

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Post-Conviction Relief

R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No.: 2018-000646

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Lewis Chisolm #196380, ..... Appellant,

vs.

State of South Carolina, ..... Respondent.

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APPENDIX

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S.C. SUPREME COURT

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|                          | ) |                           |
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|                          | ) |                           |
| Plaintiff,               | ) |                           |
|                          | ) |                           |
| -vs-                     | ) | Transcript of Record      |
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|                          | ) |                           |
| Lewis Chisolm,           | ) |                           |
|                          | ) |                           |
| Defendant.               | ) |                           |
|                          | ) |                           |

August 10-11, 2015  
Beaufort, South Carolina

B E F O R E:

The Honorable Brooks Goldsmith, Judge

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

Julie Kate Keeney, Esquire  
Mary Jordan Lempesis, Esquire  
Attorneys for the Plaintiff

Jared Newman, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Circuit Court Reporter

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| <u>NO.</u> | <u>DESCRIPTION</u>    | <u>ID.</u> | <u>EV.</u> |
|------------|-----------------------|------------|------------|
| C-1        | Miranda form          |            | 17         |
| C-2        | DVD with statement    |            | 19         |
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COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption  
or change in thought  
ellipses . . . trailing off  
[ph] phonetically written  
[sic] written as said

1 AUGUST 10, 2015

2 (WHEREUPON, the proceedings began at 2:32 p.m. The  
3 defendant was present with his counsel of record.)

4 MS. LEMPESIS: And, Your Honor, just for the record,  
5 Mary Jordan Lempesis for the State, as you know. In my case  
6 -- my name is beside this case on the trial roster. Ms.  
7 Keeney has been assisting me with it. She's actually going  
8 to be first-chairing the case and I'll just be sitting second  
9 chair with her, just for the Court's information.

10 THE COURT: Okay. And Mr. Newman is going to be  
11 handling this by himself?

12 MS. LEMPESIS: I think so, Your Honor.

13 MR. NEWMAN: I'd like to have backup.

14 MS. KEENEY: Your Honor, I'm handing up the statute for  
15 -- regarding amending indictments.

16 THE COURT: Thank you.

17 MS. KEENEY: And it states that -- it talks about the  
18 requirements of amending an indictment and, as you can see  
19 from the indictment, Mr. Chisolm is charged with criminal  
20 sexual conduct, first-degree. The State would like to amend  
21 the indictment to criminal sexual conduct, third-degree,  
22 which would actually lessen Mr. Chisolm's exposure. It only  
23 carries zero to 10 years as opposed to the zero to 30 that he  
24 is looking at under first-degree.

25 None of the -- this amendment does not change the nature

1 of the offense. I mean we're still alleging that the sexual  
2 battery occurred. The only thing that we're not alleging  
3 anymore is that it was aggravated with force. So it's just  
4 the lesser included offense and I don't think the defendant  
5 is prejudiced at all by the amendment. Thank you.

6 THE COURT: All right. Thank you. Let's hear from Mr.  
7 Newman.

8 MR. NEWMAN: If it pleases the Court, Your Honor, Judge  
9 Goodstein always tells me to oppose anything the State wants  
10 to do. However, I am familiar with the amending of  
11 indictments, particularly in burglary cases where the State  
12 is unable to prove an aggravating factor from a first degree  
13 to a second or third degree.

14 I do think I have to concede that we are on notice of  
15 what -- what the allegations and the general facts of the  
16 crime are; so we really can't claim any prejudice as to that,  
17 Your Honor. I am going to take this position that the  
18 defense stands silent on any amendment and leave that for the  
19 Court to make a ruling.

20 THE COURT: All right. The Court will grant the motion,  
21 finding that there is no prejudice that has been demonstrated  
22 to the defendant. The indictment is so amended.

23 MS. KEENEY: Thank you, Your Honor.

24 THE COURT: What else?

25 MR. NEWMAN: Your Honor, what -- there is a possibility

1 this case also may resolve. We have a Jackson v. Denno  
2 motion to make. The State and the defendant have agreed  
3 that, if the Court agrees, probably the best course of action  
4 is we'll go ahead and pick a jury, leave them unsworn. We  
5 can do our Denno hearing. As a result of that, it may change  
6 the status on a plea or not to plea.

7 THE COURT: Right.

8 MR. NEWMAN: And we'd suggest maybe starting the case  
9 tomorrow afternoon. That way -- they haven't got their  
10 victim here. I'm not saying anything bad. We need -- we  
11 were going to have motions this afternoon, but that would --  
12 if there is going to be a plea, that that would be plenty of  
13 time for the clerk to be able to cancel those jurors from  
14 coming back. In other words, we'll pick the jury and leave  
15 them unsworn until tomorrow.

16 MS. LEMPESIS: And we were thinking it could -- we  
17 wouldn't bring them in until, say, like, 1:00. So we could  
18 start the trial at 1:00 tomorrow and that way we can contact  
19 them if he does, in fact, plead guilty and call them off.  
20 And that may give us time tomorrow morning to handle that.

21 THE COURT: What time would we have them call? Would  
22 they call -- we'd have them call in, won't we? Would they  
23 all call in?

24 THE CLERK: Your Honor, if we -- if we have 12 and if  
25 you have two alternates, that's only 14 phone calls.

1 THE COURT: Okay.

2 THE CLERK: I mean we can. They can call us.

3 THE COURT: Okay.

4 THE CLERK: And we can call them. We can give both  
5 instructions or instructions for them to call us.

6 THE COURT: When do you suppose --

7 MR. NEWMAN: It would not be a long trial either.  
8 There's not that many witnesses.

9 THE COURT: So I don't forget this --

10 MS. LEMPESIS: Yes, sir.

11 THE COURT: When do you propose that we tell the jury to  
12 call us or us call them?

13 MS. LEMPESIS: I would tell them -- I would instruct  
14 them to call back tonight after 6:00 and, actually, the jury  
15 we pick, I would instruct them to report tomorrow at, say,  
16 1:30.

17 MR. NEWMAN: 1:30 would be good, but --

18 MS. LEMPESIS: And then --

19 MR. NEWMAN: -- you might also tell them that --

20 THE CLERK: We can call them if you call it off.

21 MS. LEMPESIS: We can contact them. If they haven't  
22 heard from us by noon tomorrow to come. If they -- or  
23 otherwise, we'll call them. How about that?

24 THE COURT: If they'll -- if they'll give us a good --

25 THE CLERK: Your Honor, we can give the jurors

1 instructions in the room, the ones that are selected.

2 MR. NEWMAN: That's what I'm saying. You only need to  
3 do those 12 or 13.

4 THE CLERK: Yes. Just the only ones that are selected.  
5 We'll address that with them and we'll tell them what time --

6 THE COURT: All right.

7 THE CLERK: -- to call.

8 THE COURT: So --

9 THE CLERK: Not a problem.

10 THE COURT: Remember, here's what I -- here's what I  
11 normally do is I ask the attorneys to identify themselves to  
12 the jurors and identify any potential witnesses that they  
13 might be called to testify in the case. And then I ask the  
14 question -- does anybody have any specific voir dire?

15 MS. KEENEY: None from the State, Your Honor.

16 THE COURT: Just regular?

17 MR. NEWMAN: The only thing I have in addition to your  
18 standard is ask if any juror, member or close family member  
19 been the victim of a violent crime.

20 THE COURT: A violent crime question? Okay.

21 MR. NEWMAN: Yes, sir. And I -- much beyond that,  
22 you'll read the charge and the final thing is going to ask  
23 them if they can be fair and impartial, even though what the  
24 charge is. I don't know of anything much beyond that.

25 I'm sorry. I need one more thing. If any juror is a

1 law enforcement officer, former law enforcement officer or  
2 close family member.

3 THE COURT: All right.

4 MS. KEENEY: Your Honor, none from the State. I do have  
5 our witness list, if I can hand it up?

6 THE COURT: I'll tell you who might want it more than me  
7 would be this lady sitting over here.

8 (WHEREUPON, the jury panel was brought into the  
9 courtroom and roll call, qualification, and jury  
10 selection was held beginning at 2:45 p.m. Not  
11 transcribed herein.)

12 (WHEREUPON, the proceedings resumed at 3:23 p.m. as  
13 follows.)

14 THE COURT: Now, any matters the Court needs to consider  
15 concerning the composition or selection of the jury from the  
16 State?

17 MS. KEENEY: None from the State, Your Honor.

18 THE COURT: And from the defense?

19 MR. NEWMAN: No, sir, Your Honor. Thank you.

20 THE COURT: Ladies and gentlemen, I'm getting ready to  
21 let you go for the day and for tomorrow. I'm going to ask  
22 you to call tomorrow at 6 p.m. or after for instructions on  
23 what to do next. Instructions, of course, could say come in  
24 the next morning. They could say thank you very much, we  
25 appreciate your service. You're still on jury duty until

1 either me or Judge Cooper or some judge says go home or  
2 unless that message says thank you so much for your service.  
3 Any questions?

4 (WHEREUPON, there was no response.)

5 THE COURT: Ladies and gentlemen, you're excused.

6 (WHEREUPON, the jury panel was excused and exited the  
7 courtroom at 3:23 p.m.)

8 THE COURT: And, ladies and gentlemen, I'm actually  
9 getting ready to let you go also until tomorrow at 1:00,  
10 unless you get a call from the Clerk's Office that says don't  
11 come in. That's kind of strange, but we have some motions  
12 and other things to take care of in this case before we  
13 actually begin the trial of the case.

14 But in every case where we have a delay, we tell people  
15 we need to know how to -- if something happens -- and all  
16 kind of things could happen. I've actually had to call off a  
17 jury when an attorney had a heart attack and went to the  
18 hospital. We couldn't -- we couldn't continue the case.  
19 There's all kind of things that could happen.

20 But when you walk out of here, I'm going to ask you to  
21 step into the jury room and give information to the bailiffs  
22 about how we can get in touch with you and, of course, you  
23 know how to call back this evening or call here to find out  
24 about whether something's happened to your case. But if  
25 something happens this afternoon or this evening, we'll call

1 you. If something happens in the morning, we'll call you.

2 It kind of puts you on hold I know, but the only other  
3 way to handle it is to just to tell you to come in at 1:00  
4 tomorrow and, then if something has happened, we can send you  
5 back home. So we want to try to let you know as soon as  
6 possible if something does happen.

7 But until you come back between now and tomorrow and  
8 really until the case is completely over, I'm going to ask  
9 you not to talk to anybody about this case. And I know you  
10 don't know much about it at all. Don't talk to anybody about  
11 cases like this.

12 You know, you don't -- you really shouldn't care what  
13 people -- other people think about these kinds of cases.  
14 It's what you think after you hear all the evidence that's  
15 been presented. It's what you think after everything has  
16 been presented to you, after the attorneys have made their  
17 opening statements, their closing arguments, and I tell you  
18 about the law. That's what counts, not what other people  
19 think. Your friends and neighbors tell you what they think  
20 about these kind of cases.

21 Don't get on the Internet. Don't do any research about  
22 this case. I don't know if there's any -- any publication  
23 anywhere that carried it or not, but don't do any research.  
24 You need to make a decision in this case about what happens  
25 based on what happens in this courtroom.

1       So if you don't hear from us or from the Clerk's Office,  
2 we'll see you at 1:00 tomorrow, ladies and gentlemen.  
3 Anybody have a question? Anybody have a problem?  
4       A JUROR: In this courtroom?  
5       THE BAILIFF: No, sir.  
6       THE COURT: In the -- in the jury room.  
7       A JUROR: Jury room?  
8       THE COURT: Yeah. They'll show you.  
9       A JUROR: Okay.  
10       THE COURT: All right. Ladies and gentlemen, you're  
11 excused until 1:00 tomorrow, but I ask you to step into the  
12 jury room first and give that information to the bailiffs.  
13       (WHEREUPON, the jury exited the courtroom at 3:28 p.m.)  
14       THE BAILIFF: The jury is clear, Your Honor.  
15       THE COURT: You know, one of those jurors looked awfully  
16 unhappy. I couldn't tell if he was unhappy just to be here  
17 or unhappy about us telling him to come back tomorrow or  
18 what.  
19       MR. NEWMAN: He was unhappy sitting back there.  
20       THE COURT: Was he?  
21       MR. NEWMAN: Yes.  
22       THE COURT: All right. What are we doing?  
23       MS. KEENEY: Your Honor, at this time, the State is  
24 ready for a Jackson v. Denno hearing.  
25       THE COURT: All right.

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 MS. KEENEY: The State calls Sgt. John Kelleher.

2 THE COURT: Raise your right hand, please. Do you swear  
3 or affirm the evidence you're about to give is the truth?

4 THE WITNESS: Yes, sir.

5 THE COURT: Please be seated.

6 MS. KEENEY: May it please the Court.

7 MR. NEWMAN: Your Honor, just if I can interrupt the  
8 State? There are two recorded statements: one is a video  
9 recording and one is a written statement. The video-recorded  
10 statement is not at issue. At issue is the written statement  
11 taken after Mr. Chisolm had contacted an attorney.

12 THE COURT: Okay.

13 MS. KEENEY: May it please the Court.

14 THE COURT: Sure.

15 JOHN KELLEHER, being first duly  
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. KEENEY:

19 Q: Officer Kelleher, where do you work?

20 A: I work with the Beaufort County Sheriff's Office.

21 Q: What's your position?

22 A: Investigation.

23 Q: What are your duties?

24 A: I'm an investigator on the northern side of the county.

25 Q: How long have you been in investigations?

JOHN KELLEHER - DIRECT BY MS. KEENEY

- 1 A: Ten-and-a-half years now.
- 2 Q: I'm going to take you back to September 17<sup>th</sup> of 2013.
- 3 Did you have an opportunity to have contact with Lewis
- 4 Chisolm?
- 5 A: Yes.
- 6 Q: Can you tell the Court about that contact?
- 7 A: On that evening we had contacted him by telephone?
- 8 Q: Yeah. The first time you ever spoke to him.
- 9 A: The first time ever?
- 10 Q: Uh-huh.
- 11 A: Was I contacted him by telephone to tell him that I'd
- 12 like to meet with him at the -- and I explained to him where
- 13 the investigation office was.
- 14 Q: And did he agree to meet with you?
- 15 A: Yes.
- 16 Q: What time did you meet with him that day?
- 17 A: It was sometime about midday. I don't remember exactly
- 18 what time it was.
- 19 Q: And he came in voluntarily?
- 20 A: Yes.
- 21 Q: He was not under arrest at the time?
- 22 A: No.
- 23 Q: He was not in custody?
- 24 A: No.
- 25 Q: Who was present during the interview?

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 A: Myself, Mr. Chisolm, and Investigator Frazier.

2 Q: Did it appear that the defendant was under the influence  
3 of alcohol or drugs?

4 A: No, he wasn't.

5 Q: Do you know if the defendant had any physical or mental  
6 disabilities?

7 A: Not to my knowledge, no.

8 Q: Did you ever threaten -- did you or Investigator Frazier  
9 ever threaten him or coerce him during the interview?

10 A: No.

11 Q: Did you or Investigator Frazier ever make him any  
12 promises?

13 A: No.

14 Q: What does the interview room look like?

15 A: Basically, it's an old house, probably from the 50s or  
16 60s, and it's the kitchen.

17 Q: Okay.

18 A: With a -- at a round table and that's where we sat.

19 Q: How long did the interview last?

20 A: Probably less than an hour.

21 Q: Was the defendant ever denied access to the telephone?  
22 Did he ever ask to use a telephone and you refused it?

23 A: No.

24 Q: Did he ever ask for any food or drink and you refused  
25 it?

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 A: No.

2 Q: Did he ever ask to go to the bathroom and you refused to  
3 let him?

4 A: No.

5 Q: Before you began the interview, did you advise the  
6 defendant of his Miranda rights?

7 A: Yes, I did.

8 Q: How did you do that? Verbally or in writing?

9 A: On a Beaufort County Sheriff's Office form.

10 MS. KEENEY: May I approach the witness, Your Honor?

11 THE COURT: I'm sorry. What?

12 MS. KEENEY: May I approach the witness?

13 THE COURT: Sure.

14 MS. KEENEY: I'm showing -- oh, my goodness. Can I mark  
15 this as a Court's exhibit? Thank you.

16 BY MS. KEENEY:

17 Q: I'm showing you what's been marked as State's Exhibit 1  
18 for identification purposes only. Do you recognize this  
19 document?

20 A: Yes, I do.

21 Q: What is this document?

22 A: This is the Miranda form that we use on a regular basis.

23 Q: And how do you recognize this? Is there any signatures  
24 on there?

25 A: Witness. That's my signature.

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 Q: That's your signature? Is this a fair and accurate copy  
2 of the Miranda form that you presented to Mr. Chisolm on  
3 September 17<sup>th</sup> of 2013?

4 A: Yes.

5 MS. KEENEY: At this time, the State moves to admit  
6 State's Exhibit 1.

7 THE COURT: Without objection??

8 MR. NEWMAN: Merely as a Court's exhibit, yes, sir.

9 THE COURT: All right.

10 MS. KEENEY: Okay.

11 (WHEREUPON, the Miranda form was marked and entered as  
12 Court's Exhibit Number 1.)

13 BY MS. KEENEY:

14 Q: What does that form say?

15 A: Basically, it identifies the Sheriff's Office Miranda  
16 Warning Form, the case number, the location where the  
17 interview was taking place, the name of the subject, the date  
18 of his birth, and then it has the four statements of rights,  
19 his Miranda rights. He initials each one. The waiver of  
20 rights, that he understands, that the rights were explained  
21 to him. He initials the right in mind if he wishes to talk  
22 with us now and he signs it. And the actual date and the  
23 time is my -- is my handwriting and then underneath is my  
24 signature, date and time.

25 Q: So the defendant indicated that he wished to talk to you

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 and waive his rights under Miranda?

2 A: Yes.

3 MS. KEENEY: May I approach the witness?

4 THE COURT: Certainly.

5 BY MS. KEENEY:

6 Q: I'm showing you what's been marked as State's Exhibit 2  
7 for identification purposes. Do you recognize this disk?

8 A: Yes.

9 Q: How do you recognize it?

10 A: My initials and the date on it right here.

11 Q: Okay.

12 A: And then the case number.

13 Q: You've reviewed this disk?

14 A: Yes, I have.

15 Q: Is this a fair and accurate copy of the interview that  
16 took place on that day?

17 A: Yes.

18 MS. KEENEY: At this time, the State moves to admit this  
19 as a Court's exhibit.

20 THE COURT: Without objection?

21 MR. NEWMAN: Is that -- we don't object to that -- that  
22 statement that is on that recording.

23 THE COURT: Okay.

24 MS. KEENEY: And, Your Honor, I wasn't going to play it  
25 just since he doesn't object to it. If you -- do you want me

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 to play it for your review?

