ladies and gentlemen, we all have to do things in this
22 life that we just flat out don't want to do, for instance, we
23 have to pay our taxes. Nobody wants to pay taxes. Those of
24 you with jobs, you've got to go to work, and there you have
25 duties and responsibilities, and if you don't do them you'll

JURY IN/SWORN
STATE'S OPENING (HYMAN)

26

1 get in trouble, and in this world the law maintains that sex
2 offenders have a duty on them. Sex offenders have to
3 register. Sex offenders in Horry County have to register with
4 the Horry County Sheriff's Department, and they have to notify
5 them of their address, where they live, so they can be on the
6 Sex Offender Registry.

7 Now, not only that Registry, but they have to notify the
8 Sheriff's Department, in writing, of any change of address,
9 whether or not the address is going to be temporarily changed,
10 or permanently changed. That's the law; that's the duty that
11 is imposed on sex offenders.

12 Now, the policy behind that is just for public safety.
13 The Legislature created that law that way to keep the public
14 safe, and so they could build this database, this Registry, to
15 keep track of where convicted sex offenders live, a very
16 simple process. This trial is going to be relatively short.
17 That's the good news, but nonetheless, it is very important,
18 so we just ask that you pay very close attention. A quick
19 summation of what the evidence in this case is going to prove,
20 we only have about four witnesses we are going to call up, and
21 we are going to prove to you that this Defendant, Billy
22 Alford, is, in fact, a convicted sex offender, making him
23 required to register, that he did register at one time in
24 Horry County Sheriff's Department an address that they had on
25 file he registered was [REDACTED] Quail Hollow Road, and that's here

JURY IN/SWORN
STATE'S OPENING (HYMAN)

27

1 in Myrtle Beach, in Horry County. He registered, I believe it
2 was on or about August the 7th of 2012, so that was the
3 address that he registered.

4 Then the evidence is going to prove that he skipped
5 town, and that he went down to Florida without sufficiently
6 notifying the Sheriff's Department of his change in address,
7 and that he didn't notify them verbally or in writing, but the
8 law requires, as you will hear Judge Cottingham instruct you
9 at the close of the case, that he is required by law to notify
10 the Sheriff's Department in writing, and that's really the
11 only issue for you to decide during this case. Like I said,
12 it's going to be relatively short and simple in comparison to
13 some of the trial that we have.

14 Now, for those of you that didn't hear, my name is
15 Travis Hyman. I'm an Assistant Solicitor. We have the burden
16 of proving the case beyond a reasonable doubt. That's our
17 duty. We certainly address that, and it's our Constitutional
18 duty to prove that, so we are going to do that through witness
19 testimony, and you -- you just have one simple job, and that's
20 to do justice, to render a verdict that speaks the truth, you
21 have a sworn oath to do, so essentially I just ask that you do
22 three things throughout the course of this trial to do
23 justice. I ask that you keep your eye on the evidence in this
24 case, that you pay attention to that, keep your eye on the
25 ~~keep your eye on the evidence in this case, that you pay attention to that, keep your eye on the~~ ~~law and the facts of the case, and the testimony of the witnesses, and the arguments of the attorneys, and the instructions of the judge, and the verdict of the jury, and the final decision of the court.~~

1 Horry County Sheriff's Department when he went to Florida. He
2 failed to sufficiently notify them. I believe the indictment
3 says that that occurred on or about September 6, 2012, but you
4 will kind of see, as the trial plays out, that it was an
5 ongoing thing, that it was around September the 6th that the
6 Horry County Sheriff's Department, through Lori Avant, did, in
7 fact, discover that he had moved away from that house.

8 And I thank you very much for your time and for your
9 attention. I know you have other places that you would like
10 to be, but thank you very much for being here.

11 **COURT:** Thank you, Mr. Hyman.

12 Mr. Moss.

13 **MR. MOSS:** Thank you.

14 Ladies and gentlemen of the jury, I'm Kenneth Moss. We
15 met earlier today.

16 I have the privilege of representing the Defendant.

17 You've heard that he was charged in the past with a sex
18 crime, and if you didn't hear it it was back in 1998, and he
19 actually pled guilty, and you learned a little today about
20 what that was about. Make no mistake, he is not here today
21 because of that crime that occurred in 19 -- in the 1990s.
22 That's not what this is about.

23 There was some conversation before the trial of whether
24 or not he should be in the courtroom dressed as he is, because
25 in some cases that can be considered prejudicial to a jury if

1 you've got somebody in -- ***** clothes. It can prejudice ---

2 **COURT:** Mr. Moss, come forward and stand more in the
3 middle so these folks over here can hear what you are saying.

4 **MR. MOSS:** Will do. Thank you, Your Honor.

5 My client had no objection to seeing yourself in -- just
6 like he is today, because he's not here for a crime that he
7 committed, but he's here because they alleged that he has
8 failed to register, but he's going to tell you he did
9 register, and he's going to tell you he did comply with the
10 law to the best of his ability.

11 And it's interesting Mr. Hyman mentioned the tax code,
12 because this law is about as complicated as the tax code, and
13 I dare say that none of you, and certainly I, don't understand
14 all the elements of the tax code, but the evidence is going to
15 show you he did what he understood he had to do.

16 Now, Mr. Hyman asked you to do three things. What he
17 didn't ask you in those three things to do is what I'm going
18 to ask you to do. I'm going to ask you to use your good
19 common sense and reasoning, and apply that to the duty that
20 you took an oath to uphold, and your duty is to require the
21 State to prove Mr. Alford guilty beyond a reasonable doubt.
22 They have the burden of doing that.

23 So you are good -- that fourth element, using your good
24 common sense and reasoning, is crucially important to your
25 role, because you are the decider of the facts, and you will

1 hear some evidence from the State, from their witnesses, you
2 are going to hear some evidence from Mr. Alford, and you've
3 got to sort that out and figure out what really happened here,
4 and I believe that when you do that, using your good common
5 sense and reasoning, you will find that my client has not
6 violated this law.

7 Thank you for your time and attention today.

8 COURT: All right. You may call your first witness.

9 Thank you, Mr. Moss.

10 MR. MOSS: Yes sir.

11 MR. HUCKS: We would call Sergeant Avant to the stand,
12 from the Horry County Sheriff's Office.

13 LORAIN HARDEE AVANT, being first
14 duly sworn, testifies as follows:

15 DIRECT-EXAMINATION BY MR. HUCKS:

16 Q. And what's your position? What do you do for a living?

17 A. I am employed with the Horry County Sheriff's Office.

18 Q. And what's your rank?

19 A. My rank is Sergeant.

20 Q. I've always wanted to know, what does that mean?

21 A. Well, in my case it simply means that I supervise
22 certain operations within the Horry County Sheriff's Office.

23 Q. Okay. So what -- what are your duties as a Sergeant
24 with the Sheriff's Office; what do you do?

25 A. My duties include the supervision of the Horry County

1 Sex Offender Registration and Tracking Unit. I also supervise
2 the physical security of the Horry County Government and
3 Justice Center, the building that you are in. I also
4 investigate crimes as a part of the South Carolina Attorney
5 General's Internet Crimes Against Children's Task Force.

6 Q. And we are here today in your position as a supervisor
7 over the Sex Crimes Division; is that right?

8 A. That's correct.

9 Q. Okay. Now what does that mean; what does that entail,
10 the Sex Crimes Division; what do you do?

11 A. Basically what we do is, we are -- we are mandated by
12 statute to see that convicted sex offenders who are obligated
13 to register in the county that they reside, make sure that
14 those registrations are in compliance with South Carolina Law,
15 and follow up on any information provided to us that's
16 contrary to that -- to the compliance of the law.

17 Q. Okay. I'll ask you, how do you know Billy Alford?

18 A. I'm familiar with Mr. Alford from previous
19 registrations with the Horry County Sheriff's Office.

20 Q. Have you met him before?

21 A. I have, in fact, met him before.

22 Q. You spoke with him before?

23 A. I have spoke with him on several occasions, yes sir.

24 Q. How long have you personally been acquainted in some
25 way, shape or fashion on Mr. Alford?

1 A. I have personally been acquainted with him for a number
2 of years as part of his registration with the Horry County
3 Sheriff's Office.

4 Q. If you had to estimate how many ---

5 A. I believe -- his first registration has been a number
6 of years. I probably registered him in the early 2000s,
7 2000 ---

8 Q. And how long have you been with the Sheriff's Office?

9 A. I've been employed with the Horry County Sheriff's
10 Office since 2002.

11 Q. And is that when you would have come into contact with
12 Mr. Alford the first time, around that time?

13 A. Around that time, that would be correct.

14 Q. Now, what are your dealings with Mr. Alford? What does
15 that consist of when you have to meet and deal with sex
16 offenders? What does that mean? Explain it to the jury, you
17 know. I get convicted of a sex crime, what do I do?

18 A. When a person is convicted of a sex related offense
19 that requires registration they must report to the Horry
20 County Sheriff's Office to, in fact, accomplish that
21 registration. As part of that registration we collect from
22 them certain data. As part of that da -- part of that data is
23 where they reside, where they work, where they go to school
24 if, in fact, they go to school, other data such as physical
25 characteristics, as well as vehicle information, and quite a

1 list of things that we are required, by statute, to collect
2 from every offender who presents himself or herself for
3 registration.

4 Q. Now, you say you are required by statute. What does
5 that mean? Explain that to the jury.

6 A. That means that South Carolina law simply says that the
7 sheriff must accomplish certain tasks in order to properly
8 register a convicted sex offender.

9 Q. And, in essence, your job is to ensure that the
10 Sheriff's Office complies with the South Carolina State Law?

11 A. That's correct.

12 Q. Sex offenders that are required to register, you ensure
13 that they register, and they do it appropriately?

14 A. That's correct.

15 Q. And you keep tabs on them?

16 A. We do, in fact.

17 Q. And I'm going to show you something that's been
18 previously marked as State's Number 2. It's -- I believe it's
19 thirteen pages. What is -- what is that?

20 MR. MOSS: Can I get a copy if you don't ---

21 MR. HUCKS: Oh, sure.

22 It's provided in discovery, Your Honor. It's a ---

23 MR. MOSS: Well, I got a lot in discovery. I just
24 wanted to know ---

25 (DEFENSE COUNSEL REVIEWS DOCUMENT.)

1 Thank you, Your Honor.

2 Q. Can you tell me what that is, please?

3 A. This document is a Sex Offender Registration Packet,
4 and in this case it is that of the Defendant, Billy Leon
5 Alford. It is provid -- it's information that is provided to
6 the Sheriff's Office by Mr. Alford, and that includes
7 information such as where he is living, whether or not he's
8 working, and if so, where that would be at, contact numbers.

9 It also includes a portio where the Sheriff's Office
10 goes over the mandatory requirements of an offender, with that
11 offender, and in this -- on this particular document Mr.
12 Alford has, in fact ---

13 Q. Let me stop you for just a moment. It's not in
14 evidence yet, but is this a document that you keep in your
15 regular course of business?

16 A. This is a document that is -- is routinely gone over
17 with each person who comes in for registration.

18 Q. This whole packet here, is that something that you use
19 in your regular course of business, some of this?

20 A. That is correct.

21 Q. And it's something that you actually provided to our
22 office?

23 A. Yes, we did.

24 Q. And is that something that you utilize in the day to
25 day operations of your business?

1 A. Yes, we do.

2 Q. And it's a -- and you would be a person who keeps up
3 with this document?

4 A. That's correct.

5 MR. HUCKS: And Your Honor, at this time the State
6 would move State's Exhibit Number 2 into evidence.

7 COURT: Counsel, you've seen this exhibit?

8 MR. MOSS: I have, Your Honor.

9 COURT: It is admissible.

10 (SEX OFFENDER PACKET FOR MR. ALFORD ADMITTED INTO
11 EVIDENCE AS STATE'S EXHIBIT NUMBER 2.)

12 Q. Now while -- now we can talk about it a little bit.

13 A. Okay.

14 Q. Now, I'm going to direct you to pages six and five.
15 I've got them out of order, I've got them out of order here.
16 The -- what are the purposes of pages five and six for this
17 document? What do you do? Explain to the jury what all of
18 this means.

19 A. The purpose of including this particular portion in the
20 packet is to make sure that each offender that comes in for
21 registration with us does, in fact, understand what South
22 Carolina Law requires of them. It sets forth the individual
23 obligations that they have, of things they must do, the time
24 frame they must do them in, and we go over each section
25 individually, and have the offender initial each section to

1 effectively make sure that they understand what the law is in
2 this State.

3 Q. And is it common policy with the Sheriff's Office that
4 when someone registers as a sex offender that you go over each
5 of these requirements with them?

6 A. That's correct.

7 Q. Now what are these little letters next to each one of
8 the paragraphs?

9 A. That would be the initials of Mr. Alford.

10 Q. And what do those initials indicate?

11 A. They indicate that he has gone over each of these
12 items, and -- with the Sheriff's Office, and that he does, in
13 fact, understand what he is required to do as part of his
14 registration with the Sheriff's Office.

15 Q. Now if anyone is on the registry, when you go over
16 these things is it your policy to discuss each one of these
17 with them if they have a question about them?

18 A. It is our standard protocol to do that, yes.

19 Q. So -- I'm just trying to clarify a little bit. You
20 read each of these to the person, or they read them
21 themselves?

22 A. We actually do both. It is my personal protocol to
23 make sure that an offender can read and write, as well as
24 explain this to them.

25 Q. So you do both? You explain them to them, and make

1 sure they read them personally?

2 A. That's correct.

3 Q. Okay. I want you to -- I'm going to point out a
4 portion of it. It's the fourth clause on page six. How about
5 read that out loud to the jury, please.

6 A. "Notify the Sheriff of my County of primary
7 registration of any intentions to move out of the Country, or
8 travel out of the Country twenty-one days in advance."

9 Q. I pointed at the wrong one. Excuse me just one second.
10 Pardon me. The fifth clause on page number 5. How about
11 that?

12 A. This is preceded by the statement, "I understand that
13 I'm required to register and I must", and that particular
14 paragraph says, "Provide written notification, in person,
15 within three business days of a change of address to a new
16 jurisdiction, to the county sheriff with whom the person last
17 registered."

18 Q. So, when did Mr. Alford sign this document?

19 A. This document was signed on August the 7th, 2012.

20 Q. And did Mr. Alford initial beside this particular
21 clause?

22 A. He did, in fact, initial that particular clause.

23 Q. Now, I'm going to ask you, in all of your years of
24 dealing with Mr. Alford has he ever changed his address
25 before; has he ever moved or left?

1 A. Yes sir, he has.

2 Q. And has he provided written notification in each of
3 those prior instances?

4 A. He provided written notification in some of those
5 instances.

6 Q. Okay. So he has provided written notification to you
7 before?

8 A. Yes, he has.

9 Q. And you notified him, in this document, and discussed
10 it with him on several occasions; that's a requirement?

11 A. Yes sir. I have, in fact, on several occasions, gone
12 over the obligations. Yes sir.

13 Q. And this was signed August the 7th of 2012?

14 A. That's correct.

15 Q. Now, Sergeant Avant, explain to the jury how you got
16 involved in this particular charge against Mr. Alford; what
17 happened here?

18 A. On September the 6th of 2012 the Horry County Sheriff's
19 Office received information relative to the Defendant, Mr.
20 Billy Leon Alford, and the information alleged that he no
21 longer lived at the address he had provided to us, which was
22 [REDACTED] Quail Hollow Road, in the Myrtle Beach Section of Horry
23 County. On the following day, on September the 7th, in an
24 effort to determine, or validate whether he did, in fact,
25 still live there, or whether he had moved, I went to that

1 location, Quail Hollow Road. When I arrived at the location
2 on Quail Hollow Road it did not appear that anyone was home,
3 and I, in fact, spoke with a neighbor to try to get
4 information about what may be going on in that home. As a
5 result of my conversation I was able to determine who the
6 property owner was for [REDACTED] Quail Hollow Road in an effort to
7 contact that property owner to see if I could get further
8 information.

9 Q. Now, were you able to contact the property owner?

10 A. I was.

11 Q. And through your investigation were you able to
12 determine if Mr. Alford was living at the address that he was
13 registered to on the day you went out there?

14 MR. MOSS: Objection, to the extent the question would
15 call for -- to elicit any hearsay.

16 COURT: No sir. I'm going to permit that through her
17 investigation. You may cross-examine her. We are not going
18 into details, but I'll permit that.

19 Go ahead.

20 A. As a result of my investigation ---

21 COURT: I'm not permitting it as to the truth of the
22 matter asserted, but as to the basis for her investigation.
23 You understand that? All right.

24 A. As a result of my investigation I determined that Mr.
25 Billy Leon Alford did not live at [REDACTED] Quail Hollow Road.

1 Q. On the day that you went there?

2 A. On the day that I went there, September 7, 2012.

3 Q. And that's the address that he had registered with you?

4 A. That is the last address he registered with us; that's
5 correct.

6 Q. Was anybody living in that residence that you could
7 tell?

8 A. No sir. There was no one living in that residence at
9 that time.

10 Q. So it was a vacant residence?

11 A. That's correct.

12 Q. Now, I want to show you -- and don't need
13 authenticating -- I'm going to ask you if you recognize
14 State's Number 3 and 4, Sergeant Avant, at all?

15 A. I do, in fact, recognize this.

16 Q. Okay. What are they? Let's start with the one --
17 let's start with Number 3.

18 A. State's Exhibit Number 3 is a sentencing sheet for the
19 Defendant, Billy Alford.

20 Q. And is it certified: does it have the Clerk's stamp on
21 it?

22 A. It does have the Clerk's stamp.

23 Q. And what about State's Number 4?

24 A. State's Exhibit Number 4 is an indictment also. I
25 think this is a part of the sentencing sheet.

1 Q. Okay. So these two things together make up a
2 sentencing sheet?

3 A. That's correct.

4 Q. And what do the sentencing sheets indicate?

5 A. That Mr. Alford was convicted of -- do I need to report
6 the ---

7 Q. Yes.

8 A. That Mr. Alford was, in fact, convicted of lewd act on a
9 minor.

10 MR. HUCKS: And Your Honor ---

11 COURT: All right. Let me stop and say, one of the
12 elements that the State must prove beyond a reasonable doubt
13 is that this Defendant was, in fact, a convicted sexual
14 offender. There is evidence, testimony here for your,
15 consideration as to that issue. I'm permitting that testimony
16 only because the State is required to show a prior conviction.
17 That conviction, however, is not evidence of his guilt in this
18 charge for failure to register. That testimony, if any, will
19 come from other witnesses. The only reason that's coming in
20 is that the State is required to prove a prior sexual
21 conviction.

22 You may proceed.

23 MR. HUCKS: Your Honor, at this time the State would
24 move State's Number 3 and 4, the sentencing sheet and other
25 half, into evidence. They are certified copies, under seal in

1 the Clerk's Office, so they would be admissible on their face.

2 COURT: They are admitted ---

3 MR. HUCKS: Thank you.

4 COURT: ---Without objection.

5 (TWO-PART SENTENCING SHEET ADMITTED INTO EVIDENCE AS
6 STATE'S EXHIBIT NUMBERS 3 AND 4.)

7 Q. Now, what's the crime he was committed of -- committed
8 of this?

9 A. Convicted of lewd act on a minor child.

10 Q. Now, and does lewd act -- did lewd act on a minor
11 child, at the time he was convicted, require him to begin
12 sexual registry?

13 A. It did, in fact, require registration.

14 Q. And how long does he have to register for?

15 A. In this State, for a lifetime.

16 Q. So from the day he was convicted - and what date was
17 that?

18 A. That would have been February the 6th of 1998.

19 Q. Now, so since 1998 he's had to register how often?

20 A. The law has changed since initial registration as to
21 the frequency of registration. I think his first
22 registrations were on an annual basis, and the law changed
23 subsequent to that, requiring bi-annual registration.

24 Q. So according to that contract when else does he have to
25 register? When does he have to put the Sheriff's Office on

1 notice?

2 A. Any time there's any change in any data that's
3 collected from him, such as address or employment, or a number
4 of other things, it's collected at the time of his
5 registration; any change would require that he report that to
6 the Sheriff's Office.

7 Q. And is changing his residence one of those?

8 A. Yes, in fact, it is.

9 Q. Is moving to another jurisdiction or another State one
10 of those?

11 A. Yes, it is.

12 Q. So either of those would have been a violation of --
13 violation of his registry requirements?

14 A. That's correct.

15 Q. Now, he's been required to register since 1998;
16 correct? He would have been required to register since he was
17 convicted?

18 A. That's correct.

19 Q. And in that time has he notified you of moves before in
20 writing?

21 A. He has.

22 MR. HUCKS: Your Honor, at this time we would just like
23 to publish the evidence that's in to the jury.

24 COURT: Do what?

25 MR. HUCKS: Publish the evidence that's been entered to

1 the jury.

2 COURT: Yes sir.

3 Q. Were you ever able to find Mr. Alford, or figure out
4 where he was?

5 A. Ultimately, yes sir.

6 Q. Okay. Tell us how that came about. Tell the jury how
7 that came about.

8 COURT: Please look at that and pass it around. This
9 document will be with you during your deliberations.

10 Proceed.

11 Q. How did that come about; how did you figure out where
12 he was?

13 A. The Horry County Sheriff's Office was actually
14 contacted by a police officer from the State of Florida that
15 had personal contact with Mr. Alford, and that officer had
16 contacted Horry County in an effort to make sure that we knew
17 where he was, or to inquire if we knew where he was.

18 Q. Did you know where he was?

19 A. We did not know where he was at that time.

20 Q. What was the date of that contact from that officer?

21 A. I believe that was on September the 7th of 2012.

22 Q. And that would have been the day that you went out to
23 the residence ---

24 A. That was the day that I went to the residence.

25 Q. ---And confirmed that he was not there?

1 A. And confirmed that he did not reside at that location.

2 MR. HUCKS: I've got nothing further. Please answer
3 any questions whatsoever that Mr. Moss has for you.

4 COURT: Mr. Moss.

5 MR. MOSS: Thank you.

6 CROSS-EXAMINATION BY MR. MOSS:

7 Q. Ms. Avant, who takes the registrations in your office?

8 A. We have a number of personnel that register sex
9 offenders for the Sheriff's Office.

10 Q. So it's different people?

11 A. That's correct.

12 Q. Okay. And so my client would not always be interacting
13 with you when he was there; is that right?

14 A. He would not.

15 Q. Okay. And what are the hours of operation of your
16 office?

17 A. From approximately 8:00 AM in the morning till around
18 5:00 PM in the afternoon, Monday through Friday.

19 Q. Okay. Y'all aren't open on the weekends?

20 A. We are not.

21 Q. Okay. Do you work on weekends?

22 A. I do on some occasions.

23 Q. Okay. Do you see persons to register as sex offenders
24 on the weekend?

25 A. I do not register sex offenders on the weekend.

1 **COURT:** Mr. Moss, you are going to have to talk a
2 little louder. That far witness can't hear you.

3 **MR. MOSS:** Okay.

4 **COURT:** Far juror, I mean.

5 Q. So a sex offender cannot come in your office on
6 weekends and register for ---

7 A. That's correct.

8 Q. Okay. Now, you said something earlier that I thought
9 was interesting about one of the exhibits, but I think ---

10 **MR. MOSS:** Your Honor, I think the jurors may have it.
11 I would like to have it back, if you don't mind, for the
12 questioning. Your Honor, I need the exhibits.

13 **COURT:** If you want to look at that exhibit you can
14 take a look at it.

15 **MR. MOSS:** May I?

16 And the twelve of you, I don't want to take it away from
17 you but I kind of need ---

18 **COURT:** I'll let the jury know, that exhibit will be
19 with you during your deliberations in the jury room.

20 But you are entitled to take a look at it.

21 Q. Do you remember Defendant's (SIC) Number 2? You talked
22 about it in response to Mr. Hucks' questions. I want to go
23 over it with you if you don't mind.

24 A. Yes sir.

25 Q. Now, if you flip through it with me it appears that all

1 the pages aren't either here or aren't in order; right? Flip
2 through these page numbers with me.

3 A. It looks like that a couple of them are out of order.

4 Q. There's one missing; isn't there? Let me see if I can
5 help you.

6 Okay. You are right. There's a couple of them shifted
7 out of order?

8 A. Out of order; yes sir.

9 Q. And are you aware that the copy they provided me that
10 one was missing altogether?

11 A. I am not aware of that; no sir.

12 Q. Okay. Well, let's talk about this form. This is a
13 form your office uses; right?

14 A. That's correct.

15 Q. Now this is not the State Law; is it?

16 A. What are you asking me; what is not the State Law?

17 Q. This form is not the statute; right? If you look up --
18 if you go to the law book and you look it up, and you look up
19 the Section 23 dash 3 dash 470 and 465 you don't see this
20 form; do you?

21 A. I wouldn't imagine -- no sir; you will not see the
22 exact form, but you would see that the law requires the data
23 that's encompassed within that form.

24 Q. Okay. And that's what this form's intention is; right,
25 for you guys to administer what's required in this law?

1 **COURT:** When you are through with that give it ---

2 **A.** Yes sir.

3 **COURT:** ---Back to the jury, please.

4 **MR. MOSS:** I will, Your Honor. Thank you.

5 **Q.** Now, what I've got in front of me is the statute
6 section. Take a minute and tell me if you recognize it.

7 **A.** Yes sir. Yes sir; I do.

8 **Q.** This is the Act, and your office is in charge of
9 administering this Act in Horry County; right?

10 **A.** That's correct.

11 **Q.** Okay. And these are the requirements?

12 **A.** That's correct.

13 **Q.** Okay. I want to talk to you about one of the things
14 that you said had to happen. Attorney Hucks had, I think,
15 referred you to page five of your document, Defense Number 2.
16 Do you see this page? And I think he had you look down there
17 at the bottom of the page, and I think it's the -- is it the
18 second to the last element? Do you see this, this one right
19 here where it says provide written notification to the person
20 within three business days of a change of address to a new
21 jurisdiction?

22 **A.** I do see that; yes sir.

23 **Q.** Okay. Now is it your understanding that's what the law
24 requires?

25 **A.** Yes sir. That is, in fact, my understanding.

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1 Q. Now nothing in here requires him to get permission of
2 your office to leave the jurisdiction; right?

3 A. It does not.

4 Q. Okay. And earlier you -- I think you testified that -
5 I wrote it down - that the law requires a defendant to
6 register in this State for a lifetime, but that's only if they
7 live here, right?

8 A. That's correct.

9 Q. If they don't live here they don't have to register
10 here; right?

11 A. He does not have -- an offender does not have to
12 register if they no longer reside, but upon their leaving they
13 have to report notification of where they are moving to, and
14 the address they are moving to in another jurisdiction.

15 Q. Indeed this form right here that your office uses says
16 they have to come in person and give notification; doesn't it?

17 A. That's correct.

18 Q. Okay. And that's what I want to ask you about, and it
19 refers to South Carolina 23 dash 3 dash 460(F); right?

20 A. That's correct.

21 Q. Okay. I want to show you 23 dash 3 dash 470(F). I'm
22 sorry, 23 dash 3 dash 460(F). Is that what's referred to?

23 A. 460. Yes sir.

24 Q. Okay. I want to show you 460(F), and you take a look
25 at my document and you find -- I don't want to confuse you.

1 It starts on the bottom, and I think (F) is on the next page.

2 Do you see it now, on the next page?

3 A. I do.

4 Q. Would you take a moment and read that? You can read it
5 to yourself.

6 A. Yes sir, I've read it.

7 Q. Okay. Now, this is the statute; right; and that's the
8 law?

9 A. This is -- this is the law; yes sir. I made the
10 assumption that it's a current copy of what the law is.

11 Q. Okay. Thank you for doing that. I wouldn't try to
12 trick you on that. You said earlier it had changed; right;
13 the law had changed?

14 A. There have been multiple changes in the law over the
15 course of years that the registry has been implemented.

16 Q. And in about '06 there was a big change; wasn't there?

17 A. There was, in fact, many changes in the law.

18 Q. Okay. And you had to try to educate all these
19 registered sex offenders about how the law changed, or what
20 the new requirements are; right?

21 A. That's correct.

22 Q. And how many do you have registered with your office?

23 A. Actively registered, with the Horry County Sheriff's
24 Office, it's somewhere just shy of five hundred. I don't have
25 the exact figure ---

1 Q. Okay. Did you personally ---

2 A. And those are active offenders.

3 Q. Did you personally meet with all of them, and tell them
4 about the new requirements of the law?

5 A. I personally have not met with all the offenders..

6 Q. Okay. Now, let's talk about the law, Subsection (F).
7 It says the person required to register moves out of South
8 Carolina the person must provide written notice within three
9 business days; right? It doesn't say they have to come in the
10 Sheriff's Office and do that; does it?

11 A. South Carolina Law Enforcement Division's protocol
12 manual does, in fact, require that they report in person and
13 put it in writing.

14 Q. Okay. But the Legislature didn't adopt the South
15 Carolina Law Enforcement's protocol; did they?

16 A. The Legislature did enact that they were to promulgate
17 the Horry County Sex Offender Registry.

18 Q. Okay. Now, you will agree with me this statute doesn't
19 require them to come in personally when they leave; right?

20 A. Yes sir. What I'm reading here requires a written
21 notice of a move.

22 Q. Okay. It doesn't require permission to move?

23 A. It does not require permission to move.

24 Q. And it doesn't require them to come in?

25 A. Yes sir. What I'm reading right here does not require

1 personal appearance. Again, I'm not sure of the date of the -
2 - the copy that you have, but, in fact, it does require
3 written notification.

4 Q. Okay. Would you like for me to get a book from ---

5 A. No sir. I'm just simply telling you that I'm looking
6 at what you've provided to me, and I can only make the
7 assumption that that is, in fact, a current copy of the
8 statute.

9 Q. Do you have any reason to think I would try to trick
10 you?

11 A. I have -- no sir, I have no reason to think otherwise.

12 Q. Okay. Now, another part of the statute I want you to
13 refer to ---

14 COURT: Counsel you understand that I will fully charge
15 this jury, in detail, with regards to the law ---

16 MR. MOSS: I do understand it, Your Honor.

17 COURT: I suspect that those things that you are
18 talking about are regulations, and not in the law. This lady
19 is not a lawyer now. I will explain the law.

20 MR. MOSS: I know that you will, Your Honor.

21 COURT: All right, sir. But you are reciting some
22 things that are not in the statute, but are in regulations.

23 MR. MOSS: Your Honor, I'm reciting the statute only.
24 Your Honor, I do not have the regulations with me. All I have
25 is the statute.

- 1 **COURT:** Go ahead. Go ahead.
- 2 Q. Okay. Now, 450 statute is the statute that says they
- 3 have to register here, and it says where they live; right?
- 4 A. That's correct.
- 5 Q. And he lived in Horry County?
- 6 A. He did, in fact, live in Horry County.
- 7 Q. And he registered in Horry County?
- 8 A. Yes sir, on multiple occasions.
- 9 Q. And that last registration was in August of '12; right?
- 10 A. Yes sir.
- 11 Q. And that's what your exhibit is?
- 12 A. Yes sir.
- 13 Q. Any reason to think that he told anything untruthful
- 14 about where he resided when he registered in August the 12th?
- 15 A. Could you repeat your question, please?
- 16 Q. Do you have any reason to believe that he did not
- 17 provide truthful information when he registered in August of
- 18 2012 as to where he lived?
- 19 A. As that was my first going to that location to validate
- 20 one way or the other I have no way of knowing whether he
- 21 provided accurate or truthful information or not.
- 22 Q. But you testified earlier that in your investigation
- 23 you learned he did live here; right?
- 24 A. I told you that I did learn information that he did, in
- 25 fact, live there, but you asked me if I knew whether he was

1 truthful or not at the time that he did this ---

2 Q. No Ma'am. That's not exactly what I asked you; I asked
3 you if you have any reason to think he did not provide
4 truthful information.

5 A. I have no reason to think, on that particular address,
6 as my investigation did prove that he had, in fact, been there
7 at some point in time, that he did not provide untruthful
8 information on that occasion.

9 Q. Okay. So that's a no; you don't have any reason?

10 A. I have no reason as to that specific address.

11 Q. Okay. Now in your investigation you also learned that
12 he had -- had -- said that he had spoken with two other
13 individuals in your office; didn't you?

14 A. I did. I put in my investigation that there was a
15 notation that he had spoken to two other individuals in the
16 Horry County Sheriff's Office.

17 Q. And are you aware that when he registered August the
18 12th that he told the individuals in your office that he
19 intended to move to Florida but he didn't know when?

20 A. I'm not familiar; no sir.

21 Q. Okay. But the officer in Florida that called in and
22 talked to the law enforcement here he actually said -- relayed
23 that my client had ---

24 **MR. HUCKS:** Objection, Your Honor.

25 Q. ---Spoken with individuals in your Office; right?

1 **MR. HUCKS:** That's hearsay testimony made out of court
2 by an out-of-court declarant.

3 **COURT:** Sustained.

4 **MR. MOSS:** Let me try to rephrase that.

5 Q. In your investigation did you learn the Defendant had
6 asserted, at least, that he had conversations with other
7 persons in your office about his whereabouts?

8 A. That's correct, that he had, in fact, made contact with
9 the Horry County Sheriff's Office. I would -- let me look at
10 my notes, if I could, as to the content ---

11 Q. Please do. Now the Judge is sustaining the objection
12 to hearsay, so you can't tell me what anybody said, but you
13 can tell me what you learned as a result of your
14 investigation.

15 **COURT:** You asked her about her investigation, and I'm
16 going to permit her investigation. We are not going into
17 detail conversations of other people who are not here, but
18 she's entitled to use the investigation. I've said it before,
19 I do not admit it for the truth of the matter asserted; I use
20 it as a basis for her investigation.

21 You may proceed.

22 A. There was notation in our file that a male identifying
23 himself as Billy Alford contacted the Horry County Sheriff's
24 Office and advised Deputy Rathbun that he had talked to
25 another member of the Sheriff's Office, Renee Elvis, because

1 he could not, in fact, get in touch with Deputy Rathbun after
2 his August registration.

3 He further advised that he had not registered in the
4 State of Florida because he did not want his friend's address
5 to be on the registration there for fear of their being
6 evicted.

7 Q. Now you are aware he did register in Florida; aren't
8 you?

9 A. It is my understanding that at some point after the
10 fact he registered in the State of Florida.

11 MR. HUCKS: Objection, Your Honor, just to relevance of
12 the prior ---

13 COURT: I will permit that statement ---

14 MR. HUCKS: Yes sir.

15 COURT: ---Because you -- on your examination you had
16 some question on that issue.

17 MR. HUCKS: Thank you.

18 Q. I want to show you what's been marked as Defendant's --
19 -

20 COURT: The issue is not whether he registered in
21 Florida or not; the issue is whether he did or did not comply
22 with the laws of the State of South Carolina.

23 Q. Let's talk about Florida for a minute. I want to show
24 you Defendant's 1, 2 and 3.

25 COURT REPORTER: For identification.

1 **MR. MOSS:** For identification - they've been marked for
2 identification - and I want to ask you if you've ever seen
3 them before. Take a moment to look at them and tell me if
4 you've ever seen them before.

5 A. I do not recognize the document, but it does not mean
6 that we have not been provided this in our file. I just don't
7 personally recognize the document.

8 **MR. HUCKS:** And Your Honor, I would renew objections,
9 previous objections as to it not being certified.

10 **COURT:** No sir. I've already said the document is not
11 coming in. I'm going to let you have your testimony about
12 what any issue he had. That document is not relevant to the
13 issue in this case. The issue in this case is whether or not
14 he complied with the laws of State of South Carolina. Now,
15 there is testimony for the jury to consider that he had some
16 conversation with some folks down there, but unless it relates
17 to the issue here it's not relevant.

18 **MR. MOSS:** Your Honor, the law in South Carolina
19 requires that, when you leave this jurisdiction you have to
20 register with the Sheriff's Office at a jurisdiction that you
21 go to, and so South Carolina ---

22 **COURT:** Requires what?

23 **MR. MOSS:** It requires that, when you leave this
24 jurisdiction ---

25 **MR. HUCKS:** Objection, Your Honor. the law is for you

1 to give to the jury, I mean ---

2 COURT: I understand what the law is.

3 MR. MOSS: The law requires, when you leave this
4 jurisdiction ---

5 COURT: If you want to put in -- admit into the record
6 that he registered in Florida at a later date, do it. There's
7 no reason to go into long and detailed information about that.
8 That's not the question whether he registered in Florida or
9 not. The question is whether he complied with the law of the
10 State of South Carolina prior to doing that. I don't know how
11 more clear we can do it. The fact that he may have later
12 registered in Florida has nothing to do with the issue before
13 this Court.