2 MR. NEWMAN: The -- as I said, I don't have an objection  
3 to the recorded interview.

4 THE COURT: Right.

5 MR. NEWMAN: The objection I have to is the written  
6 statement that came later in a separate interview.

7 THE COURT: Okay.

8 MS. KEENEY: Okay.

9 (WHEREUPON, the disk was marked and admitted as Court's  
10 Exhibit Number 2.)

11 BY MS. KEENEY:

12 Q: Officer Kelleher, what did the defendant say to you  
13 during this recorded interview? Can you give us a recap?

14 A: He acknowledged that he knows the victim and the family  
15 of the victim. That he picked her up and went to school --  
16 took her to school.

17 Q: Did he admit to any sexual encounters during the first  
18 interview?

19 A: Not that I recall, no. I'd have to go through my notes  
20 and stuff, but I don't think so.

21 Q: Okay. Did he admit that -- did he admit to taking  
22 MINOR back to his home or to the road where he lives on?

23 A: Once again, I'd have to review my notes.

24 Q: Okay.

25 A: I can't recall that.

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 Q: Investigator Kelleher, did you have another encounter  
2 with Mr. Chisolm that day?

3 A: That day? Yes, I did.

4 Q: And where was that encounter?

5 A: I believe that was at his residence.

6 Q: And where was his residence?

7 A: I don't recall off the top of my head his address. It's  
8 on Broad River Blvd. I can't remember the exact number.

9 Q: Broad River?

10 A: Yes.

11 Q: Sound right? Beaufort?

12 A: Yes.

13 Q: Okay. Can you describe the area where his house was  
14 located?

15 A: It's -- it's a -- it's a trailer. It has a yard and a  
16 fence around it. In the backyard, it has some pavement to  
17 it. He has a little shed in the back also and it's fenced  
18 in.

19 Q: Okay. Did it appear that the defendant was under the  
20 influence of drugs or alcohol?

21 A: No.

22 Q: Who else was present during this encounter?

23 A: During that encounter was Capt. Bromage.

24 Q: Okay. Did you or Capt. Bromage ever threaten or coerce  
25 the defendant in any way --

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 A: No.

2 Q: -- in this encounter? Did you or Capt. Bromage promise  
3 the defendant anything?

4 A: No.

5 Q: Was the defendant in custody?

6 A: No.

7 Q: He wasn't going to be under arrest at that time, was he?

8 A: No, he wasn't.

9 Q: How long did this interview last?

10 A: Approximately an hour.

11 Q: Was the defendant denied access to the telephone?

12 A: If he chose to, yes, he had access.

13 Q: Okay. And was he denied access to food or drink?

14 A: No.

15 Q: Okay. Did you read the defendant his Miranda rights  
16 during this encounter?

17 A: I believe I did. I believe I verbally told him, but I  
18 don't -- I don't recall.

19 Q: But he wasn't under -- he wasn't in custody at the time?

20 A: No, he wasn't. No.

21 Q: Okay. Did he indicate to you who -- you know, you said  
22 there was his house and then there was a trailer behind his  
23 house. Did he indicate to you who lived in the house behind  
24 his house?

25 A: I believe he said it was his cousin.

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 Q: Okay.

2 A: But his cousin wasn't home.

3 Q: And you said there was a shed?

4 A: There was a shed in his -- on his property.

5 Q: And Mr. Chisolm signed a consent form for you to search  
6 that shed?

7 A: Right. He indicated that was his man cave, if you will,  
8 and he did consent to us looking inside.

9 Q: Okay. At that time, did Mr. Chisolm make any comments  
10 about an attorney?

11 A: No. No.

12 Q: Do you need to look at your report to refresh your  
13 memory?

14 A: Probably so, ma'am.

15 Q: Okay.

16 MS. KEENEY: I beg the Court's indulgence. I'm going to  
17 give you your entire report, if that's okay.

18 (WHEREUPON, Ms. Keeney and Mr. Newman conferred off the  
19 record, after which the proceedings resumed as follows.)

20 MR. NEWMAN: Okay.

21 MS. KEENEY: May I approach the witness?

22 THE COURT: Sure.

23 BY MS. KEENEY:

24 Q: I'm showing you your report.

25 A: Thank you.

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 Q: Page 17 at the bottom -- or the top, but the last  
2 sentence.

3 A: Page 17?

4 Q: Yes.

5 A: Okay. This is when we were at the shed at his property.

6 Q: What did he say to you?

7 A: He said -- there actually behind the house approximately  
8 15 yards was a double-wide mobile home. He said his cousin,  
9 Roger -- that was his cousin's house and that was . He  
10 agreed -- he agreed to let us look inside the interior of the  
11 shed and he signed a voluntary consent form. He called it  
12 his man cave. Then we just -- we looked inside.

13 Q: Did he make any mention about a Bruce Marshall or did he  
14 ask you about whether or not he should get an attorney?

15 A: According -- no. He -- he said he was going to contact  
16 Bruce Marshall at the end of our conversation and stuff when  
17 we were done.

18 Q: Okay. And to your knowledge, Bruce Marshall is an  
19 attorney; correct?

20 A: Yes, ma'am.

21 Q: Okay. What is the next thing that happened? On  
22 September 18<sup>th</sup>, 2013, did you receive a phone call from Bruce  
23 Marshall?

24 A: On the 18<sup>th</sup>, I was contacted by Mr. Marshall via  
25 telephone. He said he was not presently representing Lewis

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 Chisolm, but was trying to gauge the incident. He should be  
2 -- it should be known that I have a working relationship with  
3 Mr. Marshall. So I knew him. We have a good relationship.

4 Q: So did you tell him what the investigation --

5 A: I informed him enough of the investigation that I was  
6 doing of what was going on.

7 Q: And what did Mr. Marshall say after that?

8 A: He requested -- he said he would request a sit-down with  
9 Mr. Lewis at 2:00 -- at our 2:00 meeting on the same day and  
10 I said that was fine.

11 Q: Okay. And Mr. Marshall -- did he indicate whether or  
12 not he was representing Mr. Lewis or --

13 A: He told me he was not representing him at the time, but  
14 he was just there inquiring, gathering information.

15 Q: Okay. So did --

16 A: That was fine.

17 Q: Did you, in fact, meet with Mr. Marshall and Mr. Lewis  
18 that same day?

19 A: I met with Mr. Marshall at 2:00. Yes, we did meet.

20 Q: Okay. And the defendant was not in custody?

21 A: No.

22 Q: He came in voluntarily?

23 A: Yes, he did.

24 Q: Did the defendant appear to be under the influence of  
25 drugs or alcohol?

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 A: No, he did not.

2 Q: Did you -- who was present? Just you from the Sheriff's  
3 Office?

4 A: I believe so, yes.

5 Q: Did you threaten or coerce the defendant at any time  
6 during this interview?

7 A: No, I did not.

8 Q: Did you promise the defendant anything?

9 A: No, I did not.

10 Q: Do you remember if you read the defendant his Miranda  
11 rights during this interview?

12 A: I believe I did not at that time, no.

13 Q: Do you remember how long this interview lasted?

14 A: It was not very long, less than an hour. Maybe 30  
15 minutes, if that.

16 Q: Did you deny the defendant access to the telephone or  
17 food or drink?

18 A: No, not at all.

19 Q: Did you deny him access to the bathroom?

20 A: No.

21 Q: Okay. What did the defendant say to you?

22 A: At that time, his -- I remember now. His version was a  
23 little different of what happened from what he told me  
24 originally. He said that he was nervous and he said that  
25 MINOR actually came on to him in a sexual way.

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 Q: He didn't mention that during his first interview though  
2 --  
3 A: No.  
4 Q: -- did he?  
5 A: No.  
6 Q: Did he make it -- did he tell -- give you details of how  
7 she came on to him?  
8 A: He said she began to masturbate herself on the couch  
9 that they were in, which later turned out to be the trailer.  
10 Not the actual shed, but the trailer behind the house. That  
11 would have been his cousin's. She began masturbating herself  
12 and came on to him.  
13 Q: Did Mr. Marshall make any comments or did he stop Mr.  
14 Lewis at any time during this interview?  
15 A: No.  
16 Q: Did you have another encounter with the defendant after  
17 this?  
18 A: Yes, I did, on that day about 5:30 in the afternoon --  
19 early evening, afternoon.  
20 Q: Was it that day or was it September 19<sup>th</sup> of 2013, which  
21 would be the very next day?  
22 A: You're testing my memory.  
23 Q: Sorry.  
24 A: I have the 18<sup>th</sup> that we met at 5:30.  
25 Q: Where did you meet?

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 A: You're correct. It was the 19<sup>th</sup>. I'm sorry.

2 Q: How did --

3 A: It was at Mr. Lewis's residence.

4 Q: How did this interaction first come about? Did you just  
5 go over to his house or what happened?

6 A: I tried -- I believe I tried to reach him on the phone,  
7 but I couldn't get a hold of him; so I went to the house.

8 Q: Okay. Did you advise the defendant of his Miranda  
9 rights?

10 A: Yes, I did.

11 MS. KEENEY: May I approach the witness? May I  
12 approach?

13 THE COURT: Sure.

14 BY MS. KEENEY:

15 Q: I'm handing you what's been marked as State's Exhibit 3  
16 for identification purposes only.

17 A: Uh-huh.

18 Q: Do you recognize this document?

19 A: This is the same type of form that we use for Miranda  
20 forms and my signature is right there with the 19<sup>th</sup> of  
21 September, 2013, at 5 p.m. it was signed.

22 Q: And the rights are the same rights that you've  
23 previously read?

24 A: Yes.

25 Q: The same exact as the first form?

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 A: Yes, it is.

2 Q: And did the defendant wish that he -- that he wished to  
3 waive his right to an attorney and the right to remain silent  
4 and speak?

5 A: He requested to speak with us. He agreed to speak with  
6 me, yes.

7 Q: He agreed to speak with you? Did you threaten the  
8 defendant during this interview?

9 A: No.

10 Q: Did you promise the defendant anything?

11 A: No.

12 Q: Did you coerce him in any way?

13 A: No.

14 Q: Who was at his house?

15 A: At the time when I arrived, his -- he told me his five-  
16 year-old son was -- and him. His five-year-old son and him  
17 were the only ones at home.

18 MS. KEENEY: And, Your Honor, I apologize. I move to  
19 admit that as a Court's exhibit.

20 THE COURT: It's without objection?

21 MR. NEWMAN: Correct.

22 (WHEREUPON, the Miranda form was marked and admitted as  
23 Court's Exhibit Number 3.)

24 BY MS. KEENEY:

25 Q: Did -- how long would you say this interview lasted?

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 A: Less than an hour.

2 Q: The defendant wasn't in custody, was he?

3 A: No.

4 MS. KEENEY: May I approach the witness again?

5 THE COURT: You may.

6 BY MS. KEENEY:

7 Q: Let me give you what's been marked as State's Exhibit 4  
8 for identification purposes only.

9 A: Sure.

10 Q: Do you recognize this document?

11 A: Yes, I do.

12 Q: How do you recognize this document?

13 A: It's a statement form that we use on a regular basis  
14 with the Sheriff's Office. This was the statement that Mr.  
15 Chisolm wrote to me on that evening.

16 Q: And that's a fair and accurate copy of the statement?

17 A: Yes, it is.

18 MS. KEENEY: At this time, the State moves to admit  
19 State's Exhibit -- what does this say? 4?

20 THE WITNESS: Number 4.

21 MS. KEENEY: 4 for -- sorry. Just for the Court's  
22 purposes for this hearing.

23 MR. NEWMAN: I'm sorry. I wasn't listening.

24 MS. KEENEY: Moving to admit this as a Court's exhibit  
25 for this hearing.

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 MR. NEWMAN: Yeah. You just showed me that.

2 MS. KEENEY: Uh-huh.

3 MR. NEWMAN: No objection.

4 THE COURT: All right. Admitted without objection as a  
5 Court's exhibit.

6 MS. KEENEY: Yes, sir.

7 (WHEREUPON, the handwritten statement was marked and  
8 admitted as Court's Exhibit Number 4.)

9 BY MS. KEENEY:

10 Q: What did the defendant say to you during this interview?

11 A: During that interview, he actually invited me inside to  
12 talk and he told me how ~~MINOR~~ came on to him again and she  
13 asked him -- she asked him to lick her vagina and he said he  
14 did. That that was all he did. And I told him at that time  
15 I didn't believe him totally. And he told me that -- how he  
16 went to pick her up that morning back on I believe the 17<sup>th</sup>  
17 and took her to the trailer.

18 Q: And he admitted to sexual --

19 A: He said he put his -- later in the conversation, he said  
20 he put his penis inside ~~MINOR~~'s vagina a few times, but it  
21 was too tight and he said he used a -- basically, like, a  
22 piece of plastic or so as a condom and he flushed that down  
23 the toilet later.

24 Q: At any point in time during this interview, did the  
25 defendant wish -- did he indicate that he wished to speak to

JOHN KELLEHER - DIRECT BY MS. KEENEY

1 an attorney?

2 A: Not to me. He did not.

3 Q: And per your knowledge, you didn't believe Mr. Marshall  
4 represented the defendant; correct?

5 A: Correct. Because Mr. Marshall told me he did not  
6 represent him.

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

8 BY MS. KEENEY:

9 Q: Did you arrest the defendant at that time?

10 A: Not at that time, no.

11 Q: When was he arrested?

12 A: The next day. He was allowed to turn himself in.

13 Q: Okay.

14 MS. KEENEY: No further questions for this witness.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. NEWMAN:

18 Q: You have procedures on interview procedures; correct?

19 A: Yes, sir.

20 Q: All right. And those procedures include when you bring  
21 them in that you have a second officer with you to assist  
22 you; is that not correct?

23 A: Most -- most times.

24 Q: And likewise, be a witness?

25 A: Most times, yes.

JOHN KELLEHER - CROSS BY MR. NEWMAN

1 Q: Okay. And in the recorded interview at the office,  
2 Jeremiah Frazier was there; correct?

3 A: Correct.

4 Q: All right. And everything is seen and discussed on  
5 audio and video?

6 A: Yes.

7 Q: All right. And the reason you do that is so that  
8 somebody can't claim that you pressured them or threatened  
9 them or coerced them or if they ask for an attorney and you  
10 told them they couldn't have one; correct?

11 A: Correct.

12 Q: All right. And the second time when you went to Mr.  
13 Chisolm's house, you followed procedure and Capt. Bob Bromage  
14 came with you; correct?

15 A: Correct.

16 Q: All right. The third time when you went out there, you  
17 came by yourself; isn't that correct?

18 A: That's correct.

19 Q: All right. And you brought no recording device?

20 A: I didn't have one. No, I did not.

21 Q: Okay. Do you have a recording device?

22 A: I do have one issued to me, yes.

23 Q: Okay. And you didn't take an audio recording of this  
24 interview?

25 A: No, I did not.

JOHN KELLEHER - CROSS BY MR. NEWMAN

1 Q: Purposely?

2 A: No.

3 Q: Okay.

4 A: Because I didn't have one.

5 Q: And you'd had a meeting before that Mr. Marshall, who is  
6 an attorney, came to; correct?

7 A: Yes.

8 Q: And Mr. Marshall was sick with cancer; is that correct?

9 A: Later I found that out, yes.

10 Q: All right. And Mr. Chisolm indicated to you that he  
11 wanted to retain Mr. Marshall?

12 A: He was inquiring about Mr. Marshall. I don't know what  
13 their arrangements were, nor their discussions.

14 Q: All right. When you came out to his house, Mr. Chisolm  
15 asked you if he could call Mr. Marshall?

16 A: I don't recall if he did or not.

17 Q: Okay. You don't recall? So if Mr. Chisolm testifies  
18 that he asked you if he could call Mr. Marshall, you don't  
19 recall whether that statement happened or not?

20 A: I don't recall, but if you wanted to, I could honestly  
21 say that would be up to him. That would be fine.

22 Q: Okay. So then he attempted to tell you I want to call  
23 an attorney?

24 A: I don't recall him ever telling me that he wanted to  
25 call an attorney. If he wanted an attorney at that time, I

JOHN KELLEHER - CROSS BY MR. NEWMAN

- 1 would have ended the conversation.
- 2 Q: All right. And Mr. Chisolm's five-year-old son was at  
3 home?
- 4 A: Yes, he was.
- 5 Q: All right. And are you aware his five-year-old son is  
6 sickly as well and has a heart condition?
- 7 A: No, I wasn't.
- 8 Q: All right. And you told Mr. Chisolm that you needed to  
9 get this down, that you were in a hurry, that you were  
10 getting ready to go on vacation?
- 11 A: Yes, I was. I was going on vacation. That's right.
- 12 Q: And you told him he needed to write this statement out?
- 13 A: After he told me what he did, he wrote the statement  
14 out.
- 15 Q: Okay. But he still asked for -- if he could call Mr.  
16 Marshall?
- 17 A: He never indicated to me that he wanted an attorney.
- 18 Q: Okay. And you became a little heavier handed by telling  
19 him that we needed to get this done, you were going on  
20 vacation, you need to write this statement?
- 21 A: Well, Mr. Jack, my going on vacation really has nothing  
22 to do with it. I could tell from my experience that Mr.  
23 Chisolm had something to tell me and he would feel probably a  
24 lot better if he got it out.
- 25 Q: And you were going to --

JOHN KELLEHER - CROSS BY MR. NEWMAN

1 A: And he made the choice.

2 Q: And you were going to get it out of him? In fact, you  
3 went so far as to say that, you know, look, if you don't talk  
4 to me now, we're just going to have to take you in. Your son  
5 is going to have to be in custody of DSS for some period of  
6 time. You told him that, did you not?

7 A: I might have said that, but my choice was not to take  
8 him in and not have DSS involved in the situation and make it  
9 easier for him.

10 Q: So you promised him leniency if he would write this  
11 statement that matched what the -- your understanding was?

12 A: No. No.

13 Q: Well, you just said you promised him leniency if he  
14 writes the statement. You're not going to have to take --  
15 get DSS involved, not going to have to take him in right now.  
16 So you promised him leniency?

17 A: Not -- I understand the way you're putting it, but  
18 that's not how it was.

19 Q: That's exactly how it was.

20 A: No, it wasn't because you weren't there. You couldn't  
21 say how it was.

22 Q: All right. So Mr. Chisolm could say how it was?

23 A: Yeah. It's up to Mr. Chisolm.

24 Q: Oh, he's going to testify.

25 A: I'm sure, but that's his interpretation. He chose to

JOHN KELLEHER - CROSS BY MR. NEWMAN

- 1 make the statement of what happened.
- 2 Q: After you had the talk about DSS?
- 3 A: I did not threaten. I said I would rather not probably
- 4 have DSS come in because his wife was at work and he had no
- 5 other family members available, he says.
- 6 Q: So it was just you and Mr. Chisolm there and a five-
- 7 year-old boy?
- 8 A: Yes, sir.
- 9 Q: All right. No audio recording?
- 10 A: Nope. Lesson learned there.
- 11 Q: No second detective with you to verify your testimony?
- 12 A: It was -- it was actually after the normal working
- 13 hours.
- 14 Q: Are you telling me the Sheriff's Department -- the
- 15 Beaufort County Sheriff's Department can't have a second
- 16 detective?
- 17 A: Nope. I didn't say that.
- 18 Q: You said it's after normal working hours?
- 19 A: There was no one available at that time. I went to see
- 20 Mr. Chisolm. He told me what happened. He wrote it --
- 21 Q: There was no one available? There wasn't even a road
- 22 deputy?
- 23 A: Don't interrupt me now. He told me what happened and
- 24 then he wrote it out.
- 25 Q: All right. There wasn't even a road deputy available so

JOHN KELLEHER - CROSS BY MR. NEWMAN

1 that you could have somebody witness this?

2 A: There was probably a road deputy, but at the time Mr.  
3 Chisolm was very cooperative. After he gave his statement  
4 and had written it out and he had his cry and got that  
5 pressure off him, he probably felt better.

6 Q: You don't know any of that.

7 A: No. I said probably, but I don't know that.

8 Q: Okay. But you didn't have a second deputy --

9 A: No, I did not.

10 Q: -- or somebody there?

11 A: I was there by myself. No.

12 Q: Okay.

13 A: But I did not threaten Mr. Chisolm in any way.

14 Q: And you turned up the heat on him?

15 A: No, I didn't.

16 Q: All right.

17 MR. NEWMAN: I don't have any further questions, Judge.

18 THE COURT: Okay. Redirect?

19 MS. KEENEY: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. KEENEY:

22 Q: When you met with Mr. Chisolm, when you and Bob Bromage  
23 went to his house --

24 A: Yes.

25 Q: -- on September 17<sup>th</sup>, 2013 -- and if you need to, look at

JOHN KELLEHER - REDIRECT BY MS. KEENEY

1 your report to refresh your memory. He asked you if he  
2 needed an attorney at that time; correct?

3 A: Yes, he did.

4 Q: And you said --

5 A: It's entirely up to him, I believe.

6 Q: And then he said he was going to contact Bruce Marshall  
7 and talk to him?

8 A: Yes.

9 Q: Did you ask him anything after that or did you stop the  
10 interrogation?

11 A: Where would I find that on the report real quick?

12 Q: That page 17.

13 A: I believe at that time when he said he was going to  
14 contact Mr. Marshall, we probably did end -- we probably did  
15 at that time, yes.

16 Q: And so to the best of your memory, you don't -- you  
17 don't recall him ever asking for Bruce Marshall when you went  
18 to his house on September 19<sup>th</sup> by yourself?

19 A: No. I do not really recall him ever saying that.

20 MS. KEENEY: Nothing further.

21 MR. NEWMAN: Just follow up on that.

22 RECROSS EXAMINATION

23 BY MR. NEWMAN:

24 Q: So when -- when you and Capt. Bob there went out to the  
25 house and Mr. Chisolm said that he was going to call Bruce

JOHN KELLEHER - RECROSS BY MR. NEWMAN

1 Marshall, you -- he made a request for an attorney and y'all  
2 left; correct?

3 A: You mean Capt. Bromage?

4 Q: Yeah.

5 A: Okay. Well, you said Capt. Bob. I just wondered, sir.  
6 We went there. I remember we talked to him. He gave us  
7 consent to search his shed, take some pictures. I honestly  
8 don't recall. I don't have it here in my report of ever any  
9 talk of Bruce Marshall on the 17<sup>th</sup>. He said -- at the end of  
10 my sentence, it says he said he was going to contact Bruce  
11 Marshall and talk, but that -- according to my report, that  
12 was after he allowed us to search his house and everything.

13 Q: That's not what I'm asking you. I'm asking you --

14 A: Okay.

15 Q: -- just what the solicitor asked you. On the 18<sup>th</sup> when  
16 you and Capt. Bob Bromage went out there and --

17 A: On the 17<sup>th</sup>?

18 Q: -- you said that he said that I'm going to contact -- I  
19 want to contact an attorney, I'm going to contact Bruce  
20 Marshall, and you said that we terminated; correct?

21 A: I believe so, yes. That was on the 17<sup>th</sup>.

22 Q: Okay. It was on the 17<sup>th</sup>?

23 A: Yes, sir.

24 Q: All right. And the contact that you had with him on the  
25 19<sup>th</sup>, Mr. Chisolm didn't call you and say I want to talk to

JOHN KELLEHER - RECROSS BY MR. NEWMAN

1 you guys, hey, come on out? You just went out there;

2 correct?

3 A: On the 19<sup>th</sup>, I believe I just went out there, yes.

4 Q: Okay. I want to be real clear on that point. Mr.  
5 Chisolm, after he made a request for an attorney, never  
6 called you back and said I need to talk to you or came and  
7 said I need to talk to you?

8 A: On the 18<sup>th</sup> is when we had our interview where Mr.  
9 Marshall was present, just not representing, but in the  
10 investigation office.

11 A: That's correct. And then --

12 Q: And then --

13 A: And he told me that he was not representing Mr. Chisolm.

14 Q: Okay. That's what he told you?

15 A: Yes.

16 Q: Now, on the 19<sup>th</sup>, at no time did Mr. Chisolm call you and  
17 say come back out to my house on the 19<sup>th</sup>. You went to him;  
18 isn't that correct?

19 A: That is correct.

20 Q: You initiated that contact?

21 A: Yes.

22 Q: Correct?

23 A: Yes.

24 Q: All right.

25 MR. NEWMAN: Thank you.

LEWIS CHISOLM - DIRECT BY MR. NEWMAN

1 MS. KEENEY: Nothing further.

2 THE COURT: Thank you, sir. You may step down. And  
3 anything else from the State?

4 MS. KEENEY: Nothing from the State, Your Honor.

5 MR. NEWMAN: We'd call Mr. Chisolm for the limited  
6 purpose of this hearing.

7 THE COURT: I understand.

8 THE CLERK: Put your right hand on the Bible. Do you  
9 solemnly swear or affirm that the testimony you give to the  
10 Court in this trial shall be the truth, so help you God?

11 THE DEFENDANT: I do.

12 THE CLERK: Thank you.

13 LEWIS CHISOLM, being first duly  
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. NEWMAN:

17 Q: Mr. Chisolm, how old are you?

18 A: I'm 51 years old.

19 Q: All right. And you live at Broad River Blvd. in  
20 Beaufort?

21 A: Yes, sir.

22 Q: All right. Where are you from, Mr. Chisolm?

23 A: I'm originally from Beaufort. I was raised in an area  
24 called Possum Hill.

25 Q: Okay.

LEWIS CHISOLM - DIRECT BY MR. NEWMAN

1 A: 48.

2 Q: All right, sir. Now, you were interviewed on the 17<sup>th</sup>.  
3 You went in and gave an interview at the detective station;  
4 correct?

5 A: Yes.

6 Q: All right. And you were asked questions about what  
7 happened on a certain day and what happened with Destiny;  
8 correct?

9 A: Yes.

10 Q: All right. And you knew this family; correct?

11 A: Yes. Very well.

12 Q: All right. And you were concerned enough after your  
13 interview by the way the questions were being asked of you  
14 and what was being asked of you that you contacted Mr.  
15 Marshall; is that correct?

16 A: Yes.

17 Q: And you knew Mr. Marshall was an attorney?

18 A: Yes.

19 Q: All right. Were you aware Mr. Marshall was in poor  
20 health at that time?

21 A: No.

22 Q: All right. And Mr. Marshall came to you -- with you for  
23 an interview; is that correct?

24 A: Yes, he did.

25 Q: All right. And did you have discussions with Mr.

LEWIS CHISOLM - DIRECT BY MR. NEWMAN

1 Marshall after the interview?

2 A: Yes.

3 Q: All right. And you were -- you had discussions as in  
4 retaining Mr. Marshall?

5 A: Yes, we did.

6 Q: Okay. Now, on the 18<sup>th</sup>, deputies came back to your house  
7 and they basically wanted to take photographs?

8 A: Well, actually, they looked around and we walked out, me  
9 and the captain, and Mr. Kelleher -- he went back in and took  
10 some photographs. I wasn't inside when he did it, but he  
11 came back and said he took some pictures of some condoms and  
12 some other stuff I had took out of a car that I was  
13 detailing.

14 Q: Okay.

15 A: Yes.

16 Q: And at that point, you were concerned and you had  
17 conversations with Mr. Marshall?

18 A: Yes.

19 Q: All right. And he comes to you at the interview on the  
20 18<sup>th</sup> and then you all have discussions after the 18<sup>th</sup>?

21 A: Yes, we did.

22 Q: All right. Then were you surprised when Mr. Kelleher  
23 showed up at your door on the 19<sup>th</sup>?

24 A: Very surprised.

25 Q: All right. And did you at any time ask him -- when he

LEWIS CHISOLM - DIRECT BY MR. NEWMAN

1 started to question you, did you ask him if you could call  
2 Mr. Marshall?

3 A: Yes. I told him that I needed to call someone because I  
4 didn't have nobody else there to be with my son because  
5 that's when he had told me that, well, he was going to, you  
6 know, call DSS and take my son somewhere for a few hours and  
7 we wouldn't have known where he been at.

8 Q: All right. But I want to be real clear. You wanted to  
9 contact Mr. Marshall?

10 A: Yes. Yes.

11 Q: And you let Detective Kelleher know that?

12 A: Yes.

13 Q: All right. And this is when he started talking about  
14 DSS?

15 A: Yes.

16 Q: And the possibility that you'd be taken away right then?

17 A: Exactly.

18 Q: That your son would be taken into DSS?

19 A: Yes.

20 Q: And he told you that you needed to write this statement,  
21 write it a certain way, he's going to go on vacation, and he  
22 needs this done right now?

23 A: Before he -- in order for him to go on vacation.

24 Q: All right. And you were not able to contact Mr.  
25 Marshall for this interview?

LEWIS CHISOLM - DIRECT BY MR. NEWMAN

1 A: No.

2 Q: But you made it clear to him you wanted to call him?

3 A: Yes, I did.

4 Q: And he did not honor that request?

5 A: He didn't.

6 Q: All right.

7 MR. NEWMAN: Thank you. I don't have any further  
8 questions, Judge.

9 CROSS-EXAMINATION

10 BY MS. KEENEY:

11 Q: Mr. Lewis, I'm going to take you back to -- Mr. Chisolm.  
12 I'm sorry. I'm going to take you back to your interview on  
13 September 17<sup>th</sup> of 2013, the one that was recorded.

14 A: Yes.

15 Q: Do you recall that interview?

16 A: Yes.

17 Q: Officer Kelleher --

18 A: Kelleher.

19 Q: -- and Frazier were there? Do you remember telling  
20 Officer Frazier and Kelleher that there was no reason for  
21 MINOR's DNA -- or your DNA to be on MINOR's lower half of  
22 her body?

23 A: Can you repeat that question again?

24 Q: Do you remember telling them that you never touched her  
25 or, if you touched MINOR, it was, like, a hug?

LEWIS CHISOLM - CROSS BY MS. KEENEY

1 MR. NEWMAN: Your Honor, I think this is outside of the  
2 scope of whether or not there was a Sixth Amendment  
3 violation.

4 MS. KEENEY: Your Honor, it goes to his credibility.  
5 The State is saying that he lied during his first interview  
6 and then he subsequently admitted in his third interview that  
7 he did touch her. So I think it goes to his credibility.

8 THE COURT: All right. I'll overrule the objection.

9 BY MS. KEENEY:

10 Q: Do you remember telling Officer Kelleher that you did  
11 not touch MINOR?

12 A: I don't recall. I recall telling Mr. Kelleher that I  
13 see where y'all are trying to go with this. I remember  
14 telling him that, you know, and that's when he wanted the  
15 DNA.

16 Q: Do you recall Officer Kelleher reading you your Miranda  
17 rights?

18 A: Yes. Yes.

19 Q: And you waived those rights?

20 A: Yes.

21 Q: And neither officer threatened you during that first  
22 interview, did they?

23 A: No, they didn't.

24 Q: They didn't promise you anything, did they?

25 A: No.

LEWIS CHISOLM - CROSS BY MS. KEENEY

1 Q: You came there voluntarily?

2 A: I did.

3 Q: And you left; correct?

4 A: Yes.

5 Q: You weren't arrested? Your second interview with Mr.  
6 Marshall, when he was present, you came there voluntarily;  
7 correct?

8 A: Yes.

9 Q: You weren't threatened?

10 A: No.

11 Q: You weren't promised anything?

12 A: No.

13 Q: And you left; correct? You weren't arrested at that  
14 time?

15 A: No.

16 Q: And then this third encounter with Officer Kelleher, you  
17 said he came to your house?

18 A: Yes, he did.

19 Q: Did he call before?

20 A: No, he didn't.

21 Q: No? And at that time, you did admit that something else  
22 happened was *MINDOL*; correct?

23 A: Yes.

24 Q: You made a further statement?

25 A: Yes.

LEWIS CHISOLM - CROSS BY MS. KEENEY

1 MS. KEENEY: I beg the Court's indulgence.

2 BY MS. KEENEY:

3 Q: Did Officer Kelleher force you to write that statement?

4 A: Well, after he told me that he needed to have the  
5 statement done today, you know, and he said he wanted to go  
6 on vacation and then after he told -- I told him that I would  
7 do the statement because he said he was going to take my son.

8 Q: Are you talking about -- did he say that to you after  
9 you already made the verbal statement to him of what  
10 happened?

11 A: Before I even wrote the statement, he said I need to  
12 have this done today.

13 Q: But you already made a verbal statement to him; correct?

14 A: Yeah. Earlier. When you said a verbal statement before  
15 I made the --

16 Q: Writing.

17 A: Before? Well, it was like I was writing and just  
18 telling him, you know, as we went along. I was just telling  
19 -- he said, well, you know what I -- you know what I'm  
20 looking for. That was his exact words. You know what I need  
21 on there.

22 Q: So you are telling him what happened as you were writing  
23 it?

24 A: I wrote the statement. He looked at it and it was just  
25 the part about where I was telling him about the massage, you

LEWIS CHISOLM - CROSS BY MS. KEENEY

1 know, and he said you know what I'm looking for. You know  
2 what I need on there.

3 Q: Had you already told him that day that -- that you had  
4 -- you tried to have sex with MINOR'?

5 A: No. I did not tell him that that day. I mean that was  
6 just that time when I was writing a statement I was telling  
7 him.

8 Q: So you're saying the first time you told him that --

9 A: We went outside. After I wrote the statement, we went  
10 outside and before that occurred, before he even went -- we  
11 even went outside, a friend of mine popped up at the house  
12 probably like 15 minutes later.

13 Q: Uh-huh.

14 A: And that's when he asked me to tell the guy that he was  
15 just there to -- to interview me about something that was  
16 stolen out of a car in Bluffton that I was detailing the day  
17 before.

18 Q: Okay. You weren't arrested that day, were you?

19 A: No, I wasn't.

20 Q: You were arrested the next day?

21 A: The next day, I went by Mr. Marshall's office and Mr.  
22 Marshall told me that he's going to arrest you when you go  
23 over there. He told me to report to his office the next  
24 morning because I called -- I got in touch with Mr.  
25 Marshall's secretary and she the one tell me, well, she'll

LEWIS CHISOLM - CROSS BY MS. KEENEY

1 call me back. And after that, she calls me back and told me  
2 to come to the office before I turned myself in that Friday  
3 morning.

4 Q: Okay.

5 MS. KEENEY: No further questions.

6 REDIRECT EXAMINATION

7 BY MR. NEWMAN:

8 Q: I just want to be real clear because it's -- I don't  
9 want nobody -- you were surprised when Kelleher showed up at  
10 your house?

11 A: Yes. Because he -- we just had left his office.

12 Q: Okay. And his tone was demanding?

13 A: Yes.

14 Q: All right. There's no doubt that you said that you  
15 wanted to call Mr. Marshall?

16 A: Yes.

17 Q: And you said -- he started talking about DSS and you  
18 needed to write a statement?

19 A: Statement.

20 Q: Right then?

21 A: Yes.

22 Q: Okay. And at that time, did you ever waive your right  
23 to an attorney or try to get an attorney?

24 A: No.

25 Q: Okay.

LEWIS CHISOLM - REDIRECT BY MR. NEWMAN

1 A: You mean as far as waive my right as --

2 Q: Shaky?

3 A: As far as just saying that I needed to call him or for  
4 me for signing the paper?

5 Q: Uh-huh.

6 A: Well, after he came in, he gave me the Miranda rights  
7 and I signed it.

8 Q: But he'd already told you you can't --

9 A: I can't make a phone call.

10 Q: And you can't contact an attorney?

11 A: Yes. Because I didn't have nobody else in my family to  
12 call at that time.

13 Q: And DSS --

14 A: And DSS, yes.

15 Q: He had to get this right now?

16 A: Yeah. Because he was going on vacation that evening.  
17 He already had everything set up to go for vacation and he  
18 had to get that to his captain.

19 Q: Did you feel coerced or pressured into writing that  
20 statement?

21 A: Yes, I did.

22 Q: Did you feel that a promise was extended to you that you  
23 wouldn't be taken to jail then and your son wouldn't be --

24 A: My son wouldn't be taken away. That was the main  
25 reason.

1 MR. NEWMAN: Okay. Thank you, Mr. Chisolm.

2 THE COURT: Cross-examination?

3 MS. KEENEY: Nothing further, Your Honor.

4 THE COURT: All right. Thank you. You may step down.

5 MR. NEWMAN: Just have a seat.

6 THE COURT: Anything else?

7 MR. NEWMAN: If it pleases the Court, Your Honor, I

8 think it's very clear as to this written statement -- I

9 forget what exhibit number that is. 4? The Court reporter

10 tells me it's 4. As to this statement, we're seeking

11 suppression of this statement. We're not seeking suppression

12 of the video review or the other statement that was done with

13 counsel.

14 It is very clear in this matter that in Edwards v.

15 Arizona, violation has occurred and, when Edwards says it's

16 like a steel curtain, once a person that's being interviewed

17 is asserting a right to an attorney, that the government

18 cannot come back to that person.

19 Mr. Chisolm had obviously -- and whether Kelleher is

20 understanding of their relationship or not relationship,

21 clearly Mr. Marshall was acting in a capacity as an attorney

22 during that interview. It was clear to the detective that

23 Mr. Chisolm, as they say in the modern street terminology,

24 was lawyering up or had lawyered up.

25 Immediately thereafter, he went to his residence

1 unannounced. He does admit that the only one home was Mr.  
2 Chisolm and a five-year-old son, who is -- has a number of  
3 illnesses, heart conditions. That the detective violated  
4 BCSO policy by not having a second detective or even -- even  
5 a street deputy. I think that's pretty thin that, well, it  
6 was 5:30 and all the detectives were off.

7 That he does not recall Mr. Chisolm asking for an  
8 attorney, specifically Mr. Marshall, but he didn't deny that  
9 Mr. Chisolm would have asked that because he just doesn't  
10 recall it. Mr. Chisolm, on the other hand, was able to tell  
11 you details, such as the detective admitted that he was on  
12 vacation.