14 MR. MOSS: With all due respect, Your Honor, the
15 Defendant ---

16 COURT: We can accept, for argument sake, that he later
17 registered, and so you can accept that. It's not relevant.

18 MR. HUCKS: I'll accept what you tell me to. You are
19 the Judge, Judge.

20 COURT: Well, sure, because you got into it in cross-
21 examination, but let's don't waste a lot of time with that.

22 MR. MOSS: Your Honor, I ---

23 COURT: We can concede that he later either tried, or
24 did register in Florida, so there ain't no need in going
25 through that with her.

1 **MR. MOSS:** Your Honor, I -- respectfully I disagree,
2 because of the investigation notes that she just read said
3 something different, and I'm trying to examine this witness
4 about that ---

5 **COURT:** Well, let's do that, but let's leave the
6 Florida thing alone.

7 **MR. MOSS:** With all due respect, I can't leave the
8 Florida thing along in and accomplish that objective.

9 **COURT:** Well, I'm letting you do it, but ---

10 **MR. MOSS:** Okay.

11 **COURT:** ---But I mean, it's admitted, no question about
12 it, that he had some contact with the folks down there, but
13 what -- deal with how it's relevant to what occurred in South
14 Carolina, if anything.

15 Q. Ms. Avant, when did you first get the information that
16 my client had left this jurisdiction?

17 A. The first information I received was September 6, of
18 2012.

19 Q. Okay. And the indictment in this case - have you seen
20 it?

21 A. I have not.

22 Q. Let me show you a copy of it.

23 **COURT:** I have the original here if you care to see it.

24 **MR. MOSS:** I would appreciate that, Your Honor. Thank
25 you.

1 I don't intend to mark it for any reason, Your Honor,
2 because it is a record in this case already.

3 Q. Ms. Avant, I'd like to show you what's the original
4 indictment, and I ask you to take a look at it, both sides of
5 it. Do you see it? It actually says, on or about September
6 6, 2012 was -- it's believed by law enforcement that he
7 violated the law; right?

8 A. It does say that; yes.

9 Q. Okay. Now, the 7th is when you went out and made your
10 observations; right?

11 A. I received the first information on the 6th, and went
12 out on the 7th of September.

13 Q. Okay. Now, these documents in front of you,
14 Defendant's 1, 2, and 3, I want to show you some dates on
15 them. Do you know what this form is?

16 MR. HUCKS: Your Honor, objection. The documents have
17 previously been ruled as inadmissible.

18 COURT: Sir?

19 MR. HUCKS: The documents have previously been ruled as
20 inadmissible. To refer to the documents that are inadmissible
21 in evidence is inappropriate.

22 COURT: I'm going to let him refer to the documents.

23 MR. HUCKS: But they are not in evidence.

24 COURT: No. No. But I'm going to let him -- no, I'm
25 not going to put the document into evidence; it's already a

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1 matter with the Clerk of Court's Office, but I'll let him talk
2 about it if he wants to. Go ahead.

3 **MR. HUCKS:** If I may just be heard very, very briefly.
4 The documents he's referring to are the documents, Defense's
5 1, 2 and 3 that you've already said are inadmissible.

6 **COURT:** No sir. I want him -- he said he was referring
7 to the document, the indictment.

8 **MR. HUCKS:** But he's got the other documents up there,
9 and he's trying to compare the indictment to the other three
10 documents.

11 **COURT:** No sir. That's inadmissible. I've already
12 told you that pre-trial. You wanted her to speak to the
13 question of that indictment.

14 **MR. MOSS:** Your Honor, at this time I would make an
15 offer of proof.

16 **COURT:** Go outside. Take the jury out. I'll listen to
17 it. I'm going to be calling you back very shortly.

18 Wait a minute. This is an appropriate time to go for
19 lunch. Please go ahead and have your lunch. Be back at 2:30.
20 You are not to discuss the case. See you back at 2:30.

21 And you may make the offer of proof.

22 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
23 JURY.)

24 **COURT:** All right. What documents are you referring
25 to? I didn't know -- you used the word documents. We've

1 dealt with so many; what documents are you talking about?

2 **MR. MOSS:** Your Honor, I have asked the witness about
3 the indictment ---

4 **COURT:** Yes sir.

5 **MR. MOSS:** ---And she's testified about the indictment.

6 **COURT:** Said what?

7 **MR. MOSS:** She has testified about the indictment.

8 **COURT:** All right.

9 **MR. MOSS:** And I have also asked her about Defendant's
10 1, 2, and 3, which are documents, which are public records
11 from the State of Florida.

12 **COURT:** I'm not going to go into the documents of State
13 of Florida. I've told the jury. It has no -- nothing to do -
14 - you tell me what, so that I will know. Based on what the
15 State is alleging, you tell me how that's relevant.

16 **MR. MOSS:** I'm trying to tell you, Your Honor.

17 **COURT:** Well, tell me how it's relevant.

18 **MR. MOSS:** With all due respect, I will do that if you
19 will permit me.

20 **COURT:** Well, go ahead.

21 **MR. MOSS:** The law in South Carolina requires that an
22 offender who leaves this jurisdiction register in the foreign
23 jurisdiction.

24 **COURT:** Wait a minute.

25 **MR. MOSS:** South Carolina law requires that.

1 **COURT:** It requires something before then.

2 **MR. MOSS:** It also requires they provide notification
3 to the Sheriff's office here. Okay. It does not ---

4 **COURT:** Mr. Moss, whether he registered later in
5 Florida or not is no relevancy on the issue in this case.

6 **MR. MOSS:** It's relevant what ---

7 **COURT:** No, it doesn't.

8 **MR. MOSS:** It's relevant to this witness's testimony.

9 **COURT:** How is it relevant to the issue of whether or
10 not he provided the Sheriff with a change of address?

11 **MR. MOSS:** With all due respect, I can't tell you if
12 you won't permit me to speak.

13 **COURT:** Well, I keep hearing you, but I'm telling you,
14 you've got -- just give me the simple fact.

15 **MR. MOSS:** This -- this -- this -- my client was
16 charged with a felony crime.

17 **COURT:** I understand.

18 **MR. MOSS:** He deserves his day in court, and I deserve
19 an opportunity to be heard.

20 **COURT:** You do, but please tell me what relevancy it
21 has on the issue of whether or not he gave written ---

22 **MR. MOSS:** It all ties into the same misinformation
23 that the Sheriff's Office gives to five hundred registered sex
24 offenders when they talk to them about what they have to do.
25 We now know there's a form, that's in evidence, that has a

1 different requirement than the statute has. That's been
2 established through the testimony of this witness. Okay. We
3 know ---

4 **COURT:** No sir. You misreported what she said. She
5 said that they require that he give notice to the Sheriff, and
6 the fact that he may have registered in Florida later doesn't
7 bear on that issue. He may -- he could have done both. The
8 question is whether he did one or not.

9 **MR. MOSS:** I submit to you he did both. I'm trying to
10 explain that.

11 **COURT:** Well, put some testimony on -- I don't mind you
12 putting testimony on whether or not he registered in South
13 Carolina, not going into whether he registered in Florida.
14 It's conceded that he had some discussions with the people in
15 Florida.

16 **MR. HUCKS:** Your Honor, I do not mean to interrupt you,
17 but just for purposes of maintaining the record, these
18 documents that Mr. Moss is trying to get into evidence are
19 also not certified as true and accurate, anything, any record,
20 which would be in violation ---

21 **COURT:** I understand. I've already said I'm not going
22 to let them -- but the more important part is that they are
23 not relevant if they were certified.

24 **MR. HUCKS:** And that's -- the second half of my
25 argument, just for purposes of the record.

1 **COURT:** Sure.

2 **MR. HUCKS:** He's charged with violating one part of the
3 statute. To say he didn't violate another part of the
4 statute, that's like saying, I drove fast but I didn't drive
5 too fast.

6 **COURT:** I understand that. Everybody -- this record
7 clearly reflects that he made some effort in Florida, but so
8 what?

9 **MR. MOSS:** Your Honor, with all due respect, that's not
10 an appropriate thing to say, that he made some effort in
11 Florida. He registered in Florida, three times, on the 7th
12 and on the 12th.

13 **COURT:** So what? You will not answer my question, and
14 that is, how is that relevant as to whether or not he gave a
15 written statement of his change of address; that's the
16 question. That doesn't bear -- I can accept the fact, for
17 your argument, that he did register in Florida ---

18 **MR. MOSS:** With all due respect ---

19 **COURT:** ---But you won't address the second question.

20 **MR. MOSS:** I'm trying to address the second question,
21 Your Honor.

22 **COURT:** Well, you won't do it.

23 **MR. MOSS:** It's relevant because this whole ---

24 **COURT:** I am not -- we are going to take a break for
25 lunch. You can have him come back.

1 Let it be clear now, Mr. Moss, I am not going to let
2 those documents into this record, because they have no
3 relevancy on the question for which he is being tried. If you
4 want to tell the jury that he registered down there, do so.

5 **MR. MOSS:** I am tendering the documents at this time --
6 -

7 **COURT:** No sir, you are not going to enter them,
8 because they are not relevant. How many times I got to tell
9 you that? You are protected on the record for that issue.

10 **MR. MOSS:** I don't feel that I am because you don't let
11 me complete my sentence.

12 **COURT:** I've already told you - don't argue with me -
13 I'm not going to permit it.

14 Now, when we get back address your questions as to the
15 issue before this Court on whether or not he complied with the
16 law of South Carolina, not Florida.

17 **MR. MOSS:** I'm not asking about Florida law, Your
18 Honor; that's not here.

19 **COURT:** What you been asking about? You want to put
20 those documents in evidence.

21 **MR. MOSS:** I can't put them in evidence if you ---

22 **COURT:** You are not going to put them in evidence. I
23 tell you, you are getting close now. I'm telling you - don't
24 argue with me - those documents are not coming into evidence;
25 they are not certified; they are not relevant; they bear on no

1 issue before this Court, period. Now don't argue with me any
2 more about it.

3 Let's break for lunch and be back at 2:30. Do not
4 discuss your testimony with anyone. Be here, available for
5 cross-examination.

6 (THE FOLLOWING TAKES PLACE AFTER A LUNCH BREAK, AND
7 OUTSIDE THE PRESENCE OF THE JURY.)

8 COURT: All right, Mr. Moss, are we ready?

9 MR. MOSS: Yes, Your Honor.

10 COURT: All right, sir, do you still have some further
11 cross-examination for this witness?

12 MR. MOSS: Yes, Your Honor.

13 COURT: All right. I want you to get on with
14 something other than the Florida now. This lady is not party
15 to that Florida proceeding, knows nothing about it. You've
16 been on her for about thirty minutes, so please move on to
17 some other cross-examination.

18 You may proceed.

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JURY.)

21 COURT: Good afternoon, ladies and gentlemen.

22 The jury is present. You may resume your examination.

23 MR. MOSS: Thank you, Your Honor.

24 CROSS BY MOSS CONTINUED:

25 Q. Ms. Avant, do you still have your notes in front of

1 you, or somewhere ---

2 A. I do.

3 Q. If you will refer to them for a moment. I want to go
4 over some dates with your days to week with you.

5 A. Okay.

6 Q. I think you testified that your office received a call
7 on the 6th; right?

8 A. We did receive a call on the 6th ---

9 Q. Okay. Do you know ---

10 A. ---And a different call on the 7th.

11 Q. Okay. Do you know what days of the week the 6th and
12 7th were?

13 A. Not without looking at a calendar; I do not.

14 **(CALENDAR MARKED DEFENDANT'S EXHIBIT NUMBER 4, FOR**
15 **IDENTIFICATION ONLY.)**

16 Q. And I brought one I want to show you. It's been marked
17 for identification as Defense Number 4, and I submit to you,
18 it was just printed right off the computer, and assuming that
19 calendar is correct, what days of the week would those be?

20 A. The 6th of September would be on a Thursday, and the
21 7th would be on a Friday.

22 Q. Okay. And I realize that I've handed this to you, but
23 do you have any reason to think that's not an accurate
24 calendar for that year?

25 A. No sir, I do not.

1 Q. Okay. Now, in one of the exhibits, Defense Number 2,
2 this was the last registration package when Mr. Alford
3 registered; right?

4 A. That's correct.

5 Q. It was done roughly a month before the events that led
6 to his arrest for this charge; right?

7 A. That's correct.

8 Q. Okay. And at that time did he provide an address on
9 this pack of information?

10 A. Yes, he did. It was an address that had been
11 previously provided to us, but the date of this registration
12 he did, in fact, give us the address at [REDACTED] Quail Hollow Road.

13 Q. Okay. Did he give you a phone number?

14 A. Yes. There is a phone number listed.

15 Q. Okay. Now, and what is that phone number?

16 A. [REDACTED]-7678.

17 Q. Okay. And do you have any reason to believe that's not
18 his phone number?

19 A. I have no reason to believe that it is or it's not.

20 Q. Okay. Now, would you refer to your notes, your
21 narrative notes from your file? And I think there was a call
22 that your office received on the 10th; wasn't there?

23 A. That's correct.

24 Q. Okay. And what number was that call from?

25 A. [REDACTED]-7678.

1 Q. Okay. And I believe in your notes you said that the
2 person who called identified themselves as Mr. Alford, my
3 client, right?

4 A. That's correct.

5 Q. Okay. And that was on the 10th that he called?

6 A. That is the date, September 10th.

7 Q. Is that the same phone number that appears in the last
8 registration package that you have?

9 A. That is the same phone number; yes sir.

10 Q. Okay. Your notes read, the person who claimed to be
11 Billy Alford called from that number. Do you have any reason
12 to think it was not him that called?

13 A. No sir, but because it was a telephone call it would
14 not be uncommon for me to make a notation, or the person
15 accepting the call to make a notation that it was a male
16 caller.

17 Q. I understand, but since that day, throughout the
18 investigation and preparation for this trial, have you learned
19 anything that makes you think it wasn't him that called?

20 A. No sir.

21 Q. Okay. Now, you sought a warrant in this case; did you
22 not ---

23 A. I did.

24 Q. ---For my client's arrest?

25 A. I did.

1 Q. What date -- on what date did you seek that warrant, if
2 you can tell from your notes in your file?

3 A. The warrant is dated September 10, 2012.

4 Q. Okay. And referring to Defense's Number 4, the
5 calendar, what day would that be on?

6 A. September the 10th would be on a Monday.

7 MR. MOSS: Your Honor, I would like to admit
8 Defendant's Number 4 as just the print-out of a calendar. I
9 think the Court could take judicial notice of a calendar.

10 MR. HUCKS: No objection whatsoever, Judge.

11 COURT: Sir?

12 MR. HUCKS: No objection.

13 COURT: I would not think so.

14 It's admitted.

15 (CALENDAR ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
16 NUMBER 4.)

17 MR. MOSS: Okay.

18 May I confer with your client -- my client, Your Honor?
19 I want to confer with my client for a moment. I think it's
20 done.

21 COURT: You may do so.

22 Q. Ms. Avant, in your notes I didn't see any reference to
23 you trying to call Mr. Alford in your investigation. Do you
24 know if you did that?

25 A. I'm certain that I did not personally try to call him;

1 no sir.

2 Q. Okay. Was anybody else involved in the investigation
3 other than you, because all the notes appear to be your notes?

4 A. The note that you are referring to here is my notes,
5 but I would not be the only person taking information in this
6 case, nor making personal notes of their own. I supervise
7 this Division, but I would not be the only person that would
8 take calls in regard to it, or make notes.

9 Q. Indeed you've gotten references on your notes to calls
10 that came to other people, but do you have any references in
11 your notes about calls to anybody at the Sheriff's Office make
12 to Mr. Alford saying, you know, hey, where are you at?

13 A. I do not have any such note; no sir.

14 Q. Okay.

15 MR. MOSS: Thank you. I have not further questions for
16 the witness at this time.

17 COURT: You may come down.

18 MR. HUCKS: Your Honor, I would like brief redirect, if
19 that would be ---

20 COURT: You may do so, briefly.

21 MR. HUCKS: Yes sir.

22 COURT: Thank you, Mr. Moss.

23 REDIRECT-EXAMINATION BY MR. HUCKS:

24 Q. Is it generally your policy to call folks whenever they
25 don't do what they are suppose to do under the law?

1 A. It is not my policy to call them.

2 Q. And when you went to ---

3 COURT: Talk in the microphone, please.

4 Q. When you went to the residence on, what was it, 9/07,
5 was the Defendant living there?

6 A. He was not living there on 9/07/2012.

7 Q. And I guess I should have asked you, did the -- is the
8 residence in Horry County?

9 A. It is in Horry County, in the Myrtle Beach Section of
10 Horry County.

11 Q. Now, did he provide written notice to you that he was
12 moving, or where he was moving to?

13 A. He did not provide notice at all.

14 Q. And isn't his initials and signature on the document
15 saying he's going to do that if he moves?

16 A. His initials are on the document, indicating that he
17 understood he was required to do that.

18 Q. And doesn't the law that Mr. Moss had you read as part
19 of your cross-examination say that he has to do that?

20 A. Yes, it does.

21 MR. HUCKS: Nothing further, Judge.

22 COURT: You may come down.

23 All right. Call you next witness.

24 MR. HUCKS: Your Honor, at this time the State would
25 call Deputy Paulette Rathbun to the stand.

1 **COURT:** Can this witness be released from her Subpoena?

2 **MR. HUCKS:** Yes, Your Honor. We would request that she
3 is released from her Subpoena.

4 **COURT:** All right. No objection from the Defendant?

5 **MR. MOSS:** If she was subpoenaed, Your Honor, I haven't
6 gotten a copy of it.

7 **COURT:** Sir?

8 **MR. MOSS:** If she was subpoenaed I don't -- if she was
9 subpoenaed I'd like to have a copy of the subpoena. I was not
10 provided one.

11 **MR. HUCKS:** She wasn't subpoenaed. I called her and
12 she came.

13 **MR. MOSS:** That's fine.

14 **COURT:** That is fine.

15 **PAULETTE RATHBUN**, being first duly
16 sworn, testifies as follows:

17 **DIRECT-EXAMINATION BY MR. HUCKS:**

18 Q. Deputy Rathbun, what do you do for a living?

19 A. Deputy for the Horry County Sheriff's Office,
20 specifically assigned to the Sex Offender Registration and
21 Tracking Division.

22 Q. Okay. What does that mean? That's a lot of words.
23 What do you do?

24 A. I register convicted sex offenders and register them
25 when they are required to come back in for their, either bi-

PAULETTE RATHBUN - DIRECT BY HUCKS

75

1 annual or quarterly re-registration.

2 Q. So it is -- in the course of your duties have you ever
3 come across this fellow, Mr. Alford, the Defendant?

4 A. Yes.

5 Q. And how many times would you say you've had contact
6 with Mr. Alford, if you had to guess? An estimate is fine.

7 A. Probably twenty, twenty-five times, maybe.

8 Q. Okay. And how long have you been assigned to the Sex
9 Offender Division?

10 A. Since 2006.

11 Q. And have you had an occasion to register and re-
12 register Mr. Alford?

13 A. Yes, I have.

14 Q. And when you do that I want to show you State's Number
15 2, which is already in evidence, and Mr. Moss talked about a
16 bit. Do you recognize this document? Do you know what --
17 that's the ---

18 A. Yes, I do.

19 Q. ---Sex Offender Registry packet.

20 A. Yes, it is.

21 Q. Now, how often would somebody fill out one of these
22 forms where they have to initial all the -- all the rules?

23 A. At the time -- in 2012, every time they came in for re-
24 registration.

25 Q. Which would be about how often?

1 A. Let me check on this particular one, because each one
2 is different.

3 Q. Okay.

4 A. His would be every six months.

5 Q. Okay. So every six months he comes in and you go over
6 the -- somebody goes over these rules with him?

7 A. Yes.

8 Q. Is that something you do on a regular basis?

9 A. Yes.

10 Q. Now, if somebody has a question about any of the rules
11 do you explain the rules to them?

12 A. Absolutely. Yes.

13 Q. When you go over these rules with somebody do you just
14 read them off to them, or do you explain them as you go?

15 A. I explain them as I go.

16 Q. And in a matter of course, next to the last note on
17 page five, could you read that for us, please?

18 A. Okay. Provide -- you must -- referenced with "You must
19 provide written notification, in person, within three business
20 days of any change of address in a new jurisdiction to County
21 Sheriff with whom the person last registered."

22 Q. So this registration happened on what date?

23 A. August the 7th, 2012.

24 Q. So roughly a month goes by, and did you ever hear from
25 Mr. Alford after that, or did Mr. Alford ever call you?

1 A. No, not that I'm aware of.

2 Q. All right. Hang on. Let's refer to your notes a
3 little bit.

4 Have you ever spoken on the phone with Mr. Alford?

5 A. Oh yes, many times.

6 Q. Okay. How about on September the 10th of 2012?

7 A. Yes.

8 Q. Okay. And you spoke with somebody on the phone?

9 A. I did.

10 Q. All right. And tell us about that conversation.

11 A. I don't have my notes for that in front of me, but ---

12 **MR. HUCKS:** Your Honor, if I may approach with a copy
13 of the notes, to help her refresh her memory.

14 A. Okay. Thank you.

15 **COURT:** And counsel is entitled to look at them too at
16 the appropriate time.

17 **MR. HUCKS:** Here. And I'll show it to him right now.

18 **COURT:** You'll have a chance to look at them again
19 during cross-examination.

20 **MR. MOSS:** What I'm troubled by is that the last
21 witness testified they were her notes, and now we are calling
22 them this witness's notes. Well, they clearly aren't both
23 these witnesses's notes.

24 **COURT:** Well, let's see what she says. I ---

25 **MR. HUCKS:** And if it doesn't help you refresh your

1 memory you tell us, okay, or if they won't help you, you tell
2 us.

3 A. Okay.

4 COURT: I need to know whose notes they are.

5 Q. Did you have input on the information that went into
6 this report?

7 A. My understanding it was pulled from some handwritten
8 notes that I placed in the original file.

9 Q. Okay. So it is an amalgamation of information?

10 A. Yes.

11 Q. Now would some of that information have come from you?

12 A. Yes.

13 Q. And would this listing of that information be helpful
14 to you in your testimony?

15 A. Yes.

16 Q. Refreshing your memory?

17 A. Yes.

18 MR. HUCKS: Your Honor, at this time we would ask to
19 show ---

20 COURT: I'm going to let her review it, but I want it
21 only as to her note, not somebody else's notes.

22 MR. HUCKS: Yes sir.

23 Anything at all -- only what you had any input in
24 putting in. Okay.

25 A. Yes sir.

1 **MR. MOSS:** We are objecting to that because another
2 witness ---

3 **COURT:** Sir?

4 **MR. MOSS:** Another witness testified that she authored
5 that document. If this witness has notes she should have her
6 own file and have her own notes.

7 **COURT:** Well ---

8 **MR. MOSS:** I asked for that in discovery, and I should
9 have been provided that.

10 **COURT:** I'm just hearing the testimony. I'll let the
11 jury consider it. If you can reconcile that do so, Mr. Hucks.

12 A. Your Honor, I think I can remember it well enough
13 without looking at that.

14 **COURT:** Please do.

15 **MR. HUCKS:** It will be a non-issue then, Your Honor.

16 Q. Do you remember the substance in that conversation?

17 A. I do. Absolutely.

18 Q. Please explain it to the jury.

19 A. I spoke with Mr. Alford on September the 10th, and the
20 reason I remember that, it was because it was the day before
21 September the 11th. I don't remember how I came about the
22 information, but in the conversation it was given that he was
23 in Florida. I asked him why hadn't he provided that
24 information to me, and that he needed to contact the Sheriff's
25 Office down in Florida. He said he did not want to do that

1 because of giving them a friend's address that would be
2 evicted if they found out a sex offender was living there.

3 Q. Now, at any point during the month of September of 2012
4 did you receive written notice from Mr. Alford about his
5 change of address?

6 A. No.

7 Q. Or the month of August?

8 A. No.

9 Q. Are you previously aware of Mr. Alford ever changing
10 his address, and actually giving you written -- giving written
11 notice to the Sheriff's Office?a

12 A. Yes.

13 MR. HUCKS: I've got nothing further, Judge.

14 COURT: All right, sir, Mr. Moss.

15 MR. MOSS: Thank you.

16 CROSS-EXAMINATION BY MR. MOSS:

17 Q. Deputy, were you in the courtroom when Ms. Avant
18 testified?

19 A. Yes sir.

20 Q. You understand she was reading from the notes she
21 authored, right?

22 A. I'm sorry.

23 Q. You understand that Deputy Avant, or Sergeant Avant,
24 was reading from the notes that she authored? That's what she
25 said. Did you hear her say that?

1 A. I don't know what she was reading from. I have a note
2 here.

3 Q. Well, so you didn't hear her say that?

4 A. (NODS HEAD NEGATIVE.)

5 Q. Okay. Now, do you recall her reciting that, on the
6 10th of September, 2012, a male identifying himself as Billy
7 Alford called?

8 A. Yes, from handwritten notes that she did read.

9 Q. And it said that he -- do you recall her testimony that
10 he talked with Renee Elvis because he couldn't get hold of
11 you?

12 A. I -- no sir. I mean, I know that was part of -- one of
13 the questions, but not that particular one. I'm not aware of
14 that. No sir.

15 Q. Okay. Do you have -- your own notes, the handwritten
16 notes, or file with you today?

17 A. No sir. I don't. I didn't know I was going to be a
18 witness today.

19 Q. Well, how certain are you that you talked to Mr. Alford
20 on the 10th ---

21 A. Fairly certain. I could check.

22 Q. ---Because it appears he couldn't get hold of you on
23 that day, from other testimony.

24 A. That's his words, not mine.

25 Q. Okay. Did you call him, or did he call you?

1 A. I don't remember that. I don't know.

2 Q. Okay. But you are aware, from previous conversations
3 with Mr. Alford, that he knew he was going to be moving to
4 Florida; right?

5 A. No sir. I'm not aware of that.

6 Q. You never discussed with him, he knew he had to go but
7 he didn't know when?

8 A. I'm not saying I never discussed it with him; I said I
9 don't recall that, no, I don't.

10 Q. Okay.

11 A. If I did I would have told him he had to notify me
12 within three days from the time he moved.

13 COURT: Talk a little bit into that microphone so these
14 jurors in the box can hear you.

15 A. Yes sir, I will.

16 Q. You don't recall him having -- specifically telling you
17 that he knew he was moving to Florida but he didn't know when?

18 A. I don't specifically recall that, but like I said, had
19 he told me he was going to move to another state I would have
20 told him what his obligations were.

21 Q. Okay.

22 A. But I do not specifically remember that.

23 Q. Would you have made note of that?

24 A. Prob -- possi -- the fact that he was thinking about
25 moving; no, I probably would not have.

1 Q. Okay.

2 A. No.

3 Q. Can you tell from Number 2, Defense -- State's Number
4 2, whether or not you actually met with him on the day that he
5 registered in August, or someone else?

6 A. I did not meet with him. Renee Elvis did.

7 Q. Okay. Have you ever received any messages on your
8 voice mail or answering machine from Mr. Alford that you
9 recall?

10 A. I'm sure I have at one time or another, yes.

11 Q. Okay. Do you know whether or not those would have been
12 around September, 2012?

13 A. If the voice mails would still be here? No.

14 Q. No, I'm just asking you, you said you were sure you had
15 received some messages; I'm asking you if you recall ---

16 A. If it around that time. I don't recall. I don't know.

17 Q. Okay. Deputy, do you recall having a conversation by
18 telephone with my client, wherein you told him that he had to
19 register by Monday or y'all would seek a warrant for his
20 arrest?

21 A. During that particular time?

22 Q. Yes Ma'am. On that date, specifically, Monday the
23 10th?

24 A. I -- possibly could have said that, but as far as the
25 specific conversation, I don't remember what it was; no.

1 Q. Did you ever learn that he had registered on that day?

2 A. No. Are you referring to registering here in South
3 Carolina, or in Florida?

4 Q. Anywhere. I'm -- I'm asking you what you know.

5 A. I can't speak for Florida. If I told him that it was
6 not about Florida's rule -- laws, because I don't have any way
7 of knowing their laws.

8 Q. Well, I guess the question I asked you, do you recall
9 having a conversation where you told him he would have to
10 register by Monday the 10th, or y'all would seek the warrant
11 for ---

12 A. I don't recall that; no.

13 Q. Okay. Is it possible that you told him that?

14 A. It's possible.

15 MR. MOSS: Your Honor, we have no further questions of
16 this witness.

17 COURT: All right. Any redirect?

18 MR. HUCKS: No sir.

19 COURT: You may come down. Thank you.
20 Call your next witness.

21 MR. HUCKS: Your Honor, we would call Ms. Renee Elvis
22 to the stand.

23 COURT: All right, sir.

24 RENEE ELVIS, being first duly
25 sworn, testifies as follows:

1 **DIRECT-EXAMINATION BY MR. HUCKS:**

2 Q. Ms. Elvis, what do you do for a living?

3 A. I work for the Horry County Sheriff's Office.

4 Q. And what division, or part of it do you work in?

5 A. I'm actually a floater, where I do all sorts of things,
6 but part of my job is to assist Deputy Rathbun and Sergeant
7 Avant with the Sex Offender Registry.

8 Q. How would you do that? When you say assist them, what
9 does that mean?

10 A. If either of them are unavailable then I -- when -- and
11 someone comes in to register then I would register, or I would
12 field phone calls or whatever is needed in that Department if
13 they are not available.

14 Q. Okay. And have you, in the course of those duties,
15 come into contact with Mr. Alford ever?

16 A. I have.

17 Q. Okay. And in what capacity have you met with Mr.
18 Alford, or talked to Mr. Alford?

19 A. I have registered Mr. Alford in the past.

20 Q. Okay. Now, have you ever, ever had an occasion to talk
21 with Mr. Alford on the phone that you know of?

22 A. I honestly cannot tell you whether or not I have spoken
23 specifically to Mr. Alford. If he has called in and either of
24 them were not available then I would have been the one to
25 speak with him.

1 Q. Okay. Now, if someone -- let's say somebody did call
2 you that had a question about the Sex Offender Registry, and
3 they were going to move out-of-state, have you had those
4 questions before?

5 A. I have, indeed.

6 Q. And what do you tell those people?

7 A. I tell those people that if they are going to change
8 the place that they live to another jurisdiction that they
9 have three business days to let us know that, in writing, and
10 also to contact the sheriff in the county to which they are
11 moving, and to notify that Sheriff of their existence there.

12 Q. Okay. And I show you what's already been marked and
13 entered, and spoken about a lot today, State's Exhibit Number
14 2. The -- page number five of this document, the next to the
15 last clause on there, how about -- what does it say?

16 A. It says, "Provide written notification, in person,
17 within three business days of change of address to a new
18 jurisdiction, to the county sheriff with whom the person last
19 registered, which would be us.

20 Q. And this would be a registration that somebody in you
21 guy's Division took from Mr. Alford?

22 A. That's correct.

23 Q. And how -- when is it dated?

24 A. It's dated 8/07/2012. In fact, I believe I did this
25 one. I did do this one.

1 Q. So you personally registered Billy Alford as a sex
2 offender on that day ---

3 A. I did.

4 Q. ---August the 7th?

5 A. Yes, I did.

6 Q. And did you talk with -- about every one of these
7 clauses with him?

8 A. I certainly did.

9 Q. Did you just read them out loud real fast, or did you
10 explain them?

11 A. What I do is, I explain them, and then I say - and this
12 is what I say every time - make -- read these, make sure you
13 understand them, and as you do please initial out by the side,
14 and this is initialed.

15 Q. Okay. And do you -- you confused me just a little bit.
16 The -- you explain them as you go through them with them?

17 A. That's correct.

18 Q. Okay.

19 A. When I -- it's two sheets, so when I place these two
20 sheets before them I say, this is what is expected of you, and
21 then I tell them what is expected of them, and then I tell
22 them to read them and initial out by the side of them.

23 Q. So would you have told Billy Alford he had to
24 register -- he had to send you notice, in writing, if he was
25 going to leave the State of South Carolina?

1 A. I would have.

2 Q. To your knowledge, have you ever received any written -
3 - any written moving form, any kind of form from Billy Alford
4 saying that?

5 A. I have not. No.

6 Q. Did ---

7 MR. HUCKS: Nothing further, Your Honor.

8 COURT: Counsel.

9 CROSS-EXAMINATION BY MR. MOSS:

10 Q. Ms. Elvis, did I hear you correctly a moment ago that
11 you did not recall having a conversation with Mr. Alford?

12 A. I do not recall whether or not I had a phone
13 conversation with Mr. Alford; that's correct.

14 Q. That's what I thought I heard you say. Were you
15 present in the courtroom earlier today when testimony was
16 offered by Sergeant Avant that a man identifying himself as
17 Billy Alford called, advising that he talked with you because
18 he couldn't get hold of Deputy Rathbun?

19 A. That -- I did hear that, yes sir.

20 Q. Okay. Do you remember that?

21 A. I do not specifically remember that, but we keep logs
22 in our -- in our folder, and I believe what she said was that
23 Deputy Rathbun took a call from a man saying that he had
24 spoken with me.

25 Q. Well, I'm curious about that. Did you bring those logs

1 with you today?

2 A. I think Sergeant Avant may have them.

3 Q. Do you know if those logs were ever provided to the
4 Solicitor's Office, because they weren't provided to me.

5 A. I do not know.

6 Q. You are aware in discovery -- you know when discovery
7 is requested, right?

8 A. I do.

9 Q. That's where the lawyers send out a request saying,
10 give me what you've got.

11 A. That's right.

12 Q. And the law requires them to give you what they've got?

13 A. That's right.

14 Q. Okay. You know, I didn't get any logs. Were you aware
15 of that?

16 A. No. I was not aware of that.

17 Q. Okay. And you don't have any logs with you right now?

18 A. That's correct.

19 Q. Okay.

20 COURT: Can those logs be available now, Solicitor?

21 MR. HUCKS: I've never seen them. I didn't know there
22 was any logs until he just asked her. I can get them for you.

23 COURT: Well, if they are here let -- let's look at
24 them. If you didn't aware they existed you couldn't turn them
25 over, but if they are there and he has them let counsel look

1 at them.

2 MR. MOSS: Your Honor, I -- this may not be appropriate
3 with the jury here, but if there are logs there's a Brady
4 violation.

5 COURT: No. I'm going to let you look at them, and
6 I'll let you -- I'll let the jury go out while you take a
7 break. Once you glance at them and think they are appropriate
8 you ---

9 MR. HUCKS: And Your Honor, Mr. Moss ---

10 COURT: Sir?

11 MR. MOSS: I can continue while they are looking.

12 COURT: Yes. Go ahead. Sure.

13 Q. Ms. Elvis, what's the policy in the registration in the
14 first place, the whole Sex Offender Registration?

15 A. I'm not sure I understand your question, sir.

16 Q. Why do we have this?

17 A. Why do we have it? To make the public aware.

18 Q. To make the public aware, or to make law enforcement
19 aware?

20 A. It's actually for both.

21 Q. Okay. And aware of what, specifically?

22 A. Aware of -- and if -- to make the public aware. It is
23 to make the public aware that there is an offender living in
24 their area. That's why it's published on the website.

25 Q. So we can know where they are?

- 1 A. That's correct.
- 2 Q. Okay. And when he registered in August you knew where
- 3 Mr. Alford was, right?
- 4 A. I knew where he told me he was.
- 5 Q. Well, he gave you the address?
- 6 A. That's correct.
- 7 Q. And he gave you a phone number?
- 8 A. I'm not sure. I would have to look at it.
- 9 Q. Please look at Defense Number 2.
- 10 A. Okay. He did give me a phone number.
- 11 Q. Okay. And I believe you said you participated some in
- 12 the investigation that brings us to this trial today?
- 13 A. No sir.
- 14 Q. You didn't?
- 15 A. No sir.
- 16 Q. Okay. Well, separate and apart from the investigation,
- 17 have you ever had any reason to learn that that address and
- 18 that phone number were not correct?
- 19 A. No sir. The job that I do is, I register them, and I
- 20 field phone calls. I don't investigate it. I don't -- that's
- 21 not part of the job. I'm not qualified for that.
- 22 Q. Okay. Now, you concede with me this law has changed
- 23 many times since it was first adopted in South Carolina;
- 24 right?
- 25 A. Oh, it has, yes sir.

1 Q. And it's changed many times since Mr. Alford was
2 convicted in 1998; right?

3 A. That's true.

4 Q. Okay. And so these rules and reporting requirements
5 changed over that time?

6 A. That's true.

7 Q. Okay. Now, do you recall in August of 2012 when you
8 met with Mr. Alford? You met with him when he registered;
9 right?

10 A. That's correct. He came into the office.

11 Q. Do you recall what he told you in that visit, that he
12 would be moving to Florida but he wasn't certain as to when?