13 And these are typical police tactics to come by  
14 surprise, to lay the pressure on. He was using coercive  
15 language about taking Mr. Chisolm to jail right then if he  
16 didn't make a statement, taking the son to DSS if he didn't  
17 make a statement.

18 And -- and the clearest thing is the Edwards v. Arizona  
19 that Mr. Chisolm had demonstrated to the police that he had a  
20 relationship with an attorney and Mr. Chisolm -- if he had  
21 contacted the police, certainly that would have been fine,  
22 but the police cannot come back and contact Mr. Chisolm under  
23 those circumstances.

24 Plus, Mr. Chisolm's Sixth Amendment rights were  
25 violated. He clearly asked -- he wanted to make a phone

1 call, wanted to call his attorney. It was very -- it was not  
2 equivocal. And was told that he didn't -- he could not do  
3 that, that he needs to fill out these forms and write this  
4 statement. He needs to write it right then or he's going to  
5 be taken to jail and his son is going to be taken to DSS.

6 So you have the pressure and coercion element. You have  
7 a promise element. You also have a glaring Edwards v.  
8 Arizona element that they contacted Mr. Chisolm after they  
9 knew or should have known that he had counsel. And what is  
10 the detective's characterization of that doesn't matter. Mr.  
11 Chisolm believed that he had an attorney-client relationship  
12 with Mr. Marshall, who unfortunately, Your Honor, at that  
13 time was -- he was ill.

14 We'd have Mr. Marshall here. I talked to Mr. Marshall  
15 about this. I just tell you as an officer of the Court -- I  
16 know it's not evidence, but he has verified that he's with  
17 me. I asked Mr. Marshall if I could subpoena him to court  
18 and he told me that he was not well enough to be able to  
19 attend court. So I do not have Mr. Marshall here to confirm  
20 those facts. Unfortunately, he still -- he's in remission,  
21 but he's still very weak from a long bad bout of cancer,  
22 unfortunately. Thank you, Your Honor.

23 THE COURT: All right. Solicitor?

24 MS. KEENEY: Thank you, Your Honor. Just so that we're  
25 clear, I don't see Mr. Newman challenging the first or second

1 statement.

2 MR. NEWMAN: I do not.

3 MS. KEENEY: So I would like to ask for a finding that  
4 those statements were voluntary and admissible.

5 The first statement was basically he picked up *MINOR*  
6 from the bus stop, but he did not have any sexual intercourse  
7 with her. In fact, he said that, you know, the detectives  
8 asked him if -- you know, if she liked him or if she was  
9 interested in him romantically. He said, no, she's not into  
10 me.

11 And in the second statement, when Bruce Marshall came  
12 with him to the investigations office, and that's when the  
13 defendant made the statement that *MINOR* masturbated and  
14 then he took her back to school.

15 I do see the issues regarding the third statement. You  
16 know, in all candor to the Court, I do feel that Mr. Chisolm  
17 did invoke his right to counsel when he brought counsel to  
18 the interview. I don't think I can make an argument that  
19 that was an unambiguous invocation of his right to counsel,  
20 and Officer Kelleher did say that he was the one that  
21 initiated the conver -- the interview, the September 19<sup>th</sup>  
22 interview, where he did make the written statement.

23 So I will leave the ruling up to you in your  
24 understanding of Edwards v. Arizona. Thank you.

25 MR. NEWMAN: And I do, Judge, just to follow-up, think

1 that does speak for itself. I do not -- I do not have a  
2 legal challenge to the first two statements, but the third  
3 one I think is a very clear Edwards violation and, therefore,  
4 should be suppressed as to the third statement, the written  
5 statement and the oral statement that was made  
6 contemporaneously with it.

7 THE COURT: All right. Now, y'all help me out on this.  
8 I missed something in here. When is it -- was it on the 18<sup>th</sup>  
9 or the 19<sup>th</sup> --

10 MR. NEWMAN: The 18<sup>th</sup> would have been the interview that  
11 Mr. Marshall attended.

12 THE COURT: Right. What I mean is is it was the phone  
13 call that Mr. Bromage [sic] was talking about when he -- when  
14 he spoke with Marshall and Marshall says he wasn't  
15 representing him.

16 MS. KEENEY: That was the 18<sup>th</sup>. That was right before  
17 the actual interview. So basically, Mr. Marshall called  
18 Officer Kelleher on the 18<sup>th</sup> and said I don't presently  
19 represent him. I'm just trying to gauge the situation. Can  
20 we meet? And at that point, the officer agreed and they met  
21 later that day.

22 THE COURT: Okay.

23 MR. NEWMAN: I certainly think that Mr. Chisolm's  
24 expectations and understanding on that -- but I think it's  
25 real clear that whether he said he's directly representing

1 him or not, he did appear as an attorney on his behalf. That  
2 would've been Mr. Chisolm's understanding as a layperson. So  
3 when they come back -- when Kelleher comes back to the house  
4 on the 19<sup>th</sup>, we've already established that wall that I want  
5 counsel and the only way to break that wall would have been  
6 for Mr. Chisolm to call Kelleher and say will you please come  
7 out or --

8 THE COURT: So that's what I missed is the timing of the  
9 conversation between Marshall.

10 MR. NEWMAN: Yes, sir. And that's why I believe that  
11 the oral statement with the contemporaneous written statement  
12 on the 19<sup>th</sup> is inadmissible for an Edwards violation.

13 THE COURT: All right. The first two statements I do  
14 find were given freely and voluntarily after warning and the  
15 defendant waived his rights.

16 MS. KEENEY: Your Honor, may I ask really quick -- and I  
17 was just looking at Edwards v. Arizona and I -- in all  
18 candor, I don't know if it makes a difference, but, you know,  
19 the Supreme Court says we reconfirm these views and to lend  
20 them substance and emphasize that it is inconsistent with  
21 Miranda and its progeny for the authorities at their instance  
22 to re-interrogate an accused in custody if he has clearly  
23 asserted his right to counsel.

24 I just -- I don't know if it matters that Mr. Chisolm  
25 was not in custody because that opinion is talking about

1 someone that's in custody that's already asserted their right  
2 to counsel, and that's not what we have here. We have a  
3 defendant who is at his house, clearly not in custody and  
4 wasn't even in custody after the interview because they  
5 didn't arrest him until the next day.

6 I would kind of just lean on your --

7 THE COURT: All right. So you're saying that you -- you  
8 don't think Edwards applies if he's not in custody?

9 MS. KEENEY: Judge --

10 THE COURT: Edwards was -- Edwards was a custodial?

11 MR. NEWMAN: Edwards was a custody case, Your Honor, but  
12 I think it has been expanded and, if you look at the reason  
13 for Edwards, once there is an assertion -- once they --  
14 there's an assertion of a right to counsel, what the Edwards  
15 case talks about, I don't think it matters whether you're in  
16 custody or not in custody by the police showing up at your  
17 house.

18 That you -- when a suspect or defendant or suspect is  
19 making an indication that I do not -- I have counsel, I'm not  
20 waiving my right to counsel, I have contacted counsel, that  
21 the whole fairness issue that's set out by Edwards is is that  
22 the police -- because they could go to his house every day  
23 and he says, no, I don't want to talk, Mr. Marshall  
24 represents me, and maybe on day three he says well, whatever,  
25 come on in and I'll give you a statement.

1       The whole stratagem that Edwards does is set up a wall.  
2       Once -- once that person says that I've got counsel -- and if  
3       you look at the rules of ethics, if the solicitor says I want  
4       to interview a witness and that witness told me I've got a  
5       lawyer, I can't -- I can't go interview that witness, but  
6       that witness can come to me and say I fired my lawyer and I  
7       want to talk to you.

8       So it sets up -- not only ethically, it sets up a wall  
9       that can't be broken, but it can be broken by Mr. Chisolm  
10      saying, you know what, Kelleher, I'd like to come down to the  
11      office, I've got a couple things I need to tell you. This is  
12      just the opposite situation. That's why I believe Edwards  
13      applies.

14      THE COURT: The solicitor is trying to find the case  
15      while we're talking.

16      MR. NEWMAN: I believe it applies. I also think  
17      secondarily you have the issue that it marries up very well  
18      with Kelleher's testimony about -- Kelleher did mention about  
19      DSS and I can take you right now. That is -- that is a  
20      promise of leniency and it's also the twin brother of  
21      coercive.

22      So if you don't want to go on what I think is a bright-  
23      line Edwards violation, because I don't think custody  
24      matters, you can find that it was under a promise of leniency  
25      and there was coercion. Kelleher actually mentioned that

1 because he talks about DSS and we could do this the hard way  
2 or the easy way. I can take your son. I can take you into  
3 custody or you can write this. That's a coercion and promise  
4 of leniency. Therefore, I don't believe it would be  
5 voluntary as to that issue.

6 So I think on the tri-peaks of voluntariness, coercion,  
7 leniency, and Edwards -- that's actually four legs of the  
8 stool -- that the State has their first two statements. We  
9 don't challenge those, but this third statement I think is  
10 constitutionally repugnant under the assertion of the Sixth  
11 Amendment right to counsel and the voluntariness issue.  
12 Thank you, Your Honor.

13 MS. KEENEY: And, Your Honor, I don't -- it's not my  
14 view that there was any coercion or threats or promises with  
15 the fourth -- or the third statement. I think Officer  
16 Kelleher -- it's in his actual report and he testified that  
17 he did not arrest the defendant that day and the reason was  
18 because his child was there and he didn't want DSS to have to  
19 -- have to come. They waited until the very next day to  
20 arrest him.

21 I think it wasn't -- it wasn't a threat or a promise.  
22 He was just simply looking out for the child and avoiding a  
23 situation where a five-year-old has to go into DSS custody  
24 because his dad is getting arrested that day.

25 So really the only issue I see is the Edwards issue and

1 the State's position is that it would only apply to a  
2 custodial interrogation, as Miranda only applies to a  
3 custodial interrogation.

4 MR. NEWMAN: You also have to look at it from --  
5 Kelleher might not have thought it was a promise or coercion,  
6 but you have to look at it from a reasonable person's view  
7 when a law enforcement officer shows up at your house  
8 unannounced and makes these kind of statements to you.

9 THE COURT: All right. Well, y'all -- y'all tell -- let  
10 me -- let me ask you this. What kind of problems are we  
11 going to have if we postpone the decision on this issue until  
12 9:30 in the morning?

13 MS. KEENEY: It's not a problem for the State.

14 MR. NEWMAN: It's not a problem for us. We can do a  
15 little more research as to that, but --

16 THE COURT: Right. I mean I think I need to know if  
17 there's any law one way or the other on the Edwards issue.  
18 You know, I got the impression the solicitor just started  
19 looking at it a few minutes ago.

20 MR. NEWMAN: That -- that would be fine, Your Honor.  
21 That would give me a chance to do that. Of course, we're not  
22 waiving anything as to the --

23 THE COURT: As to the other.

24 MR. NEWMAN: -- voluntariness.

25 THE COURT: Right.

1 MR. NEWMAN: Promise of leniency and coercion.

2 THE COURT: I understand that. I understand that.

3 MR. NEWMAN: But I think the State has got -- they've

4 got what they need from the first two statements and I do

5 want the Court to keep in mind how this happened. You're

6 interviewed with your attorney and then all of a sudden at

7 5:30 the police shows up at your door unannounced and you're

8 alone with your child.

9 THE COURT: Well, no, wait a minute. The -- all right.

10 I thought that the interview with the attorney was on the

11 18<sup>th</sup>?

12 MR. NEWMAN: That was on the 18<sup>th</sup>. This -- when the

13 police -- when one detective, not two, with no recording

14 device --

15 THE COURT: I understand.

16 MR. NEWMAN: -- comes on the 19<sup>th</sup>, the next day, after --

17 THE COURT: Right.

18 MR. NEWMAN: -- Mr. Chisolm had shown up with counsel.

19 THE COURT: Right.

20 MR. NEWMAN: But we can certainly be ready for you at

21 9:30, Judge.

22 MS. KEENEY: The State will research it, Your Honor.

23 THE COURT: Okay. Is there anything else we need to do

24 on this case or in any case?

25 MR. NEWMAN: Not on this case, but I do -- since I've

1 got solicitors here, you heard a case -- I don't need this on  
2 the record.

3 (WHEREUPON, the proceedings adjourned for the day at  
4 4:36 p.m., to resume the following day.)

5  
6 AUGUST 11, 2015

7 (WHEREUPON, the proceedings resumed at 9:42 a.m. The  
8 defendant was not present.)

9 THE COURT: All right. I guess on this case we can sort  
10 of sit for a while. It's unlikely that he's going to be --  
11 well, I don't know, you know.

12 MR. NEWMAN: I mean I don't know if he's going to have  
13 to be medicated and that might affect his judgment. It could  
14 be a simple through and through wound where they just stitch  
15 it up or I don't know if a bone was broken or they've got to  
16 do surgery if they've got a bullet. We just don't know at  
17 this point.

18 I would at the very least -- the solicitor and I have  
19 talked about this. We needed to get -- we've tried to  
20 schedule this Jackson v. Denno hearing for a while. I would  
21 hope if I can -- even if he can't be here, if I can  
22 communicate with him and get his -- to waive his presence, we  
23 could at least maybe finish the Jackson v. Denno hearing.

24 THE COURT: I agree.

25 MR. NEWMAN: In case we need to --

1 THE COURT: Okay.

2 MR. NEWMAN: -- stand down on this trial. The jury is  
3 not sworn.

4 MS. KEENEY: At least we have that done.

5 MR. NEWMAN: Both witnesses have been put up. So I'd  
6 like to try, if possible, to talk to him and we'll just --  
7 we'll knock this out and get a ruling from you.

8 THE COURT: Okay.

9 MR. NEWMAN: And then get this where we are in the next  
10 day or so.

11 THE COURT: All right. So we'll be at ease until you  
12 are able to communicate with your client. And where does  
13 that leave us?

14 MS. LEMPESIS: That leaves us -- what we have going on  
15 is second appearances -- our second appearances. So we have  
16 a lot of people out in the hallway showing up for second  
17 appearances. We have very few public defenders because most  
18 of them are required to be in Magistrate Court this morning.  
19 They're coming later to General Sessions Court.

20 The point is is I don't have lawyers to put guilty pleas  
21 before Your Honor. I do have a list for the afternoon that I  
22 was planning on bringing over. We could definitely bring  
23 that list over this afternoon and plan on doing those guilty  
24 pleas this afternoon when we have the lawyers available.

25 THE COURT: Well, I'm going to be here.

1 MS. LEMPESIS: Okay. We have one other case on the  
2 trial docket that has not yet been resolved and so it could  
3 be that we have the jury to come report in tomorrow morning.

4 THE COURT: Okay.

5 MS. LEMPESIS: That's a case that wouldn't take too long  
6 to try and it's Ms. Keeney's case and Mr. Bax with the Public  
7 Defender's Office. So I'll get with them and see if that is  
8 indeed a trial.

9 THE COURT: All right. Then we'll be at ease and if  
10 anybody needs to leave, any -- any personnel that are  
11 absolutely necessary, such as our court reporter, needs to  
12 leave the building, she can just give us her phone number and  
13 we can find her.

14 MS. LEMPESIS: Absolutely.

15 THE COURT REPORTER: I'm going to stay here and work.

16 MS. LEMPESIS: Okay.

17 THE COURT: So I'm going to be here. She's going to be  
18 here.

19 MS. LEMPESIS: Okay.

20 THE COURT: And we'll just wait until you say you're  
21 ready to do something.

22 MS. LEMPESIS: Okay.

23 THE COURT: Okay.

24 MS. LEMPESIS: Thank you, Your Honor.

25 THE COURT: All right. We are at ease.

1 (WHEREUPON, there was a break in the proceedings from  
2 9:43 a.m. until 11:23 a.m., after which the proceedings  
3 resumed ass follows.)

4 MR. NEWMAN: Judge, I do have a number of depositions  
5 Thursday that I'd really like to do in a civil case and I've  
6 got a scheduled Friday, which can be rescheduled. I have a  
7 sentencing in Federal Court. That can be put off, but if  
8 preferable, I was wanting to do this trial and get it over  
9 with so that I could make my Thursday depositions because  
10 I've got lawyers coming in from out of town.

11 So with that, but mainly with my client's condition as I  
12 saw him, I don't think he would be able to meaningfully  
13 assist me in any way in trial and, were we to have a trial,  
14 there is at least a 50-50 chance that I would put him on the  
15 stand and I don't think he would be in a position to be  
16 subject to cross-examination, much less direct examination.

17 THE COURT: All right. Let me ask you this question.  
18 If we continue the case -- and the State is just neutral on  
19 continuing? Either way suits?

20 MS. KEENEY: Either way, it's fine. We're ready to go,  
21 but if Your Honor continue it -- continues it, it's fine with  
22 the State.

23 THE COURT: All right. We'll continue the case. Let me  
24 ask you this next question though. Should -- can we -- can  
25 we tell the jury that the defendant is in the hospital?

1 MR. NEWMAN: I think that -- just bland it down and make  
2 it like that, that he had some type of medical emergency and  
3 is in the hospital.

4 THE COURT: And I told them it might be -- a lawyer  
5 might have to go to the hospital or something. I didn't  
6 think about the client. All right. We may have the same  
7 jurors come back for selection.

8 MS. LEMPESIS: I'm going to instruct them, this panel,  
9 to call back after six tonight.

10 THE COURT: Uh-huh. All right. Let me then -- we've  
11 got an hour and a half. Let's tell the clerk to do  
12 something.

13 MS. LEMPESIS: Okay.

14 (WHEREUPON, there was a pause in the proceedings, after  
15 which the proceedings resumed as follows.)

16 THE COURT: All right. The clerk is calling the jurors  
17 to tell them to call back at 6:00 for instructions. This  
18 trial is not going forward.

19 MR. NEWMAN: Thank you, Your Honor.

20 MS. KEENEY: Thank you, Your Honor.

21 MR. NEWMAN: But we are able to, with my client's  
22 consent, complete the Denno hearing.

23 THE COURT: All right. Did we get -- were we on the  
24 record when we -- when we said that earlier? Are we on the  
25 record now?

1 THE COURT REPORTER: Yes.

2 THE COURT: Okay. So make -- make sure your client has  
3 given you permission to continue with the motion hearing in  
4 his absence.

5 MR. NEWMAN: That's correct. I'll state for the record  
6 that I went to the hospital. I visited with my client. I  
7 believe he understood our talks. I explained to him that we  
8 have nothing left but arguments of law. The testimony has  
9 been taken and he's given me permission to complete the Denno  
10 hearing and he waives his presence for that.

11 THE COURT: All right. Well, last night when we -- or  
12 yesterday afternoon when we concluded court, we took under  
13 advisement the Edwards v. Arizona issue, is my recollection,  
14 and that since then Ms. Keeney has done research on that, on  
15 Edwards v. Arizona, and has submitted that to all parties.

16 Where are we? Are we going to argue -- continue arguing  
17 Edwards v. Arizona?

18 MR. NEWMAN: If it pleases the Court, Your Honor, I'm on  
19 the record with my argument on that. The State's issue was  
20 custody. I'm not abandoning that issue. I still believe  
21 that whether you're in custody or not, it does trigger a  
22 Sixth Amendment right.

23 However, I also have a companion argument, Your Honor,  
24 as to promises of leniency and coercion. I presented the  
25 case and I gave the solicitor the cite and let her read it.

1 It's State v. Corns. It can be found at 310 S.C. 546, Ct.  
2 App. 1992, and this case, Your Honor, the Corns case -- and I  
3 don't know if you've had a chance to read it.

4 THE COURT: I have.

5 MR. NEWMAN: Is I believe on all fours with the  
6 testimony that was given, both the mirrored testimony both by  
7 the investigator and by the defendant. That it was mentioned  
8 that if he gives his -- he needs to give the statement  
9 because the investigator was getting ready to go on holiday,  
10 that he needed to get the statement, that he did not want to  
11 take his child to DSS and did not want to take him into  
12 custody, and as a result of that, the client gave a  
13 statement.

14 This is not just a -- if you look at State v. Corns and  
15 the other cases that I researched, this is not just puffing  
16 by this detective saying it may be in your best interest or  
17 it'll go better for you or vague things like that. This is a  
18 specific promise. And State v. Corns says that a confession  
19 may not be extracted by any sort of threats or violence, or  
20 obtained by any direct or implied promises, however slight,  
21 or by the exertion of improper influence.

22 In this case, we find the testimony of the officer, who  
23 seemingly informed Corns his wife would be arrested and that  
24 they could be -- she could be involved in the marijuana and  
25 that their children could be taken from them amounted to

1 improper influence, rendering Corns' statement involuntary.

2 And I think this case is on all fours with the Corns  
3 case because you have both the coercive that we're going to  
4 take the children and a promise of leniency that you're not  
5 going to be arrested, at least right now. As I said, I  
6 believe the case is on all fours with the testimony. It was  
7 conceded by the officer about the mention of taking the child  
8 to DSS and his immediate arrest.

9 THE COURT: All right. Ms. Keeney?

10 MS. KEENEY: May it please the Court. I'll start with  
11 the Arizona -- or the Edwards v. Arizona issue.

12 THE COURT: Okay.

13 MS. KEENEY: I sent an email last night relying upon  
14 Oregon v. Bradshaw, Arizona v. Roberson, Shea v. Louisiana,  
15 Minnick v. Mississippi, Davis v. United States, Maryland v.  
16 Shatzer, McNeil v. Wisconsin, James v. Arizona, and McFadden  
17 v. -- I can't say it, but G-a-r-r-a-g-h-t-y, which is a First  
18 -- Fourth Circuit case.

19 MR. NEWMAN: Garraghty.

20 MS. KEENEY: Garraghty. Thank you. And those cases all  
21 deal -- the majority of those cases are United States Supreme  
22 Court cases and those cases deal with an Edwards issue and,  
23 in every single one of them, the defendant is in custody when  
24 he invokes his right to counsel and then he's in custody when  
25 he's re-interviewed and makes some type of statement.

1        James v. Arizona specifically talks about how they  
2 cannot -- a defendant who has already invoked his rights to  
3 counsel cannot be subject to an official custodial  
4 interrogation, and we simply do not have that here. The  
5 defendant was at his own house. Officer Kelleher testified  
6 that he was not in custody. He wasn't even there to arrest  
7 him and he didn't even arrest him that day. He let him --  
8 they got the arrest warrant the next day and he was able to  
9 go into custody that day, which I believe was the 20<sup>th</sup> of  
10 September.

11        And then the McFadden case and the Maryland v. Shatzer  
12 case talk about breaks in custody and there's cases, you  
13 know, that defendants were in custody when they invoked their  
14 right to -- right to counsel. Then they have some type of  
15 break and then end up back in custody and the Court said even  
16 that's fine because there is a break in custody and the  
17 inherent pressures that you have when you're in a custodial  
18 interrogation are not there when you have a break. And I  
19 think our case is even better than that because he never was  
20 in custody.

21        Moving on to the coercion argument for Jackson v. Denno,  
22 my understanding of the testimony is that Officer Kelleher  
23 went to the defendant's house to talk to him again about the  
24 -- to talk to him about the event. He didn't go there to  
25 arrest him. He didn't have an arrest warrant. So it doesn't

1 really make any sense for him to -- before the defendant  
2 makes a statement to threaten to arrest him unless he gets a  
3 statement when he wasn't there to arrest him.

4 It makes sense that the defendant gave him the  
5 statement, wrote it out, and then Officer Kelleher testified  
6 that he said, hey, I don't want to take your child to DSS; so  
7 I'm going to let you turn yourself in the next day or we're  
8 going to wait until tomorrow because he's not a flight risk,  
9 not a danger.

10 So I don't think the defendant's testimony is credible.  
11 He already, you know, lied during the first -- you know, he  
12 said in his first interview that, you know, he didn't touch  
13 *MINOR* and then at the second interview he was like, well,  
14 you know, she did go into my house and she did masturbate and  
15 then I dropped her off back at school. And then you get to  
16 the third statement, well, no, I didn't tell you all the  
17 truth.

18 So we've already established that the defendant is not a  
19 credible witness and I think that State v. Corns also -- I  
20 don't think the facts are the same. I think we have a  
21 completely different situation. I don't think Officer  
22 Kelleher ever -- ever said, hey, I'm taking your kid to DSS  
23 if you don't give me a statement. I don't think that ever  
24 happened. He did say he was going on vacation and he needed  
25 a statement, but I believe that was in-between the oral and

1 the written statement. He'd already given the oral one and  
2 he wanted to memorialize it, you know, into writing.

3 And then State v. Corns. In that case, you've got the  
4 officer, who said, hey, you know I have an arrest warrant for  
5 your wife and, you know, if I have to arrest her, then your  
6 kids are going to have to go into custody. And I think  
7 there's just a little bit of a difference there, if you -- if  
8 you were to believe the defendant's version of events, but I  
9 don't think that that's what really happened that day.

10 THE COURT: Okay.

11 MR. NEWMAN: Your Honor, respectfully, I disagree with  
12 the testimony. That's exactly what Kelleher testified to,  
13 that he needed to get that statement. That he didn't want to  
14 get DSS involved with his kid.

15 Also, there was no arrest warrant for Mr. Corns' wife in  
16 that case. He was told that they could be taken. His wife  
17 could be subject to arrest. That she could be involved in  
18 the marijuana and the children could be taken amounted to  
19 improper influence.

20 And the Court of Appeals was very clear. Any direct or  
21 implied promise, however slight -- however slight or by the  
22 exertion of improper influence. And the exertion of the  
23 improper influence is exactly what Detective Kelleher  
24 testified to, even if you don't want to take my client's  
25 version of events, which mirrors my client's line and

1 Detective Kelleher's line as well because the two mirror.

2 I think the solicitor had sequencing based on cross-  
3 examination out of -- out of sequence and that what was told  
4 to my client was exactly that. Hey, man, I don't want to  
5 have to take you. I don't want to have to take your kid to  
6 DSS. I need to get this statement. I'm going on vacation.  
7 And it's on all fours with the Corns case.

8 MS. KEENEY: Your Honor, I don't know if it makes a big  
9 difference, but, you know, in State v. Corns it says that the  
10 officer said during the interview he informed Corns he had a  
11 warrant for Corns' wife and that his wife would be arrested  
12 and that the Department of Social Services could take his  
13 children.

14 And then with respect to -- and I think I've already  
15 made this clear, but just in case I did not. Officer  
16 Kelleher didn't have an arrest warrant. He didn't have one  
17 until the next day I believe. I believe Staff Sgt. Frazier  
18 got the arrest warrant on the 20<sup>th</sup>. So I mean he couldn't  
19 have arrested him that day anyway.

20 MR. NEWMAN: And as Mr. Clifford Corns, there was no  
21 arrest warrant for him, exactly like there was no arrest  
22 warrant for Mr. Chisolm. So that puts that case strictly on  
23 all fours with the Corns case because there was no arrest  
24 warrant for Clifford Corns and there was none for Mr.  
25 Chisolm.

1 In furtherance, it's the State's burden to prove  
2 voluntariness, at least at this stage, by a preponderance of  
3 the evidence and, again, Corns is on all fours with the  
4 testimony that we heard. We believe that suppression of this  
5 statement -- the State has two other statements that we have  
6 not challenged, but as to this statement, we believe Corns is  
7 on all fours.

8 THE COURT: As to Edwards, I agree with the solicitor  
9 that he was not in custody at any time and, therefore, I find  
10 that Edwards does not apply. Therefore, his -- the officer's  
11 questioning of the defendant would not be prohibited under  
12 Edwards.

13 The -- on the -- the Corns case, well, it is different  
14 in that there was no warrant there for the threat to be  
15 carried out. I took -- I took the officer's statement about  
16 DSS based on what he said. I thought he was saying that he  
17 wasn't going to try to take him in because he didn't have  
18 anybody there to take care of the child and, if he didn't,  
19 DSS would come in and take the child. This was afterwards is  
20 what I took it to mean.

21 The officer went on to say that he never threatened him  
22 with anything, that he told him that he needed the statement.  
23 I took that to mean in writing after he had -- because he was  
24 going on vacation and needed to wrap it up. That he -- the  
25 impression I got is that when he told him all that, it was

1 after the oral statement was given.

2 And I agree with the defendant -- with the solicitor's  
3 statement about the defendant's credibility. For all those  
4 reasons then, I am going to deny the motion to quash.

5 What else do we need to do?

6 MR. NEWMAN: Judge, I just need to put on the record  
7 respectfully, Your Honor, we take exception to -- we  
8 respectfully take exception to --

9 THE COURT: All right.

10 MR. NEWMAN: -- your ruling and just want to make sure  
11 we're preserved in that for any future -- future basis.  
12 Thank you, sir.

13 THE COURT: I understand.

14 MS. KEENEY: And, Your Honor, I think you did this  
15 yesterday, but just to be sure. A finding that -- and he's  
16 not challenging the first two statements. Just a finding  
17 that those first two were voluntary.

18 THE COURT: I thought I did that yesterday, but if I  
19 didn't --

20 MS. KEENEY: I think you did.

21 THE COURT: If I didn't, I do now.

22 MS. KEENEY: Thank you.

23 THE COURT: Because those were -- were clearly  
24 voluntary. All right.

25 (WHEREUPON, the proceedings ended at 11:43 a.m.)

1 State of South Carolina )  
2 ) Certificate  
3 County of Florence )  
4

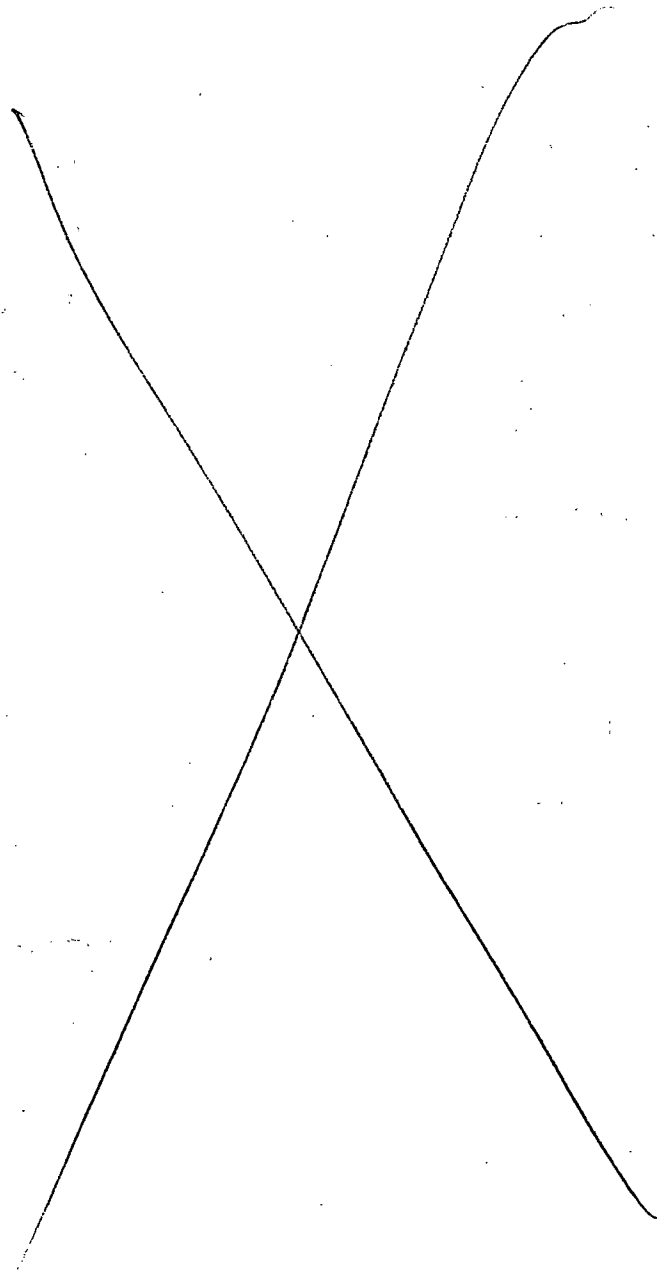
5 I, the undersigned, Krystal J. Smith, Notary Public and  
6 Official Court Reporter for the Twelfth Judicial Circuit of  
7 the State of South Carolina, do hereby certify that the  
8 foregoing pages, numbered 1 through 76, constitute a true,  
9 accurate, and complete Transcript of Record of all the  
10 proceedings had and evidence introduced in the hearing of the  
11 above captioned case, relative to appeal, in the Court of  
12 General Sessions for Beaufort County, South Carolina, on the  
13 10<sup>th</sup> and 11<sup>th</sup> days of August, 2015.

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

16  
17 Krystal J. Smith

18 Court Reporter  
19

20 Florence, South Carolina  
21 September 28, 2017  
22  
23  
24  
25



000078

STATE OF SOUTH CAROLINA  
FOURTEENTH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF GENERAL SESSIONS  
CASE NUMBER 2015-GS-07-01529

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

ORIGINAL

NOVEMBER 9, 2015

TRANSCRIPT OF PLEA

BEAUFORT, SOUTH CAROLINA

LEWIS CHISOLM

DEFENDANT

---

BEFORE:

HON. EUGENE GRIFFIN, JUDGE

WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

000079

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**EXHIBITS**

No exhibits were admitted.

1 BEGINNING 11:32 A.M.

2 BY THE COURT:

3 MS KEENEY: The State calls Lewis Chisolm. This is  
4 Indictment Number 2015-GS-07-01529. He's charged with a  
5 criminal sexual conduct with a minor, second degree.  
6 He's pleading without recommendations or negotiations.  
7 So, the State would like to be heard at sentencing at  
8 the appropriate time.

9 MADAM CLERK: Left hand on the Bible. Raise your  
10 right. Do you solemnly swear or affirm to truthfully  
11 answer all questions asked of you by this Court, so help  
12 you God?

13 DEFENDANT CHISOLM: I do.

14 THE COURT: Your name's Lewis Chisolm?

15 DEFENDANT CHISOLM: Yes, sir.

16 THE COURT: Docket Number 15-GS-07-01529 has been  
17 true billed for criminal sexual conduct with a minor,  
18 second degree. That indictment reads in part that you:

19 while in Beaufort County, the 17th of  
20 September of '13, did engage in sexual battery  
21 of a victim who was 14 years of age or less,  
22 but more than 11; did have intercourse with  
23 her in violation of the provisions of  
24 16-3-655(b) (1).

25 My understanding you wish to plead guilty on that.

1 indictment. Is that right?

2 DEFENDANT CHISOLM: Yes, sir.

3 THE COURT: Mr. Newman, you represent Mr. Chisolm.

4 MR. NEWMAN: Yes, sir.

5 THE COURT: And you've explained to him the  
6 elements of CSC with a minor in the second degree.

7 MR. NEWMAN: I have, your Honor.

8 THE COURT: And you've examined the State's  
9 discovery; done your own investigation; had discussions  
10 with your client. Do you have a belief that, if your  
11 client proceeded to trial, that, more probably than not,  
12 he could be convicted of this charge?

13 MR. NEWMAN: I do, your Honor, and I have  
14 investigated the case, received full discovery from the  
15 solicitor's office, to include medical records.

16 THE COURT: All right. And you agree the decision  
17 to enter this plea.

18 MR. NEWMAN: I do.

19 THE COURT: All right. Mr. Chisolm, you're under  
20 oath. I ask you, in the last 24 hours, did you take any  
21 alcohol, drugs, or medications?

22 DEFENDANT CHISOLM: Just medication for my -- my  
23 replace -- hip replacement, the pain pills, and my --  
24 I'm a diabetic.

25 THE COURT: Okay. Has your medication affected you

1 the way it normally does?

2 DEFENDANT CHISOLM: No, it's not. I'm all right.

3 THE COURT: Any confusion as to why you're here  
4 before me today?

5 DEFENDANT CHISOLM: No -- no, sir.

6 THE COURT: Okay. You suffer from any other  
7 disabilities, other than diabetes and you've had a hip  
8 replace? Any other disabilities, mental or physical,  
9 that would affect your understanding of what we're  
10 doing?

11 DEFENDANT CHISOLM: No, sir.

12 THE COURT: All right. You have an opportunity and  
13 a right to plead not guilty and have a jury of your  
14 peers. Do you understand that?

15 DEFENDANT CHISOLM: Yes, sir.

16 THE COURT: During a jury trial, the State bears  
17 the burden of proving you're guilty on the indictment.  
18 You've got absolutely nothing to prove or disprove. You  
19 can remain silent throughout the entire trial. Your  
20 lawyer is allowed to cross-examine State's witnesses.  
21 He's allowed to challenge introduction of State's  
22 evidence. He's allowed to present defenses you may  
23 have. You can remain silent, and the State's never  
24 allowed to call you as a witness, nor is the State  
25 allowed to comment on your silence. Do you understand

1 these rights to challenge those accusing you of this  
2 crime in Court?

3 DEFENDANT CHISOLM: Yes, sir.

4 THE COURT: And your decision, after talking to  
5 your lawyer, is to we've those rights in order to enter  
6 this plea.

7 DEFENDANT CHISOLM: Yes, sir.

8 THE COURT: And you're waiving your rights to  
9 defend yourself at trial are freely and voluntarily.

10 DEFENDANT CHISOLM: Yes, sir.

11 THE COURT: All right. Pay careful attention to  
12 Ms. Keeney as she tells me the summary of the facts.

13 MS KEENEY: Thank you, your Honor. This incident  
14 occurred on September 17th of 2013. Victim is  
15 the victim in this case. She was 14 years old. She was  
16 walking to her morning bus stop around 6:30 in the  
17 morning that day. As she was walking to the bus stop,  
18 Mr. Chisolm, who she knew, because Mr. Chisolm was  
19 friends with her mother Debbie Cooper, for a very long  
20 time, he pulled up in his car. He asked MINOR if she  
21 wanted a ride to school. She was hesitant, but,  
22 eventually, she got into the car, because she did know  
23 him. However, Mr. Chisolm did not take MINOR to  
24 school at that point. He took her to this little -- I  
25 don't know if it's a shed area, but it's a little

1 structure behind his house in Beaufort County. He told  
2 her to come inside. She went inside, and he raped her.