13 A. I don't have any indication of that, sir, and it was
14 two years ago, so I can't say that I recall that at all.

15 Q. Okay. Is it possible that he told you that?

16 A. It is possible.

17 Q. Okay.

18 MR. MOSS: We've got no further questions, Your Honor.

19 COURT: All right. Do you have any redirect, Mr.
20 Hucks?

21 MR. HUCKS: Yes, Your Honor, just very, very briefly.

22 REDIRECT-EXAMINATION BY MR. HUCKS:

23 Q. If Mr. Alford did possibly ask you about possibly
24 moving to Florida, would you have told him he had to let you
25 know, in writing, he was moving?

1 A. Anyone who calls in and tells me that they are moving
2 to any place I always tell them, it's perfectly fine for you
3 to move, just make sure that you let us know that within three
4 business days, in writing. If they tell me they are moving to
5 another jurisdiction I tell them they also need to make sure
6 they know the laws of that state, and if they are moving to
7 another place in South Carolina I make sure that they know
8 that they need to make the county in which they are moving to
9 aware of their -- that they are moving there.

10 Q. And how many times have you fielded that particular
11 question from a sex offender?

12 A. Oh, a lot. I don't know how many, but a lot.

13 Q. A lot.

14 **MR. HUCKS:** And I've got nothing further, Your Honor,
15 from this witness.

16 A. Okay. .

17 **COURT:** All right, sir.

18 You may come down.

19 A. Thank you.

20 **COURT:** Let this witness remain in the courtroom.

21 **MR. HUCKS:** Yes, Your Honor.

22 Your Honor, may Mr. Moss and I approach briefly on that
23 issue of the log?

24 **COURT:** Sure.

25 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

1 **COURT:** Let you go to the jury room and let's get on
2 the record.

3 **MR. HUCKS:** Yes sir.

4 **COURT:** I'll be calling you back out very shortly.

5 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
6 **JURY.)**

7 **COURT:** All right. Tell me about the log, and what it
8 says, and what relevance it has to this case.

9 **MR. HUCKS:** Your Honor, here's the thing about the
10 logs. What Ms. Elvis referred to as a log is just some
11 handwritten notes that Sergeant Avant took, and then put the
12 substance of in her police report. It's just she amalgamated
13 some handwritten notes - I didn't know they existed - and she
14 put what they said in her case report. It's the notes that
15 she took from people to put in her case report.

16 **COURT:** So it's not a log as such?

17 **MR. HUCKS:** It's not a list of pe -- a list of things
18 that happened. No, it's just people's notes that she took and
19 then memorialized into her case report.

20 **COURT:** And who wrote those notes?

21 **MR. HUCKS:** The different people from the Sheriff's
22 Office that are involved in the case, and that includes Ms.
23 Rathbun. The one that Mr. Moss simply asked about is a note
24 that Ms. Rathbun did that said Mr. Alford called up here and
25 told me that he had spoken with Renee Elvis. That's the note.

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1 And that is ---

2 COURT: They are ---

3 MR. HUCKS: ---Spelled out completely in the case
4 report.

5 COURT: And you are saying she erroneously described
6 the log as a note?

7 MR. HUCKS: Absolutely; yes sir; a handwritten note
8 that she called a log.

9 MR. MOSS: Irregardless, Your Honor, this has been a
10 Rule 5 Brady violation.

11 COURT: Sir?

12 MR. MOSS: The one termed -- this is a handwritten note
13 by one of the witnesses for the prosecution, and it wasn't
14 turned over, and I have another motion on the -- to exclude
15 the witness I think they are going to call.

16 COURT: What witness is this?

17 MR. HUCKS: This -- Deputy Rathbun. Not the lady who
18 just testified, but the one just before her. And she
19 testified to this phone call in her testimony, and it's in the
20 case report.

21 COURT: Is that witness available?

22 MR. HUCKS: She's sitting right here, Judge.

23 COURT: I mean -- well, that answers that question, Mr.
24 Moss.

25 MR. MOSS: It doesn't answer any question. All it does

1 is demonstrate there's evidence that was not given to me in
2 discovery when I was trying to prepare for my client's case.

3 COURT: You didn't ask for it. You ---

4 MR. MOSS: I most certainly did.

5 COURT: They may just -- the witness, whoever made that
6 statement, was made available to you.

7 MR. HUCKS: And she testified to the altercation,
8 Judge.

9 COURT: Sure.

10 MR. MOSS: I asked for all of the notes, Your Honor.

11 COURT: I'll be glad to put her back on the witness
12 stand, and you can examine her about it, but you never asked
13 about it. He can't give you something he didn't know. But
14 regardless of that, the individual who made the notation is
15 here, and has testified on cross, and I'll call her back.

16 MR. MOSS: Your Honor ---

17 COURT: Sir?

18 MR. MOSS: ---You made two statements I would like to
19 address. The first is ---

20 COURT: Sir?

21 MR. MOSS: You made two statements I'd like to break
22 down and address in the record. The first is, he can't give
23 me something he didn't know about. Well, I sent a Rule 5
24 Brady discovery request specifically asking for all
25 investigative materials in March of this year.

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1 **COURT:** That is not sufficient. The witness who made
2 that statement is here, and is subject to cross-examination.
3 There can be no prejudice to you if the witness who made that
4 statement on that document is here, and I invite you to cross-
5 examine her further on that issue.

6 **MR. HUCKS:** And Your Honor, the note is -- the
7 substance of that note is memorialized in the case report. It
8 doesn't mention there is a note; it just says that he called
9 on that day.

10 **COURT:** I understand that. That's not -- there's no
11 prejudice to this Defendant regarding that note, but I'll be
12 glad to let him examine her about it if he cares to.

13 **MR. MOSS:** I would like to do that, Your Honor, and I'm
14 also ---

15 **COURT:** I'm going to let you do it.
16 Bring the jury in.
17 I want that witness put back on the stand.

18 **MR. HUCKS:** Yes, Your Honor.

19 **COURT:** Bring my jury back.

20 I really see no prejudice, but you are entitled, in my
21 view, to cross-examine her some more on that.

22 **MR. HUCKS:** Your Honor, it's a -- she would like to see
23 a note in order to ---

24 **COURT:** I'm going to let her look at it.

25 **MR. HUCKS:** ---Be cross-examined on it.

1 **COURT:** He's entitled to a full explanation about it.
2 There's no prejudice -- prosecutor misconduct because you
3 didn't turn it over; you didn't know about it, but the
4 substance of that note was prepared to testify in open court
5 subject to cross-examination. There can be no prejudice, but
6 in fairness to Mr. Moss I'm going to let him examine it in
7 detail.

8 Bring my jury in.

9 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
10 **JURY.)**

11 **COURT:** I am going to mention the recall of a prior
12 witness.

13 **MR. HUCKS:** Thank you, Your Honor.

14 At this time we would recall Deputy Rathbun to the
15 stand.

16 **PAULETTE RATHBUN,** being previously
17 sworn, states as follows:

18 **DIRECT-EXAMINATION BY MR. HUCKS:**

19 Q. Deputy Rathbun, I would just like to remind you for
20 purposes of the record, you are still under oath from the
21 previous -- from your previous testimony.

22 A. Yes sir.

23 **COURT:** Deputy ---

24 A. Yes sir.

25 **COURT:** ---Please talk into that microphone. You talk

1 so soft I'm afraid that some of those on the last row can't
2 hear you.

3 A. Yes sir.

4 COURT: Please talk into the microphone for me. Thank
5 you.

6 Q. We discussed at length, Deputy, once, about a
7 conversation that you say you had with Mr. Alford, or somebody
8 claiming to be Mr. Alford on the telephone.

9 A. That's right.

10 Q. And the substance of that conversation has already been
11 testified to in the record.

12 A. Yes.

13 Q. But most specifically, in reference to his moving to
14 Florida, do you remember discussing his move to -- potential
15 move to Florida with him, or move to Florida with him?

16 A. After the fact, I do. On the September the 10th -- I
17 have it -- since I'm looking at my notes there I can probably
18 tell you exactly what happened. I talked with Billy and he
19 said that he had tried to get in touch with me several times
20 and was unable to, so he talked with Renee Elvis. This was
21 approximately one month after his registration in August.
22 When I talked with him that day I asked him -- apparently I
23 asked him had he registered in Florida yet, and why hadn't he
24 provided the information to me that he had moved to Florida.
25 He said that he had not registered in Florida because he did

- 1 not want to list his friend's address so that they would not
2 be evicted. He was afraid his friend would be evicted. I
3 told him at that time he had to get registration done in
4 Florida, and have Florida contact me with the information that
5 he had registered. I also told him he really needed to do
6 that before the end of the business day, whatever day the 10th
7 was on. I told him that we were in the process of getting a
8 warrant here because I knew that he had been gone for more
9 than three weeks.
- 10 Q. So ---
- 11 A. And that's all that's on these notes.
- 12 Q. At any point in time did Mr. Alford give you written
13 notice that he wanted to leave the State of South Carolina?
- 14 A. No sir.
- 15 Q. Was he on notice that he needed to give you written
16 notice?
- 17 A. Yes.
- 18 Q. Had you talked with him about that before?
- 19 A. Not that I recall.
- 20 Q. Okay. But had he done it before, in your office, that
21 you know of?
- 22 A. Changed addresses?
- 23 Q. Changed addresses.
- 24 A. Yes.
- 25 Q. Okay. And when he did that he gave you written notice?

1 A. Yes.

2 MR. HUCKS: Nothing further.

3 CROSS-EXAMINATION BY MR. MOSS:

4 Q. Deputy, is this your handwriting on this document?

5 A. Yes, it is.

6 Q. Why didn't you give it to the Solicitor before today?

7 A. It was not part of the investigative notes, and I don't
8 -- I can't testify to what was given as a part of the case
9 file because I didn't do the case file.

10 Q. Anybody ask you for your notes?

11 A. No sir. To my knowledge nobody knew they existed until
12 they were found in the file.

13 Q. You knew they existed though, right, because you wrote
14 them?

15 A. I knew -- yes, I wrote them.

16 Q. Now, earlier you didn't remember having a conversation
17 with him on the 10th. Now you know you did; right?

18 A. I did, yes.

19 Q. And it's because of these notes y'all didn't give to
20 me. Can I hold the note?

21 A. Yes sir.

22 Q. Would it be fair to say that you were wrong before,
23 when you said you didn't talk to him, you didn't have a
24 recollection of talking to him. That was ---

25 A. No sir. I didn't have a recollection of talking to

1 him. I was not trying to deliberately mislead anybody.

2 Q. Now this was on the 10th?

3 A. Yes sir.

4 Q. And you are aware he did register in Florida on the
5 10th, right?

6 A. No sir. I am now, according to what's come out in this
7 trial. As far as knowing it then, I did not.

8 Q. You never checked on that?

9 A. No sir, and it's not my job to.

10 Q. But you did tell him, according to your notes, that he
11 had to register in Florida on that day; right?

12 A. That's correct.

13 Q. And whether or not he did or didn't is irrelevant to
14 you; right?

15 A. I didn't have any need to know about that at the time,
16 no.

17 Q. Okay. You told him, according to your notes, he had to
18 register in Florida before the close of business day ---

19 A. That's correct.

20 Q. ---And that was on the 10th?

21 A. Yes sir.

22 Q. Okay. And whether or not he did that you didn't check
23 up on?

24 A. No sir.

25 Q. And you told him you were getting a warrant on that

1) day, on that Monday?

2 A. Let me read these last notes again because -- yes sir.
3 I told him we were in the process of getting a warrant.

4 Q. On the 10th?

5 A. Yes sir.

6 Q. Okay. Do you see up here in your notes where he said,
7 "He asked her what he needed to do to move to Florida".

8 A. That's what he told me on the phone, yes.

9 Q. Okay. Do you have any reason to think he didn't ask
10 her?

11 A. I don't have any reason to believe that one way or the
12 other.

13 Q. But it's in your notes?

14 A. It's in my notes. That's ---

15 Q. Okay.

16 A. It's in my notes that that's what he told me ---

17 Q. Okay.

18 A. ---And I don't have any reason not to believe or
19 disbelieve that.

20 Q. Okay. And it says he didn't have an address yet;
21 right?

22 A. That's what he told me. That's correct.

23 Q. Isn't that right?

24 A. Uh huh (indicating positive)

25 Q. Okay.

1 A. Well, it said he -- I believe in the notes down there
2 it says that he didn't want to give his friend's address.

3 Q. Well, it's ---

4 A. Okay. That's the -- yes, at the particular time. He
5 didn't want to give his friend's address because he didn't
6 want them convicted.

7 Q. He told you he asked Renee what he had to do to move to
8 Florida ---

9 A. Uh huh (**indicating positive**)

10 Q. ---And he did not have an address yet?

11 A. Okay. Yes. That's what he told me.

12 **MR. MOSS:** Confer with my client, Your Honor.

13 Q. Deputy ---

14 A. Yes sir.

15 Q. ---According to your notes you told him he had to
16 register by that day. What was your plan to determine whether
17 or not he did?

18 A. I didn't -- I don't remember why I told him he had till
19 the end of that day to register in Florida because routinely I
20 don't tell people what other states require.

21 Q. You don't deny you told him that based on your notes;
22 do you?

23 A. Based on my notes I do not deny that; no sir.

24 **MR. MOSS:** Thank you. I have no further questions.

25 **COURT:** All right.

1 **REDIRECT-EXAMINATION BY MR. HUCKS:**

2 Q. Now in your previous testimony, Deputy Rathbun, you
3 specifically said that you remember talking to him on
4 September 10th because it was the day before September 11th?

5 A. That's correct.

6 Q. Right. And does this note, in any way, shape or form,
7 substantially change your previous testimony?

8 A. No. It does not.

9 Q. And you were telling the truth then?

10 A. Yes.

11 Q. And you are telling the truth now?

12 A. Yes.

13 Q. Same truth.

14 A. Yes sir.

15 **COURT:** You may come down. Thank you. Please remain
16 in the courtroom.

17 All right, next witness.

18 **MR. HYMAN:** The State calls Mark Lynn.

19 **MR. MOSS:** Your Honor, we are going to have a motion to
20 exclude this witness.

21 **COURT:** Sir?

22 **MR. MOSS:** We are going to have a motion to exclude
23 this witness based on the Rule 5 **Brady** issue and ---

24 **COURT:** Let you go to the jury room just a moment, be
25 calling you right back.

1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 COURT: All right. What is your motion, please, Mr.
4 Moss?

5 MR. MOSS: Specifically, to exclude the testimony of
6 this witness, Mr. Mark Lynn.

7 COURT: On what grounds?

8 MR. MOSS: The basis of my motion is simply this.

9 COURT: Sir?

10 MR. MOSS: The basis is simply this. I served
11 discovery requests upon the Solicitor's Office on March the
12 10th, 2014. In my discovery request -- and they responded to
13 them, okay, on March the 19th, and they did not express any
14 objection or seek to quash any part of my requests, and so
15 they responded without qualification or incident, so I -- I
16 feel that the Defense is entitled to believe we've been given
17 everything.

18 Specifically included in my requests are receipt from
19 taking any and all investigative reports, information or
20 material which tends to establish the Defendant's innocence,
21 to mitigate punishment, or to impeach, discredit or contradict
22 the testimony of any witness whom the State will, or may call
23 at trial.

24 COURT: And what was their response?

25 MR. MOSS: Their response was nothing, silent as to

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1 this witness. Today I was handed a witness list. Now, to be
2 fair, his name did appear in Sergeant Avant's investigatory
3 notes, okay.

4 COURT: You had knowledge of him before?

5 MR. MOSS: Well, I did, but I didn't have knowledge of
6 his prior criminal record. Today, after lunch, I was handed
7 by Solicitor Hucks his criminal record. That's inappropriate.

8 COURT: Why?

9 MR. MOSS: Because they are required under the Rule 5
10 to give me that information within thirty days of request.

11 COURT: You ought to -- you are his lawyer. You ought
12 to had that information yourself.

13 MR. HUCKS: Your Honor, if I may briefly respond.

14 COURT: Please do.

15 MR. HUCKS: The issue here is, he's had his client's
16 NCIC the whole time, from the outset.

17 COURT: I understand.

18 MR. HUCKS: The witness -- a witness that's on the
19 State's witness list, that the State intends to call next, has
20 some prior criminal history. I'm entitled, or I'm required
21 under the law, at the time he testifies, to let the defense
22 know of any felony record that he has ---

23 COURT: That is -- okay.

24 MR. HUCKS: ---On crimes of dishonesty, so before he
25 testified I gave Mr. Moss a copy of his NCIC, and told him

1 what was on it. He has one drug conviction on his record
2 that's a felony, so that's -- I gave him the proper evidence
3 to impeach the witness based on one prior felony conviction at
4 the time of his testimony. I don't have to give him the NCIC
5 for everybody involved in the case.

6 COURT: Yes sir.

7 MR. MOSS: Your Honor, I would like to mark my Rule 5
8 Brady request as an exhibit and put it in the record of the
9 case, because under Rule 5 and Brady versus ---

10 COURT: I'm going to deny that. He's complied with the
11 past record of this witness. The witness was identified by
12 another witness, and I'm going to permit it to come in.

13 You were notified earlier that this was going to be a
14 witness, weren't you?

15 MR. MOSS: Actually, no, I was not. I was not given
16 any witness list until today.

17 COURT: Well, that's fine.

18 MR. MOSS: And -- and ---

19 COURT: Your only concern is -- you are concerned that
20 they didn't provide this NCIC report?

21 MR. MOSS: My concern is they did not comply with the
22 Rule 5, and respond with the information I've specifically
23 requested within thirty days.

24 COURT: Respond to that. Why didn't you give them his
25 name?

1 **MR. HUCKS:** His name is in the report, and what he's
2 going to testify to, are all written in the case report,
3 Judge.

4 **COURT:** You've got it. Where are you prejudiced? You
5 read it. You are a competent lawyer, obviously prepared.

6 **MR. MOSS:** I did read it. I specifically requested any
7 evidence ---

8 **COURT:** You got it, in the report.

9 **MR. MOSS:** Your Honor, please, for the record, let me
10 finish. The jury is not here.

11 I asked for information they had in their possession
12 that might tend to impeach a witness of the State. They were
13 obligated under Rule 5 to provide that to me within thirty
14 days and they did not, and you cannot find on this record they
15 complied with that Rule.

16 **COURT:** You want to respond to that?

17 **MR. HUCKS:** Your Honor, it has been the practice in
18 this courthouse, and every courthouse that I've ever been in
19 to try a case that as -- when a witness is called to testify
20 that we notify the defense ---

21 **COURT:** I understand that. That's not his issue. His
22 issue is that he asked for all witnesses and information; you
23 didn't provide it in discovery. That's what he's saying.

24 **MR. HUCKS:** Well, the only thing that he doesn't have
25 is the copy of his criminal history. I'm not aware that I

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MARK LYNN - DIRECT BY HYMAN

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1 have to turn over a criminal history on every person mentioned
2 in every report.

3 COURT: You do not. You do not. Did you specifically
4 provide that name?

5 MR. HUCKS: His name is in the report, and what he's
6 going to testify to, is listed in the Officer's report.

7 COURT: I'm comfortable with that.

8 Bring the jury in.

9 Motion is denied.

10 Bring the jury in, please.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JURY.)

13 COURT: All right. Call your next witness.

14 MR. HYMAN: The State calls Mark Lynn to the stand.

15 MARK LYNN, being first duly sworn,
16 testifies as follows:

17 DIRECT-EXAMINATION BY MR. HYMAN:

18 Q. Good afternoon, Mr. Lynn.

19 Tell the jury where you live, the address of your house.

20 A. [REDACTED] Quail Hollow Road.

21 Q. And what's the city?

22 A. Myrtle Beach.

23 Q. Okay. What do you do for a living?

24 A. Right now I'm unemployed.

25 Q. And did you live in that -- at that residence back in

JURY IN
MARK LYNN - DIRECT BY HYMAN

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1 the year 2012?

2 A. Yes.

3 Q. Did you -- is your house situated around the address of
4 [REDACTED] Quail Hollow Road?

5 A. Right next door.

6 Q. Right next door. And during the time around, we'll say
7 June though September of 2012, did you know who was living in
8 that residence, [REDACTED] Quail Hollow Road?

9 A. I knew him by first name. I didn't know the last
10 names.

11 Q. What were the names of the people you knew that lived
12 there?

13 A. Larry and Dianna.

14 Q. Have you ever seen this Defendant before?

15 A. Yes.

16 Q. And did you ever see this Defendant on that property?

17 A. Yes.

18 Q. Describe for the jury a little bit about -- in what
19 situations you observed this Defendant on that property.

20 A. Basically saw him in the back yard walking a dog, saw
21 him in the front yard standing, saw him in the street
22 standing. One time I saw him in my driveway.

23 Q. How often would you say you saw him?

24 A. I didn't keep a record, but I'd say maybe three times a
25 week.

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MARK LYNN - DIRECT BY HYMAN

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- 1 Q. And I think you said you are unemployed so ---
- 2 A. Yes sir.
- 3 Q. ---You were around all the time.
- 4 A. Not all the time, but the majority of the time.
- 5 Q. I understand. During what times periods would you
- 6 estimate that you saw this Defendant at [REDACTED] Quail Hollow Road?
- 7 A. I'd say July and August.
- 8 Q. July and August?
- 9 A. Yes sir.
- 10 Q. Did there come a time when the people that were living
- 11 in that house moved out?
- 12 A. Yes.
- 13 Q. Did you ever see a moving truck or anything like that
- 14 come to that house?
- 15 A. Yes.
- 16 Q. And approximately when do you think that was?
- 17 A. I couldn't give you a date; I just know it was a
- 18 Saturday.
- 19 Q. Okay.
- 20 A. I saw a lot of movement Saturday morning, nothing
- 21 Friday, Saturday morning saw a lot of movement -- Saturday
- 22 afternoon -- or Saturday morning I had gone out -- when I came
- 23 back, right after lunch.
- 24 Q. What month is it that you are talking about?
- 25 A. August.

MARK LYNN - CROSS BY MOSS

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- 1 Q. So that was back in August?
- 2 A. Yes.
- 3 Q. And you don't recall the exact date?
- 4 A. No sir.
- 5 Q. But about how many weeks, or months, again, did you say
- 6 it was that you saw this Defendant living in that house?
- 7 A. I would say July and August, up to that point.
- 8 Q. Up to that point ---
- 9 A. Yes sir.
- 10 Q. ---And now, once the moving truck came did anyone live
- 11 in that house from that point forward?
- 12 A. No.
- 13 Q. Did you ever see this Defendant back in that house?
- 14 A. No.
- 15 Q. Did you ever see him walking the dog around the house?a
- 16 A. Not after that Saturday.
- 17 Q. So you never saw him back on that property after that
- 18 Saturday in August?
- 19 A. No sir.
- 20 MR. HYMAN: Okay. Please answer any questions Defense
- 21 has.
- 22 COURT: All right, sir, Mr. Moss.
- 23 CROSS-EXAMINATION BY MR. MOSS:
- 24 Q. Mr. Lynn, did you know my client's name?
- 25 A. Not at the time; no.

1 Q. And did you ever have -- make small talk with him when
2 you would see him in the yard, or see him in your driveway?
3 A. No more than hello, or how are you.
4 Q. Ever had any problems with him as a neighbor?
5 A. Not -- not a problem.
6 Q. Okay. Were you aware that he had a prior criminal
7 record?
8 A. No sir.
9 Q. Did you ever make him aware that you had one?
10 A. No sir.
11 Q. Okay. Now, your prior record had nothing to do with
12 sex offender -- sex offender registry; right?
13 A. No sir.
14 Q. Yours are drug -- drug charges?
15 A. Yes sir.
16 Q. Okay. And so you wouldn't know anything about the sex
17 offender registry; would you?
18 A. No sir.
19 Q. You wouldn't know what's ---
20 A. I don't have a computer.
21 Q. Okay. You don't know what's required of sex offenders?
22 A. No sir.
23 Q. Okay. Did -- did you call the Sheriff's Office and
24 tell them he had left, because somebody -- there was some
25 testimony about an anonymous caller; was that you?

TERRY CHATFIELD-DONEFF - DIRECT BY HYMAN

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1 A. No sir.

2 Q. Okay.

3 A. Saturday when they picked up and moved out that was --
4 that was the end of it.

5 MR. MOSS: Nothing further from ---

6 COURT: All right, sir. You may come down.

7 Next witness.

8 MR. HYMAN: The State calls Terry Chatfield-Doneff.

9 TERRY CHATFIELD-DONEFF, being first
10 duly sworn, testifies as follows:

11 DIRECT-EXAMINATION BY MR. HYMAN:

12 Q. And where do you -- where do you reside?

13 A. Forestbrook Community.

14 Q. All right. That's good. You are local?

15 A. Yes sir.

16 Q. So do you own any other property in this area?

17 A. Yes sir.

18 Q. And tell us, for the record, what property that is?

19 A. I own the property at [REDACTED] Quail Hollow Road, in Myrtle
20 Beach.

21 Q. And is that a rental property?

22 A. Yes sir.

23 Q. Who was the tenant, if you recall, back in 2012?

24 A. Dianna and Larry Cooley.

25 Q. And how long -- if you remember, about how long did

1 they live in that house, rent it from you?

2 A. They lived there a few years.

3 Q. And do you know this Defendant?

4 A. No sir.

5 Q. You don't. Did there come a time when you were
6 contacted by Sergeant Avant about this case?

7 A. Yes sir.

8 Q. And around when was that?

9 A. I imagine it was probably in August, 2012.

10 Q. I believe there came a point when the Cooleys moved out
11 of that house?

12 A. Yes.

13 Q. And do you know when they moved out of that house?

14 A. It was on or around the 18th of August, 2012.

15 Q. On or around the 18th of August they moved out of the
16 house?

17 A. Uh huh (**indicating positive**)

18 Q. And what happened after that? Can you describe -- what
19 did you house look like when you went back to check on the
20 property?

21 A. It was a little bit in disrepair when we went back in
22 the next day, on that 18th or 19th when we went back in to
23 check it it was -- it was a little disrepair.

24 Q. Did anybody live in the house from, say August 18th,
25 when they moved out, till September 7th? I believe that was

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1 the day Sergeant Avant contacted you.

2 A. No sir.

3 Q. Nobody was living there. And I believe you had -- did
4 you have an occasion to check the mail when you went back to
5 the property to clean it up?

6 A. Yes sir.

7 Q. Was there any mail addressed to this Defendant found in
8 that mailbox?

9 A. There was.

10 Q. But he was receiving mail at that house?

11 A. Yes sir.

12 MR. HYMAN: Please answer any questions the Defense
13 has.

14 COURT: Mr. Moss.

15 CROSS-EXAMINATION BY MR. MOSS:

16 Q. Ms. Doneff, did the Cooleys turn the keys in to you?

17 A. No. The Cooleys left the keys underneath the mat when
18 they left.

19 Q. You don't live there by this house; do you?

20 A. I live near it, not next door to it.

21 Q. Do you live in seeing distance of it?

22 A. Not from my house; no.

23 Q. Okay. Sergeant Avant contacted you, I think, on the
24 7th; is that right?

25 A. I don't recall what day it was.

1 Q. Okay. Did you -- you didn't bring a diary or anything
2 with you today?

3 A. No sir, I didn't.

4 Q. Okay. So you don't have any notes or anything with you
5 that you brought?

6 A. Not with that date on it; no sir.

7 Q. Okay.

8 **MR. MOSS:** No further questions, Your Honor.

9 **COURT:** All right. You may come down.

10 A. Thank you.

11 **COURT:** Thank you.

12 Any further witnesses?

13 **MR. HUCKS:** Your Honor, that would be the showing of
14 the State's case.

15 **COURT:** All right. Ladies and gentlemen, you've been
16 out here a good while, as has staff and the attorneys. Let's
17 take about a fifteen minute break and I'll bring you back,
18 please. Thank you.

19 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
20 **JURY.)**

21 **COURT:** All right, sir. The State has now rested it's
22 case. Are there any motions, Mr. Moss?

23 **MR. MOSS:** Your Honor, we would renew our motion on the
24 fact that he should not be charged with third offense. You've
25 ruled on it before, but I would like to put it in the record.

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1 The only evidence that he's been convicted in this case is he
2 was convicted once in South Carolina for a sex offender
3 registry.

4 **COURT:** You've made that motion and the record is
5 protected, and it has been denied, and still is for the same
6 reason.

7 **MR. MOSS:** Okay. And we would also move for a directed
8 verdict based upon the State's witnesses that used dates like
9 on or about, and there has been no evidence of the fact of
10 when the move occurred. The two witnesses that -- one was a
11 neighbor and one was a landlord. Neither one could establish
12 the date that the move occurred on, and so the only firm date
13 we have is the date ---

14 **COURT:** Do you want to respond to that, Mr. Hucks?

15 **MR. HUCKS:** Your Honor, on or about is standard
16 language for folks to say, I think it happened, it happened
17 right about here. I think in the -- in the indictment it's
18 actually alleged that the violation happened on or about
19 September the 6th, and that allows a window for something that
20 happened over a period of time.

21 **COURT:** I understand. That motion is denied. Any
22 other motions -- for reasons previously stated.

23 There is sufficient evidence, if believed by the finders
24 of the facts, to go forward with the trial. They are the
25 finders of the facts, and you may argue that if you care to.

1 **MR. MOSS:** My client never was arraigned in this case,
2 and we have demonstrated from the trial of this case that Rule
3 5 in Brady versus Maryland ---

4 **COURT:** Well, did you ever ask for an arraignment?

5 **MR. MOSS:** Your Honor, we brought that to the attention
6 of the Court ---

7 **COURT:** Sir?

8 **MR. MOSS:** We brought that to the Court's attention
9 this morning.

10 **COURT:** I understand.

11 What you want to respond to that?

12 **MR. HUCKS:** He's not required to be arraigned. He's
13 been in jail over ninety days. He's subject to be called for
14 trial at any time.

15 **COURT:** Sure he has.

16 I deny that.

17 **MR. MOSS:** No further motions, Your Honor.

18 **COURT:** All right. Thank you.

19 All right. Y'all may take a short break.

20 Let me deal with that other issue. Mr. Fox.

21 (COURT REPORTER THINKS WE ARE TAKING A BREAK. THE COURT
22 AND COUNSEL CONTINUE OFF THE RECORD.)

23 (OFF THE RECORD)

24 **COURT:** ...To the crimes of dis -- and I'm not going to
25 let that in. I'm going to let in any crimes of dishonesty,

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1 not involving criminal sexual conduct, clearly, and you've
2 been provided a copy of it.

3 **MR. MOSS:** Yes, and I would like to take a moment to
4 look at that to see which crimes they might be.

5 **COURT:** You've got a chance. The jury is out. Take a
6 long look at it.

7 All right. Let's take a short break.

8 **(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE**
9 **THE PRESENCE OF THE JURY.)**

10 **COURT:** Bring the Defendant out, please.

11 All right, Mr. Moss, have the Defendant stand.

12 **MR. HUCKS:** Your Honor, prior to your interrog -- or
13 your questioning of the Defendant could I ask a very brief
14 question?

15 **COURT:** Yes sir.

16 **MR. HUCKS:** There will be a -- due to the Defendant's
17 substantial criminal history Mr. Moss and I couldn't agree on
18 what was and was not a crime of dishonesty, and I would like
19 to have the Court tell me what crimes I can use and can't use.

20 **COURT:** All right. What is it?

21 **MR. HUCKS:** He has what I believe to be crimes of --
22 I'll just read the ones I believe to be crimes of dishonesty.
23 Shoplifting, FTC theft, grand larceny, possession of a stolen
24 vehicle, petit larceny, receiving stolen goods, obtaining
25 goods under false pretenses, possession of a stolen vehicle

1 again, and receiving stolen goods again. I believe those are
2 crimes of dishonesty, and I would like to have it on the
3 record.

4 COURT: All right. Which ones are you saying are not
5 dishonesty?

6 MR. MOSS: I don't think a property crime is
7 dishonesty, Your Honor.

8 COURT: Sir?

9 MR. MOSS: A property crime is not a crime of dis ---

10 COURT: Stealing is not -- shoplifting is not
11 dishonesty?

12 MR. MOSS: It may be a crime of moral turpitude, but
13 it's not a crime of dishonesty. Obtaining goods under false
14 pretenses is a crime of dishonesty.

15 COURT: No sir. I'm going to let that in. If stealing
16 at a store is not dishonest I don't know what is. I've let
17 shoplifting in on many occasions. I will -- I will do it,
18 however, only as to his credibility and believability, and not
19 as any evidence of his guilt in this case. All right. No,
20 he ---

21 You are entitled to let it in.

22 Let me hear ---

23 Mr. Defendant, we are at that stage now where you have
24 the opportunity to put up any witnesses that you want to; you
25 understand that?

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1 A. Yes sir.

2 **DEPUTY CLERK OF COURT:** Judge, you want me to swear
3 him?

4 **COURT:** Sure.

5 **DEPUTY CLERK OF COURT:** Sir, please raise your right
6 hand.

7 Do you solemnly swear or affirm to tell the truth, the
8 whole truth, and nothing but the truth, so help you God?

9 A. I don't to that, but tell the truth.

10 **COURT:** Just affirm that you will tell the truth.
11 Okay.

12 Now, under our rules you have the absolute right to
13 testify. You also have the absolute right not to testify.
14 You are presumed innocent. You don't have to prove a thing.
15 The State must prove you guilty beyond a reasonable doubt.
16 You can testify, if you choose to. You cannot testify if you
17 choose to. If you elect not to testify I will charge the jury
18 that that fact raises no adverse inferences against you. If
19 you elected not to testify I would further charge the jury
20 that the fact that you did not testify could not even enter
21 into their deliberations.

22 Now, this is a serious matter. Obviously you would
23 discuss it with your lawyer, but the final decision to testify
24 or not testify rests with you; do you understand that?

25 A. Yes sir.

1 **COURT:** On post-conviction relief I've had defendants
2 say well, I wanted to testify but my lawyer wouldn't let me.

3 A. That's right.

4 **COURT:** That's not true, and can't be; it's your
5 decision.

6 Now, do you have any questions about this issue?

7 A. I've got all kind of questions, but I ---

8 **COURT:** No sir. I -- wait a minute. I want your
9 ques -- what questions do you have about your right to testify
10 or not testify?

11 A. I'm good on that.

12 **COURT:** Sir?

13 A. I'm good on that, sir.

14 **COURT:** All right. And what is your decision?

15 A. I wish to testify, sir.

16 **COURT:** You will be granted that opportunity.

17 And is there any other witnesses that he cares to call,
18 Mr. Moss?

19 **MR. MOSS:** No, Your Honor.

20 **COURT:** All right. Bring the jury in.

21 You've made your motion -- next case. That's fine.

22 All right. Bring the jury in.

23 **MR. HUCKS:** Your Honor, would you like to make the
24 handwritten note and the case report a Court's exhibit due to
25 your earlier ruling?

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BILLY LEON ALFORD - DIRECT BY MOSS

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1 **MR. MOSS:** I'm going to object to that.

2 **COURT:** We'll make it a Court's Exhibit.

3 **MR. MOSS:** I would -- I would have an objection to that
4 going back.

5 **COURT:** If you object to it I won't do it.

6 **MR. HUCKS:** Just for the Court's ---

7 **COURT:** I'll deal with that issue out of the jury's
8 presence.

9 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
10 **JURY.)**

11 **COURT:** All right. Mr. Foreman, ladies and gentlemen,
12 at the recess we had completed all of the testimony by the
13 State of South Carolina. We now move to the defense.

14 Mr. Moss, call your first witness.

15 **MR. MOSS:** Your Honor, the Defendant would testify at
16 this time.

17 **COURT:** All right, sir.

18 **BILLY LEON ALFORD**, first affirming,
19 testifies as follows:

20 **DIRECT-EXAMINATION BY MR. MOSS:**

21 Q. Mr. Alford, we've heard a lot about the Sex Offender
22 Registry. How did you find yourself on the Sex Offender
23 Registry?

24 A. In '97 I had a friend and his girlfriend that -- more
25 or less, hung out with this girl. Come to find out she was

1 under age. Two weeks after we was dating ---

2 MR. HUCKS: Objection, Your Honor, relevance. Either
3 he's ---

4 A. I mean, you don't know about the case.

5 COURT: We are not going into the facts. The question
6 is, was he a registered sex offender or not. Not entitled --
7 not going into the facts of that case. That was another trial
8 at another date.