3 There was penetration involved and oral sex. She  
4 did not consent to any of this. Obviously, a 14-year-  
5 old cannot consent, but there was no willingness on her  
6 part to participate in these activities. He then took  
7 her to school. We do have video surveillance of her  
8 entering school, and she immediately tells her best  
9 friend, who's in high school with her. Her best friend  
10 tells her, you need to go talk to the counselor. They  
11 go to Crystal Younce, at Battery Creek High School, the  
12 guidance counselor. And then, that's when the sheriff's  
13 office gets involved.

14 She disclosed to the SRO, school resource officer,  
15 the school nurse, and they take her to Beaufort Memorial  
16 for an evaluation. They perform a rape kit on her. At  
17 that point, the rape kit is taken to the Beaufort County  
18 Sheriff's Office lab department. There was male DNA on  
19 her mouth. She had disclosed that he kissed her.  
20 However, there was not enough DNA to compare to anything  
21 on the mouth.

22 They did a pubic comb of her private area, and  
23 there was DNA found in that area. And the defendant  
24 gave a sample, a known swab, and he could not be  
25 excluded from that. He also gave three statements to

1 law enforcement. The first statement; it's under  
2 Miranda. He basically just admits that he took her to  
3 school. He stated that he took her back to his house  
4 because he needed to turn a light off. However, he said  
5 she never got out of the car. He later comes back to  
6 law enforcement and says -- this is his previous  
7 attorney, Bruce Marshall. He makes the statement that  
8 she did come inside, and he blames the victim, and says  
9 that she was coming onto him. However, he denied any  
10 wrongdoing. Then he made a third statement to law  
11 enforcement admitting that he did have sex with her and  
12 he did perform oral sex on her. He was arrested at that  
13 point for criminal sexual conduct.

14 He does have a prior record. It is a 1993, two  
15 counts of distribution of crack cocaine; 2000 possession  
16 of cocaine; and a 2000 distribution of crack cocaine.  
17 The victim's mother, Debbie Cooper, is here, and would  
18 like to be heard at the appropriate time. The State is  
19 asked for 15 years.

20 THE COURT: All right. That factual summary, Mr.  
21 Newman and Mr. Chisolm, are those the facts represented  
22 to you through discovery that the State would intend to  
23 prove would this case go to trial?

24 MR. NEWMAN: They are, your Honor.

25 THE COURT: All right. And I'll ask Mr. Chisolm,

1 same question to you.

2 DEFENDANT CHISOLM: Yes.

3 THE COURT: All right. Have any promises been made  
4 to you -- it appears this is a straight-up plea on the  
5 one indictment. Still remaining is CSC second. Have  
6 any promises been made to get you to plead guilty, Mr.  
7 Chisolm?

8 DEFENDANT CHISOLM: No.

9 THE COURT: Anybody threatened you or coerced you  
10 to get you to plead guilty?

11 DEFENDANT CHISOLM: No.

12 THE COURT: You understand if I accept this plea,  
13 that this will create a conviction on your record that's  
14 classified in two separate ways. First of all, you'll  
15 be classified as a violent offender at the Department of  
16 Corrections. This means you'll be held with violent  
17 offenders and will not be entitled to certain programs  
18 that the non-violent offenders are classified are  
19 entitled to. Such as, early release, furlough, parole  
20 eligibility. This crime carries up to twenty years,  
21 meaning, whatever time the Court imposes, you'll have to  
22 be prepared to serve at least 85 percent of that before  
23 you're eligible for a community supervision release. Do  
24 you understand that?

25 DEFENDANT CHISOLM: Yes.

1 THE COURT: Also, --

2 DEFENDANT CHISOLM: Sir.

3 THE COURT: -- this creates a conviction as a most  
4 serious offense on your record, and that means -- that's  
5 a big strike in the scheme of three strikes you're out,  
6 or two strikes you're out. You need two of the bigger  
7 ones, or two small ones and one big one. This will be a  
8 big strike, meaning, just about any combination from  
9 this time forward, the State may be in a position to ask  
10 for a life-without-parole-type sentence in the future,  
11 if you have another most serious charge facing you. You  
12 understand that?

13 DEFENDANT CHISOLM: Yes, sir.

14 THE COURT: There is no more severe classification  
15 than most serious conviction on your record, and the  
16 State would use it if at all possible. Do you  
17 understand that?

18 DEFENDANT CHISOLM: Yes, sir.

19 THE COURT: Understanding you're creating a valid  
20 classification and a most serious conviction on your  
21 record, do you still want to plead guilty?

22 DEFENDANT CHISOLM: Yes, sir.

23 THE COURT: Have you had enough time to speak to  
24 your lawyer?

25 DEFENDANT CHISOLM: Yes, sir.

1 THE COURT: Has he gone over everything with you?

2 DEFENDANT CHISOLM: Yes, sir.

3 THE COURT: Have you understood your conversations  
4 with him?

5 DEFENDANT CHISOLM: Yes, sir.

6 THE COURT: Are you satisfied with his advice and  
7 counsel you've received?

8 DEFENDANT CHISOLM: Yes, sir.

9 THE COURT: Do you need anymore time with him?

10 DEFENDANT CHISOLM: No, sir.

11 THE COURT: After having sufficient time to speak  
12 with him, is it your decision to plead guilty here  
13 today?

14 DEFENDANT CHISOLM: Yes, sir.

15 THE COURT: Are you pleading guilty freely and  
16 voluntarily?

17 DEFENDANT CHISOLM: Yes, sir.

18 THE COURT: Are you pleading guilty because you  
19 did, in fact, commit the offense described on this  
20 indictment?

21 DEFENDANT CHISOLM: Yes, sir.

22 THE COURT: Regarding Indictment 15-GS-07-01529, I  
23 find that Lewis Chisolm made a free, knowing, and  
24 intelligent plea of guilt to the offense of criminal  
25 sexual conduct with a minor. He's entered this plea

1 with the advice of counsel, of whom he states he's  
2 satisfied. The State has provided facts to support this  
3 plea.

4 I forgot to ask you a couple other questions.

5 Do you understand that, as a result of this plea,  
6 you'll be required to register as a sex offender?

7 DEFENDANT CHISOLM: Yes, sir.

8 THE COURT: For the balance of your life. Twice a  
9 year, I believe.

10 DEFENDANT CHISOLM: Yes, sir.

11 THE COURT: You also understand that the State may  
12 undertake a civil proceeding toward the end of your  
13 incarceration to see whether or not you should be  
14 declared a --

15 MR. NEWMAN: SVP.

16 THE COURT: -- sexually violent predator. Do you  
17 understand that?

18 DEFENDANT CHISOLM: Yes, sir.

19 THE COURT: And that civil action will commence  
20 some time in the last year of your incarceration period.

21 DEFENDANT CHISOLM: Yes, sir.

22 THE COURT: And that determination will be made  
23 before another court. You understand that.

24 DEFENDANT CHISOLM: Yes, sir.

25 THE COURT: Understanding the State may proceed in

1 that fashion, do you still want to plead guilty?

2 DEFENDANT CHISOLM: Yes, sir.

3 THE COURT: All right. All right. I accept the  
4 plea. Mr. Newman, let me hear from you.

5 MR. NEWMAN: Yes, sir. I've known Lewis for a  
6 fairly good while now. You heard about his past.  
7 You're 45? Forty-six?

8 DEFENDANT CHISOLM: No, I'm 51.

9 MR. NEWMAN: Fifty-one. I'm sorry. I'm making you  
10 younger than you are. You've heard from the early  
11 nineties and the early two thousands that he's had some  
12 convictions with -- some drug convictions. He's been  
13 basically doing well for a good long time. Lewis is  
14 married. He has an eight-year-old son who has a heart  
15 condition. This is one of the questions that we had  
16 when we did a *Jackson v. Denno* hearing, because the  
17 State was very much talking about if he didn't  
18 cooperate, they were going to take his child away. That  
19 was a factual dispute. But I know Lewis is a good  
20 father to his son. His son does have to go to MUSC to  
21 be monitored for his heart condition.

22 Lewis has a number of good friends and family who  
23 live here. He's from Beaufort County and grew up here.  
24 If the people that are here for Mr. Chisolm, if you  
25 could just hold your hand up, please. That would be his

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1 family and his reverend back there, your Honor. You  
2 know, these are always -- always tough cases on all  
3 sides. One of the things that I ask and you consider  
4 about sentencing, is just as you said, Mr. Chisolm has a  
5 right to a trial, which would require the victim to  
6 testify, to be cross-examined and put through this.  
7 Asking that the Court consider some mercy that Lewis is  
8 -- has admitted his guilt. This is not an Alford plea.  
9 He's told the Court very ashamedly what the facts were  
10 and what he did on that occasion. Of course, we can't  
11 go back two years or so and undo what's been done. But  
12 I would ask on his behalf that the Court consider that  
13 the victim does not need to go through this. Again,  
14 because I've had to cross-examine young people in these  
15 situations, and of course, I would have to do my job. I  
16 can't pull any punches on that. And would be prepared  
17 to do that, but I'm thankful, as well, that I don't have  
18 to do that.

19 Lewis does take care of his family. He works a  
20 number of jobs. He always has. And I think you can  
21 see, at 51 years, that this would be an aberration on  
22 Lewis' character. Just ask you to look at 51 years of  
23 his life in doing that and taking care of his family.  
24 Lewis would like to address the Court.

25 THE COURT: Be glad to hear from you, Mr. Chisolm.

1           DEFENDANT CHISOLM: Thank you, sir. I stand here  
2 truly remorseful. I just want to just apologize for  
3 them I have hurt, family. Our families were so close-  
4 knitted. The Cooper family. The Chisolm family. I  
5 took care of her kids. She took care of my son. And  
6 it's not easy today. And I just pray for leniency. I  
7 pray that the two family could -- could just knit back  
8 together; that won't have to bick -- they won't have to  
9 bicker over this no more. I've taken responsibility for  
10 my acts. And I just ask the family to forgive me for  
11 whatever hurt I've caused them. And ask you, the Court;  
12 prosecutor, for whatever leniency you could show on my  
13 behalf. I appreciate it to the utmost.

14           THE COURT: All right.

15           MR. NEWMAN: If it pleases the Court, your Honor.  
16 As you mentioned, this is a violent crime. Actually,  
17 different prisons. As you well said, there are  
18 basically no programs. I mean, there is sexual offender  
19 treatment, but there are no programs where he'd be able  
20 to work or he'd be outside the fence for any reason.  
21 Those type of things. So, as you said, it is much  
22 harsher time than, say, going for an, I don't know, PWID  
23 for even ten years of even cocaine. You know. They  
24 qualify for programs. They qualify for release.

25           I've explained to Lewis, just like you did, that

1 the minimum he could get out would be 85 percent; that  
2 that's not guaranteed; that that's based on behavior;  
3 and whatever you sentence him to, he could serve day-  
4 for-day. So, with all those in mind, and looking at his  
5 entire life, I would ask your Honor to impose somewhere  
6 around a ten-year sentence, suspend that for five years;  
7 put him on probation afterwards.

8 He also has the additional anxiety, as you said, of  
9 whether or not the State wants to put him through a  
10 trial as an SVP. Of course, that will motivate him to  
11 get whatever treatment is available, the CSTAR problem  
12 or whatever they have at the department. I'm sure Lewis  
13 would be a willing -- that's not -- that is a voluntary  
14 program, and I'm sure he'd be willing to take advantage  
15 of whatever program that SCDC, though limited they may  
16 be, that they would offer.

17 I think you can see he is truly remorseful. He did  
18 tell me he did not want to have that girl testify. Not  
19 because he was afraid of her, but for possibly re-  
20 traumatizing her. So, I would ask the Court to consider  
21 -- to consider all of that and whatever mercy the Court  
22 can show. Thank you, your Honor.

23 THE COURT: Ms. Keeney.

24 MS. CAMPBELL: Thank you, your Honor. If I could  
25 have Ms. Cooper come up and speak to you.

1 THE COURT: Sure.

2 MS KEENEY: Okay.

3 THE COURT: Tell me your name, ma'am.

4 MS. DEBBIE COOPER: My name is Debbie Cooper. I'm  
5 the mother of MINOR Cooper, the victim who was  
6 assaulted by Mr. Chisholm. I -- I heard what he had to  
7 say, and I understand that he may be remorseful, and I  
8 heard the attorney say that they want maybe ten years,  
9 you know, placed on him. But I have a sixteen-year-old  
10 daughter in my house who's still not completely who she  
11 was before this act happened on her. So, she can't get  
12 ten years and she'll be okay after that. She can't get  
13 fifteen and be okay after that. This is a lifetime  
14 thing for her. We're in counseling; we're out of  
15 counseling; she's okay; she's not okay; she's up; she's  
16 down.

17 I don't understand exactly how someone could have  
18 called themselves my friend, and know how I am with my  
19 children, and see me interact with my kids, and go  
20 behind my back and do the most violent thing that I  
21 could ever think for anybody to do to a child; and then,  
22 expect to her be okay, or to walk away and think that it  
23 was all right, or try to get away with that. I live  
24 with this every day. And I don't know what's going to  
25 happen as far as the mind set of my child or how she may

1 react to another relationship or if she would even be in  
2 one.

3 What he took from her, he took a lifetime from her.  
4 He didn't take something that's going to be given back  
5 in ten years. So, I don't know what you may do or what  
6 you may decide to do, but whatever the maximum is,  
7 that's what I want for him, because she has to deal with  
8 this for the rest of her life, not ten minutes or ten  
9 days.

10 THE COURT: Okay. Thank you very much, ma'am. Mr.  
11 Newman, anything else?

12 MR. NEWMAN: No, your Honor. I just -- as we said,  
13 we're here on a plea of mercy. Thank you.

14 THE COURT: All right. It's the sentence of the  
15 Court he gets credit for the sixty days he's done, under  
16 24-13-40. Sentence of the Court is a straight ten  
17 years. Good luck.

18 MS KEENEY: Thank you, your Honor.

END PROCEEDING 11:52 A.M.

## CERTIFICATE OF REPORTER

NOVEMBER 9, 2015 TRANSCRIPT OF PLEA

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing November 9, 2015 Transcript of Plea is a true, accurate, and complete record of the proceedings on said date, in the case of State versus Lewis Chisolm, Beaufort County, Court of General Sessions, Case Number 2015-GS-07-01529; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

THIS CERTIFICATE OF REPORTER CONTAINS MY ORIGINAL SIGNATURE AND IS ATTACHED TO THE ORIGINAL OF THIS TRANSCRIPT REQUESTED BY SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING/EMAILING IS PROHIBITED.

Witness my signature September 16, 2016.

  
Wanda H. Rowe, CVR/CM  
Official Court Reporter

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COUNTY OF BEAUFORTLEWIS CHISOLM #196380

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

Submitted By: Tommy A. ThomasAddress: P.O. Box 88Irmo, SC 29063SC Bar #: 5536Telephone #: 803-732-5507Fax #: 803-781-4226

Other: \_\_\_\_\_

E-mail: jackie@paroleme.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

**DOCKETING INFORMATION (Check all that apply)***\*If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

**NATURE OF ACTION (Check One Box Below)**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Fraud/Bad Faith (150)<br><input type="checkbox"/> Failure to Deliver/Warranty (160)<br><input type="checkbox"/> Employment Discrim (170)<br><input type="checkbox"/> Employment (180)<br><input type="checkbox"/> Other (199) _____ | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 <u>-NI-</u><br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299) _____                                          | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Assault/Battery (370)<br><input type="checkbox"/> Slander/Libel (380)<br><input type="checkbox"/> Other (399) _____                                                                                                                                               | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499) _____                                                                                                                                                  |
| <b>Inmate Petitions</b><br><input checked="" type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599) _____                                                                                                                                                                                                                                                                 | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) _____ | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) _____ | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) _____ |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699) _____<br><input type="checkbox"/> Sexual Predator (510)<br><input type="checkbox"/> Permanent Restraining Order (680)                                                                                                                                           | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of-State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Pre-Suit Discovery (670)                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

Submitting Party Signature: \_\_\_\_\_

Date: July 6, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous

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0-20 years

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort  
STATE VS.  
Lewis Chisolm  
AKA:  
Racer: AFRICAN AME Sex: M Age: 31  
DOB: [REDACTED] SS#: [REDACTED]

INDICTMENT/CASE#: 2015GS0701529  
A/W#: 2015GS0701529  
Date of Offense: 9/17/2013  
S.C. Code § 16-03-0655(B)(1)  
CDR Code #: 0396

SENTENCE SHEET

DL#: SID#  
\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS  
TO: Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second degree

In violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396  
☐ 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.

ATTORNEYS: JANE KAT WILSON 100145 SC Bar# [REDACTED] Defendant  
JERRY JALICHAKE SC Bar# [REDACTED] Attorney for Defendant  
12930 SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_ provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_ plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections. 60 days  
☐ The Defendant is to be placed on the Central Register of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms:  
☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

| *Fine:                                 | \$       |
|----------------------------------------|----------|
| § 14-1-206 (Assessments 107.5%)        | \$       |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100    |
| § 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 (SCCA Surcharge)          | \$5      |
| 3% to County (if paid in installments) | \$       |
| TOTAL                                  | \$133.90 |

\_\_\_\_\_ days/hours Public Service Employment  
Obtain GED ☐  
Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling ☐  
Random Drug/Alcohol testing ☐  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk: [REDACTED]  
Court Reporter: Wanda Rouse  
SCCA/217 (03/2011)

Presiding Judge: [REDACTED]  
Judge Code: 2154  
Sentence Date: 11-9-15

000105

WITNESSES

Kelcher/BCSO

DOCKET NO. 2015GS0701529

The State of South Carolina  
County of Beaufort

After being fully advised as to my  
legal rights, I hereby waive  
presentment to the Grand Jury

Defendant

COURT OF GENERAL SESSIONS

September Term 2015

I  
hereby appear in my own proper  
person and plead guilty to the within  
indictment or to

ARREST WARRANT NUMBER

2015GS0701529

Direct Indictment

THE STATE

Vs.

Lewis Chisolm

Indictment For

Criminal Sexual Conduct With Minor,  
2<sup>nd</sup> Degree — victim 11 to 14 years of  
age

SC Code: 16-3-655(B)(1)

CDR Code: 0396

True Bill

Defendant

Witness

C.C.C. PLS. and G.S.