9 Q. You pled guilty; didn't you?

10 A. North Carolina versus Alford.

11 Q. You pled guilty?

12 A. No -- no contest.

13 Q. So there wasn't a trial?

14 A. Wasn't a trial.

15 Q. Okay. Ever had any other charge about the sex crime?

16 A. No sir.

17 Q. Okay. You ever have any complaint made against you
18 that you are aware of about another sex crime?

19 A. No sir.

20 Q. Okay. And what year was that?

21 A. '97 was whenever I was first initially charged. I was
22 convicted in '98.

23 Q. Okay. And as a result of that you had to register as a
24 sex offender; right?

25 A. Yes sir.

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BILLY LEON ALFORD - DIRECT BY MOSS

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1 Q. And every state you go to you've got to register;
2 right?
3 A. Yes sir.
4 Q. Have you always registered?
5 A. Yes sir.
6 Q. Now, every state has got different rules; don't they?
7 A. Yes sir.
8 Q. Okay. And you have managed before with these rules
9 that different states have, right?
10 A. Yes sir.
11 Q. And indeed in this State?
12 A. Indeed this State.
13 COURT: You need to talk a little louder so these --
14 that juror back there in the far back can hear you. Thank
15 you. Please speak up.
16 Q. You were in the courtroom today for all the testimony;
17 okay. Tell us about the move to Florida.
18 A. Prior to my move to Florida I had to register on August
19 the - I'm not exactly sure of the date - but at that time I
20 knew that I was about to be moving to Florida, and I talked
21 with Ms. - the lady back there. I can't remember her name. I
22 only talked to her like one time - other person. But anyways,
23 I talked with her and she gave me my information as far as
24 what I was suppose to do, and so forth and so on, and then I
25 told her, I said, well, I don't know exactly when, but I said

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BILLY LEON ALFORD - DIRECT BY MOSS

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1 I am possibly going to be moving to Florida, and she let me
2 know exactly as she did earlier, that I would have to put in
3 writing, and this and that and the third.

4 Q. Let me stop you right there. What does it mean that
5 you possibly might have to be moving, plus, why you didn't
6 know for certain?

7 A. Because I had no actual -- I just knew that the people
8 that I was living with were moving to Florida, but I didn't
9 know exactly when, and they didn't know because they had to
10 find a place. They was actually trying to find a place that
11 they could rent to, and so forth, and so there was no
12 confirmation as to when, where or whatever. All I knew was
13 that there was talk about, and so I informed the Sheriff's
14 Office so that when it came I would be able to know what --
15 you know, what I must do or whatever.

16 Q. Now, you said that the people you were living with were
17 moving. Why is it that that meant you were moving?

18 A. Well, at the time I was homeless. I had been homeless
19 for the last four years. And due to Sex Offender Registry the
20 laws are very strict and so forth, and people are judgmental,
21 and they don't know facts, they just know, you know, you are a
22 sex offender, and they don't know the details that goes with
23 that. So anyways, you know, you are judged as a pedophile,
24 which must of y'all can probably relate, or know what I'm
25 talking about. Anyways, it's difficult being in residents.

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1 People are particular about their kids. I can agree because
2 I've got a little girl that's seven years old, so I can
3 understand, but nonetheless, I'm still considered a pedophile,
4 and so therefore I've got to deal with the repercussion of
5 being labeled as such, and therefore it causes me -- I can't
6 get jobs, I can't live in certain areas, and so forth, so on.

7 Q. Did you have anywhere else to live in Horry County?

8 A. No sir.

9 Q. But you had a family that you lived with at the address
10 given in this courtroom?

11 A. Yes sir.

12 Q. Okay. And when you registered, I think Defendant's
13 Exhibit 2, was in August, but that's the address you used;
14 right?

15 A. Yes sir.

16 Q. And that's where you lived?

17 A. Yes sir.

18 Q. Okay. So they were moving. Do you know why they were
19 moving?

20 A. They -- something to do with one -- their son was in
21 Florida. He was having medical problems, and so they wanted
22 to go up there so that they could be close to him, and that's
23 just one of those family matters, so to speak.

24 Q. Did you explain that to anyone at the Sheriff's Office
25 when you were arrested in August?

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BILLY LEON ALFORD - DIRECT BY MOSS

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1 A. Not particularly. There was no discussion as to why,
2 or just -- I just, more or less, just told them that I would
3 be going to Florida ---
4 Q. Okay.
5 A. ---But I didn't know exactly when.
6 Q. So at that time though, in August, you gave them your
7 address and your phone number?
8 A. Right.
9 Q. Okay. Did you ever change your phone number?
10 A. No sir. It's still the same.
11 Q. Okay. So, you moved. Tell me about the move.
12 A. It was in the afternoon, must have been about like
13 seven o'clock, and Chrissy, which was the daughter of the
14 people that I was staying with, she said that she had found a
15 place, and so that everything was made available to move, and
16 so we packed up that night. The next day we -- we left.
17 Well, it was sometime late that afternoon. And so we left,
18 and I wasn't able to contact the Sheriff's Office at the time,
19 cause it was on the weekend. And so I got there to Florida
20 and found out that I wasn't able to register. I know it was
21 stated earlier that I was concerned about my relatives but --
22 I mean the people, but it wasn't to do with the people. I
23 could not register. And that could be verified if they do the
24 -- the research. I was not able to register at that address.
25 And so I'm in Florida, and now I'm stuck between a rock and a

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1 hard place. I don't, you know -- there's nowhere I can go,
2 you know what I'm saying, so anyways, ---

3 Q. When was this?

4 A. I'm not even sure. I just -- I know it was in August.
5 That's all I know.

6 Q. Okay. Now earlier there was some testimony from
7 Deputy, I think, Rathbun, she had a conversation with you on
8 the 10th.

9 A. Right.

10 Q. Okay. Looking at this calendar - this is Defense's
11 Number 4 - can you tell on September 10th what day of the week
12 it was?

13 A. Monday.

14 Q. Okay. Would that -- knowing that September 10th was on
15 a Monday would that help you in your testimony now?

16 A. It must have been that Friday, so I guess that would
17 have been September the 7th.

18 Q. I'll give you the calendar.

19 A. September the 7th. I want to say it was sometime in
20 August, but I don't know exactly when. I don't -- I don't
21 know. All I know is that I contacted the -- the Sheriff's
22 Office in Florida. I let them know that I was in Florida, and
23 then they told me that I had to register on that Monday, which
24 was on the 10th, and then ---

25 Q. That was September though, wasn't it?

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- 1 A. Right. September the 10th.
- 2 Q. Okay. Did you register on September the 10th in
- 3 Florida?
- 4 A. Yes sir.
- 5 Q. Okay. And did you have a conversation with the
- 6 Sheriff's Office here in Horry County on the 10th?
- 7 A. Yes sir.
- 8 Q. Tell us about that conversation, and who it was with.
- 9 A. I talked with Ms. -- Ms. Paulette, and -- talked with
- 10 her, and I discussed with her what was going on. I told her
- 11 that I was in a situation to where I couldn't live where I'm
- 12 living, because some fact -- it's in the school zone area, and
- 13 so therefore I wasn't able to live there, and I said, I'm in a
- 14 situation to where we don't have the money to move so I'm
- 15 stuck, and I said I guess I'm coming back to South Carolina, I
- 16 said, but I don't know. But she said, well, you've got till
- 17 today to register. And so I was like, well, I'll register,
- 18 and so when I registered -- I couldn't register, so I had to
- 19 move. I had to move out, and I had to re-register again,
- 20 which was on the 12th.
- 21 Q. Let me stop you there. You did register ---
- 22 A. Yes.
- 23 Q. ---On the 10th?
- 24 A. Yes sir.
- 25 Q. And you used an address of -- I think it showed up in

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1 the Incident Report as ---

2 A. Right. It was on [REDACTED] Rolling Sands.

3 Q. That's in Florida?

4 A. That's in Florida.

5 Q. You registered there?

6 A. Right.

7 Q. Okay. Now ---

8 A. And the next day they told me that I couldn't live
9 there because it was a non-registry. I couldn't not live
10 there due to being a sex offender.

11 Q. Okay. And so what did you do the next day?

12 A. Well, I had to move, so I came to St. Augustine, which
13 was in St. Johns County. I went to the Sheriff's Department
14 and re-did the same thing I had to do prior, which was
15 register again, and I didn't have an address because I had no
16 address. I was not -- I didn't have a physical address, so
17 they just made me tell them where I was at, which at the time
18 was in between Dunkin Donuts and some other place, but
19 anyways, I was homeless, and so I was there on the streets and
20 ---

21 Q. It was a halfway house, wasn't it?

22 A. No, that was -- they couldn't -- I couldn't register
23 there. That was the first address that I tried to give them,
24 but I couldn't give it to them because it was a -- it was a
25 mission, Christian Mission, but they didn't allow sex

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1 offenders, so then ---

2 Q. So you couldn't live there. Now, did the Horry County
3 Sheriff's Office know how to find you?

4 A. Yes sir.

5 Q. Okay. Did they have your phone number?

6 A. Yes sir.

7 Q. Did they ever call you?

8 A. No sir.

9 Q. Okay. But you called them?

10 A. Yes sir.

11 Q. And specifically on the 10th you called them?

12 A. And prior to that. I called sometime within the first
13 week of what-you-call it? I talked with Ms. -- I can't
14 remember her name. Sorry. But not Ms. Paulette or Ms. Avant,
15 but the other lady, Ms. ---

16 Q. Ms. Elvis?

17 A. Ms. Elvis. I talked with her, and me and her had had a
18 prior conversation before, when I went to register, and we
19 didn't get off on good terms because I was explaining to her
20 how difficult this is, having to, you know, register and how -
21 - what it -- what it does as far as me getting a job, and she
22 was like, well, that ain't no excuse, and you know, so I just
23 didn't feel comfortable with actually telling her my situation
24 with what was going on feeling -- knowing how she felt as far
25 as me being a sex offender, so I was trying to talk with Ms.

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1 Paulette, and I left -- like I say, I left answering machine,
2 answering -- answering service, on her messages, and I told
3 her, you know, the same thing, that I needed to talk to her,
4 and that she could call me back, but I never got a call. And
5 then like I say, on the 10th I called, and I did -- was able
6 to talk to her.

7 Q. Now, you gave other people the address that you were
8 going to in Florida, right, when you got there?

9 A. I gave my bondsman, which is more or less like a
10 sheriff, or whatever you call them - they are bounty hunters -
11 and I gave Mr. Moss, which is my attorney, the -- that I was
12 going to be moving. I actually called him when I got to
13 Florida, and told him why I was going to Florida.

14 Q. And how about the Sheriff's Office here? Did they know
15 how to find you too?

16 A. Well, they was never -- they never knew where to find
17 me cause they never -- they was never no talk, except for me
18 and her on the 10th.

19 Q. Were you hiding from them?

20 A. No. I was not ---

21 Q. Okay. Did you change your phone number?

22 A. No sir.

23 Q. Okay. Did you ever seek to abscond, or run away where
24 they couldn't find you?

25 A. (NODS HEAD NEGATIVE.)

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1 Q. Okay. When you got to Florida who did you contact?a

2 A. The Sheriff's Department.

3 Q. Okay. There was some testimony earlier today about a
4 deputy running across you in Florida. Tell me about that.

5 A. I went to the Sheriff's Office and contacted them about
6 me being in this State, and I just knew -- wanted to know what
7 to do, because I knew it was on the weekend, and he just said,
8 well, you can't register today because it's on the weekend.
9 He said, just come back Monday. And he said, well, I have to
10 call the county where you are at to verify that, you know,
11 whatever, and so they called, and I guess they verified,
12 whatever, showed by the State that said everything was
13 whatever, like a -- you know.

14 Q. But running across a deputy in Florida, didn't -- you
15 went to find him?

16 A. Right.

17 Q. Okay. With specificity, what were you told when you
18 told in your telephone call with Ms. Rathbun?

19 A. When I talked with her ---

20 MR. HUCKS: Objection, Your Honor. That's -- that's
21 hearsay. I mean, she's -- it's an out-of-court statement
22 being offered for the truth of the matter asserted, and Ms.
23 Rathbun has already testified and been cross-examined.

24 MR. MOSS: She's an agent of the State.

25 COURT: I will permit you to call her back if you want

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1 to, but they are not going to get her testimony in through
2 him.

3 Q. Okay. Well, as a result of your conversation with her
4 what did you understand?

5 COURT: No sir. If you want to hear what she said I
6 will bring her back. We'll let the jury hear it too. I will
7 afford you the opportunity to recall her if you want to. I'm
8 not going to let him testify to what she said or didn't say,
9 because simply, the State would have no position in which to
10 cross-examine her.

11 A. She's already done and said their statement.

12 COURT: Just leave it alone. If you want that
13 testimony, additional testimony in, call her. She's
14 available.

15 Q. Did you comply with the directions as you understood
16 them?

17 A. Yes sir.

18 Q. By registering in Florida?

19 A. Yes sir.

20 Q. Now, since you moved in 2012 has there been any
21 complaint about a sex crime or sexual assault by you?

22 A. No sir. I'm not a sexual -- sexual ---

23 Q. Now you have had some other criminal violations?

24 A. Yes sir.

25 Q. Okay. Were those crimes that involved, in your

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1 opinion, dishonesty?

2 A. I mean, I could say, I mean, yeah, it would be
3 dishonest. I mean, if you are stealing that's dishonesty, so
4 I guess -- I mean, it's dishonest. If I steal somebody's
5 stuff it's dishonest.

6 Q. And when you stole some stuff you got caught, didn't
7 you?

8 A. Yes sir.

9 Q. Okay. When you got caught did you deny stealing stuff?

10 A. No sir.

11 Q. What did you do?

12 A. I pled guilty.

13 Q. Okay. Why did you do that?

14 A. Cause I was guilty.

15 Q. Okay.

16 **COURT:** Let me explain to the jury, under our Rules the
17 past record of a witness involving dishonesty may be
18 introduced into the testimony. There is some reference by his
19 own attorney as to crimes of dishonesty. If you conclude that
20 he has been convicted or pled guilty of crimes of dishonesty
21 you may use it as to his credibility and believability, and
22 for no other purpose. A defendant's prior record of
23 dishonesty, if any, does not relate to the facts for which he
24 is being tried today. I emphasize, if you conclude that he
25 has been convicted or pled guilty of crimes of dishonest you

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1 may, only if you choose, to use that as to his credibility and
2 believability, and for no other purpose. Thank you.

3 You may proceed, Mr. Moss.

4 **MR. MOSS:** Thank you, Your Honor.

5 Q. Recall this other history with Horry County. Have you
6 got problems with them?

7 A. I have a case pending right now where I'm actually
8 fighting due to the fact that -- malicious prosecution, and
9 false arrest, and that's been going on for two years.

10 **COURT:** I would not permit any charges now pending
11 against him to which has not been ended in this case.

12 **MR. MOSS:** And I'm not asking about those.

13 **COURT:** Okay.

14 **MR. MOSS:** This is a civil matter. You say you've got
15 claims ---

16 **COURT:** I do that for his protection. You understand?

17 **MR. MOSS:** I do understand, Your Honor.

18 Q. So you've got claims that the County has done wrong by
19 you?

20 A. Done wrong? They've done me wrong.

21 Q. Okay. And you believe they have?

22 A. I know they have.

23 Q. And you've said they have. In your opinion, is that
24 relevant to what's happening here?

25 A. Yes sir.

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1 Q. You've got another lawyer in that matter, right; not
2 me?

3 A. Yes sir.

4 Q. Okay. Now, I want to go back to that calendar for a
5 minute. You have -- testimony from Sergeant Avant, she talked
6 about her notes, and her notes talked been some dates. She
7 talked about September the 6th being a day they received an
8 anonymous phone call. Do you remember that?

9 A. That's what I heard them say.

10 Q. I want to show you this calendar again. (September 6,
11 2012. Do you see it on there?

12 A. September 6, Thursday.

13 Q. Okay. According to the testimony before the Court they
14 got an anonymous call on the day that you had moved. Okay.

15 A. Uh huh (**indicating positive**)

16 Q. So -- and then she said on the 7th she went out
17 personally and made an investigation. Do you recall that
18 testimony?

19 A. I recall that.

20 Q. Okay. What day was the 7th?

21 A. On Friday.

22 Q. Was that the day that you had the conversation with the
23 deputy in Flagler County, Florida?

24 A. It was -- yes sir.

25 Q. Okay. Okay. And when were you arrested?

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1 A. On that Monday. He told me that I couldn't register
2 then because it was too late, and that I would just come back
3 Monday.

4 Q. Okay. And she -- on the 10th?

5 A. On the 10th.

6 Q. Now you are aware the 10th is the day the warrant was
7 obtained here for your arrest; do you not?

8 A. That's what I've been told.

9 Q. Okay. Well, let me show it to you.

10 A. I just know that Ms. Paulette told me that if I did not
11 -- that if I got registered that day ---

12 MR. HUCKS: Objection again, Your Honor, back into
13 hearsay testimony of what somebody else told him.

14 COURT: Sustained.

15 A. She admitted to it. She has admitted to it. It's not
16 hearsay.

17 COURT: Mr. Foreman, ladies and gentlemen, you've heard
18 the word hearsay. Hearsay is the testimony not under -- on
19 the stand, not under oath, but allegedly made by somebody out
20 there. That is improper for several reasons. One, that out
21 there is not on the witness stand, is not under oath.

22 A. It's already been subjected to evidence.

23 COURT: That person is not subject to cross-examine,
24 consequently hearsay testimony, with few exceptions, is not
25 admissible. If you want that testimony you have to bring him

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1 in, put him under oath so that you, the jury, will have an
2 opportunity to hear that testimony from the author itself.

3 Thank you. You may proceed.

4 A. Could I ask a question, Your Honor?

5 COURT: Sir?

6 A. Could I ask the Court a question?

7 COURT: No sir. No sir. You go through your attorney.
8 I'll be glad to answer through your attorney. I don't want
9 you on a -- it would be improper.

10 Q. We are talking about your warrant, Mr. Alford. I'm
11 going to show it to you. Have you seen this Warrant right
12 here? You've seen it before, right?

13 MR. HUCKS: Objection, Your Honor. The Warrant is not
14 in evidence. He can't talk about what's on a document that's
15 not in evidence.

16 COURT: He's not trying to. This officer -- this
17 attorney is trying to find out what he wants to ask so he can
18 ask me. He's just discussing it with his lawyer -- attorney,
19 and he's entitled to do that.

20 MR. HUCKS: Your Honor, he -- the attorney just
21 directed him to read something from the Warrant, and the
22 Warrant is not in evidence.

23 A. It's the evidence which is what I'm here on. How can
24 it not be evidence if it's what I'm here on.

25 MR. MOSS: Mr. Alford ---

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1 **MR. HUCKS:** It's not entered into evidence, Your Honor.

2 **COURT:** I'm going -- if that's the Warrant, and if
3 that's on the Warrant I'm going to let him testify to it.

4 **MR. HUCKS:** Yes sir.

5 A. Thank you.

6 **COURT:** It's a document, a business document. It
7 doesn't contain his testimony. I'm permitting it only as to
8 the charge on the law. The indictment is what is the proper
9 procedure that brings him to Court, not the Warrant, but you
10 may let him read -- or you read it for us, Mr. Moss.

11 **MR. MOSS:** I haven't gotten to ask him the question.
12 I'm asking about a date, and I ---

13 **COURT:** What are you asking him?

14 **MR. MOSS:** The date the Warrant was obtained.

15 A. Let me ask it -- he could ask.

16 **COURT:** Sir?

17 **MR. MOSS:** I'm trying to get to the date the Warrant
18 was obtained, and I'm trying to show him the Warrant for that
19 purpose and that purpose only.

20 Q. Now, this is a copy of your Warrant. Can you see on
21 here what date it was issued?

22 A. It says here on or about ---

23 Q. No, not there; down at the bottom where the Judge
24 signed it.

25 A. 9/10/2012.

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1 Q. That's the date of the Warrant. Okay. Now, is that
2 the same day that you registered in Florida?

3 A. Yes sir.

4 Q. On Monday. Okay. Did you hear the testimony earlier
5 today about this document right here, Defendant's Number 2?

6 COURT: When you say this document, let us know for the
7 record what document you are referring to.

8 MR. MOSS: Thank you, Your Honor. I did. Defense's
9 Number -- State's Number 2.

10 Q. This document, you heard testimony about it; right?

11 A. Yes sir.

12 Q. This is -- when you went in August to register this is
13 your registration package; right?

14 A. Yes sir.

15 Q. And you went through a list of stuff. Tell me about
16 that process.

17 A. More or less I go in there and she asks me questions as
18 to where I'm living, if I have a job, type of vehicle I drive,
19 my e-mail address, my phone number, what else is it? I have
20 to take a picture, fingerprint, and then after all that's done
21 she gives me that form there, and just more or less tells me
22 to sign it, and just verify that you've been informed of your
23 rights as far as registering. And I'm suppose to get a copy
24 of it but unfortunately I don't get a copy of it; I didn't get
25 a copy of it that day.

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- 1 Q. How long does that process take?
- 2 A. No more than ten minutes.
- 3 Q. All right. Did they give you the document and tell
- 4 you to go sit down at a desk and read it?
- 5 A. No sir.
- 6 Q. Do they give you a room to go in?
- 7 A. No sir.
- 8 Q. Do they tell you, if you've got any questions go talk
- 9 to your lawyer about it before you sign this stuff?
- 10 A. No sir.
- 11 Q. Do they tell you if you have any questions about it
- 12 come back tomorrow and sign it?
- 13 A. No sir.
- 14 Q. Okay. And you didn't get a copy of it?
- 15 A. No sir.
- 16 Q. Okay. Now, one of the things they pointed to was your
- 17 knowledge to provide, in person, the change of address. Do
- 18 you know -- have you read the statute?
- 19 A. I haven't read it. I don't try to pay that no
- 20 attention. I just -- I don't even like to think about it.
- 21 It's a nightmare to me, so I'm sorry if that offends y'all. I
- 22 just -- that thing just -- it irks me, and I even tell them as
- 23 much when I go in there, that I despise it; it's been a curse
- 24 to me since I've been on it so ---
- 25 Q. So you weren't given a copy of this document?

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- 1 A. No sir.
- 2 Q. Okay. Now it says that Renee Elvis signed this
3 document, along with you; is that right?
- 4 A. Yes sir.
- 5 Q. Is that the way you remember?
- 6 A. Yes sir.
- 7 Q. Okay. Renee Elvis is in the courtroom today; right?
- 8 A. Yes sir.
- 9 Q. And you heard her testify?
- 10 A. Yes sir.
- 11 Q. Okay. Was she the first one you talked to when you
12 called when you could not get hold of Deputy Rathbun?
- 13 A. Yes. She was the one that I talked to.
- 14 Q. Okay.
- 15 A. And I left a message with -- on Ms. Paulette's
16 answering service.
- 17 Q. Did that message ever get returned?
- 18 A. No sir.
- 19 Q. Had you left messages before?
- 20 A. Yes sir.
- 21 Q. And did any of those messages get returned?
- 22 A. Yes, I mean, I've left prior messages, yes.
- 23 Q. Okay. And so it was not unusual for you to leave a
24 message like that?
- 25 A. No.

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1 Q. Okay. Did you consider yourself to have a good rapore
2 with the Sheriff's Department?

3 A. Well, I mean, I thought I did.

4 Q. Did you know Terry Doneff that testify, or Doneff?

5 A. I just more or less -- I knew of him, and I've met him
6 a couple of times as far as being out in the yard. He used to
7 be outside. He's got like twenty-five cats and I had dogs ---

8 Q. Now that might be Mr. Lynn you are referring to.

9 A. Huh?

10 Q. Your neighbor, Mr. Lynn, you might be referring to.
11 I'm talking about the lady that owned the house ---

12 A. Oh, I didn't know her.

13 Q. Okay. The landlord.

14 A. I didn't know her.

15 Q. Did you ever have any dealings with her?

16 A. I never had no dealings with her.

17 Q. Ever had any communication with her about when you were
18 leaving?

19 A. Never had no communication with her, period, never had
20 seen her, never talked to her, don't know her.

21 Q. Now Mr. Lynn that testified, your neighbor, did you
22 ever have any communications with him when you told him your
23 intentions about moving?

24 A. No sir.

25 Q. Okay. Do you recall the testimony about you not

1 wanting to register because -- in Florida because -- something
2 about people living with you didn't want to be evicted?

3 A. No sir.

4 Q. Okay. You recall it was said here in the courtroom
5 though; right?

6 A. I heard it earlier.

7 Q. And in the courtroom it was said that that's something
8 you said on the 10th; you remember that?

9 A. That's what they said.

10 Q. But the 10th is the day you registered; isn't it?

11 A. Yes sir.

12 Q. When you moved to Florida were you planning to come
13 back to South Carolina?

14 A. No sir. I had no intentions.

15 Q. Why are you here now?

16 A. Because they drove me here.

17 **MR. MOSS:** I'm not going to ask you any further
18 questions at this time. Please answer any the Solicitor may
19 have.

20 A. Thank you, sir.

21 **MR. HUCKS:** Your Honor, I believe Mr. Moss and I need
22 to approach briefly.

23 **(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)**

24 **CROSS-EXAMINATION BY MR. HUCKS:**

25 Q. Now, Mr. Alford, you told kind of a fanciful story, so

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1 I want to go by and let's talk about it a little bit.

2 A. Will you state that again, please sir.

3 Q. Just let -- let's go through this a little bit. I want
4 to go through your version of the facts. Your version of the
5 facts, you testified the same way that Ms. Doneff testified,
6 that you guys left that residence in August; right?

7 A. Right about somewhere, yes.

8 Q. She said August 18th. That sounds pretty close; don't
9 it?

10 A. I mean, I don't know. I can't speak on days because I
11 don't know. I wasn't like keeping direct of times, I was ---

12 Q. Okay. If she said August 18th would that be pretty
13 close?

14 A. I mean, I can't say. I'm not going to sit here and lie
15 to you because I don't know.

16 Q. Well, anyway, you talked to Deputy Rathbun on September
17 the 10th; right?

18 A. Right.

19 Q. So you went a period of weeks without registering when
20 you knew you had to register, right? Yes or no?

21 A. I can't speak on that because I can't speak on weeks.

22 Q. Okay. From August the 18th to September the 10th would
23 be more than a week?

24 A. If you are going by what that says then, yeah, that
25 would be correct.

1 Q. Okay. Now, the -- so it's fair to say, much like I
2 believe Ms. Doneff said, that y'all took off. That's what you
3 did; right? You loaded up and you just took off to Florida;
4 right?

5 A. How are you trying to imply that, sir?

6 Q. Y'all left Myrtle Beach and went to Florida, just
7 packed up and took off?

8 A. Yes, we packed up and took off.

9 Q. And you know you are a sex offender. You packed up and
10 moved, hurriedly?

11 A. Hurriedly. Was I running from something? Is that what
12 you are trying to imply?

13 Q. You packed up and moved in a short period of time; how
14 about that?

15 A. Thank you.

16 Q. There you go. So -- and on August the 7th, which, if
17 you believe Ms. Doneff's date, is ten days prior to y'all
18 moving, something to that effect; right, ten or eleven days.
19 You went into the Sheriff's Office ---

20 COURT REPORTER: Excuse me. I didn't get an answer.

21 Q. Oh. Does that -- please answer affirmatively ---

22 A. Yes sir.

23 Q. ---Or negatively ---

24 A. Yes sir.

25 Q. ---Our loud. Thank you.

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1 So within ten days after signing this document you left;
2 didn't you, or eleven days?

3 A. Ten days what now?

4 Q. After signing this packet, your signature?

5 A. Like I say, I can't state on that. I cannot testify to
6 that.

7 Q. You signed this where you filled out this package on
8 August the 7th, right ---

9 A. I'm agreeing to that. I cannot agree to the part after
10 your statement.

11 Q. ---And before September the 1st you had moved away?
12 That's your testimony. You said August.

13 A. I can't tell them that.

14 Q. You don't know when you moved?

15 A. That's what I've been telling you the whole time I've
16 been sitting here.

17 Q. Have you told the truth yet, in any ---

18 **MR. MOSS:** Objection. Objection, Your Honor.

19 **MR. HUCKS:** Withdrawn. Withdrawn.

20 Q. You moved to Florida in August; right or wrong?

21 A. It was sometime in August. I don't know exactly when.
22 All I know is that it was in August.

23 Q. In the month of August?

24 A. Right.

25 Q. You signed this -- or you signed up here in the month

1 of August; correct?

2 A. Right. Why do you keep on with that? We've done
3 established that.

4 Q. Because you won't give -- you won't answer
5 affirmatively. I'm just trying to make sure that we -- that
6 we get it all out; okay.

7 A. I understand you don't want to talk about it, and I
8 really do want to talk about it.

9 Q. Your testimony just a few minutes ago was, when you
10 looked at that thing you said, I hate that thing, I tell them
11 when I go there I hate that thing.

12 A. That's right; I hate it.

13 Q. You hate it?

14 A. That's right.

15 Q. You said people call me a pedophile.

16 A. Exactly.

17 Q. And the reason you are registering is because you are a
18 pedophile?

19 A. Because I was considered a pedophile.

20 MR. MOSS: Objection. Objection.

21 Q. So ---

22 COURT: Use the word ---

23 MR. HUCKS: Sexual offender.

24 COURT: Yes.

25 MR. HUCKS: I would withdraw the statement and ---

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- 1 Q. You are a convicted sexual offender?
- 2 A. Yes sir.
- 3 Q. Correct?
- 4 A. Yes sir.
- 5 Q. And you filled this out in August?
- 6 A. Yes sir.
- 7 Q. And you moved in August?
- 8 A. Yes sir.
- 9 Q. And the police discovered that you moved in September?
- 10 A. Yes sir.
- 11 Q. And then once you were found out you called the
- 12 Sheriff's Office; right?
- 13 A. What you mean, once I found out? What do you mean,
- 14 once I found out? I contacted the Sheriff's Office.
- 15 Q. You contacted the Sheriff's Office after you had a run-
- 16 in with a deputy in Florida; right?
- 17 A. No. I went to the deputy in Florida.
- 18 Q. Several weeks after you moved from here?
- 19 A. How you figure it's several weeks?
- 20 Q. In the following month. Let's rephrase.
- 21 A. I thought hearsay and all that was not relevant. Y'all
- 22 have been jumping on my man here all day about hearsay and all
- 23 this, so what are you going on?
- 24 COURT: Please answer his question.
- 25 A. I'm trying. I'm trying ---

1 **COURT:** Well, no, just -- he's being fair to you now.
2 Answer the question.

3 A. You would have to rephrase your question because I --
4 you moved in August, correct?

5 A. Right.

6 Q. And you went to try to register in Florida in
7 September; correct?

8 A. Because of some fact that I was not able to register
9 where I was living out. I could not register at that address,
10 and so therefore I had to go -- and going through the
11 procedures that I had to go through. But I was not able to
12 register at that address was the reason why I was not able to
13 register there. See what I'm saying?

14 Q. So you broke the law?

15 A. How you mean I broke the law? I did not break the law.
16 I was not able to register there.

17 Q. I want you to read something for me, page five. Now
18 you will admit to this jury that these are your initials on
19 this form; won't you?

20 A. Yes sir.

21 Q. You filled this form out ---

22 A. First of all let me just make this clear. I'm not
23 stating anything as far as me was not so-called ---

24 **MR. HUCKS:** Your Honor, would you please ---

25 A. ---Fulfilling this law ---

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1 **COURT:** Wait a minute. Sir?

2 **MR. HUCKS:** I've asked him a direct question. All I
3 want is an answer. He took the paper from me and said, I'm
4 going to tell you something different.

5 **COURT:** No sir.

6 A. I didn't say I'm going to tell you something different.
7 I was telling ---

8 **COURT:** Please, Mr. Witness, the question was clear.

9 A. I understand that.

10 **COURT:** Well, just please answer it, and then I'll let
11 you explain it ---

12 A. There you go.

13 **COURT:** ---But first answer it. You can explain it.
14 I'll permit that.

15 A. Thank you, sir.

16 **COURT:** But please answer the question.

17 A. Yes sir.

18 Q. Now, these are your initials; correct?

19 A. Yes sir.

20 Q. All right. And you initialed on each clause here?

21 A. Yes sir.

22 Q. And you've been registering as a sex offender since
23 1998; correct?

24 A. Yes sir.

25 Q. And you've always been on an affirmative duty as a sex

1 offender to let the Sheriff's Office know, in writing, when
2 you move residences; right?

3 A. That's exactly right, sir.

4 Q. And you did not do that here; did you?

5 A. I was not able to do that, sir, because I did not have
6 no knowledge.

7 Q. Now Mr. Moss asked you directly about some of your
8 record for crimes of dishonesty. In fact, you have a
9 substantial number of crimes of dishonesty on your record;
10 don't you?

11 A. Not really. Not really. Not as far as being
12 dishonesty. As far as my word. My word has always been true.
13 Now yes, I have had prior stealing of vehicles, if you want to
14 get specifically, yes, I have done that.

15 Q. Well ---

16 A. And I'm not a liar.

17 Q. ---Some of those crimes of dishonesty will be
18 shoplifting; right?

19 A. But that has nothing to do with me speaking a lie.

20 Q. And stealing?

21 A. It's all the same. The commandment says, thou shalt
22 not steal, and thou shalt not lie. There's two different ---

23 **COURT:** Please answer his question.

24 A. I am, sir. I am.

25 Q. Six prior convictions for stealing; right? Does that

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- 1 sound about right to you?
- 2 A. How many?
- 3 Q. Six.
- 4 A. For stealing?
- 5 Q. Yes sir.
- 6 A. And you want to go back to the dates?
- 7 Q. Okay. You were convicted of shoplifting in 1988;
- 8 right?
- 9 A. Wow!
- 10 Q. Were you, were you not?
- 11 A. Yes sir.
- 12 Q. And financial transaction card theft ---
- 13 A. And that was when?
- 14 Q. Okay.
- 15 A. What was that?
- 16 Q. The same -- at the same time, 1988. In 1991, grand
- 17 larceny, correct? 2002, possession of a stolen automobile;
- 18 right?
- 19 A. One after that, sir.
- 20 Q. Is that right, or wrong?
- 21 A. Yes sir, that's right.
- 22 Q. And 2010, stealing again, larceny; right?
- 23 A. So to speak; yes.
- 24 Q. And in 2012, receiving stolen goods; right?
- 25 A. 2012, receiving stolen goods; that's not stealing

1 goods.

2 Q. Obtaining goods under false pretenses in 2012; right?

3 A. That's because of the fact I pawned a thing, and that
4 called that false pretense because I pawned something. How is
5 that false pretense?

6 Q. Is that a yes?

7 A. No, it's not a yes.

8 Q. A sentence of ---

9 COURT: All right, Mr. Foreman, I want to emphasize
10 again to you, it is permissible to cross-examine a defendant
11 on a prior record involving crimes of dishonesty. You must
12 not use his prior record as any guilt of the charge which he
13 is being tried today; however, if you conclude that there is
14 his record involving dishonesty you may, if you choose, to use
15 it as to his credibility and believability, and for no other
16 reason. You may use it for that reason or you may not; that's
17 for you to decide, but I emphasize that if it's used at all it
18 can only go to credibility and believability.

19 Proceed.

20 MR. HUCKS: Thank you, Your Honor.

21 Q. I want to look back at State's Number 2, page number 5,
22 the next to the last clause. Read that for me. Read it out
23 loud so the jury can hear it.

24 A. "Provide written notification, in person, within three
25 business days of change of address to a new jurisdiction to

1 the county sheriff with whom the person last registered. South
2 Carolina Code 23-3-..." ---

3 Q. And those are your initials by it; isn't it?

4 A. Yes sir.

5 Q. And you did not provide written notice to the Sheriff's
6 Office when you moved; did you?

7 A. That's right, and I'm not disputing that, but I'm
8 trying -- going to try to do three years because of some fact
9 I was not able to provide y'all with an address I wasn't able
10 to give you. How was I going to give you something I don't
11 have.

12 Q. Did you tell them in writing you were moving?

13 A. How you going to do that?

14 Q. Did you?

15 A. How could I do that?

16 Q. Did you tell them in writing you were moving?

17 A. How can I do that if I don't know I'm moving.

18 **MR. MOSS:** I think he's answered that question, Your
19 Honor.

20 **MR. HUCKS:** No further questions, Your Honor.

21 **COURT:** Is there any redirect, Mr. Moss?

22 **MR. MOSS:** Yes, Your Honor.

23 **COURT:** Proceed.

24 **REDIRECT-EXAMINATION BY MR. MOSS:**

25 Q. You weren't charged in Florida with any violation of a

1 registry with the law there, were you?

2 A. No sir.

3 Q. Okay. And you were arrested there?

4 A. Yes sir.

5 Q. Okay. When you left here and went to Florida did you
6 know you had to register?

7 A. When I left here and went to Florida; yes sir.

8 Q. Okay. And you went and found the deputy there?

9 A. Right.

10 Q. Okay. Let me show you another law, 23-3-470. Since
11 you are reading law read this for me.

12 MR. HUCKS: Your Honor, objection.

13 COURT: Sir?

14 MR. HUCKS: You are the person who gives the jury the
15 law. If he's going to read a law -- he's not certified to
16 read the law; he doesn't work in that law.

17 A. You just made me read a law; what's the difference?

18 COURT: I will explain the law to this jury, and we
19 don't need him to explain it. I've said that three different
20 times; the law comes from me.

21 A. He just made me read the law.

22 COURT: If I charge the jury incorrectly you may tell
23 me so. He is not to explain the law.

24 A. He just made me read the law.

25 COURT: Sir?

1 A. He just made me read the law.

2 COURT: No sir. I'll let you read the law. Him -- I'm
3 not going -- he's not a lawyer. I'm not going ---

4 MR. MOSS: I'm not -- Your Honor, I'm not asking him to
5 ---

6 COURT: No sir. I'm not going to permit that. If you
7 care to read the law to the jury, read it. You are an
8 accomplished attorney; he's not. Read it if you want to.

9 MR. HUCKS: We would have to know that the portion of
10 the law he's trying to read is relevant the case at hand,
11 Judge ---

12 COURT: I understand that.

13 MR. HUCKS: ---And we can't put that jack back in the
14 box after he reads it.

15 COURT: I understand, but he's an accomplished lawyer;
16 he knows he's got to limit it.

17 Q. I want to read you one sentence. 23-3-470. Okay.
18 "It is the duty of the offender to contact the sheriff in
19 order to register, provide notification of change of permanent
20 or temporary address, or notification of change of employment.
21 Okay. Just -- I'm going to stop there. Do you see that?

22 A. Uh huh (**indicating positive**)

23 Q. Did you contact the sheriff's office?

24 A. Yes sir, numerous times.

25 Q. Okay. You didn't do it in writing though; did you?

1 A. I didn't do it in writing because I didn't have no --
2 no knowledge of where I was going.

3 Q. Okay.

4 A. And when I did it was -- I registered in Florida, and
5 the lady clearly told me that ---

6 COURT: Mr. Moss, ---

7 A. ---As long as I registered that day ---

8 COURT: ---I'm not going to permit that. It's hearsay
9 from somebody else. He could go on and on and on.

10 A. The lady still told me that I had that day ---

11 MR. HUCKS: Your Honor, objection.

12 COURT: What occurred in Florida is not relevant to
13 this issue. This issue is, and that alone; the State of South
14 Carolina is alleging that he is guilty of failing to advise
15 the Sheriff, within the time prescribed, of his residence in
16 another State; that's the issue.

17 MR. MOSS: I understand, Your Honor. The witness was
18 not responding to my question.

19 COURT: Sir?

20 MR. MOSS: The witness was not responding to a question
21 that I asked him.

22 COURT: Well, you were getting ready to say what some
23 officer in Florida said. That's not ---

24 A. No, we are talking about what Ms. Paulette said.

25 COURT: It's not coming in. That lady is here, and I

1 told you earlier, if you want to cross-examine her again,
2 fine. I'm not going to let this Defendant tell this jury what
3 somebody else said.

4 MR. MOSS: I didn't ask him to, Your Honor.

5 COURT: Well, no -- you did. You asked him what some
6 officer there said in Florida.

7 A. Just let it go then. Just let it go.

8 COURT: Sure you did. And this witness is not going to
9 testify to that. He's not qualified to testify to that.

10 A. I'm sure these people can see what's going on here.

11 COURT: Any more questions.

12 MR. MOSS: No, Your Honor.

13 COURT: Do you have any further recross?

14 MR. HUCKS: One simple thing.

15 COURT: All right, sir.

16 MR. MOSS: I don't believe the Rules permit recross.

17 COURT: Sure it does.

18 MR. HUCKS: Directly on the issue that you ---

19 MR. MOSS: It's not in the Rules of Criminal Procedure.

20 COURT: I'm going -- it's obviously ---

21 A. And this is about rules and proper procedure.

22 COURT: This is proper. You go ahead.

23 He's entitled to go into what you did again on redirect,
24 clearly.

25 MR. MOSS: Your Honor, it's often done, I acknowledge

1 that, but it's not proper according to the Rules.

2 COURT: I'm going to permit him to examine this
3 witness.

4 Go ahead. Thank you.

5 RECROSS-EXAMINATION BY MR. HUCKS:

6 Q. While we are reading laws, Mr. Alford, you knew that
7 you had to register, in writing, to leave this State; didn't
8 you?

9 A. Yes sir, I did.

10 Q. And you did not do that; did you?

11 A. Because I had no knowledge of where I was going.

12 COURT: Wait a minute. I'm going to let him answer the
13 question.

14 MR. MOSS: Your Honor, the Solicitor has mis-stated the
15 law. Nothing in the law requires him to register to leave
16 this State; the law requires him to register within three
17 business days afterwards. If we are going to quote the law
18 let's get it right.

19 A. That's right; let's get it right.

20 COURT: Go ahead.

21 MR. HUCKS: Your Honor, sub-section (F) of 23-3-460
22 says, "If a person required to register, pursuant to this
23 chapter, moves out -- Article, moves outside of South Carolina
24 the person must provide written notice within three days of
25 the change of address."

1 **COURT:** And that will be my charge to the jury. I've
2 told you that. I'm going to charge the jury to the law. The
3 jury is not going to take what you said, or he said, or what
4 they think the law is or ought to be. Under their oath they
5 are going to take the law as I give it to them, and they are
6 honorable people, and I know that they will. I'm not saying
7 how they react to the facts in this case, but I'm going to
8 charge them what the law is, and then they can determine
9 whether or not that law has been violated, and proven beyond a
10 reasonable doubt.

11 **MR. HUCKS:** Yes sir.

12 **COURT:** The law is coming from me, and I want it said
13 one more time.

14 **MR. HUCKS:** Yes sir.

15 **COURT:** Thank you.

16 **MR. HUCKS:** Nothing further whatsoever.

17 **COURT:** You may come down.

18 A. For the record, I'm not disputing the fact that I did
19 not ---

20 **COURT:** Wait, wait, wait now. Don't argue with me.

21 A. I'm not trying to argue with you; I'm just stating
22 something ---

23 **MR. MOSS:** Come on down. Just come on down.

24 **COURT:** I don't want him to say anything that might be
25 improper in the presence of the jury. I've told you that.

1 All right, counsel, is there any other witnesses for the
2 Defense?

3 MR. MOSS: No, Your Honor.

4 COURT: All right. Is there any reply for the State?

5 MR. HUCKS: No sir.

6 COURT: That will conclude the taking of the testimony

7 Ladies and gentlemen, it's after five o'clock. We have
8 concluded all of the testimony in the case. That factor of
9 things remaining are, I will instruct you with regard to all
10 the issues. We will have final summation, and I will give you
11 the case for your deliberation. That process would at least
12 take another hour before I could give you the case, and it's
13 too late. Y'all have got responsibilities at home.

14 I'm going to recess this proceeding, have you come back
15 at 9:30 in the morning. At that time I'm going to tell you
16 what the law is, we are going to have final arguments, and you
17 will be getting this case for your deliberation sometime
18 around eleven or eleven-thirty.

19 I tell you now that this will be the last case this week
20 for anybody's consideration.

21 Now, please remember my admonition, don't discuss this
22 case with anyone, let no one discuss it with you. Under your
23 oath please make no independent inquiry, and with regard these
24 issues in this case, stay off the Ipad and the internet.

25 Let me say this to you. I've been very impressed

1 throughout the day with the intensity that all of you have
2 listened to all of the testimony. That's just a good example
3 and a good sign that I've got a jury here intent in finding
4 the truth, intent on doing their oath under their oath, and I
5 thank you for that.

6 Please be in the jury room at 9:30. Be a few minutes
7 later.

8 Mr. Foreman, I believe your jury of yesterday enjoyed
9 those ham biscuits so I'm going to order some more. Is that
10 okay with you?

11 **MR. FOREMAN:** That would be great.

12 **COURT:** That would be fine.

13 **MR. FOREMAN:** Don't forget the coffee.

14 **COURT:** We'll have coffee too. I'm going to have ham
15 biscuits for you in the morning.

16 You are excused to be in your jury room at 9:30 ready to
17 go. Be here a few minutes early for your coffee and your hot
18 biscuit in the morning.

19 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
20 **JURY.)**

21 **COURT:** All right. Before I hear motions at the end
22 of the case, there's some issue where you wanted to put those
23 notes in the -- as a Court's exhibit, and he was objecting to
24 it.

25 **MR. MOSS:** Your Honor, I don't mind it being in the

1 record as a Court's exhibit. My only objection was it going
2 to the jury as evidence, and he's -- certainly that's not what
3 ---

4 **COURT:** No. I'm going to leave it as a Court's
5 exhibit. They are not going into evidence.

6 **MR. HUCKS:** Just to ---

7 **COURT:** I misunderstood what you said. I'm sorry.
8 Yes sir.

9 **MR. HUCKS:** Just to preserve the arguments that we made
10 on the record in reference to Rule 5 and **Brady** I wanted to
11 include a copy of the case report that -- Sergeant Avant's
12 case report ---

13 **COURT:** I will permit it as a Court's exhibit.

14 **MR. HUCKS:** And the note?

15 **COURT:** That's correct. It's not going into evidence,
16 and I want a complete record for the Defendant's protection.
17 Mr. Moss is entitled to that.

18 (HORRY COUNTY SHERIFF'S OFFICE NOTES, ONE PAGE, DATED
19 SEPTEMBER 8, 2012, MARKED COURT'S EXHIBIT NUMBER 1, NOT TO BE
20 SUBMITTED TO THE JURY.)

21 (HORRY COUNTY SHERIFF'S OFFICE NOTES, TWO PAGE, SUMMARY,
22 MARKED AS COURT'S EXHIBIT NUMBER 2, NOT TO BE SUBMITTED TO THE
23 JURY.)

24 **COURT:** All right, Mr. Moss, we've concluded all the
25 testimony, and this is the appropriate time to hear any

1 objections or motions that you may have.

2 **MR. MOSS:** I would renew the motion that I already made
3 on the record with respect to the charge being a third
4 offense, and with respect to the Rule 5 **Brady** violation, for
5 the record.

6 **COURT:** My response is the same, as a matter of record.

7 **MR. MOSS:** We'll also move the State, in the opinion of
8 myself and the Defendant, has not proven it's burden without -
9 - or cannot prove it's burden beyond a reasonable doubt as to
10 the date that my client moved to Florida, because the only
11 probative date is that offered by Ms. Avant, which is the
12 investigating officer, or when she made her investigation.
13 There was some reference to an anonymous call, and there's
14 certain nothing -- Mr. anonymous wasn't here in the courtroom
15 to give us that evidence. And the only other two witnesses
16 that testified testified they weren't certain of the date, so
17 we don't believe that they could meet the burden of proof and
18 therefore we move for a directed verdict.

19 **COURT:** All right, sir. Mr. ---

20 **MR. HUCKS:** Yes sir, Your Honor. As to the
21 establishment of the date for the burden of proof, the
22 Defendant -- the only thing we had to go by, and the reason we
23 used the on or about language so frequent in this particular
24 case, is because this is an ongoing action. This is a period
25 of time where ---

1 **COURT:** I have no problems with that. Address the
2 issue as to whether or not he says you have not met the burden
3 of proof.

4 **MR. HUCKS:** Your Honor, if you believe his own
5 testimony, he got on the witness stand and testified that he
6 didn't register when he was suppose to. If that don't get us
7 there I don't know what does.

8 **COURT:** It is my view that there is ample testimony for
9 the jury's consideration as to whether or not he complied with
10 the statutory requirements. It's a jury question, and clearly
11 there's ample testimony for their consideration. I'm not the
12 finders of facts; they are. I will leave it to the jury,
13 based on the testimony, to make that determination.

14 All right. Please be back at 9: -- that's fine.

15 Are there any specific requests to charge? What says
16 the State?

17 **MR. HUCKS:** No sir. I would like to review the charge
18 prior -- just to review the charge prior to being given.

19 **COURT:** Be here at 9:15. I'm preparing the charge, but
20 if you've got one I'll look at it.

21 How about you, Mr. Moss, you got a charge?

22 **MR. MOSS:** I would like to charge on the -- you will
23 charge them on the offensive language I know.

24 **COURT:** Pardon me.

25 **MR. MOSS:** I know that you will charge them on the

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1 23- -- let me find it.

2 COURT: Well, I may charge the statute, but I may
3 charge the law out of that statute. I'll share with you my
4 proposed charge in the morning at 9:15.

5 MR. MOSS: Fair enough.

6 COURT: If you've got another charge I'll be glad to do
7 it.

8 MR. MOSS: Thank you.

9 COURT: My charge will encompass the appropriate parts
10 of the statute, yes sir.

11 MR. HUCKS: Thank you, sir.

12 COURT: All right. Thank you, gentlemen. I'll see
13 everybody in the morning, 9:15 in my chambers. We'll start
14 around 9:30.

15 Thank you, Mr. Moss.

16 (THE FOLLOWING TAKES PLACE ON MAY 15, 2014, WITHIN THE
17 PRESENCE OF THE JURY.)

18 COURT: Good morning, Mr. Foreman, ladies and
19 gentlemen. I trust the biscuits made available to you were
20 satisfactory. I know I enjoyed mine.

21 Ladies and gentlemen, we are at that stage of the trial
22 where we have the charge and the law, as distinguished are
23 ready to give you final summation. I often, and the statute
24 requires, that you have the summation, that you have the
25 charge on the law after the attorneys' summation. Jurors in

1 the past years have said to me, Judge Cottingham, I wish you
2 would have told us what the law was before they argued; I
3 could have followed their positions better, and that's made
4 sense to me, and I've done that for the last fifteen years,
5 and will do so this morning with the consent of the attorneys.

6 After I have given you the charge the lawyer for the
7 State and the Defendant will give you final summation. Now
8 remember, the law comes from me. The evidence comes from the
9 witness stand under oath. What the lawyers tell you is their
10 view of the facts on the case, and they are entitled to that,
11 but what the lawyers tell you is not evidence, and anything
12 that may have occurred in open court relevant to objections is
13 not evidence. Evidence comes under oath from this witness
14 stand, and you are to consider only such matters as were
15 presented in oath by this witness.

16 Now, last evening and this morning I have prepared, in
17 writing, the appropriate law regarding every issue in this
18 case. You, as finders of the facts, take the facts as you
19 find them, apply it to the law of the case as is applicable.

20 I'm going to ask my associate and Law Clerk to read to
21 you my instructions in the law. Please accept these
22 instructions as coming from me. They were prepared by me;
23 they are mine, and are given to you with regards to the issues
24 in this case.

25 Mr. McLeod, you may continue.

1 **MR. McLEOD:** The indictment charges the Defendant with
2 Sex Offender Registry violation. I remind you that the fact
3 that the Defendant was arrested, charged and indicted in this
4 case is not evidence in this case, and cannot be considered by
5 you as evidence of guilt in this case, nor does it create any
6 presumption or inference of guilt. This document is simply
7 the formal written instrument which contains the charge made
8 against the Defendant. It is the formal document by which
9 this case is brought into this court.

10 The Defendant has pled not guilty to this indictment,
11 and that plea puts the burden on the State to prove the
12 Defendant guilty. A person charged with committing a criminal
13 offense in South Carolina is never required to prove himself
14 innocent. I charge you that it is an important rule of the
15 law that the Defendant in a criminal trial, no matter what the
16 seriousness of the charge may be, will always be presumed to
17 be innocent of the crime for which the indictment was issued,
18 unless guilt has been proven by evidence satisfying you of
19 that guilt beyond a reasonable doubt.

20 This presumption of innocence does not end when you
21 begin your deliberations, but it accompanies the Defendant
22 throughout the trial, until you reach a verdict of guilt based
23 on evidence satisfying you of that guilt beyond a reasonable
24 doubt.

25 The presumption of innocence is like a robe of

1 righteousness placed about the shoulders of the Defendant,
2 which remains with the Defendant until it has been stripped
3 from the Defendant by evidence satisfying you of the
4 Defendant's guilt beyond a reasonable doubt. The presumption
5 of innocence is not mere legal theory. It is not just a legal
6 phrase; it is a substantial right to which every defendant is
7 entitled unless you, the jury, are satisfied from the evidence
8 of the defendant's guilt beyond a reasonable doubt.

9 The State has the burden of proving the Defendant guilty
10 beyond a reasonable doubt. Some of you may have served as
11 jurors in civil cases where you were told that it is only
12 necessary to prove that a fact is more likely true than not
13 true, such as by the greater weight or the preponderance of
14 the evidence. In criminal cases the State's proof must be
15 more powerful than that. It must be beyond a reasonable
16 doubt. Proof beyond a reasonable doubt is a proof that leaves
17 you firmly convinced of the defendant's guilt.

18 There are very few things in this world that we know
19 with absolute certainty, and in criminal cases the law does
20 not require proof that overcomes every possible doubt. If,
21 based on your consideration of the evidence, you are firmly
22 convinced that the Defendant is guilty of the crime charged
23 you must find the Defendant guilty. If, on the other hand, you
24 think there is a real possibility that the Defendant is not
25 guilty you must give the Defendant the benefit of the doubt

1 and find him not guilty.

2 I remind you that during this trial you and I have
3 certain duties to perform. As the Trial Judge it is my
4 responsibility to preside over the trial of this case, and I
5 also have the duty to rule on the admissibility of the
6 evidence offered during this trial. You are to consider only
7 the competent evidence before you. If there was any testimony
8 ordered stricken from the record in this case during this
9 trial you must disregard that testimony. You are to consider
10 only the testimony which has been presented from this witness
11 stand, any exhibits which have been made a part of the record
12 in this case, and any stipulations of counsel.

13 I have the additional duty to charge you the law
14 applicable to this case, and as the Presiding Judge I am the
15 sole judge of the law of this case, and it is your duty as
16 jurors to accept and apply the law as I now state it to you.
17 If you already have any idea as to what the law is, or as to
18 what the law ought to be, and it does not agree with what I
19 now tell you the law is, you must abandon this idea because
20 you are sworn to accept the law and apply the law exactly as I
21 state it to you.

22 In every case tried in this court before a jury the jury
23 becomes the sole and exclusive judge of the facts in a case.
24 A trial judge cannot intimate, state, comment on, or make any
25 statement to a trial jury about the facts in a case. Since

1 you, the jury, are the sole judge of the facts in this case
2 you are not to infer from what I have said during the progress
3 of this trial in ruling upon the admissibility of evidence or
4 otherwise, or anything that I say now during the course of
5 this instruction to you that I have any opinion about the
6 facts in this case. The law does not allow me to have an
7 opinion about the facts in this case. This is a matter solely
8 for you, the jury, to determine. As jurors it is your duty to
9 determine the effect, value, weight and truth of the evidence
10 presented during this trial. Necessarily, you must determine
11 the credibility of the witnesses who have testified in this
12 case. Credibility simply means believability. It becomes
13 your duty as jurors to analyze and to evaluate the evidence,
14 and determine which evidence convinces you of it's truth. In
15 determining the believability of witnesses who have testified
16 in this case you may believe one witness over several
17 witnesses, or several witnesses over one witness. You may
18 believe a part of the testimony of a witness, and reject the
19 remaining part of the testimony of that same witness. You may
20 believe the testimony of a witness in it's entirety, or reject
21 the testimony of a witness in it's entirety. You may consider
22 whether any witness has exhibited to you any interest, bias,
23 prejudice, or other motive in this case. You may also
24 consider the appearance and manner of a witness while on the
25 witness stand.

JURY IN/COURT'S CHARGE TO THE JURY

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1 A person who has a past criminal record is competent to
2 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's
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. You have heard evidence that the Defendant was
8 convicted of a crime other than the one for which the
9 Defendant is not on trial. This evidence may be considered by
10 you, if you conclude it is true, only in deciding whether the
11 Defendant's testimony is believable, and for no other purpose.
12 You must not consider the Defendant's prior record as any
13 evidence of the Defendant's guilt of the charge we are trying
14 today.

15 The Defendant is charged with Sex Offender Registry
16 violation. The State must prove, beyond a reasonable doubt,
17 that the Defendant was required to register with the Sex
18 Offender Registry, and that the Defendant violated a
19 requirement of the Sex Offender Registry registration
20 procedures. Any person, regardless of age, residing in the
21 State of South Carolina who has been convicted of, pled
22 guilty, or pled nolo contendere to a sexual offense shall be
23 required to register as a sexual offender.

24 For the purposes of sex offender registration a person
25 who remains in this State for a total of thirty days during a

1 twelve-month period is a resident of this State. The sexual
2 offense of lewd act on a minor child requires registration
3 with the Sex Offender Registry upon conviction or a plea of
4 guilty or nolo contendere. A person who is required to
5 register as a sex offender in South Carolina has the duty to
6 contact the sheriff in order to register and provide
7 notification of change of permanent or temporary address. A
8 person required to register as a sex offender who moves
9 outside South Carolina must provide written notice within
10 three business days of the change of address to a new state to
11 the county sheriff with whom the person last registered.

12 There are two possible verdicts which you may find for
13 each indicted charge, guilty or not guilty. There is no
14 significance whatsoever in the order in which I state these
15 possible verdicts. It is simply that one must be stated
16 first. Ladies and gentlemen, your verdict must be a unanimous
17 one.

18 Mr. Foreman, when the jury agrees on the verdict you
19 will write the verdict on the back of the indictment and sign
20 your name as foreperson, then knock on the jury room door and
21 inform the bailiff that you have reached a verdict. At that
22 time we will receive you back into the courtroom.

23 Mr. Foreman, ladies and gentlemen of the jury, as you
24 retire to begin your deliberation I wish to express the hope
25 that each of you will be mindful of the importance of your

JURY IN/COURT'S CHARGE TO THE JURY

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1 responsibility. You are not called upon to serve as jurors
2 very often, and the proper performance of the duty requires
3 each of you to reach the height of freeing your mind of all
4 improper influences. You and I are acting for the community,
5 and that is why we must see to it that the trial is fair, and
6 the verdict is just.

7 You have observed that the presiding officer of this
8 court is always addressed as Your Honor. The reason is that
9 this Court is entrusted with the honor of this community, the
10 honor of this State, and the honor of this Country in seeking
11 that every case tried here receives fair and impartial
12 justice. Now you, the jury, take into your care the
13 preservation of the honor of this community, the honor of this
14 Country, and the honor of this State.

15 Now, do not get the idea that I am trying to intimate to
16 you how I might think you should decide this case. As I have
17 already told you, under the laws of the State of South
18 Carolina you, the jury, are the sole judge of all questions of
19 fact. It would be highly improper for me to influence you in
20 the performance of that duty, so I am not trying to tell you
21 what verdict you should find, but as the presiding officer of
22 this Court I am vitally concerned that whatever verdict you
23 find will be the result of you going into that jury room and
24 confining your consideration to the evidence and the law that
25 you have heard in this courtroom, weighing it fairly and

1 impartially, as I have every confidence that you will.

2 Everyone is entitled to justice in this case, both the
3 State and the Defendant. All are entitled to justice, nothing
4 more, nothing less. You owe no support or sympathy to anyone.
5 The Court is of the confirmed opinion that whatever verdict
6 you will reach will represent truth and justice for all
7 parties involved.

8 Remember, your verdict must be unanimous.

9 COURT: Please accept the foregoing as my specific
10 charge to you, of the law of this case.

11 I'm going to ask you to go to the jury room in just a
12 moment, and I'll be calling you right back. Thank you.

13 You may take them to the jury room.

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
15 JURY.)

16

17 COURT: For the State, what says the State? Any
18 exceptions or additions to the charge?

19 MR. HUCKS: No sir.

20 COURT: Say you for the Defense?

21 MR. MOSS: One exception, Your Honor. It is not
22 factually correct to say that my client has pled not guilty to
23 this charge because he was never given an arraignment.

24 COURT: What now?

25 MR. MOSS: It is not factually correct to say that he

1 has pled not guilty to this charge because he was never
2 arraigned. Now, in fairness, he would have pled not guilty,
3 but they were charged with the statement that he has pled not
4 guilty. That never happened.

5 COURT: I charged the jury initially, upon the
6 indictment, that he specifically pleads not guilty. What are
7 you saying to me now?

8 MR. MOSS: I'm saying to you that he never was
9 arraignment. It is not factually correct to say that he pled
10 not guilty because he was never given ---

11 COURT: Well, do you want me to tell the jury he's
12 guilty?

13 MR. MOSS: No sir. I -- my only exception is we've
14 stated to the jury something that did not actually happen in
15 this case.

16 COURT: Well, I think by the trial of this case he was
17 pleading not guilty.

18 Do you care to respond to that?

19 MR. HUCKS: I was just going to say the same thing,
20 Judge. If he's -- he's at trial because he says he didn't do
21 it, and that's why we are here.

22 COURT: All right. Other than that, is there any
23 addition to my charge on the law of the case?

24 MR. MOSS: I have no exceptions to that.

25 COURT: That's fine. And thank you.

JURY IN
DEFENDANT'S SUMMATION (MOSS)

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1 Bring the jury in.

2 COURT: Let me ask you this. There's going to be two
3 arguments for the State, or just closing?

4 MR. HUCKS: We would waive the opening on the law.

5 COURT: Is that agreeable to you?

6 MR. MOSS: It is, Your Honor.

7 COURT: You will proceed first, Mr. Moss.

8 And I have explained to the jury that what the lawyers
9 say is not evidence.

10 MR. HUCKS: Yes sir.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JURY.)

13 COURT: The jury is present.

14 Mr. Moss, you may have final closing.

15 MR. MOSS: Thank you, Your Honor.

16 Ladies and gentlemen, thank you for your attention all
17 day yesterday. I want to take you back to when you first were
18 -- heard our opening remarks. Remember there were three
19 things that Attorney Hyman asked you to take care of, to do
20 for him, and I asked you for a fourth, and I asked you -- the
21 fourth was to maintain your good common sense and your good
22 reasoning, and apply it to what you hear in this courtroom
23 today, what you hear from the witness box, and what you see in
24 the documents, and what you've heard the Judge tell you the
25 law is, and so that's what I'm going to call upon you again to

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1 do, because that's why we are here. See, jurors -- you bring
2 the voice of reasoning into a courtroom because we, as
3 adversaries, Attorney Hucks, Attorney Hyman and myself, we
4 obviously are representing our respective clients, they the
5 State of South Carolina, as long as their witnesses, law
6 enforcement and the State of South Carolina, and I represent
7 the accused, and so we do have fights, okay, and that's there,
8 but you don't. You are suppose to be the voice of reasoning.
9 You are the ones that sort out what's given to you and
10 determine what's right and what's wrong.

11 Now, you probably have figured out by now that this is a
12 very bureaucratic process. None of you probably have ever
13 dealt with it because none of you are arrested sex offenders.
14 If you were you wouldn't be on this jury. And because of that
15 you probably haven't experienced that kind of bureaucracy in
16 terms of what you have to do to stay in compliance with the
17 rules, but you might have experienced bureaucracy in other
18 kinds of areas of your life, for example, some of you may have
19 tried to getting a building permit over at the Planning
20 Department. Some of you may have had to try to get something
21 taken care of at the Social Security office, and you might
22 remember from those kind of experiences there's a whole lot of
23 forms, and there's a whole lot of people that work there, and
24 when you try to get guidance, and you try to get answers you
25 don't get the same answer from two people if you ask for

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1 anything.

2 That's kind of like this situation my client finds
3 himself in. This law -- well, if you went to the Building
4 Department and you went to the Social Security office, and you
5 thought you were doing what you were suppose to do and you
6 didn't quite get it right they wouldn't try to put you in jail
7 for it, but that is what's happening here. Okay. And that's
8 why this case is so important, a man's liberty is in interest.

9 The law -- the Judge has told you the law. Nothing I
10 say is going to -- can be, and would not be appropriate; you
11 take it as he -- has been given, and what the Judge says what
12 the law is. He has told you what it is. And he has told you
13 parts of the law that he thinks are relevant to this case.

14 South Carolina passed the Sex Offender Law in 1994.
15 We've heard evidence that it's been modified many times since
16 it was passed, and the compliance has been modified. It came
17 along after Megan's Law was passed by the Federal Congress.
18 Megan's Law was named after a seven-year-old child who was
19 violently raped and murdered.

20 And you heard a little bit about the charge that my
21 client pled guilty to. It was about a consensual relationship
22 with a woman who didn't tell him her age. I hope you can
23 appreciate there's a difference between those, but there's no
24 difference in the law; they treat them the same.

25 I have a daughter whom I care very much for. I have

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1 two. One of them especially I want to tell you about, she's
2 thirteen. She's five foot ten inches tall, and fully
3 developed, and I promise you if I didn't know -- if I wasn't
4 there when she was born I wouldn't know how old she was, and
5 unless a woman is forthcoming you don't know, and so sometimes
6 people get in situations with minors -- and we're not talking
7 about a small child; we are talking about a fully developed
8 person. And my client was charged with a relationship which
9 he told you was consensual.

10 MR. HUCKS: Objection, Your Honor.

11 COURT: Yes sir. I sustain that. We are not going
12 into the details of any prior conviction. The question is,
13 was he a prior criminal -- required prior to register. We are
14 not going into the details ---

15 MR. MOSS: And I was about to say that.

16 COURT: ---Of that -- got nothing to do with this jury.
17 The question ---

18 MR. MOSS: With all due respect I ---

19 COURT: Stay with the question here. We are not going
20 into the details of his prior incident. Not entitled to that.
21 The jury doesn't need that.

22 MR. MOSS: The fact that he pled guilty is all I was
23 going to say.

24 COURT: The sole question is, was he required to
25 register as a sexual offender, and the jury can make that

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1 determination, but they don't need the underlying facts to
2 decide that.

3 Go ahead.

4 MR. MOSS: Wasn't about to go into those ---

5 COURT: No sir. You are not permitted to do that.

6 MR. MOSS: My client ---

7 COURT: You can't retry that issue ---

8 MR. MOSS: Not trying to.

9 COURT: ---Before this jury. Go ahead.

10 MR. MOSS: My client was a sex offender in South
11 Carolina law. He told you that. He showed you documents, he
12 signed up, signed up for years. Okay. He didn't try to hide
13 that from you. When he tried to make sure he had clothes to
14 wear so you wouldn't see him in his detention center clothing
15 he said, I have nothing to hide; I'm an arrested sex offender;
16 there's no reason for me to put on a tie and come in here and
17 try to present something different than I am. So, he's not
18 tried to misrepresent that in any fashion, but there is a
19 difference in how these things should be treated.

20 Now, the law in South Carolina - and it's been amended
21 several times - is very complicated. It's twenty-six pages,
22 single-space typed. You've been charged with the relevant
23 portions according to the Judge's instructions because he is
24 only charged with violating a specific provision of it. He's
25 responsible for the whole twenty-six pages. You remember that

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1 bureaucracy I talked about?

2 Now, when I was standing right here, and I asked my
3 client to read the section of it even the Judge told you that
4 he wasn't a lawyer, that he shouldn't read that, that he
5 wouldn't understand it as good as I would understand it, which
6 is a fact, and this is a fact you can take with you because
7 it's an important fact. You heard evidence in this case that
8 the prosecution didn't understand the law. I'm going to give
9 you some examples. Defense's Exhibit Number 2 - they referred
10 you to page five - they asked my client to sign something that
11 said that if he left the State he had to provide written
12 notification in person. Now you just heard the Judge charge
13 you with the law. It doesn't require him when he leaves the
14 State to register in person. That's not in the statute;
15 that's not what the Judge just told you, but that's what the
16 Sheriff's Office said he had to do.

17 Now, you heard evidence that -- from Sergeant Avant,
18 that he had to register in South Carolina for the rest of his
19 life, and then when I reminded her that was not true, if he
20 moved out of the State of South Carolina she agreed with me,
21 and so that wasn't true. You heard the prosecutor stand right
22 here and say he had to get permission to leave the State.
23 That's not what the law that the Judge just quoted you said.
24 It didn't require him to get permission to leave the State,
25 not required at all. My client left the State.

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1 Now, it would be right for you, if you choose to, to
2 question the motivation behind this prosecution between the
3 Sheriff's Office and the prosecutor's office. They are really
4 motivated to prosecute this case. You might wonder why that's
5 -- was so important to do. You might wonder if it makes
6 sense. My client told you that he left South Carolina. He
7 told you he sued Horry County because of facts related to a
8 different case that's not relevant to this case, but the fact
9 that he sued them is. That's relevant. Okay. And it's
10 relevant to how this case has been conducted. Now you've seen
11 in this case that documents weren't turned over to us that
12 should have been turned over to us. That came out in this
13 courtroom, and you saw that that document, the notes that were
14 turned over to us in this courtroom, that we didn't get prior
15 to coming to court, actually changed the testimony from the
16 witnesses. What she didn't remember was written right there
17 in her own handwriting. So the motivation for this charge, I
18 submit to you, is important. My client was gone. He went to
19 Florida. He wasn't coming back to South Carolina. They drug
20 him back up here for this case, and they want you to put him
21 in prison here in South Carolina, when he had no intentions of
22 being here ever again.

23 Now, they knew where he was. They knew he was in
24 Florida because he called them and told them. First he told
25 them -- he told them -- the evidence has not been disputed

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1 that he told them that he was leaving to go to Florida but he
2 didn't know when. He told them that. My client testified he
3 told them that when he registered in March, Renee Elvis. Now,
4 she didn't write it down, according to her testimony, and it's
5 not in Defendant's Exhibit Number 2. But she told you he may
6 very well have told her that but she didn't remember it.
7 Well, that doesn't contradict what my client said. It just
8 means she doesn't remember it. That's not evidence if she
9 doesn't remember it. So he told her he was leaving, in her
10 office, when he was meeting with her, before he left.

11 Now, he also called them from Florida and said, I'm in
12 Florida. I'll return to that in a moment. Maybe my client is
13 right. Maybe there is some motivation to harm him or to
14 prosecute him for a crime that doesn't make sense. If
15 somebody is going to be gone they are not -- the purpose of
16 this law is to know if a registered sex offender is in this
17 State, in this County, and where they are. Well, if you know
18 they are in Florida, and you know they are not coming back,
19 what's the purpose of prosecuting them here, dragging them
20 back up here? Is that -- does that do justice to my client?
21 Does it do justice to the State, to you, the citizens of the
22 State?

23 Now, we have learned that there were other -- we learned
24 that there were documents that weren't disclosed to us until
25 this trial. What we didn't learn is what else is out there

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1 that wasn't disclosed to us; what else did they not share with
2 us? It's been my experience that that's going to be your mode
3 of operation to not share things, and maybe it's not a single
4 event, maybe it is a single event. I can't prove that it is;
5 I can't prove that it isn't, but that's certainly something
6 you can consider in your deliberations.

7 Now, the burden of proof, as the Judge told you - he
8 instructed you - resides solely with the prosecution. They've
9 got to prove my client's guilt beyond a reasonable doubt, and
10 you heard about -- when you listen to the testimony of these
11 witnesses, and you look at these documents that the witnesses
12 talked about - you've heard about the believability of the
13 witnesses and the credibility of the witnesses - and I want to
14 talk to you about some of that, because I want to go over some
15 of what they told you. Sometimes I use an example, and I like
16 this example because I think it makes sense to folks that have
17 -- work in this environment. You know, if you go to a grocery
18 store and you push a buggy down the aisle, and you are
19 shopping, you see some things on the shelf you want you take
20 them and put them in your cart, and if you don't want them you
21 just go right on by and you leave them on the shelf, and
22 sometimes you put something in your buggy or your cart and you
23 decide you don't want it and you put it back. Okay. Well,
24 this is kind of like that, because what you've heard from the
25 witness box, from these witnesses, you don't have to believe

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1 all of it; you don't have to believe any of it. It's kind of
2 like going to the grocery store and walking out and buying
3 nothing. You can do that here. You don't have to buy any of
4 it, or you might want to buy some of it. You can take some of
5 what a witness says and believe it, but not all of what they
6 say. You can take nothing that a witness says and believe it;
7 you can take some of what a witness says and say -- and
8 decide, I don't see any value in this; I bought it but I don't
9 see any value in it, and so that's kind of like what you are
10 being asked to do.

11 Now, Mr. Lynn testified. If you remember, he was the
12 guy that lived next door to the house where my client was
13 residing when he was in South Carolina. In August my client
14 went to the Sheriff's Office and registered and said, this is
15 where I live. No evidence that was inaccurate, no evidence
16 that it was -- that he tried to hide anything, that he tried
17 to misrepresent anything. The neighbor said, yes, he lived
18 there, in July and August. What does that do for you? I
19 submit to you, nothing. They put a witness up here to tell
20 you that he lived beside him. Well, he already said he lived
21 beside him, in South Carolina; my client said that. What else
22 did Mr. Lynn tell you? He told you - I wrote it down - could
23 not give you an exact date as to when my client left. That's
24 what Mr. Lynn said, cannot give you an exact date. I know he
25 moved, cannot give you an exact date.