Foreperson of Grand Jury

Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury

Date:

INDICT

000106

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

INDICTMENT

2015GS0701529

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Beaufort County present upon their oath:

Criminal Sexual Conduct With Minor, 2<sup>nd</sup> Degree -- victim 11 to 14 years of age

That in Beaufort County, South Carolina, on or about September 17, 2013, the Defendant, Lewis Chisolm, did engage in sexual battery with the victim [REDACTED] (date of birth 6/21/1999), who was fourteen years of age or less but who was at least eleven years of age at the time of the sexual battery, to wit: the Defendant did have sexual intercourse with the victim; all in violation of Section 16-3-655(B)(1), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*[Signature]*

**Prosecutor**

000107

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA

vs.

Lewis Chisolm,

Defendant.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NOS: 2013-GS-07-01593

2015-GS-07-01529; 2015-GS-07-01736

MOTION TO REVOKE BOND

2015 OCT 23 PM 2:14

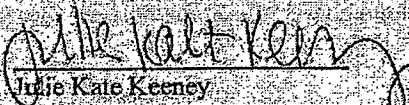
TO: Mr. Jared Newman, Attorney for the Defendant

PLEASE TAKE NOTICE that the State, by and through Assistant Solicitor Julie Kate Keeney, will move before the Presiding Judge during the term of General Sessions beginning on Monday, November 9, 2015, at 9:00 a.m. at the Beaufort County Judicial Center, 102 Ribaut Road, Beaufort, South Carolina, or as soon thereafter as may be heard, for a ruling to revoke the Defendant's bond on the above captioned charge. The State predicates this motion on the following facts:

1. That Defendant was arrested on September 20, 2013, for Criminal Sexual Conduct, First Degree.<sup>1</sup> Defendant received a \$150,000 bond for this charge set by a Beaufort County Magistrate.
2. That a condition of Defendant's bond was to be on good behavior.
3. That while out on bond, and subject to above-mentioned condition, Defendant was arrested on October 16, 2015, for Possession with Intent to Distribute Cocaine. Defendant received a \$10,000 bond for this charge set by a Beaufort County Magistrate.

Therefore, in light of the foregoing, Defendant has violated the conditions of his bond by not complying with the order to maintain good behavior and that he is a danger to the community. Therefore, the State moves for Defendant's bond to be revoked immediately.

Respectfully Submitted,

  
Julie Kate Keeney  
Assistant Solicitor  
Fourteenth Judicial Circuit

Beaufort, South Carolina  
October 23, 2015

<sup>1</sup> Defendant was direct indicted for Criminal Sexual Conduct with a Minor, 2<sup>nd</sup> Degree (2015-GS-07-01529).

WITNESSES

ARREST WARRANT NUMBER

2013A0710400327

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury OCT 31 2013  
Date:

VERDICT

Foreperson of Petit Jury  
Date:  
INDICT

DOCKET NO. 2013GS0701593

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2013

THE STATE

vs.

Lewis Chisolm

Indictment for

Sex / Criminal sexual conduct - First degree.

SC Code: 16-03-0652  
CDR Code: 0160

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I  
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

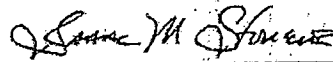
INDICTMENT  
2013GS0701593

At a Court of General Sessions, convened on October 31, 2013, the Grand Jurors of Beaufort County present upon their oath:

**Sex / Criminal sexual conduct - First degree**

That in Beaufort County, South Carolina, September 17, 2013, the Defendant, Lewis Chisolm, did commit a sexual battery upon the victim and he used aggravated force to accomplish sexual battery, to wit: defendant forced sexual penetration upon [REDACTED], in violation of Section 16-3-652, 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.



Solicitor

000110  
000000

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

LEWIS CHISOLM #196380

Plaintiff(s)

CIVIL ACTION COVERSHEET

2016-CP-07-1560

vs.

State of South Carolina

Defendant(s)

Submitted By: Tommy A. Thomas

Address: P.O. Box 88

Irmo, SC 29063

SC Bar #: 5536

Telephone #: 803-732-5507

Fax #: 803-781-4226

Other:

E-mail: jackie@paroleme.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

## DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

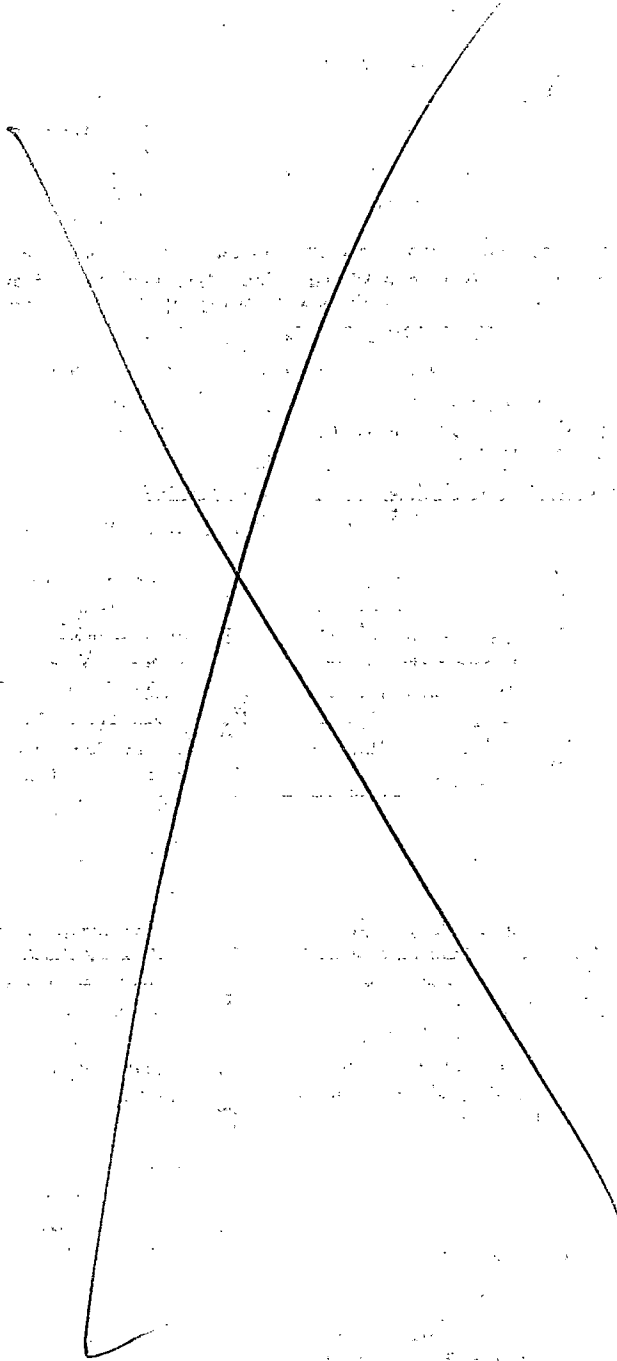
## NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Fraud/Bad Faith (150)<br><input type="checkbox"/> Failure to Deliver/Warranty (160)<br><input type="checkbox"/> Employment Discrim (170)<br><input type="checkbox"/> Employment (180)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 -NI-<br><input type="checkbox"/> Notice/File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                  | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Assault/Battery (370)<br><input type="checkbox"/> Slander/Label (380)<br><input type="checkbox"/> Other (399)                                                                                                                                               | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                  |
| <b>Inmate Petitions</b><br><input checked="" type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                                                                                                                                                                                 | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899) | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)<br><input type="checkbox"/> Sexual Predator (510)<br><input type="checkbox"/> Permanent Restraining Order (680)                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Pre-Suit Discovery (670)                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

Submitting Party Signature:

Date: July 6, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous



000112

STATE OF SOUTH CAROLINA

COUNTY OF  
STATEBeaufort  
VS.

Lewis Chisolm

AKA:

Race: AFRICAN AME Sex: M Age: 51

DOB: [REDACTED] SS#: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second degree

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.JERRY L. KANE  
JERRY L. KANE100145  
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the: ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 60 days☐ 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 |

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

000113

WITNESSES

Kelleher/BCSO

DOCKET NO. 2015GS0701529

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

September Term 2015

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2015GS0701529

Direct Indictment

THE STATE

vs.

Lewis Chisolm

Indictment For

Criminal Sexual Conduct With Minor,  
2<sup>nd</sup> Degree — victim 11 to 14 years of age

SC Code: 16-3-655(B)(1)

CDR Code: 0396

True Bill

Foreperson of Grand Jury

Date: SEP 17 2015

Defendant

VERDICT

Witness

Foreperson of Petit Jury

Date:

INDICT

C.C.C. PLS. and G.S.

000114

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

INDICTMENT

2015GS0701529

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Beaufort County present upon their oath:

**Criminal Sexual Conduct With Minor, 2<sup>nd</sup> Degree – victim 11 to 14 years of age**

That in Beaufort County, South Carolina, on or about September 17, 2013, the Defendant, Lewis Chisolm, did engage in sexual battery with the victim [REDACTED] (date of birth 6/21/1999), who was fourteen years of age or less but who was at least eleven years of age at the time of the sexual battery, to wit: the Defendant did have sexual intercourse with the victim, all in violation of Section 16-3-655(B)(1), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*[Signature]*

~~Signature~~

000115

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA

vs.

Lewis Chisolm,

Defendant.

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT NOS: 2013-GS-07-01593;  
2015-GS-07-01529; 2015-GS-07-01736<sup>1</sup>

MOTION TO REVOKE BOND

2015 OCT 23 PM 2:14

JULIE KATE KEENEY  
ASSISTANT SOLICITOR  
FOURTEENTH JUDICIAL CIRCUIT

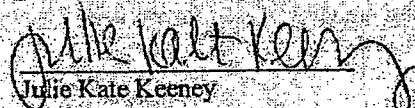
TO: Mr. Jared Newman, Attorney for the Defendant

PLEASE TAKE NOTICE that the State, by and through Assistant Solicitor Julie Kate Keeney, will move before the Presiding Judge during the term of General Sessions beginning on Monday, November 9, 2015, at 9:00 a.m. at the Beaufort County Judicial Center, 102 Ribaut Road, Beaufort, South Carolina, or as soon thereafter as may be heard, for a ruling to revoke the Defendant's bond on the above captioned charge. The State predicates this motion on the following facts:

1. That Defendant was arrested on September 20, 2013, for Criminal Sexual Conduct, First Degree.<sup>1</sup> Defendant received a \$150,000 bond for this charge set by a Beaufort County Magistrate.
2. That a condition of Defendant's bond was to be on good behavior.
3. That while out on bond, and subject to above-mentioned condition, Defendant was arrested on October 16, 2015, for Possession with Intent to Distribute Cocaine. Defendant received a \$10,000 bond for this charge set by a Beaufort County Magistrate.

Therefore, in light of the foregoing, Defendant has violated the conditions of his bond by not complying with the order to maintain good behavior and that he is a danger to the community. Therefore, the State moves for Defendant's bond to be revoked immediately.

Respectfully Submitted,

  
Julie Kate Keeney  
Assistant Solicitor  
Fourteenth Judicial Circuit

Beaufort, South Carolina  
October 23, 2015

<sup>1</sup> Defendant was direct indicted for Criminal Sexual Conduct with a Minor, 2<sup>nd</sup> Degree (2015-GS-07-01529).

WITNESSES

ARREST WARRANT NUMBER

2013A0710400327

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0701593

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2013

THE STATE

VS.

Lewis Chisolm

Indictment for

Sex / Criminal sexual conduct - First degree

SC Code: 16-03-0652

CDR Code: 0160

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I  
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

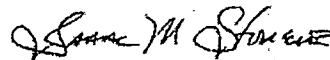
INDICTMENT  
2013GS0701593

At a Court of General Sessions, convened on October 31, 2013, the Grand Jurors of Beaufort County present upon their oath:

**Sex / Criminal sexual conduct - First degree**

That in Beaufort County, South Carolina, September 17, 2013, the Defendant, Lewis Chisolm, did commit a sexual battery upon the victim and he used aggravated force to accomplish sexual battery, to wit: defendant forced sexual penetration upon [REDACTED], in violation of Section 16-3-652, 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.



Solicitor

000118

FORM 5

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

LEWIS CHISOLM #196380 )

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

v. )

State of South Carolina )

2016-CP-07-1560  
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2016 JUL 11 PM 2:57  
CLERK OF COURT  
LEWIS & CLARK COUNTY, S.C.

**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 Allendale Correctional Institution, P.O. Box 1151, Fairfax, SC 29827
2. Name and location of Court which imposed sentence Beaufort County General Sessions, Court, 102 Ribaut Road, Beaufort, SC 29902
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015-GS-07-01529 - Criminal Sexual Conduct with Minor 2<sup>nd</sup> Degree
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) November 9, 2015 - 10 years

Revised 3/2003

- (b) \_\_\_\_\_  
(c) \_\_\_\_\_
6. Check whether a finding of guilty was made:  
(a) after a plea of guilty x  
(b) after a plea of not guilty \_\_\_\_\_  
(c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes
8. If you answered "yes" to (7), list:  
(a) the name of each Court to which you appealed:  
i. SC Court of Appeals  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(b) the result in each such Court to which you appealed:  
i. dismissed  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(c) the date of each such result:  
i. June 6, 2016  
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) \_\_\_\_\_  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Involuntary guilty plea
- (c) \_\_\_\_\_

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

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

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

Revised 3/2003

(d) the date of each such disposition:

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

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

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

iv. \_\_\_\_\_

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

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

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

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

iv. \_\_\_\_\_

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

no

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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

(a) \_\_\_\_\_

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

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

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

(a) your arraignment and plea? yes

(b) your trial, if any? \_\_\_\_\_

Revised 3/2003

- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (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. Jared Newman, Esq., P.O. Box 515, Port Royal, SC 29935-0515
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. plea, sentencing
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

New trial

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

no

STATE OF SOUTH CAROLINA

County of Kershaw

VERIFICATION

I, Lewis Chisolm, 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.

Lewis Chisolm

SWORN to and subscribed before me this 27  
day of June, 2016.

Jose B. Smith (L.S.)  
Notary Public

My Commission Expires February 17, 2021

2016 JUL 11 PM 2:57  
JENNIFER ROSELEAU  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

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

I, Lewis Chisolm, 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.

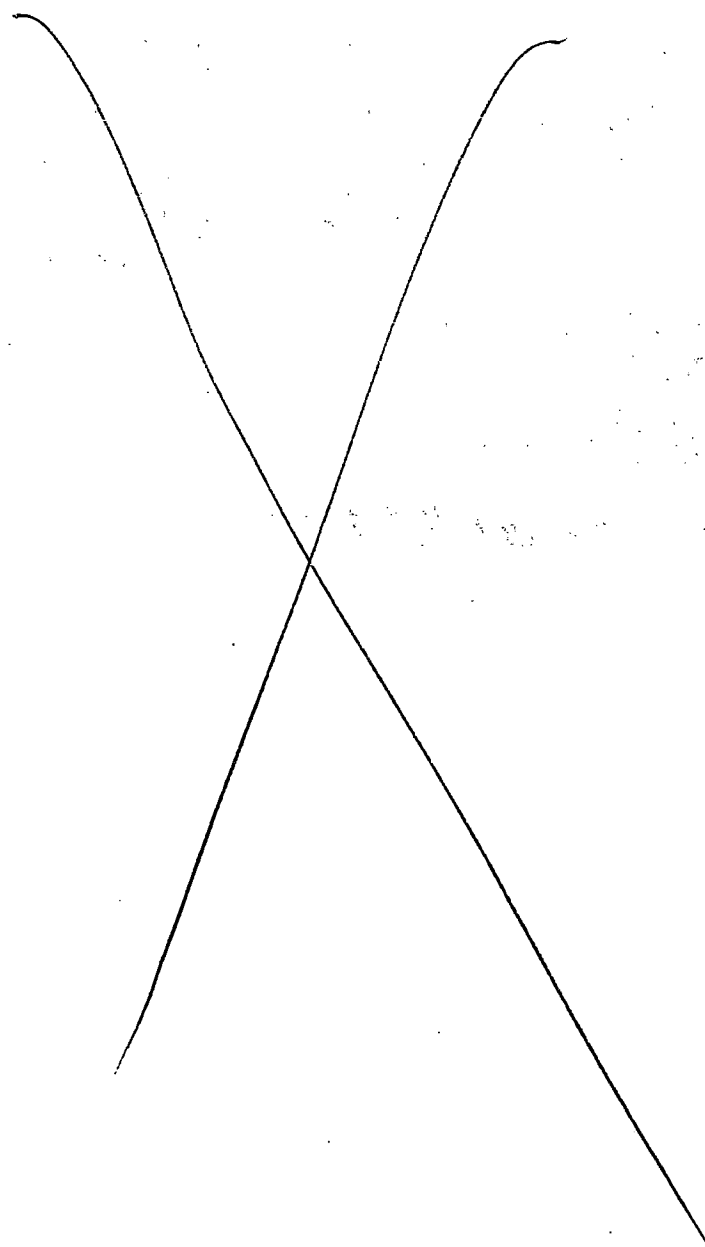
Lewis Chisolm  
Applicant

SWORN or affirmed to and subscribed before me this  
27th day of June, 2016.

Paul B. Smith  
Notary Public

My Commission Expires: February 17, 2021

2016 JUL 11 PM 2:57  
RECEIVED  
CLERK OF COURT  
S.C.



000126

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Lewis Chisolm, #196380,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

2016-CP-07-1560

**RETURN AND MOTION FOR  
MORE DEFINITIVE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on July 11, 2016, would respectfully show this Court:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. On November 9, 2015, Applicant waived presentment to Grand Jury and pleaded guilty to criminal sexual conduct with a minor, second degree (2015-GS-07-1529). Applicant was represented by Jared Newman, Esquire. Assistant Solicitor Julie Kate Keeney prosecuted the case. Applicant pled guilty as indicted. The Honorable Eugene Griffin sentenced Applicant to ten years imprisonment.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 6, 2016. The Remittitur was returned on May 23, 2016.

**II. ALLEGATIONS**

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

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

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

### III. INEFFECTIVE ASSISTANCE OF COUNSEL

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

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney

performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised, which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

#### IV. INVOLUNTARY GUILTY PLEA

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C.