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DEFENDANT'S SUMMATION (MOSS)

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1 You heard from Ms. Doneff. She's the lady who said she
2 owned the property, and I assume she does. I don't have any
3 reason to think she's not telling the truth about that. She
4 used words like on or about, if you remember. She didn't live
5 within seeing distance of the property, she didn't see the
6 property every day according to her, so she used dates like on
7 or about. She didn't deal with my client; she didn't lease
8 the property to my client; he lived with her tenants. I don't
9 know what she adds to this.

10 Sergeant Avant. She was the investigating officer.
11 She's -- if you recall she testified that she was responsible
12 for the Sex Offender Registry rules, she was responsible to
13 see South Carolina law was complied with, and she was the
14 person that actually investigated the anonymous call that came
15 in that my client had left. The account under -- I mean,
16 she's a trained investigative officer, with years of
17 experience, and they do things when they investigate, like
18 they write down dates, and they write down what happens that
19 they observe on dates. And so now we start getting some
20 dates, and then start having some credibility, okay, but let's
21 look at those dates. The fact is, as presented to you, they
22 received an anonymous call on the 6th saying Mr. Alford
23 registered -- he doesn't live here anymore; he moved, 6th of
24 September. The fact is, she said she went out and
25 investigated on the 7th of September that he was gone. Okay.

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1 That's what she said in her notes, I went out, wasn't there.
2 In her notes, which you won't see because they weren't
3 admitted into evidence, but she testified about them, so you
4 can - I'll say in her testimony - in her testimony she said
5 Mr. Alford called the Sheriff's Office on the 10th. Okay. So
6 that's part of her investigative notes that she told you
7 about, and so now we've got some dates. We've got the 6th,
8 7th and 10th of September, and those are real dates. Those
9 aren't dates where somebody said, I can't tell you the exact
10 date or on or about, those are real dates.

11 Now, did you -- in the investigation of Sergeant Avant
12 did you hear her say that she didn't even try to call my
13 client? If the purpose of the registry is to know where
14 people are that are registered sex offenders, and when they
15 come in to register you make them give them their address, and
16 you make them give you their telephone number, and you've got
17 a complaint that said somebody is not where they are suppose
18 to be, wouldn't you expect them to make a phone call? If I
19 asked you where a local was, or a relative was, or a friend
20 was that you hadn't seen in a while, and you didn't know,
21 would you go driving around looking for them, or would you
22 pick up the phone and call them and say, hey, where are you?
23 It's not reasonable that she did not call my client during
24 this investigation. She didn't even attempt to avoid the
25 burden. She had his phone number, because he's required to

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DEFENDANT'S SUMMATION (MOSS)

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1 give it to them every six months, and in their notes when she
2 said they received a call on the 10th it was from the same
3 phone number that my client had given them as his phone
4 number. And so you have to question, what's going on here.
5 There's no evidence been presented in this case to you that my
6 client ever misrepresented an address, or he ever
7 misrepresented a phone number; nobody said that. Okay. And
8 so -- and what we do know that's represented is, the number
9 that he called from saying I'm Billy Alford, is exactly the
10 number that he gave to them.

11 Now, could it be - this is for you to decide - that
12 maybe they didn't want to create any record of communication
13 with Billy Alford because they wanted to prosecute him? I
14 mean, is he right? Is there something going on here because
15 he sued them? I don't know, and that's for you to decide.
16 It's certainly -- it's certainly something -- a reasonable
17 conclusion you can draw as to why they didn't even reach out
18 and call him to see where he was, because that would be the
19 logical thing to do if you got that complaint,

20 The indictment in this case -- you are going to be given
21 -- if you read it on the one side it says clearly, on or about
22 the 7th day of September my client violated the law. Well,
23 the 7th day of September is the same day that Ms. Avant went
24 out to the property to investigate the complaint. It's one
25 of those real dates we can use, the 7th.

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DEFENDANT'S SUMMATION (MOSS)

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1 Now, that is the burden of facts, that he violated the
2 law on the 7th, that my client is charged with. Actually the
3 indictment says on or about, to be fair, but you will have it,
4 and you can read it. So we've got real dates of September 6th
5 through the 10th. Let's talk about her testimony some more,
6 because she was looking at her notes when she told you the
7 story. She left out the most important part. She said he
8 called on the 10th, and she said he called from this number
9 that he gave them, and she said I'm Billy Alford, but we know,
10 from other testimony, more about that call, because remember
11 the notes they didn't turn over to us but we got them anyway
12 at trial? They said, through Deputy Rathbun, he called and
13 said I'm in Florida; what do I need to do. That's important.
14 Why didn't she tell you that? Why wasn't that in her notes?
15 Why wasn't that in their case until this document they didn't
16 turn over to us was discovered?

17 Now, Renee Elvis testified. Very pleasant. She takes
18 the document - in fact she signed this document along with my
19 client. She admitted in my cross-examination that my client
20 might have told her in August that he was moving to Florida
21 but she didn't remember. She admitted to you that he might
22 have told me that. I think that's an important fact that you
23 need to take them in for your deliberations, because my client
24 said he did, not refuted.

25 Deputy Rathbun. You heard her first testify that she

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1 had no recollection of talking to my client on the 10th. I
2 challenged her on it, challenged her on it again, and out
3 popped out of her mouth, we have call logs that she called
4 them, and I said what call logs; I haven't been given any call
5 logs. You might remember today. And guess what, all of a
6 sudden the document comes out. Well, that document -- you
7 know the truth. You know lawyers say this a lot of times, and
8 sometimes it's a little cliché but sometimes the truth does
9 come out in trials. Okay. That's not a piece that the
10 prosecution was trying to show you but it came out.

11 In her own handwriting Deputy Rathbun noted that my
12 client called and spoke with her on the 10th, and he advised
13 her he was in Florida, and he asked her what he needed to do.
14 In her own handwriting Deputy Rathbun, in her document, the
15 note they didn't give us, said you've got to register in
16 Florida by today. The testimony is my client did register in
17 Florida by that day.

18 Why didn't they give us that document before this trial?
19 What else did they not give us? Look at Defense Number 4 in
20 your deliberations, please; it's important. It's nothing more
21 than a calendar of 2012, and I'm sure that y'all all know
22 about calendars. The dates, September 6th, September 7th,
23 September 12th. It was a Thursday and a Friday, and a Monday.
24 That's important. There are not even three business days
25 between the anonymous call on the 6th, and the 10th, which is

JURY IN
DEFENDANT'S SUMMATION (MOSS)

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1 the day that a warrant was signed for my client's arrest. The
2 Judge told you my client had to make a notification within
3 three business days. There weren't even three business days
4 between those dates. There was not a phone call to my client
5 saying, hey, where are you. They charged my client before he
6 even had time to violate the law, so please look at the
7 calendar.

8 Now, did you notice each and every time that my client
9 tried to offer evidence in his defense, or that I tried to
10 offer evidence on behalf of my client's defense was an
11 objection, because they want this case to be simple; they want
12 this case to be about what they want it to be about. They
13 didn't want to tell you when my client did try to comply with
14 this twenty-six page law.

15 **COURT:** Let me stop you, sir. It is a proper rule of
16 law for you and the defense, at an appropriate time, by
17 objection, to call to the Court's attention a possible
18 violation of the Rules. There is no adverse inference to be
19 derived against you or him for raising an objection.

20 You may continue.

21 **MR. MOSS:** I don't quarrel with a thing the Judge just
22 said. It is absolutely the truth, and it's absolutely what he
23 told you when he charged you the law. He said that what
24 happened in the objections is not evidence, okay, and it is
25 not, and I don't mean to imply that it is evidence, but I

1 think you can consider it as motivation, okay; it's there.

2 You are going to be asked to speak the truth, and I
3 submit to you, the only verdict of not guilty will speak the
4 truth in this case, and only a verdict of not guilty will give
5 that fair and impartial justice that His Honor told you you
6 were charged with, and I appreciate your time and attention in
7 these proceedings.

8 COURT: Thank you, Mr. Moss.

9 You may now proceed.

10 MR. HUCKS: Thank you, Judge.

11 Folks, I didn't get to introduce myself to you earlier.
12 Some of you I met earlier in the week. My name is Scott
13 Hucks. I'm an Assistant Solicitor of the Horry County
14 Solicitor's Office. I have a job. We've all got jobs. I get
15 up in the morning, I put on my suit, I come to case (SIC) and
16 try cases. We pick jurys, and we make arguments. That's what
17 we do. It's part of my job. It's a requirement. If I like
18 to get paid, and pay my mortgage, and pay my divorce attorney
19 I have to get up and I have to go to work. Right. That's
20 what I do. When I wake up in the morning, put my boots, I put
21 on my suits, and I come to work. When I go to the store - Mr.
22 Moss made an analogy - when I go to the store and I buy
23 something when I get to the cash register and they strike it
24 across the scanner and they type it into the cash register, if
25 anybody still does that anymore, if it's a dollar I don't pay

STATE'S SUMMATION (HUCKS)

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1 a dollar. What do I pay, I pay a dollar ten, or a dollar
2 twelve, or whatever it is, you know why, because I have to pay
3 the sales tax on that item that I'm buying. The law says I
4 have to, and if I don't pay it, or if the store doesn't take
5 it they send the IRS after me, or the State Department of
6 Revenue, probably even worse to deal with, and they send those
7 folks down with their guns and their badges, and they hold me
8 accountable for not doing what I'm suppose to do. There are
9 very few laws in the State of South Carolina, and the United
10 States as a whole, that require affirmative movement on a
11 person. They require you to actually go do something. You
12 have to pay your taxes, you have to get a building permit if
13 you are going to go build your house, right. There are
14 certain things you just have to do. And once you are a sex
15 offender you have to register and follow the rules of a sex
16 offender. That's what you do once you are put into that
17 category.

18 I have an illness, a physical illness, and every morning
19 when I get up I brush my teeth and I have to give myself a
20 shot, every morning, you know why, because I'm required to,
21 because I fall in the class of people that need to take shots
22 every morning. That's what I do. Billy Alford falls in the
23 category of people who have to follow the rules of being a sex
24 offender because he's a sex offender. He's in the category.
25 Billy Alford, on August the 7th, showed up at the Sheriff's

1 Office where he met with Ms. Elvis. When he met with Ms.
2 Elvis what did she do? You heard her testify. You heard Ms.
3 Paulette testify that she's dealt with him before on similar
4 things. I believe you've even heard Sergeant Avant testify
5 that she's dealt with him on similar situations. He's been on
6 this registry, he said, since 1998, I believe it was. He's
7 been on there since that long he's had to register quite a few
8 times. When he registers - you heard all three of those
9 ladies in that supervision division say we sit them down and
10 we read this stuff to them; we read what's been marked as
11 State's Number 2, we read it to them, we talk with them about
12 it, we explain all the rules of being a sex offender. You
13 heard Mr. Moss say something about twenty something pages.
14 Pages five and pages six list out -- well, and a little bit on
15 page seven where the dates are certain when he has to register
16 - tells you what he's got to do, and his initials are next to
17 every line. They testified they sit down and they talk with
18 them about these things. The rules are very, very clear.
19 They are not some complicated legal jargon. It's not like Mr.
20 Moss said yesterday, well, paying your taxes you need an
21 accountant. Well, for sex offenders these ladies are like the
22 accountant; they sit them down and they tell them every single
23 rule, and why they have to register. I will -- Billy
24 Alford's signature is on here. You can take it in the back
25 with you. It's in evidence. "I will present myself in person

1 to register. I will provide all information that S.L.E.D.
2 requires me to. I'll provide written notification within
3 three days any time I change residences. I will provide
4 written notification within three days if I move to another
5 jurisdiction to the county sheriff with whom I last
6 registered." That means, when you move to a new place, you
7 move out of South Carolina or out of Horry County, you move
8 out of here, another jurisdiction, you've got three days from
9 the time you move to send written notice here to let them know
10 you moved. We all understand the public policy about that,
11 and we understand the purpose of the Sex Offender Registry.
12 Mr. Moss talked about it. He even asked some people on the
13 stand, it's really about investigating these people, or
14 something to that effect.

15 As a public policy the registries keep tabs on sex
16 offenders. He moved. Sergeant Avant says, I found out a
17 hundred percent that he moved - I believe it was on the 7th,
18 that Friday - I found out a hundred percent he had moved. You
19 heard the landlord, the lady that owns the house, said they
20 moved out of that house on or about the 18th of August. You
21 heard Mr. Alford sit on the stand and say, we moved in August,
22 to Florida. The date on the indictment, if the Judge gives
23 you the indictment to go back, is the 6th or the 7th.

24 Now, that's what we confirmed. That's when Sergeant
25 Avant confirmed the fact that he wasn't there. But you heard

1 Ms. Doneff testify these people took off on or about the 18th.
2 And then you heard Mr. Alford say something very, very telling
3 when he was on the witness stand, very telling. He sat right
4 here and said, I couldn't register where I was, they wouldn't
5 let me register where I was. You heard he said to Ms.
6 Paulette over the telephone, I can't register or put my
7 friends' names out there, I don't want the people to know that
8 my friends have a sex offender staying with them. But then
9 when he testified what did he say? He said, I couldn't
10 register at that address. He said, I couldn't register at
11 that address. He couldn't register at that address because he
12 was in violation of the law. He couldn't register because he
13 was in violation. He couldn't tell the folks in Florida where
14 he lived because it was somewhere he couldn't live. He said
15 that. And his -- his obligations are to follow the registry.
16 I'll tell you -- he wants to tell you about whatever it
17 was that put him on the registry, you can't even take into
18 consideration why he's on the registry. The question is
19 whether he is on the registry. You've got a certified copy
20 from the Clerk of Court saying that he's convicted of a crime
21 that the Judge's instruction says puts him on the registry.
22 You got his conviction. He got up here and he told you that.
23 He also told you he took off and moved to Florida, and didn't
24 do what he knew he was suppose to do. He testified, under
25 oath, he was sitting up there, if that means anything when he

1 says it. That's for you to decide, not me. He testified that
2 he moved to Florida, that he knew he was suppose to notify and
3 he didn't; he knew he was suppose to do it in writing, he had
4 it before, in writing. He had done it before in writing. He
5 didn't do it.

6 When we get up in the morning we all have things we've
7 got to do, and if you are a sex offender you've got to follow
8 the registry. Every six months you've got to come in here and
9 have these lists -- since 1998 people have been explaining
10 these rules to him, these ladies have been explaining this
11 stuff to him. I heard Ms. Avant, Sergeant Avant, say she had
12 been doing it since 2002, explaining it since 2002 what all
13 these rules are.

14 Ms. Renee and Ms. Paulette explain these rules to
15 people. That's what they do. You've got to follow the rules
16 when you know what the rules are and when you are a sex
17 offender, you are on the registries. He has notified in
18 writing before. He knew what that obligation was, and he
19 didn't do it. He didn't do it because he wanted to run off to
20 Florida, and he ran off to Florida, and he was there for two
21 weeks before anybody caught him, and then once he was on
22 notice, once the police said something to him he ran out and
23 tried to do it.

24 It doesn't take a rocket scientist to figure out why
25 that cat did that. He testified on that stand - and you can

1 hear it again if you want to - he testified that he hated that
2 registry, he hated it, he hated it, and he hated it so much he
3 went to Florida and didn't do what he was suppose to do,
4 because he didn't want anybody telling him what to do. You've
5 seen him in here. You've heard him testify.

6 MR. MOSS: Your Honor, I'm going to have to object to
7 that. I've been real patient, but he did not testify that he
8 went to Florida because he didn't want anybody telling him
9 what to do.

10 COURT: He's entitled to testify. Move on from that.

11 MR. HUCKS: Yes sir.

12 COURT: The Defendant was absolutely -- absolutely
13 entitled to testify, and did testify.

14 (DEFENDANT SPEAKS ALOUD, AS HE HAS DURING THE ENTIRE
15 TRIAL AND SUMMATION BY COUNSEL.)

16 DEFENDANT: But I did not testify to what he's saying I
17 testified to. That's not ---

18 COURT: Now you be quiet.

19 DEFENDANT: Well, it's on the record.

20 MR. HUCKS: You can hear it again. If I say anything
21 that you don't remember appropriately please come back and
22 hear it again. And if I hear any -- if I say anything you
23 remember differently you get to decide the facts; I'm just the
24 lawyer, right. If I say anything about the law that's
25 different than what the Judge says, go with the Judge because

1 he's a judge; I'm just a lawyer.

2 So ask yourself, folks, what makes sense, what makes
3 sense? He's a victim of some big machination of State
4 Government, or he took off to Florida and didn't do what he
5 was suppose to do. Think about that. What makes sense. I
6 ask juries in every closing argument I've ever given to ask
7 themselves what makes sense. Does it make sense he took off
8 on August the 18th and wasn't found out till September the
9 6th, and as soon as he knew that he was found out he ran out
10 and registered -- tried to register the following Monday, or
11 does it make sense that he just happened to follow the rules
12 explicitly and the whole machination of State Government is
13 after him. Hey, I like to think I'm a smart fellow, but I'm
14 not that devious. That's pretty obvious, you've seen me, and
15 heard me speak.

16 I'm going to thank you for your time. I'm going to ask
17 you to come back. I'm going to ask you to render a verdict
18 that speaks the truth, just like Mr. Moss just did. Come back
19 and tell the truth; that's it. Find some justice. You are
20 the arbiters of justice in our system. You and that Judge
21 judge two different things for the exact same purpose, to find
22 justice in any case, so just go and do some justice, go find
23 these facts and come back and tell the truth, and the truth is
24 that he was wrong, he knew he was wrong, and he knew he was
25 violating the law.

1 And I thank you for your time and your patience in all
2 of this, and thank you again.

3 **COURT:** Again, thank you, Mr. Hucks, and thank you, Mr.
4 Moss.

5 Ladies and gentlemen, you've now heard all of the
6 testimony in the case. You've heard final arguments, which
7 are not evidence - it's their view, it's not evidence - of
8 counsel for both sides, and I have given you the law which,
9 under your oath you are required to follow. Whether you
10 disagree with what the law ought to be you disregard that, and
11 under your oath you take the law as I charged it to you.

12 As I've told you previously, and I know you understand,
13 whatever verdict it is it's got to be the unanimous verdict of
14 all twelve. It cannot be a verdict of the majority.
15 Obviously it could not be a verdict of the minority.

16 There is pencil and paper provided in the jury room.
17 And if you, Mr. Foreman, or any member of your jury have any
18 questions that is appropriate for me to answer write that
19 question down, let the bailiff know, and I'll be glad to
20 respond, if appropriate. Let me give you an example.

21 **(DEFENDANT CONTINUED TO SPEAK LOUD ENOUGH TO INTERRUPT**
22 **THE PROCEEDING.)**

23 **COURT:** Please have the Defendant be quiet while I'm
24 speaking.

25 As an example I was trying a young lady for arson in

JURY OUT - EXCEPTIONS TO CHARGE

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1 another county having burned down -- allegedly burned down a
2 mobile home. The jurors came back with a question, tell us
3 whether she smokes or not. Well, I saw her outside smoking, I
4 knew she smokes, but that question, on the record, was never
5 asked, consequently never answered, and I couldn't respond.
6 The point of the story is that your verdict must be based on
7 the law and the evidence heard in this courtroom, and from no
8 other source.

9 You may now retire to the jury room. Do not begin your
10 deliberation until I send the evidence in along with the
11 indictment.

12 (THE JURY RETIRED AT 11:00 A.M., AND THE FOLLOWING TAKES
13 PLACE OUTSIDE THE PRESENCE OF THE JURY.)

14 COURT: All right. Come forward and let's agree on
15 what's in evidence, please.

16 Mr. Moss, wait for the jury to leave the courtroom.

17 I noticed throughout the State's summation that your man
18 kept mouthing over there. He did not do it during your
19 summation. Again, while I was talking to the jury a moment
20 ago he wanted to interrupt. You tell him if he wants to stay
21 in this courtroom and see the rest of the proceedings I'm not
22 going to permit that interruption from him, and I'm going to
23 send him out, or gag him, bind him, and put him to the chair.
24 He is not going to interrupt these proceedings. You go tell
25 him that if he wants to stay in this courtroom, otherwise I'm

1 going to send him out.

2 **DEFENDANT:** I heard you. I heard you, Your Honor.

3 **COURT:** All right. As long as he heard me, fine.

4 Have you agreed on what's going into evidence?

5 Mr. Moss, I heard him mouthing over there, but I didn't
6 want to say anything and call it to the attention of the jury.
7 I didn't want the jury to be prejudiced against him so I
8 didn't say anything but I heard it.

9 **MR. MOSS:** Before you send them in to start
10 deliberating I would like to make an exception on the record
11 that my client has asked me to make about the instructions so
12 you can rule on them.

13 **COURT:** I thought you said -- I already did that. What
14 ---

15 **MR. MOSS:** I'm talking about in your last instructions.

16 **COURT:** Oh, okay. Go ahead. Wait a minute. Don't let
17 them deliberate yet.

18 What is your objection?

19 **MR. MOSS:** Your Honor, in your very last instructions
20 to the jury you instructed them as to the fact that they had
21 to have a unanimous verdict.

22 **COURT:** Yes sir.

23 **MR. MOSS:** You did not instruct them as to the
24 possibility, if they couldn't reach it, that there could be a
25 hung jury. My client ---

JURY OUT - EXCEPTIONS TO CHARGE

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1 **COURT:** I'm not required to do that.

2 **DEFENDANT:** It's the law.

3 **MR. MOSS:** My client has asserted ---

4 **DEFENDANT:** It's the law.

5 **(MR. MOSS SPEAKS TO HIS CLIENT.)**

6 **COURT:** No sir.

7 **MR. MOSS:** My client has asserted that that would be an
8 appropriate instruction, and therefore I'm stating that
9 exception for the record.

10 **COURT:** Not going to do that. Your client can't tell
11 me what the law is. I told the jury emphatically that it must
12 be unanimous; it could not be a majority, and would not be a
13 minority. The jury fully understands that. There's no reason
14 for me to raise the question of a hung jury unless they tell
15 me something about it, and then I'll deal with it.

16 **MR. MOSS:** Thank you, Your Honor.

17 **COURT:** I note your objection.

18 **(DEFENDANT SPEAKS ALOUD AGAIN.)**

19 **COURT:** Now you better tell your client to be quiet if
20 he wants to stay in this courtroom.

21 All right, have we agreed on what's going into evidence?

22 **MR. HUCKS:** Yes sir.

23 **COURT:** How about it, Mr. Moss?

24 **(DEFENDANT CONTINUES TO SPEAK ALOUD.)**

25 **COURT:** Mr. Moss, have you agreed on what's in

JURY OUT (DELIBERATING)
JURY IN

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1 evidence?

2 MR. MOSS: Yes, Your Honor.

3 COURT: All right.

4 Heather, this is the indict ---

5 Do you want to look at the indictment again before I
6 send it to the jury? It does not make reference ---

7 MR. MOSS: To third offense?

8 COURT: It does not make reference to third offense
9 anywhere.

10 MR. MOSS: Yes, that's the same -- same ---

11 COURT: The indictment is clear. You agree with that,
12 Mr. Moss?

13 MR. MOSS: I do.

14 COURT: All right, sir.

15 Tell the jury to begin deliberation.

16 We will be in recess subject to the call of the Court.

17 (THE JURY BEGAN DELIBERATION AT 11:05 A.M. AND THE
18 FOLLOWING TAKES PLACE AT 11:48 A.M., OUTSIDE THE PRESENCE OF
19 THE JURY.)

20 COURT: All right. I understand that the jury has a
21 verdict.

22 Now I want it clear that I will permit no comment or
23 outburst from anybody in this courtroom. If I hear it there's
24 going to be severe consequences.

25 Is the State ready to receive the verdict?

VERDICT

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1 MR. HUCKS: Yes sir.

2 COURT: Defendant ready?

3 DEFENDANT: Yes sir.

4 COURT: The Defendant is in the courtroom.

5 Bring the jury in.

6 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
7 JURY.)

8 COURT: Mr. Foreman, have you and your distinguished
9 jury reached a unanimous verdict?

10 FOREMAN: We have, Your Honor.

11 COURT: Please accept the verdict and hand it to me.

12 And thank you, sir.

13 If this be the unanimous verdict of all twelve please
14 signify by raising your right hand.

15 (EACH AND EVERY JUROR RAISED HIS OR HER RIGHT HAND.)

16 The jury has so signified.

17 Publish the verdict.

18 DEPUTY CLERK OF COURT: Indictment Number 2013-GS-26-
19 01587), State of South Carolina, County of Horry versus Billy
20 Leon Alford, on the charge of Sex Offender Registry violation,
21 we, the jury, unanimously find the Defendant guilty.

22 Dated May 15th, 2014.

23 Signed by Foreperson, Roger Kline.

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

1 (EACH AND EVERY JUROR RAISED HIS OR HER RIGHT HAND.)

2 DEPUTY CLERK OF COURT: Thank you.

3 COURT: Mr. Hucks, it would be appropriate at this time
4 to advise the jury of prior failure to registers.

5 MR. HUCKS: Yes sir, Your Honor. Would you like his
6 entire criminal history, or just his failure to register?

7 COURT: The entire history. I want ---

8 Let me say this to you, Mr. Foreman, ladies and
9 gentlemen. Sometimes after a verdict is rendered there will
10 be an article in the newspaper giving his prior history. In
11 this case this Defendant has already failed to register on two
12 other occasions, and you may wonder, well, why didn't they
13 tell us that. It was not permitted to come into evidence
14 because that would have been highly prejudicial to this
15 Defendant, and thus it was, if he was guilty we wanted him
16 convicted on the simple failure to register and not have the
17 fact that he had already done it twice before before you. I
18 just wanted you to know why you didn't hear it. It would have
19 been so prejudicial to him.

20 But I do want the jury to hear his prior history in
21 totality.

22 MR. HUCKS: Yes sir, Your Honor.

23 He has a 1998 shop -- 1988 shoplifting, financial
24 transaction card theft, breaking and entering an automobile,
25 1991 burglary and grand larceny, 1996 criminal domestic

VERDICT

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1 violence, 1998 lewd act on a minor, which is the charge that
2 we were here for today -- in relation to today, and a breaking
3 and entering an automobile. 2002 possession of a stolen
4 vehicle, failure to stop for a bluelight, a resisting arrest,
5 2004 sex offender violation, and a possession of crack
6 cocaine, 2006 driving under suspension, 2007 criminal domestic
7 violence and driving under suspension, 2010, petit larceny and
8 unlawful use of a telephone, 2011 assault and battery in the
9 second degree, 2012 receiving stolen goods, and obtaining
10 goods by false pretenses, 2009 trespassing, and he was charged
11 with a forced intercourse that was pled down to a simple
12 assault, and 2013 burglary, and a 2009 receiving stolen goods.

13 **COURT:** When was the two prior failure to registers?

14 **MR. HUCKS:** Your Honor, he had a 2004, and a 2009, Your
15 Honor.

16 **COURT:** All right. Is there anything further prior to
17 my -- I'll hear motions at a later time. Prior to discharging
18 the jury is there anything further from either side?

19 **MR. MOSS:** None from the defense, Your Honor.

20 **COURT:** All right. Let you go to the jury room just a
21 moment. I want to come back there and speak to you for just a
22 second.

23 Have them go to the jury room, please.

24 I'm going to return in just a moment, and we'll have
25 sentencing at that time, and then I'll be glad to hear any

JURY OUT/SENTENCING
MOTIONS

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1 post-trial motions, okay. Is that satisfactory?

2 MR. MOSS: That is, Your Honor.

3 COURT: All right. Be back in just a moment.

4 (THE FOLLOWING TAKES PLACE AFTER A SHORT BREAK.)

5 COURT: The Defendant come forward for sentencing,
6 please.

7 For the State, anything further?

8 MR. HUCKS: No sir. I believe Mr. Moss has some post-
9 trial motions, but I don't have anything.

10 COURT: Well, let me deal with the sentencing, and then
11 I'll deal with post-trial motions, or do you want me to hear
12 them now?

13 MR. MOSS: As long I get on the record to hear them I -
14 --

15 COURT: Sir?

16 MR. MOSS: As long as I get them on the record today
17 I'm -- that doesn't matter to me ---

18 COURT: I'm going to be on the record in just a few
19 minutes.

20 MR. MOSS: Okay.

21 COURT: Let's go ahead and deal with the sentencing.
22 Anything further on that issue? I know his prior
23 record.

24 MR. HUCKS: Your Honor, the charge -- the way the
25 statute is written is, it carries five years or five years, so

JURY OUT/SENTENCING
MOTIONS

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1 I -- there's kind of not much for me to day, other than the
2 fact that it carries a mandatory five years.

3 COURT: No sir. I can, in my discretion, give up to --
4 give three or more.

5 MR. HUCKS: Oh, yes sir, you can suspend it to three.
6 Pardon me.

7 COURT: Mr. Moss, you had a difficult set of facts to
8 deal with. Under the facts in the case you did, in my view,
9 as best that you could, but the evidence was just simply
10 overwhelming that he did not conform with the law in advising
11 the Sheriff within three days of his move.

12 I'll be glad to hear from you with regard to sentencing,
13 and then I'll hear your post-trial motions.

14 Anything further regarding sentencing?

15 MR. MOSS: Yes, Your Honor. I really believe that it's
16 not true to say he didn't advise them within three days. The
17 statute requires three business days.

18 COURT: Sir?

19 MR. MOSS: The statute requires three business days,
20 not three days. He did advise them ---

21 COURT: No sir, that -- I'm going to let you listen --
22 you didn't hear me. I want to deal with the sentencing and
23 then I'll hear your post-trial motions.

24 MR. MOSS: I'm trying to deal with sentencing.

25 COURT: Sir?

JURY OUT/SENTENCING
MOTIONS

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1 **MR. MOSS:** I'm trying to deal with sentencing.

2 **COURT:** All right. Do it.

3 **MR. MOSS:** The circumstances in this case are that this
4 Defendant tried to comply. He communicated with the Sheriff's
5 Office. The evidence and testimony was he told them, in
6 August, that he was going to be leaving to go to Florida but
7 he wasn't sure when. That was not dispute or refuted by the
8 State because they couldn't, because the only witness that was
9 involved in the conversation didn't remember. Okay.

10 And when he went to Florida there was testimony that he
11 was calling them. They didn't call him, but he called them,
12 from the phone number that he had given them, so this witness
13 did try to comply with the law, as he understood it.

14 There was also evidence, through Deputy Rathbun, that he
15 ---

16 **COURT:** I didn't hear any -- I didn't hear anything
17 where he had in writing.

18 **MR. MOSS:** No sir.

19 **COURT:** He may or may not have called, but ---

20 **MR. MOSS:** That didn't happen.

21 **COURT:** Well, sure. Isn't that a violation?

22 **MR. MOSS:** It is. And the reason I'm bringing this up
23 is, I think it does go to some mitigating circumstances when
24 this -- this Defendant did try to comply, as he understood,
25 and he even called and said, what do I need to do, and I

JURY OUT/SENTENCING
MOTIONS

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1 believe that's relevant for sentencing purposes that, no, you
2 didn't comply, in writing, as the statute requires, but he
3 called.

4 **COURT:** What I'm concerned with for sentencing
5 purposes, he's got a long and notorious prior history, but
6 what I'm concerned with too, he's failed to do it on two prior
7 occasions. If this was the first time I could understand your
8 position, Judge, he really tried to comply, but he's -- this
9 is the third time out; this is not his first rodeo.

10 **MR. MOSS:** One of those times was in this State,
11 another of those times was in Virginia. The requirements in
12 Virginia are different. I don't even know what they are.
13 There's no evidence in the report on what was violated, and so
14 I don't think you can draw ---

15 **COURT:** I understand that, but I understand your
16 argument in the possible mitigation, but there is none with
17 him because this is his third time out.

18 Be that as it may, this is the sentence. I'm going to
19 sentence you to five years. I'm going to suspend that upon
20 the service of four years, and you are thereafter placed on
21 probation for three years.

22 That the is the judgment and sentence of the Court.
23 Give him credit for time served.

24 **DEFENDANT:** Could you go ahead and give me the whole
25 five so I can just do away with the probation. I don't want

JURY OUT/SENTENCING
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1 no paperwork. I don't want nothing to tie me to this State.

2 I want to leave this State without ---

3 COURT: No sir. I want you on probation. If you
4 decide to leave the State we'll deal with that at the time.
5 But no, I want -- with your prior criminal record I want you
6 to know the first time you are convicted of shoplifting ---

7 DEFENDANT: That's a ten years back because all that's
8 over ten years ago.

9 COURT: ---You will be coming back.

10 You are going to be on probation.

11 All right, sir, now I'll hear any post-trial motions.

12 Let him have a seat.

13 MR. MOSS: Your Honor, it was brought to my attention
14 today that the PCR my client has filed involved 2011 case
15 where he was charged by the Conway Police Department and there
16 was a plea, and you were the Presiding Judge and Mr. Hucks was
17 the Solicitor.

18 COURT: What now?

19 MR. MOSS: There was a previous case that my client
20 PCRed in which you were the Presiding Judge, and Mr. Hucks was
21 the Solicitor. I did not know ---

22 COURT: That I was Presiding Judge?

23 MR. MOSS: Now that's what my client has told me.

24 COURT: In what case?

25 MR. MOSS: It was a case for second degree -- second

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1 degree assault and battery.

2 COURT: How long ago?

3 MR. MOSS: 2011.

4 COURT: I have no recollection of it, but what
5 difference does it make?

6 MR. MOSS: Well, my client tells me he's prejudiced in
7 this trial because of the fact that Mr. Hucks and you had a
8 prior involvement, and that there was a PCR ---

9 COURT: No sir. That issue was not raised prior to
10 trial, and I have no recollection of something that occurred
11 in 2011. I must have tried several hundred cases since then.
12 There's no prejudice to me. I don't recall ever seeing him
13 before.

14 MR. MOSS: Well, specifically my motion would be to
15 grant a new trial based upon that.

16 COURT: No sir. It's denied.

17 MR. MOSS: I would have a motion for a new trial based
18 upon violations of Rule 5 and **Brady** which were demonstrated in
19 this courtroom today. My client was not given exculpatory
20 materials prior to the trial of this case as it was required
21 to be, and therefore we ---

22 COURT: That material on that note was also encompassed
23 in material turned over to you. I'll let Scott respond to
24 that.

25 What's your next motion?

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MOTIONS

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1 **MR. MOSS:** The indictment was not presented to the
2 Grand Jury and determined the ninety days as required by Rule
3 3(C), and I've raised that motion previously. We would ask
4 for a new trial based upon that.

5 **COURT:** All right. Any further motions?

6 **MR. MOSS:** No, Your Honor.

7 **COURT:** Respond to the three, please.

8 **MR. HUCKS:** Yes, Your Honor. As ---

9 **COURT:** The first motion was we having tried this in --
10 -

11 **MR. HUCKS:** Well, and that I was involved in it. I
12 honestly have no recollection if I was involved in prosecuting
13 this gentleman before. I keep a case load of somewhere around
14 four hundred cases at any given time, and if I prosecuted him
15 three years ago that means I would have prosecuted somewhere
16 in the neighborhood of a thousand cases since that so ---

17 **COURT:** I have absolutely no -- I don't know whether
18 it's true or not, but even if it's true ---

19 **MR. HUCKS:** I do remember personally that I have seen
20 this Defendant on one prior occasion that I can recall, and
21 that was when he was being prosecuted by Stephen Grooms of our
22 office, and he was on the trial roster, and he was showing his
23 behind. That's the only reason I remember him.

24 **COURT:** That motion was never made, never considered.
25 I want the record to reflect that insofar as I know I never

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1 seen him in my life before this trial. There's no prejudice
2 in this case on that issue.

3 Address the other question.

4 **MR. HUCKS:** The second issue, Your Honor, as to the
5 Rule 5 and **Brady** -- is that what you said?

6 **COURT:** No. I want the ninety day argument.

7 **MR. HUCKS:** Okay. As ninety day -- as to Rule 3(C) we
8 already -- we already, at one time earlier in the case -- the
9 controlling case law says that if the Solicitor's office --
10 that that Rule is not a jurisdictional rule, and that if the
11 State does not have someone indicted within ninety days after
12 the time of arrest then the appropriate remedy, at the time,
13 is for the Judge to hold the person, if they believe that they
14 are acting willfully and wantonly, or doing something in bad
15 faith, to hold the prosecutor in contempt.

16 **COURT:** All right. Address the other issue. ---

17 **MR. HUCKS:** The other issue as to Rule 5 and **Brady**,
18 that note was not in the custody and control of me at any time
19 up until the witness said -- I didn't know it existed. The --
20 so I couldn't turn it over if I didn't know it existed. The -
21 - even though I didn't know it existed the case report that
22 was turned over to Mr. Moss in this -- in this case included
23 Sergeant Avant talking about this event happening. He called
24 and he said the same stuff that was written on that note. The
25 handwritten note was not included in discovery. I didn't know

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1 it existed. But the fact that the phone call was made was
2 mentioned directly in her case report.

3 COURT: I understand.

4 I conclude there's absolutely no prejudice to this
5 Defendant. I regard **Brady** very seriously. There's no
6 prejudice in this case for two reasons. He didn't know about
7 it; the note was innocuous in and of itself, and the contents
8 of it were included in material furnished to the Defendant's
9 attorney.

10 Your motions, Mr. Moss, are heard, recorded, and are
11 respectfully denied. I thank you.

12 MR. MOSS: Your Honor, if you will indulge me one more.

13 COURT: Sure.

14 MR. MOSS: The Constitution of the State of South
15 Carolina, Article I, I believe at Section 11, requires that no
16 detainee can be charged for trial before an indictment by the
17 Grand Jury. In this case the indictment was not had until
18 after my client was actually scheduled for a trial, and was
19 not provided to me until after the case was first scheduled
20 for a trial last week, but was rescheduled for this week.

21 COURT: What are your grounds, that you didn't have
22 notice?

23 MR. MOSS: We didn't have the indictment until Monday
24 of this week.

25 COURT: Well, it was available to you, wasn't it?

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1 **MR. MOSS:** Actually not ---

2 **COURT:** Why?

3 **MR. MOSS:** ---Because I couldn't find it in the Clerk's
4 records.

5 **COURT:** Sir?

6 **MR. MOSS:** Couldn't find it in the Clerk's records.

7 **MR. HUCKS:** And Your Honor, the situation in this case
8 is, he was indicted in -- he went to the April Grand Jury to
9 be tried in May, and when he went to the April Grand Jury the
10 trial roster was published while the indictment was at Grand
11 Jury, so the trial roster was published prior to the
12 indictment being true-billed. Once the indictment was true-
13 billed I had my assistant -- when I saw it on my desk I had my
14 assistant send it over to Mr. Moss, which happened to be last
15 week, and it was prior to the trial of the case.

16 **COURT:** I understand that.

17 I deny that motion to -- there's no prejudice. Clearly,
18 at least a week ago you and your client knew what he was
19 charged with. He knew what he was charged with several months
20 ago.

21 **MR. MOSS:** The fact is, the indictment was not filed
22 with the Clerk of Court as indicated by a file stamp.

23 **COURT:** I don't know whether it was filed or not. Was
24 it?

25 **MR. HUCKS:** I don't file them, Judge. I knew that it

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1 was in the Clerk's file because she gave it to you when we
2 started the case, so it had to be with the Court ---

3 **COURT:** Regardless of that, that issue -- the Defendant
4 has not been prejudiced in any way about that issue. The
5 indictment was there, you had knowledge of it. Clearly he
6 knew what he was being tried for, and I deny that motion.

7 **(DEFENDANT CONTINUES TO SPEAK ALOUD TO HIS COUNSEL.)**

8 **COURT:** I'm not going to hear this. If you've got a
9 motion to make, make it, but I'm not going to hear every
10 witness's assertion.

11 **MR. MOSS:** What my client is referring to is actually -
12 - is actually factually correct as far as the Rule is
13 concerned.

14 **COURT:** It's what?

15 **MR. MOSS:** What he's referring to is a factually
16 correct assessment of Rule 3. Rule 3 does require that a
17 record of all the proceedings, including indictment, must be
18 filed with the Clerk of Court, and there's no ---

19 **COURT:** Just out of curiosity, Heath, can you respond
20 to that? You handed me the indictment?

21 **DEPUTY CLERK OF COURT:** Judge, the indictments are
22 given to our office, and -- after they are true-billed by the
23 Grand Jury, so whenever -- I'm assuming when Mr. Moss come to
24 our office to get it we -- it had -- we hadn't received it
25 from the Grand Jury yet. But after it's been true-billed,

JURY OUT/SENTENCING
MOTIONS

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1 which was -- what was it, April? Then we would have received
2 the indictment right after ---

3 COURT: It was in your file when we started this case
4 on Monday morning?

5 DEPUTY CLERK OF COURT: Yes sir. Yes sir.

6 COURT: There's no prejudice there.

7 Any other motions?

8 MR. MOSS: I don't have anything else, Your Honor.

9 COURT: All right, sir. Mr. Moss, again I say to you,
10 you handled it very well, given a set of facts that were just
11 difficult to overcome.

12 Thank you so much.

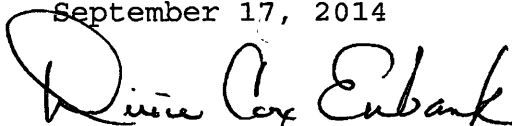
13 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the TRIAL of the captioned case, relative to appeal, in the COURT OF GENERAL SESSIONS for HORRY COUNTY, SOUTH CAROLINA, on the 14th and 15th days of May, 2014.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

September 17, 2014


DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Horry)

Billy L. Aford 285850)
Full name and prison number (if any) of Applicant)

20 17 CP26 0729

v.)

APPLICATION FOR

State of South Carolina)

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 Kershaw Corr Inst.
2. Name and location of Court which imposed sentence Horry County Court, Conway S.C.
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) 2024-WS-2601587
 - (b) _____

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- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 15th 2024 4 yrs
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ Trial by Jury
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 20th 2026
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Unlawful conviction
- (b) Due Process of Law 14th Amendment Violation
- (c) Ineffective Assistance of Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I was never charged or convicted for a 2nd
- (b) offense Therefore I can't be convicted
- (c) w/ a 3rd offense
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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. Direct Appeal, S.C. Court of Appeals
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals Columbia S.C.
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Denied July 20, 2016
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. July 20th 2016
- ii. _____
- iii. _____
- iv. _____

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

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

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

No

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

(a) which grounds have been presented:

- i. ~~that the Court has no jurisdiction over the matter~~ N/A
- ii. ~~I am not a party to this case and the Court has no jurisdiction over me~~
- iii. ~~the Court has no jurisdiction over the matter~~

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

- i. ~~in the Court of Appeals~~ N/A
- ii. _____
- iii. _____

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

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

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

(a) your arraignment and plea? _____
 (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? _____

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. Kenneth R Moss 628A Sea Mountain Hwy
North Myrtle Beach S.C. 29582
 ii. LaNelle DuRant 1330 Lady St.
Columbia S.C. 29201
 iii. _____

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

i. 17(b)(c) Kenneth R Moss
~~17~~
 ii. 17(d) LaNelle DuRant
 iii. _____

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

Convict Overturned & [REDACTED]
[REDACTED]

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

No

20 17 CP26 0729

STATE OF SOUTH CAROLINA)

County of

Landcaster)

VERIFICATION

I, Billy L. Alford 285850, 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.

Billy L. Alford

SWORN to and subscribed before me this 30th
 day of January, 2017.

Carmine A. Amara

(L.S.)

Notary Public

My Commission Expires: December 22 2018

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 KORN

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

I, Billy L Alford 285850, 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.

Billy L Alford
Applicant

SWORN or affirmed to and subscribed before me this
30th day of January, 2017.

Catherine C. Amera
Notary Public

My Commission Expires: December 22, 2018

2017 FEB -3 PM 3:21
HOSPITAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Billy Lee Alford,	)	Case No.: 2017-CP-26-00729
S.C.D.C. No. 285850,	)	
	)	
Applicant,	)	
	)	RETURN AND
v.	)	PARTIAL MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Billy Lee Alford (Applicant) on February 3, 2017, Respondent would show this Court:

I.

Applicant was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the April 2014 term of the Horry County Grand Jury for a sex offender registry violation (2014-GS-26-01587).

On September 6, 2012, Sergeant Loraine Avant, the supervisor of the Horry County Sheriff Office's sex offender registration and tracking unit, was alerted Applicant was no longer living at the home address he had provided when he last registered. Tr. 38; p. 59. In response, Sergeant Avant went to that address the following day and discovered Applicant had not been living there for several weeks. Tr. 38-40; p. 73; p. 100; p. 112-13; p. 116-17. Significantly though, Applicant had not provided any notice to the Horry County Sheriff's Office indicating he intended to change his address or move out of the state since he last registered as a sex offender. Tr. 73; p. 80; p. 88; p. 100.

Subsequently, an out-of-state law enforcement officer contacted Sergeant Avant later that day and advised her Applicant was in Florida at that time. Tr. 44. After that information was received, Deputy Paulette Rathburn from the Horry County Sheriff's Office engaged in a telephone conversation with Applicant, and Applicant revealed during that conversation he was still in Florida and had not notified him of his move because he was afraid he and the people he was living with would be evicted if he registered as a sex offender in Florida. Tr. 55-56; p. 69; p. 74; p. 77; p. 79-80; p. 99-100. Applicant was then located, arrested, and indicted for a third-offense sex-offender registry violation. Tr. 5-6; p. 70-71.

Kenneth Moss, Esq. represented Applicant on the charges. Scott Hucks and Travis Hyman, both of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury on May 14, 2014. The jury found Applicant guilty as indicted on May 15, 2014. Judge Cottingham sentenced Applicant for his third offense to imprisonment for a term of five years, provided that upon service of four years, the balance would be suspended with probation for three years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by LaNelle Cantey DuRant, Esq., who raised to the appellate courts the following issue:

Did the trial court err in allowing the state to charge [Applicant] with failure to register with the Sex Offender Registry as a third offense when the S.C. Code Section 23-3-460 and 23-3-470 (A) (B) (3) do not require that out of state convictions for failure to register be counted for enhancement purposes in South Carolina?

Final Brief of Appellant at 3, State v. Alford, App. Case No. 2014-001202. The South Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion. State v. Alford, Op. No. 2016-UP-364 (S.C. Ct. App. filed July 20, 2016). The Remittitur was issued on August 8, 2016.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Unlawful conviction"
 - a. "I was never charged or convicted for a 2nd offense Therefore I can't be convicted w/ a 3rd Offense"
2. "Due Process of Law 14th Amendment Violation"
3. "Ineffective Assistance of Counsel"

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have 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 to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither 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 respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant primarily alleges that his conviction is unlawful because he was never charged or convicted of a second offense of the sex offender registration statute. This allegation should be summarily dismissed. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegation that his conviction as a third offense was unlawful was raised on direct appeal. Furthermore, Applicant conceded,

through trial counsel and again by way of argument on appeal, that he had one prior violation in South Carolina and one violation in Virginia. See Tr. 217, ll. 4-14; FBOA at 11-12. Applicant cannot now come again before the Court and argue facts contrary to those he presented before. Therefore, Applicant's allegation that his conviction is unlawful because he was never charged or convicted of a second violation of the sex offender registration statute should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

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

VII.

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

Respectfully submitted,

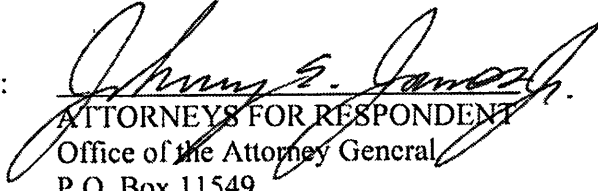
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Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

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Assistant Attorney General

By:


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Columbia, S.C. 29211

15 Dec, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2017-CP-26-0729
BILLY LEON ALFORD,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Daniel A. Selwa, II, Esquire
516 29th Avenue North
Myrtle Beach, SC 29577

DATED this 15th day of December, 2017.


 Tamieka Russell-Brown, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
		2015-CP-26-07716
COUNTY OF HORRY	)	2017-CP-26-00729
BILLY LEON ALFORD,	)	
	)	
Applicant,	)	Transcript of Record
	)	(Post-Conviction Relief)
vs.	)	
	)	February 22, 2018
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Daniel A. Selwa, II, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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E X H I B I T S

21	<u>No.</u>	<u>ID</u>	<u>EV</u>

22

23 (No exhibits were marked or admitted.)

24

25

1 FEBRUARY 22, 2018

2 BY THE COURT:

3 THE COURT: Yes, sir, Mr. Attorney General.

4 MR. JAMES: If I may have just one moment to provide a
5 material to Madam Court Reporter real quick.

6 THE COURT: Certainly.

7 MR. SELWA: Your Honor?

8 THE COURT: Yes, sir.

9 MR. SELWA: Mr. Alford has prepared some stuff and
10 brought it to my attention that he prepared on his computer
11 today. Is that gonna be an issue with him bringing his
12 computer up to the stand with him to refresh some of his ---

13 THE COURT: No, sir. I'm assuming that you have given
14 copies of that to the assistant attorney general?

15 MR. SELWA: I have not, Your Honor. In fact, it's his
16 notes. I have -- I've just saw them today.

17 THE COURT: Okay. Well, we have to share those with the
18 assistant attorney general, so if they have a question, they
19 can question Mr. Alford about this. So, I don't know if you
20 need to get them printed out or how you're gonna do that but
21 he needs to provide a copy of that to the opposing side. I
22 don't know how y'all are gonna do that.

23 MR. JAMES: All right, Your Honor, briefly, the state
24 would first call to your attention the matter of Billy Leon
25 Alford v. State of South Carolina, Docket Number 2015-CP-26-

1 7716. Mr. Alford is here present in the courtroom today and
2 he has not yet been appointed counsel as to this matter. Mr.
3 Selwa is on standby as his other pending post-conviction
4 relief matter today. Your Honor, without going into
5 excruciating detail, the procedural history of this case
6 because I don't have the file in front of me, Mr. Alford has a
7 pending post-conviction relief action out of 2015 that was
8 previously set to be dismissed by initial order of dismissal
9 signed by the Honorable Judge Seals as outside of the statute
10 of limitations and as successive to his prior application for
11 post-conviction relief from a conviction for assault and
12 battery second degree.

13 Your Honor, upon review of Mr. Alford's response to that
14 conditional order of dismissal, Mr. Alford indicated that he
15 actually was present in the courtroom on the day that his
16 prior PCR -- or not present in the courtroom but present in
17 the court on the day that his prior PCR was dismissed on the
18 grounds that he was not present in the court. Your Honor,
19 it's sort of convoluted set of facts. Ultimately, he was out
20 of South Carolina Department of Corrections' custody, he was
21 arrested on the subject matter that we actually have a full
22 hearing on today and his lawyer did not know, the state did
23 not know, nobody really knew, but because his name was on the
24 roster, and this is the state's theory, he may have been
25 transported to the court and then transported back without the

1 knowledge of anybody actually in the courtroom. At the very
2 least, that was the nature of his response to the COD. I did
3 a little bit follow-up investigation into that and I was
4 provided by J. Reuben Long Detention Center a copy of their
5 inmate log book dated March 20th, 2014 and I have that as
6 State's Exhibit 1 showing it to Mr. Alford at this time.

7 THE COURT: And what does that document reflect?

8 MR. JAMES: That document reflects that Mr. Alford was in
9 custody at J. Reuben Long Detention Center on the date of his
10 hearing in which his prior PCR was dismissed, that he was
11 transported from J. Reuben Long Detention Center to court at
12 around 6:17 A.M. and then transported back from court at
13 around 2:35 P.M., the same day that he was said to have not
14 been in court for his hearing.

15 THE COURT: All right. You can leave that with the court
16 reporter.

17 MR. JAMES: Therefore, Your Honor, the state's position
18 is that creates a valid question of law such that an attorney
19 needs to be appointed to Mr. Alford on the matter of 2015,
20 ending in 7716 and that a hearing needs to be set for a future
21 term of post-conviction relief. Therefore, the state would
22 respectfully request a conditional order of dismissal signed
23 by Judge Seals be vacated and that this matter be set for a
24 hearing at a future date.

25 THE COURT: All right. Mr. Alford, do you have any

1 objection to that?

2 MR. ALFORD: No, sir.

3 THE COURT: All right, sir. So, very good. Regarding
4 that 2015 matter, then, we're gonna vacate Judge Seals' order
5 and it will then be placed on the docket in a future term of
6 post-conviction relief application court. And that's the 2015
7 matter.

8 So, Mr. James, if you don't mind, if you'd just do a
9 short order to that effect on the 2015 matter.

10 MR. JAMES: Absolutely, Your Honor.

11 THE COURT: All right. Thank you very much.

12 All right. So, on this one.

13 MR. JAMES: Next, Your Honor, the State calls the matter
14 of Billy Lee Alford versus State of South Carolina, Docket
15 Number 2017-CP-26-00729. Mr. Alford is present here in the
16 courtroom today and represented by Mr. Daniel Selwa, Esquire.
17 Mr. Alford was indicted at the April 2014 term of the Horry
18 County Grand Jury for a violation of a sex offender registry.
19 Your Honor, he ultimately proceeded to trial starting on May
20 14th, 2014 before the Honorable Edward B. Cottingham and a
21 jury. Mr. Kenneth Moss, Esquire, who is present here in the
22 courtroom today represented Mr. Alford on that charge. Your
23 Honor, the jury found Mr. Alford guilty as indicted on May
24 15th, 2014 and Judge Cottingham sentenced Mr. Alford for his
25 third offense up to imprisonment for a term of five years,

1 provided that upon service of four years, the balance would be
2 suspended with probation for three years. He thereafter filed
3 a notice of appeal and a direct appeal was perfected by Ms.
4 LaNell DuRant who raised the issue of whether or not the -- a
5 conviction was valid in light of his reliance upon an out-of-
6 state conviction for failure to register. Your Honor, the
7 South Carolina Court of Appeals affirmed Applicant's
8 conviction by an unpublished opinion filed on July 20th, 2016,
9 and the remitter was issued on August 8th, 2016.

10 Your Honor, my understanding of his allegation today is a
11 broad allegation of ineffective assistance of counsel and,
12 again, indicates that he was never charged or convicted with a
13 second offense. Therefore, he can't be convicted of a third
14 offense.

15 THE COURT: All right.

16 MR. JAMES: Your Honor, I would cede the floor to
17 opposing counsel.

18 THE COURT: All right. Very good.

19 All right. So, Mr. Selwa, are you ready to proceed?

20 MR. SELWA: Yes, I am, Your Honor.

21 THE COURT: All right. Very good. If you want, call
22 your witness then.

23 MR. SELWA: Call Billy Alford to the stand.

24 THE COURT: Please come around to be sworn, sir. The
25 notes that he's gonna rely on, have we provided copies of that

1 to the assistant attorney general?

2 MR. SELWA: Your Honor, I do -- we have not done any
3 disclosure. I just saw the stuff on his computer. It's his
4 notes. The other documentation he's bringing up to my
5 knowledge is a copy of the transcript, and I don't know what
6 else he has there.

7 THE COURT: All right. Well, let's go over that and if
8 Mr. Alford is going to be referring to matters set that are in
9 his computer, we need make clear what that is.

10 MR. ALFORD: Right.

11 THE COURT: And Mr. Alford, you are represented by
12 counsel. Thank you.

13 What that is -- and I want to make that clear, Mr. Selwa,
14 and then the Court will determine whether or not Mr. Alford
15 could use that at that point in time or not. Thank you.

16 Proceed.

17 MR. SELWA: Thank you, Your Honor.

18 BILLY LEON ALFORD, HAVING BEEN DULY
19 SWORN, TESTIFIED AS FOLLOWS:

20 CLERK: State your name.

21 MR. ALFORD: Billy Leon Alford.

22 THE COURT: Go ahead, Mr. Selwa.

23 MR. SELWA: Thank you. May it please the Court?

24 DIRECT EXAMINATION OF BILLY LEON ALFORD BY MR. SELWA:

25 Q: Mr. Alford, you filed a petition for a post-conviction

1 relief, correct?

2 A: Yes, sir.

3 Q: On the registration charge, the third offense conviction;
4 is that right?

5 A: Yes, sir.

6 Q: Okay. And in your petition you claim an unlawful
7 conviction, correct?

8 A: Yes, sir.

9 Q: You also claim due process of law, Fourteenth Amendment
10 violation, correct?

11 A: Yes, sir.

12 Q: And an ineffective assistance of counsel; is that
13 correct?

14 A: Yes, sir.

15 Q: Okay. What are you alleging that was unlawful about your
16 conviction?

17 A: Based on law, first of all that the charge in Virginia is
18 not called failure to register, it's actually providing false
19 information. And the law in the Virginia law is different
20 from the law within South Carolina failure to register. Let's
21 see where I put it.

22 Q: You've claimed that you cannot have been convicted of a
23 third offense; is that correct?

24 A: Right.

25 Q: And that was an issue that you addressed on appeal; is

1 that correct as well?

2 A: Yes, yes, sir.

3 Q: And now you're basically -- you filed this post-
4 conviction relief to address that issue; is that correct?

5 A: Among others.

6 Q: Okay. And so what was it about that Virginia statute
7 that you're claiming is the reason for the unlawful
8 conviction?

9 A: Well, they're trying to say that I have three charges of
10 failure to register when in all actuality I only have two
11 convictions of failure to register. The third conviction that
12 they're relying upon is actually a conviction of, like I said
13 before, it's ---

14 Q: Are you stating that you have two prior convictions or
15 you have one prior conviction?

16 A: Well, now I have two prior convictions due to the
17 conviction of May 15th, 2012 or 2014.

18 Q: Okay. And so this one that you're here on today is the
19 third conviction?

20 THE COURT: Mr. Alford, let me see if I understand. All
21 right? You had one conviction for failure to register,
22 correct?

23 A: Right, from 2000 -- 2004.

24 THE COURT: 2004, right?

25 A: Yes, sir.

1 THE COURT: Then you got convicted of Virginia -- in
2 Virginia for whatever that crime was, correct?

3 A: Right, yes, sir.

4 THE COURT: Then you came back to South Carolina or
5 you're here in South Carolina and you get charged in September
6 of 2012 for a third offense, using that prior South Carolina
7 one and the Virginia one as the first and second?

8 A: Yes, sir

9 THE COURT: All right. So, when you say you -- now have
10 two, you're saying the original one and this last one?

11 A: Right.

12 THE COURT: And you're saying the Virginia one is not and
13 couldn't be used to enhance it or make it a third, right?

14 A: Right.

15 THE COURT: Is that what you're telling me?

16 A: Yes, sir.

17 THE COURT: All right. Very good.

18 Go, Mr. Selwa.

19 MR. SELWA: Thank you, Your Honor.

20 BY MR. SELWA:

21 Q: And Mr. Alford, please explain why you feel that that is

22 ---

23 A: Well, first of all, and the law it states in -- let me
24 find the law here -- in the petition, I see -- in the statute
25 code of laws, South Carolina Code Annomission [sic] 56-5-2940,

1 1991, Supplemental 1999, which provides for enhancement
2 punishment for each subsequent DUI conviction, the state
3 statute provides that any conviction, entry of a plea of
4 guilt, or of nolo contendere, or forfeit of bail for the
5 violation of any law or ordinance or this or any other state
6 or any municipality of this or any other state that prohibits
7 any person from operating a motor vehicle while under the
8 influence of intoxicating liquor, drugs, or narcotics shall
9 constitute a prior offense for the purpose of any prosecution
10 for any subsequent violation thereof. In the Constitution or
11 the statute of the law it actually allows or actually calls
12 for out-of-state convictions to be more or less have to be
13 acknowledged. However, in the statute of the sex offender
14 registry, there's nowhere where it stipulates that out-of-
15 state convictions are to be held. However, in the Virginia
16 statute of the false pretense, providing false information or
17 whatever, it also allows and calls that all prior convictions
18 be notified, in other words acknowledged. And as far as the
19 law for the -- the Virginia Code of Laws 18- -- I mean, 18.2-
20 4721.1 providing false information or failing to provide
21 registration information penalty prima facie evidence, failing
22 to register or providing false information is a Class 1
23 misdemeanor under Virginia Code of Laws when it's a first
24 conviction and the offender committed a nonviolent sex
25 offense. The typical penalty for a Class 1 misdemeanor

1 includes up to 12 months in jail and a maximum \$2,000 fine.
2 And then (k), according to that statute, for the purpose of
3 this section, any conviction for a substantially similar
4 offense under the laws of any foreign country or any political
5 subdivision thereof or to any state or territory of the United
6 States or any political subdivision thereof, the District of
7 Columbia, or of the United States shall be considered a prior
8 conviction. Once again, it's in the statute of the law that
9 says that it shall be considered. But, if you read the 23-3-
10 473, sexual offender, (a) it is the duty of the offender to
11 contact the sheriff in order to register, provide notification
12 of change of permanent or temporary address or notification of
13 change employ or attendance, enrollment, employment, volunteer
14 status, intern status, or vacation status at any public or
15 private school, including but not limited to a kindergarten,
16 elementary school, middle school, or junior high school. If
17 an offender fails to register, provide notification of change
18 of address, or notification of permanent or temporary change
19 in employment or attendance, enrollment, employment, volunteer
20 status, intern status or vacation status at any public or
21 private school as required by this article, he must be
22 punished as provided in subsection (b). A person ---

23 MR. JAMES: Your Honor, respectfully, I've not objected
24 to his plainly reading from a number of statutes, but
25 ultimately we are lawyers and wouldn't permit expert testimony

1 on the law. In any event, I think the argument that Mr.
2 Alford is setting forth is well enough apparent to the Court
3 and the attorneys in this chamber.

4 THE COURT: I appreciate that.

5 Go ahead, sir.

6 A: A person convicted for a first offense is guilty or a
7 misdemeanor and must be imprisoned for a mandatory period of
8 90 days, no part of which shall be suspended or probation
9 granted. And then it goes on, first, second, third.

10 THE COURT: And, Mr. Alford, I appreciate you reading it
11 to me. If you tell the code section you want me to look at, I
12 can pull it up and I can look at it. I don't need for you to
13 read it to me.

14 A: Okay.

15 THE COURT: I do want you to point to me, though, to the
16 specific code section you want me to look at.

17 A: Okay. All right.

18 THE COURT: And if there's a specific subsection, I want
19 you to point me to that and say I want you to look at whatever
20 it is.

21 A: All right.

22 THE COURT: You don't need to read it to me.

23 A: Okay.

24 THE COURT: Okay?

25 A: Yes, sir. It's *Kansas v. -- Kansas v. State*, where it

1 says that they couldn't use a prior conviction of a DUI based
2 upon the fact that the DUI statute in Missouri was different
3 from the statute in Kansas. And therefore, by the two -- the
4 two statutes being different in law, in nature of law, they
5 couldn't use it. And that's Kansas -- let's see --

6 MR. SELWA: Your Honor, may I approach.

7 THE COURT: Yes, sir.

8 MR. SELWA: Let me see if I can get the citation number.

9 A: That's where it's dealing with using a prior conviction.

10 BY MR. SELWA:

11 Q: So, essentially, Mr. Alford, what you're trying to say to
12 the Court here is that the elements of the Virginia statute
13 that you had a conviction for did not meet the same elements
14 of the statute here in South Carolina and therefore could not
15 be used for enhancement purposes; is that correct?

16 A: Yes, sir.

17 Q: And are you claiming that's why you were unlawfully
18 convicted?

19 A: Among other things, but that is one of the issues; yes,
20 sir.

21 Q: Okay. What else under the unlawful conviction are you
22 claiming are the reasons for the unlawful conviction?

23 A: Due to the evidence at trial that was not presented or
24 allowed to be presented.

25 Q: What evidence was that?

1 A: There was testimony to which the sheriff's office
2 afforded me a certain time period to be registered on the 10th
3 of September and that criteria was met, but however the
4 evidence I had to prove that I had done what was told, the
5 Judge would not allow it because ---

6 Q: And so, Mr. -- your trial attorney, Mr. Moss, he argued
7 that, correct?

8 A: Yes, sir.

9 Q: But he was not allowed to enter that into evidence,
10 correct?

11 A: Yes, sir.

12 Q: Okay. And that's what you're claiming you were
13 unlawfully convicted for, correct?

14 A: Yes, sir.

15 Q: Is there anything else under the unlawful conviction
16 prong of your petition that you are claiming is the reason for
17 the unlawful conviction?

18 A: Oh, yeah, the other issue was the fact that they're
19 trying to say that I was not -- that I had not provided in
20 writing, which was the main argument in their case was that I
21 didn't provide in writing that the fact that I did notify was
22 not acceptable due to the fact that I did not present in
23 writing but the statute does not in any way, form, or fashion
24 say that I must in writing notify the sheriff's office of a
25 change of address. It simply states that 23-3-477, if an

1 offender fails to register or provide identification of change
2 of address. So, there's nothing to do with write -- there's
3 nowhere in the statute that says that I have to have it in
4 writing. So, that's another issue that I feel is relevant due
5 to the fact that, you know, I met criteria that you don't --
6 you're not accepting because you're simply stating that in the
7 law it says I must present in writing, but it does not state
8 that in the law. And the courts added to the law in the court
9 when they, when they presented my case, they added to the law
10 that it's not in the law.

11 Q: And to further clarify this, this is not something that
12 Mr. Moss failed to argue; is that correct?

13 A: Right. He, he argued it; he brought it up, yes, sir.

14 Q: It's a matter of the judge not allowing your attorney and
15 you to present evidence; is that correct?

16 A: Right, exactly.

17 Q: In your petition you also claimed that the due process
18 law and your Fourteenth Amendment was violated; is that
19 correct?

20 A: Yes, sir.

21 Q: And can you explain that to the Court and lay out the
22 reasons why you feel that you should be granted a post-
23 conviction relief under that?

24 A: The law says that as far as -- let's see -- ineffective
25 assistance of counsel -- let's see -- it says ineffective

1 assistance of counsel -- *Strickland v. Washington*, 466 U.S.
2 668, defendant must first show that his counsel's performance
3 was deficient. And that such deficiency resulted in actual
4 prejudice to defendant. I would use that against the
5 prosecutor because the prosecutor did not, first of all, read
6 the law into accordance with that the law says, he added to
7 the law, but he -- it says and with any criminal charge, the
8 prosecution must prove all the elements of the offense beyond
9 a reasonable doubt. Otherwise, the jury is supposed to find
10 the defendant not guilty. The prosecutor could not prove
11 beyond a reasonable doubt anything of which he was saying, so
12 therefore he was -- his conduct was in error. I mean, he was
13 prejudice in his -- he was prejudice in his prosecution.

14 Q: You also claim in your final prong of your petition that
15 there was ineffective assistance of counsel, correct?

16 A: That was on my appellate -- on the appellate due to the
17 fact that she did never -- she did not raise proper grounds.
18 The law states that ---

19 MR. JAMES: Objection, Your Honor. The allegation set
20 forth in the original application is ineffective assistance of
21 counsel, not ineffective assistance of appellate counsel. I
22 don't have appellate counsel here today to testify in
23 response.

24 BY THE COURT:

25 THE COURT: I was gonna ask you about that, Mr. Selwa.

1 Looking at the post-conviction relief application in this
2 matter, it says ineffective assistance of counsel. And I
3 don't see anywhere in the application that it says that the
4 appellate attorney failed to perform his or her duties
5 properly. There's no allegation as to the appellate attorney
6 in there. So, there's no notice to the State of South
7 Carolina that this issue is going to come up. What say you
8 about that?

9 MR. SELWA: Your Honor, I -- I would agree it's not in
10 the petition. It is not something that I felt I could
11 effectively plead under this post-conviction relief
12 application.

13 THE COURT: All right.

14 Mr. Alford, you haven't given notice that you have a
15 post-conviction relief claim against the attorney that
16 perfected your appeal. You didn't put that in your
17 application. You didn't say ineffective assistance of
18 appellate counsel. All you said was bare bones ineffective
19 assistance of counsel. You didn't give any rationale or
20 reason underneath that, so the state didn't know. Okay? So,
21 the situation is you can't argue that. All right? I'm not
22 gonna allow you to argue that because you haven't given proper
23 notice to the state. If you think you have a proper ground
24 and you want the Court to consider it, then you probably need
25 to talk to your attorney about that. Okay? So, step down and

1 go talk to your attorney.

2 A: Could I address the Court on ---

3 THE COURT: No, sir. You step down and you talk to your
4 attorney.

5 (REPORTER'S NOTE: Applicant consults with counsel.)

6 MR. ALFORD: Yeah, but the law doesn't say anything about
7 stipulating what counsel. Counsel is counsel. And if it's
8 ineffective assistance of counsel on a appellate defense, that
9 means that it's ineffective assistance is against appellate
10 defense..

11 THE COURT: It's a notice problem, sir.

12 MR. ALFORD: Right.

13 THE COURT: You have to let the state know what your
14 claims are. If you don't let the state know what your claims
15 are, then you're not giving them a proper opportunity to
16 respond.

17 MR. SELWA: Your Honor, the -- for the record, I just
18 want to make the argument, he made the allegation of
19 ineffective assistance of counsel in his -- I want to say
20 Paragraph 10 of his petition and then following up on Number
21 18 he lists all his counsel albeit he didn't specify trial
22 counsel or appellate counsel, it just simply said counsel.
23 And for the record, Your Honor, we would just make the
24 argument that he should be allowed to argue that under that,
25 that part of his petition is that it provides notice that that

1 was one of the counsels.

2 THE COURT: I'm not gonna allow him to argue it if he
3 wants to proceed. Okay? He has a choice. If he wants to
4 proceed, I'm not allowing him to argue ineffective assistance
5 of appellate counsel since he didn't set it forth in his
6 application. You understand me?

7 MR. SELWA: Yes, Your Honor.

8 THE COURT: Thank you. Talk to him about that.

9 (REPORTER'S NOTE: Applicant confers with counsel.)

10 MR. SELWA: Your Honor, Mr. Alford wishes to amend it.
11 As I stated earlier, I didn't feel there was a ground for me
12 to do so and under my ethical obligation, I don't know that I
13 could do that. And we had a bit of a disagreement in my
14 office a couple -- a week ago or so about that. It was quite
15 heated; although it remained professional, it did get heated.
16 And my suggestion under this and I -- Mr. Alford may agree
17 with me that the new counsel that would be appointed for his
18 other PCR matter could simply take this case over and address
19 that at the next term when he addresses his other PCR.

20 THE COURT: Well, I appreciate that. There's not a
21 matter -- there's not a motion before me to relieve counsel.

22 Again, Mr. Alford, if you want to proceed, I'm not
23 allowing you to argue that. There's an avenue -- I'm not your
24 attorney and I'm not telling you what to do here, I'm just
25 telling you if you want to proceed today, I'm not gonna allow

1 you to argue it because you didn't give proper notice to the
2 state. Now, if you want to amend it, what that means is that
3 if I grant that, the matter is continued. You understand
4 that?

5 MR. ALFORD: Yes, sir.

6 THE COURT: It will not be heard today.

7 MR. ALFORD: Yes, sir.

8 THE COURT: Okay. It will go on to the future whenever
9 the next term is. You understand that?

10 MR. ALFORD: Yes, sir.

11 THE COURT: Are you asking me to allow you to amend your
12 post-conviction relief application ---

13 MR. ALFORD: Yes, sir.

14 THE COURT: --- to specifically state you're alleging
15 ineffective assistance of appellate counsel and setting forth
16 a reason why?

17 MR. ALFORD: Yes, sir.

18 MR. SELWA: Your Honor, I feel that I don't or rather I
19 feel I don't know that I can help him on that in that ---

20 THE COURT: I understand that you don't feel he didn't --
21 you didn't help him file the original application, so ---

22 You feel capable of filing that amendment yourself, Mr.
23 Alford or not?

24 MR. ALFORD: I mean, I'm not really -- I ain't -- I'm not
25 a lawyer.

1 THE COURT: All right. And I understand that. So,
2 again, the matter of Mr. Selwa being relieved, there hadn't
3 been a motion made before the Court. Nobody has asked for
4 that.

5 MR. ALFORD: Right.

6 THE COURT: All right. So, that's not before me.

7 MR. ALFORD: Right.

8 THE COURT: Until somebody asks for it. Let's deal with
9 the part of the amendment.

10 Mr. James, what say the state regarding the request of
11 Mr. Alford to amend his post-conviction relief application to
12 more specifically state that he's alleging ineffective
13 assistance of appellate counsel and giving a reason why?

14 MR. JAMES: I would offer two alternative courses of
15 action, Your Honor, to potentially deal with this. One, I
16 respectfully move to strike the allegation on the basis of
17 *Mangal v. State*, that Mr. Alford had up until we got started
18 with this hearing today to amend his allegation and
19 potentially the state would be put on notice and, despite
20 yesterday, the state is on occasion willing to go forward with
21 a last minute allegation if it is such that the state can be
22 prepared and ready to forward on it right then and there.

23 In the alternative, Your Honor, it may be most
24 appropriate for the state to submit a motion to dismiss that
25 allegation and then proffer testimony as to that allegation.

1 My anticipation of what he is about to testify to coincides
2 with part of the argument that the state intends to offer on a
3 directed verdict motion momentarily if this matter proceeds,
4 which is very simply that he's wrong on the law and therefore
5 his argument for ineffective assistance of appellate counsel
6 will be without merit as a matter of law. So, if Your Honor
7 would like hear the proffered testimony, Your Honor can make a
8 determination of that as a matter of law and determine whether
9 or not further proceedings are necessary if there is a
10 question of law or fact.

11 THE COURT: You have a problem with that, Mr. Selwa?

12 MR. SELWA: I do not, Your Honor.

13 THE COURT: All right. Very good.

14 Resume the stand, Mr. Alford.

15 THE COURT: Under a proffer I will hear you regarding
16 your claim of ineffective assistance of appellate counsel.

17 PROFFER DIRECT EXAMINATION OF BILLY LEON ALFORD BY MR. SELWA:

18 Q: Mr. Alford, what the Court is saying is that basically
19 you get to testify as to what your appellate counsel did wrong
20 and if you prevail at the end you can -- they can consider it.
21 What is it and what you can testify to at this point that
22 appellate counsel did that was ineffective?

23 A: First of all was just the argument that was used to
24 rebuttal the prosecution's conviction. She argued a burglary
25 statute for enhancement which has nothing to do with the

1 statute of failure to register. There was several objections
2 made in my transcript that were played an important role in my
3 being conviction -- in my being convicted that were never
4 raised in the appellate brief that was filed with the courts
5 and these were things that I addressed to her in her -- in
6 letters to her through and also conversation on telephone.

7 Q: What were those issues?

8 A: Well, there was testimony that that proved beyond a
9 reasonable doubt that I was innocent that was not accepted
10 into the Court. These issues was not raised into the
11 appellate brief.

12 Q: When you say not accepted to the Court, what do you mean?
13 Can you explain that?

14 A: I mean, they was evidence that was presented at trial
15 that the jury was not allowed to hear based on certified
16 information which was a government agency who was certified to
17 provide information to the public but yet they ruled them
18 uncertified. So, that was a issue that I felt was prejudice
19 because this is public knowledge that is inserted into the
20 database for informational purposes and therefore you didn't
21 accept it, therefore I felt that that as prejudiced in the
22 courts due to the fact that you didn't allow this evidence
23 that proved beyond a reasonable doubt that I was actually
24 innocent because I met the criteria that was called for for my
25 register.

1 Q: So, the -- essentially, what you are saying is Mr. Moss
2 objected to it, you argued about it, the Court would not admit
3 that evidence, and you asked the appellate public defender to
4 address it in her appeal and she did not; is that what you're
5 saying?

6 A: Right.

7 Q: Okay. What else about the appellate public defender's
8 representation of you was ineffective other than that?

9 A: Just mostly everything that that I brought to her
10 attention that was in error in my case she never argued. She
11 never discussed, she never brought to the Court.

12 Q: And we need to set forth what everything was when you say
13 everything.

14 A: Well, there was evidence where the charging officer had
15 wrote a note stating in the note that she gave me until
16 September the 10th to be registered. Okay. That was vital
17 evidence to prove my innocence. She never -- the Courts never
18 allowed it to be accepted into the Court for determining my
19 innocence of the charge being presented. There was issues
20 with the indictment, that I was never indicted until after.
21 There was issues ---

22 Q: After what?

23 A: Huh?

24 Q: After what?

25 A: After I was charged, after I was set for trial I was

1 actually indicted after I was already set for trial, so ---

2 Q: Did your trial counsel bring that up?

3 A: Right, we brought up the indictment issue.

4 Q: Okay. And so he, he argued and preserved it for the
5 record, correct?

6 A: Yes, sir.

7 Q: And you asked your appellate public defender to address
8 that and she did not; is that what you're saying?

9 A: Right.

10 Q: Okay.

11 A: And then there was issues -- I guess that's what it was,
12 I can't recall everything because I don't really have the --
13 and just like I say the ineffective assistance, the fact of
14 the writing being a issue, that was never argued, it was never
15 raised into the briefing.

16 Q: When you say writing, you're talking about the notice
17 requirement being to the appropriate authority to inform them,
18 correct?

19 A: Right, cause the whole main issue that the Courts; the
20 prosecution relied upon was the fact of the supposed law that
21 stated I was supposed to in writing notify.

22 Q: And did you ask the appellate defender to appeal that for
23 you?

24 A: Yes, yes, sir.

25 Q: And did she?

1 A: She never argued it. She only argued one issue, which
2 was she used a burglary statute for enhancement purposes.

3 Q: And had, had she presented those, would you have -- do
4 you feel that you would've prevailed?

5 A: Well, if the Courts respect the laws of the Courts, yes,
6 sir.

7 Q: And were you imprisoned for three years because of the
8 conviction that you got?

9 A: Three years and three months.

10 Q: Any other claims for ineffective assistance of counsel
11 for your appellate public defender?

12 A: Let's see. I guess more or less I would argue or raise
13 the fact it was ineffective assistance of counsel due to the
14 fact that had she done a proper review of my sentencing sheet,
15 she would have seen that it was not a failure to register that
16 was actually my charge and conviction from Virginia. And so,
17 therefore, I felt she was ineffective in the fact that she
18 never presented that -- this charge that was from Virginia was
19 not in -- is not in -- is not the same charge as the charge
20 here in South Carolina for failure to register.

21 Q: Is that it, Mr. Alford?

22 A: That would be all that I could bring forth right now,
23 sir.

24 MR. SELWA: Your Honor, that is all we have on the
25 proffer testimony.

1 THE COURT: All right.

2 Cross examination?

3 MR. JAMES: I have no cross examination for Mr. Alford.
4 I do have a little bit of argument if the Court would be
5 willing to entertain it.

6 THE COURT: All right. Well, let's -- there's no cross
7 examination, sir. You may step down next to your attorney.

8 Further witnesses on behalf of the applicant, Mr. Selwa?

9 MR. SELWA: No, Your Honor.

10 THE COURT: All right. Very good.

11 All right. It's the applicant's motion for post-
12 conviction relief. So, I'll hear from you first, Mr. Selwa
13 and then I'll hear from the assistant attorney general.

14 ARGUMENT BY SELWA:

15 MR. SELWA: Your Honor, Mr. Alford has claimed that he
16 wasn't given due process to address the issues of not having
17 evidence admitted and allowing the higher courts to address
18 that, Your Honor. We would ask to give him that opportunity
19 by granting his post-conviction relief. Mr. Alford claims
20 that the conviction in Virginia was not in line with what
21 would've been considered an enhancement conviction and
22 therefore should not have been applied in his conviction
23 ultimately leading to his conviction for a third in South
24 Carolina for failure to register. Your Honor, we feel that
25 his claims could be addressed by appellate public defender if

1 that's the case but also that it should've been in court
2 documents that he had as well as the documentation from the
3 notice of the supervisor that he was checking in with. Your
4 Honor, we would ask that you grant the PCR based on that
5 matter.

6 THE COURT: All right. Mr. James?

7 MR. JAMES: Your Honor, just to be clear, this is
8 argument based on the state's pending motion to dismiss the
9 ineffective assistance of ---

10 THE COURT: Yes, sir. You ---

11 MR. JAMES: Just making sure that if I ---

12 THE COURT: Yes, sir. If you don't prevail on this, then
13 you're able to call Mr. Moss as a witness.

14 MR. JAMES: Thank you, Your Honor.

15 MOTION FOR DIRECTED VERDICT:

16 MR. JAMES: Respectfully, Your Honor, the issue raised by
17 Mr. Alford that the Virginia conviction should not contribute
18 to his enhancement was exactly the issue raised by appellate
19 counsel on appeal, and therefore appellate counsel did exactly
20 what she was supposed to do and exactly what Mr. Alford wanted
21 to do and the Court of Appeals ruled on it and dispensed with
22 it in an unpublished opinion and found that the intent of
23 legislature in enacting the sex offender registry law was to
24 protect the public from those offenders who may reoffend and
25 implicitly permitted the Virginia statute to be used to

1 enhance here.

2 He argues in his proffer that the ineffective assistance
3 of appellate counsel is based on her attempts to compare this
4 issue to the burglary statute. Your Honor, I think that's
5 facially without merit, the specific means by which appellate
6 counsel attempts to argue. Her case is not in and of itself a
7 ground for ineffective assistance of appellate counsel. Your
8 Honor, what he has to show is that there was some issue that
9 she did not raise that would've been superior. And
10 furthermore, I would note that Mr. Alford himself, in making
11 his argument, attempted to compare the enhancement statute to
12 DUI enhancement.

13 Furthermore, Your Honor, as to the other issues that Mr.
14 Alford raised, there needs to be some showing that they were
15 superior to the issues that were raised by appellate counsel.
16 I believe that on its face, the allegations that he has raised
17 are in no way, shape, or form superior to that issue raised by
18 appellate counsel, especially in light of the fact that that
19 is the number one issue that Mr. Alford has focused his
20 attention on and demonstrates that he believes that it was his
21 best issue. Appellate counsel is not required to raise every
22 non-frivolous issue that is presented by the record, rather
23 she has an affirmative duty to choose only the best issue.
24 Therefore, Your Honor, I respectfully motion that his request
25 to amend the application to include ineffective assistance of

1 counsel be denied as it is without merit as a matter of law.
2 And furthermore, I respectfully request that the Court grant a
3 directed verdict motion as to the remaining allegations before
4 the Court today because they are also without merit as a
5 matter of law.

6 THE COURT: All right. Thank you.

7 Any brief response, Mr. Selwa?

8 MR. SELWA: No, Your Honor.

9 BY THE COURT:

10 THE COURT: All right. As to the matters of appellate
11 counsel, the Court grants the motion to dismiss as presented
12 by the state. I find that, first, the issue was not properly
13 presented in the post-conviction relief application. And, any
14 reasonable interpretation of the post-conviction relief
15 application does not give the state notice of any arguments as
16 to ineffective assistance of appellate counsel.

17 Further, I grant the motion to dismiss on appellate
18 counsel based upon the matters of law presented by the state
19 finding that those are persuasive and that as a matter of law
20 the -- any relief sought by Mr. Alford regarding appellate
21 counsel is unfounded.

22 So, regarding that particular issue, I would ask that you
23 would do an order to that effect, Mr. James, as to dismissing
24 the matter at this stage of the proceedings without hearing
25 from Mr. Moss, the Court respectfully declines to grant the

1 motion as to trial counsel at this point in time until the
2 Court hears from Mr. Moss.

3 You may proceed.

4 MR. JAMES: Thank you, Your Honor. The state would call
5 Mr. Kenneth Moss.

6 THE COURT: All right, sir. Please come around to be
7 sworn.

8 KENNETH MOSS, HAVING BEEN DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 THE COURT: Go ahead, Mr. James.

11 DIRECT EXAMINATION OF KENNETH MOSS BY MR. JAMES:

12 Q: Good morning, Mr. Moss.

13 A: Good morning.

14 THE COURT: Could you sit behind the microphone?

15 A: Sure.

16 THE COURT: Thank you, sir.

17 Q: Did you represent Mr. Billy Alford on these charges?

18 A: I represented him in the charges of failure to register.

19 Q: Were you appointed or retained to represent Mr. Alford?

20 A: I was appointed.

21 Q: How long have you been practicing law?

22 A: Well, 20 years now. At the time, I guess it would've
23 been about 17.

24 Q: And about how much of that has been criminal law?

25 A: Maybe 10 or 15 percent.

1 Q: Do you recall about how many times you've met with Mr.
2 Alford in the course of your representation?

3 A: I don't recall specifically, but I know that I met with
4 him prior to the trial at the J. Reuben Long Detention Center
5 on two or three occasions. One remarkable exception that
6 calls me to remember it is we met in the infirmary room.
7 Normally, counsel doesn't meet with clients in the infirmary
8 room but they were full and they had to make arrangements for
9 me to meet with him and so I met with him in the nurses'
10 station room. But, I know I met with him at least twice and
11 it may've been more times than twice.

12 Q: In those times that you met with Mr. Alford, did you
13 discuss the indictments and offenses charged against him?

14 A: I did not discuss the indictment with him when I met with
15 him at J. Reuben Long because we didn't have one. As a matter
16 of fact, he was scheduled for trial prior to being indicted
17 and the trial was continued for a week or so. The indictment
18 was actually given to me right before the trial and it had not
19 been filed with the clerk. That's one issue that I raised
20 with the Trial Court that he had not been properly indicted.
21 So, we did discuss the charges based on the warrant affidavits
22 but there were no indictment to discuss with him.

23 Q: Did you discuss the charges that had not yet been
24 indicted but had been charged against him?

25 A: We did discuss the charges based on the warrant affidavit

1 on failure to register as a third offense, we did discuss
2 those charges and the potential liability and we discussed
3 also the potential sentence associated with those charges.

4 Q: Did you go over the statute with him?

5 A: We did discuss the statute and the requirements of the
6 statute.

7 Q: Did you explain to him what it was that the state needed
8 to prove beyond a reasonable doubt in order for him to be
9 convicted?

10 A: Yes.

11 Q: Do you recall what you told him?

12 A: Well, just the elements of the statute were that he had
13 to -- it's relevant to this case upon leaving the jurisdiction
14 he had to register with the sheriff in the county of the new
15 residence within three business days and then he had to notify
16 the sheriff of this county where he had last registered that
17 he had left the jurisdiction.

18 Q: Did you explain to him that he had to do so in writing
19 according to the statute?

20 A: Actually, no, because there was a debate about whether or
21 not you had to. At the trial, there was some -- a form
22 presented by sheriff's office witnesses that actually provided
23 different requirements than the statute required. The
24 notification that he was required to give was not clear to
25 him, I was convinced at the time of the trial. So, I'm --

1 maybe I need to back up and ask you to clarify your question.
2 You're talking about prior to the trial or at the trial?

3 Q: Well, we'll start with prior to the trial.

4 A: So, prior to trial we did not discuss anything other than
5 the requirements of the statute. At the time I had in front
6 of me; I don't have it in front of me now.

7 Q: Counsel, are you familiar with Section 23-3-460, biannual
8 registration for life, notification of change of address,
9 notification of local law enforcement agencies?

10 A: I don't -- I'm familiar that the statute exists and I
11 have read the statute in the past even in relation to this
12 trial, but I'm not -- I couldn't recite it to you.

13 Q: Okay. Would it surprise you if I told you that
14 Subsection (f) does in fact require that a person register,
15 provide written notice with three -- within three business
16 days of the change of address to a new state with the county
17 sheriff with whom the person last registered?

18 A: That would not surprise me, no.

19 Q: Okay. Did you discuss with Mr. Alford his prior
20 registration violation in Virginia?

21 A: Briefly we did discuss it, yes.

22 Q: And did you develop an argument based on your
23 determination of the applicability of that Virginia violation?

24 A: I developed an argument and we actually had a pretrial
25 motion on the inability to charge him with failure to register

1 as a third offense. I don't recall that I actually developed
2 an argument based on the elements of the Virginia statute
3 other than it was a jurisdiction other than South Carolina.
4 And my reading of the statute in South Carolina was, was not
5 like the other statutes that actually provided for enhancement
6 based on offenses in out-of-state jurisdictions. So, I did
7 develop an argument that he should not be charged as a third
8 offense, but not based on the elements of the Virginia
9 statute.

10 MR. JAMES: I beg indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. JAMES:

13 Q: The argument you did develop, did you present it to the
14 Court?

15 A: Absolutely, both pretrial and during the trial.

16 Q: Did Mr. Alford bring to your attention directives that he
17 received from Horry County law enforcement about what he
18 needed to do in order to move and register?

19 A: He did bring those directives to my attention and they
20 were later revealed by the sheriff's deputy's notes, I recall
21 specifically how frustrating it was because the notes were --
22 frankly, Rule 5, *Brady* was not complied with. And information
23 was not provided to us prior to trial as was requested both by
24 the public defender prior to me being appointed as conflict
25 counsel and also by me after becoming appointed as counsel.

1 We both submitted Rule 5, *Brady* requests. Documents were
2 provided timely but nothing in the documents provided
3 evidenced the assertions that Mr. Alford had made that he did
4 notify the sheriff's office. At trial, one of the deputy's
5 notes was produced. I think it -- I don't recall her name,
6 but I recall reading it this week, and the notes did evidence
7 exactly that that Mr. Alford was asserting and that was that
8 he did contact the sheriff's office and made them aware of
9 where he was. He did not do so in writing and that was very
10 clear in the record that he did not so in writing, but he did
11 contact them by phone and that as evidenced at the trial.

12 Q: Did you raise your issue that the materials had not been
13 provided to the Court at the time of trial?

14 A: Absolutely, I did. And I was very summarily dismissed in
15 an argument.

16 Q: Did you attempt to introduce any records from the State
17 of Florida showing Mr. Alford's attempt to comply with
18 registration requirements?

19 A: Yes, on numerous occasions I attempted to introduce, I
20 think it was three exhibits and was denied the opportunity to
21 introduce them at the trial. I did try, without introducing
22 them into evidence, I did also because they'd been marked, I
23 did try to examine a sheriff's deputy based upon the existence
24 of those documents or that there was compliance with that part
25 of the statute and was not permitted to do so at the objection

1 of the state.

2 MR. JAMES: I have no further questions, Your Honor.

3 THE COURT: All right.

4 Cross examination?

5 MR. SELWA: Thank you, Your Honor. I do not have any
6 questions for Mr. Moss at this time.

7 THE COURT: All right. Very good.

8 All right. Mr. Moss, you may step down, sir.

9 Is there any reason that Mr. Moss cannot be excused at
10 this time from the appellate?

11 MR. SELWA: No, sir.

12 MR. JAMES: No objection, Your Honor.

13 THE COURT: All right. Mr. Moss, you're excused to go
14 back to your regular activities, sir.

15 MR. MOSS: Thank you.

16 THE COURT: All right. So, any further witnesses on
17 behalf of the state?

18 MR. JAMES: Not at this time, Your Honor, no.

19 THE COURT: All right. Very good.

20 BY THE COURT:

21 THE COURT: All right. Then as to the matters the Court
22 did not dismiss. I dismissed as a matter of failure of notice
23 and a matter of law the ineffective assistance of appellate
24 counsel, but as to the other issues raised in the post-
25 conviction relief application, I've allowed those to proceed

1 through the testimony of Mr. Moss and I'll hear your arguments
2 on that, Mr. Selwa.

3 MR. SELWA: Your Honor, this is in regards to the motion
4 to dismiss ---

5 THE COURT: No, no, I granted the motion to dismiss as to
6 appellate counsel, as to no notice ---

7 MR. SELWA: I'm sorry.

8 THE COURT: --- and as a matter of law, but I allowed in
9 some -- expecting your arguments on his post-conviction relief
10 application on the issues he raised as to the matters you put
11 forth, the unlawful conviction, Fourteenth Amendment, those
12 things.

13 MR. SELWA: And, Your Honor, was Your Honor ruling on the
14 directed verdict motion or ---

15 THE COURT: No, no, I'm -- I'm not going to -- I'm not
16 gonna grant a directed verdict motion. I'm gonna make my
17 decision based upon the entirety of the record as to his
18 arguments regarding the -- those issues he brought up of
19 unlawful conviction, Fourteenth Amendment, due process
20 violation.

21 MR. SELWA: Thank you, Your Honor. I misunderstood you
22 there.

23 ARGUMENT BY SELWA:

24 MR. SELWA: Your Honor, my argument would be -- and Mr.
25 Alford's argument would be that basically he wasn't afforded

1 the ability to have his evidence admitted into court, which
2 would under his claim submit or substantiate his, his
3 innocence in the case and does not believe that further the
4 appellate public defender -- well, I'm sorry, scratch that --
5 he does not believe that his counsel was allowed to present
6 the evidence which would've ultimately led to his non-
7 conviction in that case, Your Honor. And, we feel that had
8 that testimony or documentation been allowed in, would've
9 supported part of his defense.

10 Your Honor, we're asking that the post-conviction relief
11 be granted on those bases.

12 THE COURT: All right. Very good.

13 All right. Mr. James?

14 ARGUMENT BY JAMES:

15 MR. JAMES: Your Honor, Applicant doesn't actually allege
16 anything that trial counsel did wrong. There were a number of
17 issues identified prior to and during trial by trial counsel
18 and by the applicant that were raised to the Court and ruled
19 upon by the Court. So, at that point, any further
20 consideration of those issues would be direct appeal issues
21 not appropriate for further consideration on post-conviction
22 relief, including but not limited to the allegation of a *Brady*
23 violation, the applicability of the prior Virginia conviction
24 for the purposes of enhancement, and the requirement of a
25 writing in order to violate the statute.

1 Your Honor, trial counsel did everything that he was
2 supposed to do and to the extent that Mr. Alford continues to
3 disagree with the rulings of the Trial Court, Judge
4 Cottingham, those would've been direct appeal issues. Your
5 Honor, the state's position as it was stated before is that
6 they're not very good direct appeal issues but direct appeal
7 issues, nonetheless, they would remain for the purposes of
8 considering the appropriateness of ineffective assistance of
9 counsel. So, therefore, Your Honor, the state would
10 respectfully request that the application of relief be denied.

11 THE COURT: All right. Well, let me ask you a question.
12 I agree that he does not have a claim for ineffective
13 assistance of trial counsel because the Court finds that the
14 trial counsel raised the issues that Mr. Alford had to the
15 Trial Court and they were, as Mr. Moss indicated, dismissed
16 and the Court wouldn't allow him to proceed on those. But,
17 what about his argument of due process or Fourteenth Amendment
18 violation that the -- these are -- I'm stating his argument,
19 I'm not saying this is what the Court is ruling here but that
20 these are proper matters, that the Trial Court was incorrect
21 in the application of law, and that due process requires that
22 the Court grant the post-conviction relief application; what
23 do you say to that argument?

24 MR. JAMES: Your Honor, he originally had a trial and was
25 represented by competent counsel who raised all of the issues

1 that he identified and raised all the issues that Applicant
2 specifically identified. He raised them to the Court and got
3 rulings thereupon. Your Honor, that is what due process
4 requires that he be provided a forum to appear in and a forum
5 to make his arguments in, and a forum in which to receive
6 rulings thereupon. To the extent, again, that he disagrees
7 with those, those rulings, the appropriate course of action
8 would have been to raise them on appeal.

9 Now, of course, because there were a considerable number
10 of objections in this trial and it's actually a very active
11 trial transcript, I believe it may be the most objection dense
12 transcript that I've had an opportunity to read through in my
13 course of representing the state on post-conviction relief
14 actions, so there were a tremendous number of potential issues
15 that could've been raised on appeal. Ultimately, the one
16 considered best issue was the one that was raised.

17 Ultimately, this is in many respects what he was
18 convicted of, something of a status offense. We was required
19 to provide written notice within three days. The materials
20 that were kept out were kept out because they didn't go to the
21 issue of whether or not he provided written notice within
22 three days. They provide a panoply of other excuses and
23 reasons why he did not do so and a variety of reasons of why
24 he endeavored by other means to give notice that he was
25 relocating to the State of Florida, but they don't get to the

1 core issue that was at hand at trial that he did not provide
2 written notice within three days of his moving. So, Your
3 Honor, ultimately, I believe that the Trial Court ruled
4 correctly and there was no violation of Applicant's due
5 process. And therefore, the application should be denied.

6 THE COURT: Thank you, sir.

7 RULING OF THE COURT:

8 THE COURT: In this particular matter, it's clear that
9 23-3-460(f) says that if a person required to register
10 pursuant to this article moves outside of South Carolina, the
11 person must provide written notice within three business days
12 of the change of address to a new state to the county sheriff
13 with whom the person last registered. That statute was in
14 effect, that particular subsection was in effect at the time
15 that the defendant below, the applicant here, moved to
16 Florida. He was required to give the written notice. It is
17 clear from the transcript of record and the testimony here
18 today that he did not give the written notice as he was
19 required to do so.

20 Further, the issue of the applicability of the Virginia
21 statute, first the Virginia statute and the conviction was not
22 presented to this Court for review. But, besides that, here
23 it is in the record that the defendant had a prior conviction
24 from the State of Florida for -- I'm sorry -- for the State of
25 Virginia that was the failure to -- failure to register or as

1 it was stated giving false information, which is contained
2 within the South Carolina statute. So, whether or not that
3 was an argument to be made, the matter was raised by trial
4 counsel, it was ruled upon, that's what due process requires.
5 I do not find that there were any matters that Mr. Alford
6 complains of that were not properly raised by trial counsel.
7 And all those matters were properly or were ruled upon by the
8 Trial Judge as set forth in the transcript of record.

9 Any issues of whether or not they should have been
10 appealed, as I've indicated prior, are not before this Court
11 because of the failure of the applicant in his application to
12 raise that issue in his post-conviction relief application.
13 Therefore, the post-conviction relief application of Mr.
14 Alford in 2017-CP-26-729 is denied.

15 Mr. James, I want you to do an order regarding this 2017
16 case and within, as you asked for, not later than 30 days. I
17 would hope that it would be sooner but at the outside within
18 the 30 days.

19 MR. JAMES: I'll certainly endeavor to do so, Your Honor.

20 THE COURT: All right, sir.

21 Thank you very much.

22 MR. JAMES: Thank you.

23 MR. SELWA: Thank you, Your Honor.

24 (ADJOURNED.)

25

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, 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 hearing held in the case of Billy Leon Alford v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on February 22, 2018, as reported by Dixie C. Eubank.

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

A handwritten signature in black ink, appearing to read 'Kay H. Richardson', is written over a horizontal line.

Kay H. Richardson

Official Court Reporter

July 10, 2018.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
Billy L. Alford,	)	Case No.: 2017-CP-26-00729
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Billy L. Alford ("Applicant") on February 3, 2017. Respondent made its return on or about December 15, 2017. The Court convened an evidentiary hearing into the matter on Thursday, February 22, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Kenneth Moss, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was previously confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the April 2014 term of the Horry County Grand Jury for a sex offender registry violation

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(2014-GS-26-01587). Kenneth Moss, Esq. represented Applicant on the charges. Scott Hucks and Travis Hyman, both of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury on May 14, 2014. The jury found Applicant guilty as indicted on May 15, 2014. Judge Cottingham sentenced Applicant for his third offense to imprisonment for a term of five years, provided that upon service of four years, the balance would be suspended with probation for three years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by LaNelle Cantey DuRant, Esq., who raised to the appellate courts the following issue:

Did the trial court err in allowing the state to charge [Applicant] with failure to register with the Sex Offender Registry as a third offense when the S.C. Code Section 23-3-460 and 23-3-470 (A) (B) (3) do not require that out of state convictions for failure to register be counted for enhancement purposes in South Carolina?

Final Brief of Appellant at 3, State v. Alford, App. Case No. 2014-001202. The South Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion. State v. Alford, Op. No. 2016-UP-364 (S.C. Ct. App. filed July 20, 2016). The Remittitur was issued on August 8, 2016.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Unlawful conviction"
 - a. "I was never charged or convicted for a 2nd offense Therefore I can't be convicted w/ a 3rd Offense"
2. "Due Process of Law 14th Amendment Violation"
3. "Ineffective Assistance of Counsel"

At the evidentiary hearing, Applicant, during his testimony, attempted to raise new allegations of ineffective assistance of appellate counsel and proffered testimony to that claim.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she 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." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Challenge Enhancement

Applicant alleges Counsel was ineffective in failing to adequately challenge the use of a Virginia conviction as a basis for enhancement under S.C. Code Ann. § 23-3-470. Under that statute, “[a] person convicted for a second offense is guilty of a misdemeanor and must be imprisoned for a mandatory period of three hundred sixty-six days,” but “[a] person convicted for a third or subsequent offense is guilty of a felony and must be imprisoned for a mandatory

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period of five years, three years of which shall not be suspended nor probation granted." S.C. Code Ann. § 23-3-470(B)(2), (3).

During pre-trial motions, Counsel argued the indictment charging Applicant with a third offense was invalid as a matter of law:

MR. MOSS: My position is he can't be charged with a third offense in South Carolina.

COURT: Why?

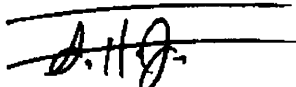
MR. MOSS: This statute regulates what has to happen in South Carolina, and it defines what's criminal in South Carolina.

[...]

Our State has no business defining what's required in other states. Now, the evidence in this case is going to deal with State of Virginia conviction. Okay. Virginia laws are different than South Carolina laws, and whether or not he violated the law in Virginia is for Virginia to prosecute and punish not South Carolina. What this article requires, and the contents of this statute, is what you have to do in South Carolina, and it's clear you have to register in South Carolina if you have an out-of-state conviction, not for failure to register, but an out-of-state conviction for one of the laundry list of sex offenses.

(Pre-Trial Tr. 7-9). Judge Cottingham denied Applicant's pre-trial motion to quash the indictment. (Pre-Trial Tr. 10-12). Counsel renewed the motion at the close of the State's case-in-chief, arguing the State had only proven one prior conviction for failure to register, at which time Judge Cottingham renewed his denial. (Trial Tr. 118-19). Counsel renewed again at the close of all evidence, at which time Judge Cottingham again renewed his denial. (Trial Tr. 169, 11, 2-6). The issue was thereafter raised to the South Carolina Court of Appeals, which affirmed Applicant's conviction in the unpublished opinion previously noted.

At the evidentiary hearing, Applicant argued that the Virginia conviction that provided the basis for his enhancement was not "failure to register," but "providing false information."



See Va. Code Ann. § 18.2-472.1. Applicant argued that the elements of the Virginia violation were not the same as the South Carolina violation and, therefore, reliance upon the Virginia conviction for enhancement purposes was inappropriate. Furthermore, Applicant argued, the South Carolina statute did not provide for the use of out-of-state registry violations for enhancement purposes

Counsel testified he raised the issues regarding the validity of the indictment to the trial court. Counsel recalled arguing the Virginia conviction could not be used to enhance Applicant's South Carolina registry violation.

The Court finds no deficiency on the part of counsel. Counsel clearly and completely raised Applicant's arguments to the trial court before, during, and after his trial. Counsel secured rulings from Judge Cottingham in each instance. Applicant's arguments offered to this Court are, where they are at all distinguishable, no more compelling than those offered by Counsel at trial. Accordingly, Applicant has failed to meet his burden under Strickland, and as such his request for relief by way of this allegation is **DENIED**.

2. Failure to Successfully Introduce Evidence of Applicant's Efforts to Comply

Applicant alleges Counsel was ineffective in failing to successfully introduce evidence of Applicant's efforts to comply with the sex offender registry.

At trial, during the cross-examination of Sgt. Loraine Avant, Counsel first attempted to introduce evidence that Applicant tried to comply with both South Carolina and Florida registry laws. (Trial Tr. 54-72). In the course of that effort, Counsel navigated a litany of objections from the State on hearsay and relevance grounds, with mixed success, to elicit testimony to argue that Applicant called the Horry County Sheriff's Office, followed their instructions, and repeatedly attempted to register in Florida. Counsel attempted to introduce documents from the

State of Florida to show Applicant's efforts in registering in that State, but was firmly rebuffed by the trial court. Counsel similarly attempted to elicit testimony from Applicant himself to establish that Applicant did what he was told to do by the Horry County Sheriff's Office, but was constrained by sustained objections to hearsay. (Trial Tr. 137-42).

At the evidentiary hearing, Applicant testified the trial judge did not allow him to present substantial evidence that he tried to comply with the requirements of the law to the best of his ability. Applicant recalled Counsel argued for the admission of evidence showing Applicant did what he was told to do, but that the Judge would not admit the evidence. Counsel similarly recalled attempting to admit the Florida records, but that Judge Cottingham kept them out.

The Court finds no deficiency on the part of Counsel. For whatever the Florida records were worth, Counsel attempted repeatedly to have them admitted to the trial court, argued diligently for their admission, and received rulings from the bench. There was no more that Counsel could have done. Accordingly, Applicant's request for relief by way of this allegation is **DENIED.**

B. Ineffective Assistance of Appellate Counsel

At the evidentiary hearing, Applicant alleged for the first time that appellate counsel was ineffective in her argument that out-of-state convictions for failure to register pursuant to a sex-offender registry do not count for enhancement purposes under S.C. Code Ann. §§ 23-3-460 and 23-3-470. Respondent promptly objected that no notice was given of the issue, that the issue was not raised in the original application, and that the State consequently had not subpoenaed appellate counsel to appear as a witness in response to any claims against her. Applicant argued in reply that the application's broad allegation of "ineffective assistance of counsel" was not specific to trial or appellate counsel, that the names of both trial and appellate counsel were listed

J. H. J.

in the contents of the application, and thus the application should be read to raise a broad allegation of ineffective assistance of both trial and appellate counsels.

Trial courts have broad discretion on procedural matters to find reasonable ways, within the flexibility of Court rules, to reach the merits of *substantial* issues. Mangal v. State, 421 S.C. 85, 99-100, 805 S.E.2d 568, 576 (2017). As such, in the interest of justice and due caution, this Court permitted Applicant to proffer testimony in support of his allegation. Upon consideration of that proffered testimony and the record as a whole, the Court finds the interests of justice would not be meaningfully advanced by extraordinary action of excusing Applicant from his procedural default. See Mangal, 421 S.C. at 97, 805 S.E.2d at 574 (The courts have, in most cases, refused to excuse the pleading and issue-preservation requirements that apply in all civil cases). Applicant's arguments are unpersuasive as a matter of law. Accordingly, Applicant's request to amend his application mid-hearing and be excused of his procedural default is **DENIED**. As such, any issues regarding the performance of appellate counsel are not properly before this Court, and the Court declines to rule upon their merits.

C. Due Process

Applicant alleges he was denied due process of law. "The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review." Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 352, 354 (2008). However, an application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v.

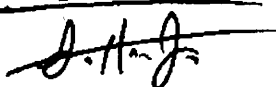
State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973).

Review of the entirety of the record before this Court indicates that Applicant appeared at trial with Counsel who was fully prepared to defend his liberty interest, testified in his own defense, had the opportunity to introduce evidence, cross-examined adverse witnesses, and enjoyed meaningful judicial review. To the extent that Applicant might argue he was not afforded adequate notice due to the late provision of a true billed indictment, Counsel timely objected to the indictment on that basis and thus that issue was raised to the trial court, ruled upon, and preserved for appeal—accordingly any error in that judgment is not cognizable in this action. That Applicant's efforts in defending himself were circumscribed by the adverse rulings of the trial judge does not amount to a denial of due process, but rather reflects the procession of due process in its regular course. All the matters complained of were raised by trial counsel and ruled upon by the trial judge. Applicant is entitled to no more than that. Accordingly, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED**.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453

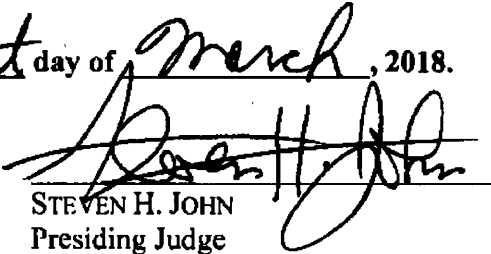


(1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

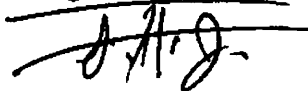
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21st day of March, 2018.


STEVEN H. JOHN
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

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WITNESSES

Lorraine Avant Horry County Sheriff

DOCKET NO. 2014-GS-26-**01587**

The State of South Carolina
County of Horry

J. Scott Hucks

14H00044

COURT OF GENERAL SESSIONS

April, 2014 TERM

ARREST WARRANT NUMBER

M974562

CDR: 2435 23-03-0470(B)(3)

DOA: 1/1/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: APR 24 2014

VERDICT

Guilty

Regan H. Hucks

Foreperson of Petit Jury

Date: 05/15/14

VS.

Billy Leon Alford
W/ M

Palm Coast, FL 32164

DOB: 1970

SSN:

ATTORNEY: Moss Jr., Kenneth Ray

Indictment for

SEX OFFENDER
REGISTRY VIOLATION

ORIGINAL

Jimmy A. Richardson, II, Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on April 24, 2014, the Grand Jurors of Horry County present upon their oath:

SEX OFFENDER REGISTRY VIOLATION

CDR: 2435 23-03-0470(B)(3)

That Billy Leon Alford did in Horry County on or about September 6, 2012, being required to register as a sex offender pursuant to Section 23-3-460, S.C. Code of Laws, 1976, as amended fail to register with the sheriff's department in the county where he resides, provide written notice of any change of address or notification of a change in attendance, enrollment, employment, or vocation status at any public or private school, in violation of Section 23-3-470 (A), (B)(3), 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.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

329

COUNTY OF
STATE

Horry

VS.

Billy Leon Alford

AKA:

Race: WHITE Sex: M Age: 43

DOB: [REDACTED]-1970 SS#: [REDACTED]

Address:

City, State, Zip: Palm Coast, FL 32164

DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Sex Offender Registry Violation, fail to register - 3r

INDICTMENT/CASE#: 2014GS2601587

A/W#: M974562

Date of Offense: 9/6/2012

S.C. Code §: 23-03-0470(B)(3)

CDR Code #: 2435

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 23-03-0470(B)(3) of the S.C. Code of Laws, bearing CDR Code # 2435

☐ 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:

SCB76948

Hucks, J. Scott

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 4 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90 + 40.00 = 173.90

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 6/6/15 2018

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2041

5/15/14