16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V. MOTION FOR MORE DEFINITE STATEMENT

Respondent also moves for a more definite statement. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Applicant has wholly failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application well in advance and set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

## VI. AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

## VII. CONCLUSION

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied. WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

*{signature block on following page}*

Respectfully submitted,

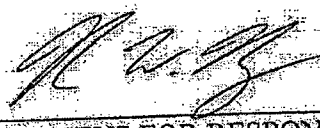
ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

RUSTON W. NEELY  
Assistant Attorney General

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

By:   
ATTORNEYS FOR RESPONDENT

April 17<sup>th</sup>, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LEWIS, CHISOLM, #196380,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2016-CP-07-1560

AFFIDAVIT OF SERVICE BY MAIL

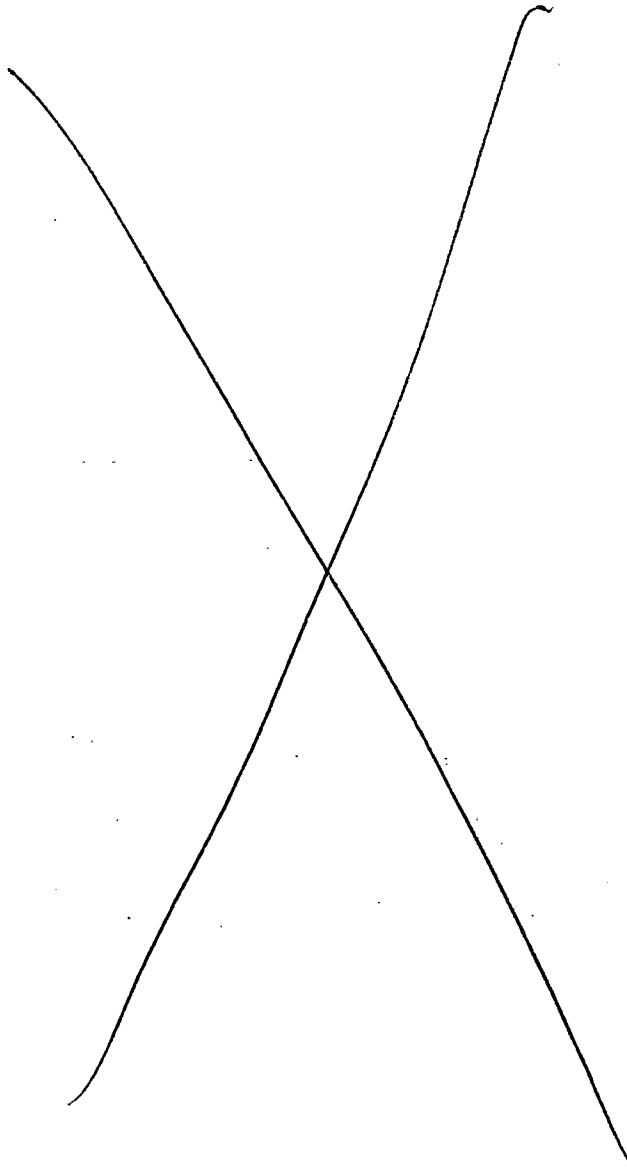
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for More Definitive Statement on the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

Tommy A. Thomas  
PO Box 88  
Irmo, SC 29063

DATED this 17<sup>th</sup> day of April, 2017.

  
Brianna Arnone, Legal Assistant  
For Respondent

000133



STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-07-1560

LEWIS CHISOLM #196380, )  
Applicant, )  
v. )  
STATE OF SOUTH CAROLINA, )  
Respondent, )

AMENDMENT TO APPLICATION  
FOR POST CONVICTION RELIEF

2017 MAY 30 PM 2:29  
JERRI ANN ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

Pursuant to the Respondent's Return and Motion for More Definite Statement, the Applicant by and through his attorney, Tommy A. Thomas, would respectfully amend and supplement his original application for Post-Conviction Relief filed July 11, 2016, by adding the following:

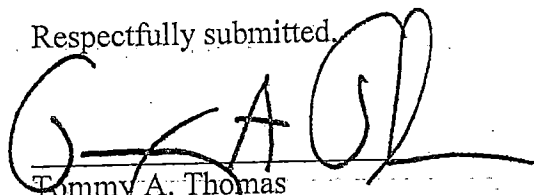
1. That the Applicant specifically re-alleges his claim of ineffective assistance of counsel.
2. That trial Counsel was ineffective for the following additional reasons:
  - a. Failure to adequately investigate the case.
  - b. Failure to adequately explain the State's evidence against Applicant.
  - c. Failure to investigate and/or use the fact that the Police threatened to take his son away from him unless he admitted to the crime.
  - d. Failure to adequately investigate and use inconsistent descriptions by the victim of the alleged incident.

e. Failure to adequately present and argue the Motion to suppress the statements at pre-trial hearing. However, there is no evidence that a Pretrial Motion to Suppress was ever held.

3. That the Applicant is informed and believes that his guilty plea was not freely, voluntarily.

4. That the Applicant is informed and believes that he lacked sufficient knowledge to enter the plea knowingly or intelligently.

Respectfully submitted,



Tommy A. Thomas  
Attorney for the Applicant  
Post Office Box 88  
Irmo, SC 29063  
(803) 732-5507

May 26, 2017  
Irmo, SC

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2016-CP-07-1560

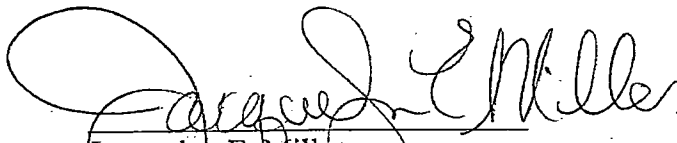
LEWIS CHISOLM #196380, )  
 )  
Applicant, )  
v. )  
STATE OF SOUTH CAROLINA, )  
 )  
Respondent, )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

2017 MAY 30 PM 2:29  
JERRI ANN ROSENEAD  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

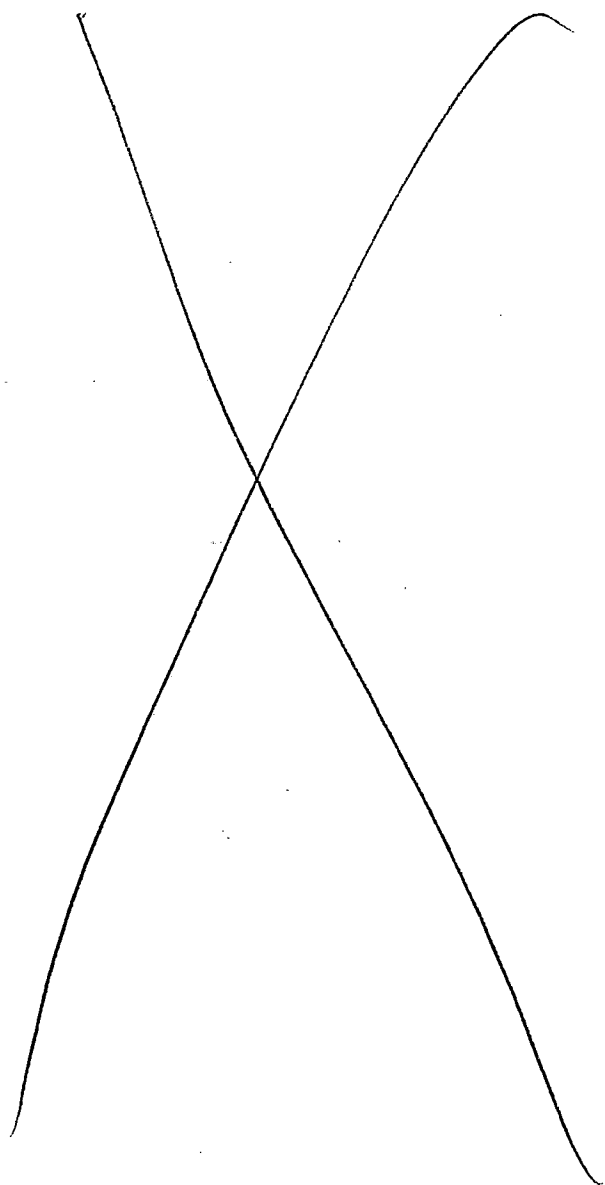
I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of the Amendment to Application for Post Conviction Relief by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Ruston W. Neely, Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

  
Jacquelyn E. Miller  
Tommy A. Thomas, Esq.  
Attorney at Law  
7588 Woodrow Street  
P.O. Box 88  
Irmo, S.C. 29063  
(803) 732-5507

May 26, 2017

000137



STATE OF SOUTH CAROLINA  
FOURTEENTH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF COMMON PLEAS  
CASE NUMBER 2016-CP-07-01560

LEWIS CHISOLM

APPLICANT

VERSUS

ORIGINAL

STATE OF SOUTH CAROLINA

RESPONDENT

---

JANUARY 29, 2018

TRANSCRIPT OF POST CONVICTION RELIEF HEARING  
BEAUFORT COUNTY, BEAUFORT, SOUTH CAROLINA

BEFORE

HON. R. LAWTON MCINTOSH, JUDGE

WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

ORIGINAL

000139

APPEARANCES

ON BEHALF OF THE STATE:

HON. CHRISTIAN SAVILLE  
ASSISTANT ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, SOUTH CAROLINA 29211-1549  
803-734-3970

ON BEHALF OF APPELLANT  
LEWIS CHISOLM:

HON. TOMMY A. THOMAS, P.C.  
HARRINGTON BUILDING  
7599 WOODROW STREET  
POST OFFICE BOX 88  
IRMO, SOUTH CAROLINA 29063  
803-732-5507

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APPLICANT LEWIS CHISOLM

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ELLA FRAZIER

|                                          |    |
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#### EXHIBITS

No exhibits were admitted.

1 BEGINNING 10:59 A.M.

2 BY THE COURT:

3 MR. SAVILLE: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. SAVILLE: This is Lewis Chisolm versus the  
6 State of South Carolina, Docket Number 2016-CP-07-01560.  
7 Applicant is presently confined in the South Carolina  
8 Department of Corrections pursuant to the orders of  
9 commitment of the clerk of court for Beaufort County.  
10 Applicant was charged with criminal sexual conduct with  
11 a minor, second degree. Applicant was represented by  
12 Jared Newman, Esquire. Assistant Solicitor Julie Kate  
13 Keeney prosecuted the case.

14 On August 11, 2015, a pretrial *Jackson v. Denno*  
15 hearing was convened before the Hon. Brooks Goldsmith  
16 regarding statements Applicant had made to police.  
17 Judge Goldsmith found all the statements to be  
18 voluntary, and denied Applicant's motion to quash. On  
19 November 9, 2015, Applicant waived presentment to the  
20 grand jury and pleaded guilty to criminal sexual conduct  
21 with a minor, second degree, before the Hon. Eugene  
22 Griffith. Judge Griffith sentenced Applicant to ten  
23 years in prison. Applicant filed a timely notice of  
24 appeal. South Carolina Court of Appeals dismissed the  
25 appeal for failure to provide an explanation, by order

1 filed May 9, 2016. The remittitur was returned on May  
2 23, 2016.

3 Applicant filed a timely application for post-  
4 conviction relief on July 11, 2016, alleging that he was  
5 being held in custody unlawfully based on the following  
6 allegations: ineffective assistance of counsel and  
7 involuntary guilty plea.

8 The State filed its return, and motions from our  
9 office on May 17, 2017. Applicant subsequently filed an  
10 amendment to his application May 30, 2017, in which he  
11 alleges ineffective assistance of counsel for failure to  
12 investigate; failure to adequately explain the evidence  
13 against Applicant; failure to investigate and/or use the  
14 fact that police threatened to take his son away from  
15 him unless he admitted to the crime.

16 THE COURT: You got failure to investigate, failure  
17 -- what was the last of that, please?

18 MR. SAVILLE: Essentially, a failure to explain  
19 evidence and a failure to challenge the voluntariness of  
20 statements made to police. Applicant also alleges that  
21 he believes his guilty plea was not free and voluntary.

22 Applicant's present today, represented by Mr. Tommy  
23 Thomas. I'll turn it over to Mr. Thomas.

24 MR. THOMAS: Yes, if it please the Court. I can  
25 clean that up a little bit, your Honor. This case

1 should be pretty straight-forward. I think -- and I  
2 talked with the Assistant Attorney General last week  
3 about these issues. Really, in essence, what it's going  
4 to boil down to is an involuntary guilty plea. And  
5 there also may be -- there may be some ineffective  
6 assistance of counsel. I don't want to leave that out,  
7 but I think the main issue is going to be the voluntary  
8 guilty plea. And also, there's an issue of the appeal.  
9 the appeal was -- and Counsel's correct. The appeal was  
10 dismissed for failure to file the reasons as to why it  
11 should go forward, since it was a guilty plea. And one  
12 of the issues, your Honor, would be the belated appeal.

13 I do have --

14 THE COURT: He did appeal, though, right?

15 MR. THOMAS: He did appeal, yes. There's just --  
16 it was just dismissed.

17 THE COURT: He did not properly meet the  
18 requirements, but he did appeal, right?

19 MR. THOMAS: Yes, sir. Yes, sir.

20 THE COURT: Okay.

21 MR. THOMAS: And I just wanted to make sure the  
22 Court has the pretrial transcript and the transcript --

23 THE COURT: I have nothing, Mr. Thomas. You have  
24 your hand up of --

25 MR. THOMAS: Yes, your Honor. I'm sorry. I placed

1 the judge packet before you started the day.

2 THE COURT: I stand corrected. I do have them.

3 MR. THOMAS: Thank you. And also, your Honor, I  
4 have a habit of just quoting rather than having my  
5 client read the transcript. A lot of times I'll just  
6 make reference to the transcript, the page number and  
7 the lines, just for the convenience of the Court, your  
8 Honor. If that's -- if that's with the Court's  
9 approval, it helps to kind of move things along.

10 THE COURT: Sure.

11 MR. THOMAS: Your Honor, if it please the Court, in  
12 this case, we're going to call Mr. Jared Newman first.  
13 That's the trial counsel, plea counsel.

14 THE COURT: Come around, please.

15 MR. JARED NEWMAN: Can I pour a cup of water, your  
16 Honor?

17 THE COURT: Yes, sir, you may.

18 MADAM CLERK: Do you solemnly swear or affirm to  
19 truthfully answer all questions asked of you by this  
20 Court, so help you God?

21 MR. JARED NEWMAN: I do.

22 MADAM CLERK: Thank you.

23 MR. THOMAS: Your Honor, please the Court.

24 JARED NEWMAN

25 DIRECT EXAMINATION BY MR. THOMAS:

1 Q. Mr. Newman, you had an opportunity to represent  
2 Lewis Chisolm?

3 A. I did.

4 Q. And what was he charged with?

5 A. He was charged with criminal sexual conduct with a  
6 minor in the second degree.

7 Q. All right, sir. And what did you do to prepare  
8 this case for trial? Or trial or plea, I guess.

9 A. For trial, we'd gone back and forth as to whether  
10 this was going to be a trial or a plea. Lewis initially  
11 indicated that we were going to go to trial. I did my  
12 normal thing that I would do to investigate a case. Of  
13 course, I read the police reports, I look at the  
14 statements, look for the legal issues, such as  
15 voluntariness or whether a statement could be  
16 admissible.

17 I want to say I drove by -- I did not go into, but  
18 I drove by the location and the bus stop where this was  
19 alleged to have happened. I looked over the forensic  
20 interview. I look over the written statements.  
21 Basically, the entire police file. I guess the standard  
22 stuff you do to prepare.

23 Q. Yeah.

24 A. Nothing out of the ordinary.

25 Q. All right. Was there any DNA evidence in this

1 case?

2 A. I do not believe there was.

3 Q. Okay. All right. And was it -- so what evidence  
4 did the State actually have of it, of the crime?

5 A. The State -- the State -- this was alleged to have  
6 happened with a fourteen-year-old girl, who, in my  
7 opinion, when I listened to the interviews, was  
8 articulate. The girl had a story. These were family  
9 friends. She knew Mr. Chisolm because Mr. Chisolm knew  
10 her mother fairly well and from the community. The kind  
11 of twin versions that came down, I don't know where they  
12 split was that it -- I believe it was raining lightly  
13 that day. Mr. Chisolm offered to give the young lady a  
14 ride; said he needed to stop by his -- his shed or man  
15 cave, a building behind his house. And he invited her  
16 in for T.V. and/or to get out of the rain. I'm not  
17 really sure.

18 Q. Yes, sir.

19 A. There, the stories diverge. Mr. Chisolm says  
20 nothing happened, other than I think he said his knee  
21 was sore and the girl rubbed his knee.

22 The girl wrote a statement saying that he performed  
23 oral sex on her and attempted to penetrate her. And  
24 when that didn't work, Mr. Chisolm took her to school.  
25 She immediately had talked to a friend. I don't recall

1 the little girl's name, a little girl about the same age  
2 as her. Was reported to be shaken, visibly upset. They  
3 reported it to a school counselor. Who then reported  
4 it, I guess, to the SRO, the law enforcement officer at  
5 the school. An investigation began from there.

6 MR. THOMAS: Your Honor, for the Court's  
7 information, the DNA is discussed on Trial Transcript  
8 Page 8, and that's lines 18 through 25.

9 A. And I'll create reference. I don't remember DNA  
10 protocol.

11 Q. Yeah. I think that comes back inconclusive.

12 A. Okay, that -- that's consistent with what I had. I  
13 don't think that they had anything they could use  
14 forensically.

15 Q. They didn't. Yes. Yes, sir.

16 Now, let's talk about there were some statements  
17 made in this -- in this case by Mr. Chisolm. Is that  
18 correct?

19 A. That's correct.

20 Q. And there were three different statements? Do you  
21 remember?

22 A. I believe they were done at three different times.  
23 I know there was initially a verbal statement, and then  
24 at some point that was reduced to a written statement.  
25 I don't recall if there was a actually recorded

1 statement.

2 Q. All right, sir. And of those three statements, in  
3 reading, especially the *Jackson v. Denno* hearing, it  
4 appears that you were concerned about the third  
5 statement that there was some indication of guilt, some  
6 sort of confession of guilt?

7 A. Yeah, very much so, because he admitted to facts  
8 that would fit the -- the charge of CSC second degree.

9 Q. All right. And you argued that that -- that that  
10 statement should be suppressed.

11 A. That's correct.

12 Q. In the pretrial hearing.

13 A. For a couple different reasons.

14 Q. All right. And do you remember why you argued that  
15 it should have been suppressed?

16 A. The -- Lewis had told me this, and I don't think it  
17 was necessarily disagreed to by Kelleher, the  
18 investigator; he just had a different spin on it. Lewis  
19 had given a statement. They were pressing him for more.  
20 And I believe, I don't know the exact timing, but after  
21 the first time that he spoke with the -- with the  
22 sheriff's investigator, Mr. Chisolm had told me, and I  
23 did verify it, that he had contacted an attorney, Mr.  
24 Marshall.

25 Q. Yes.

1 A. Because he was concerned that he needed  
2 representation. Mr. Chisolm had told me he believed  
3 that he retained Mr. Marshall. I was not able to really  
4 verify or dispel that, other than Mr. Marshall did not  
5 recall being retained. He did recall that Mr. Chisolm  
6 spoke with him. And parenthetically, going on at the  
7 time, Mr. Marshall was really, really sick with cancer  
8 and was undergoing some very serious treatments. So my  
9 -- I was only able to talk to Bruce maybe a minute at a  
10 time before he become fatigued. But he really -- he had  
11 a recollection that he spoke with Mr. Chisolm, but did  
12 not recall being retained by Mr. Chisolm.

13 Q. All right. Do you remember whether or not Mr.  
14 Marshall actually appeared with Mr. Chisolm in regards  
15 to the second statement? Appeared in front of -- went  
16 with him to the police station?

17 A. I -- I don't recall.

18 Q. All right.

19 MR. THOMAS: Your Honor, if I could beg the Court's  
20 indulgence for just a second.

21 THE COURT: Yes, sir.

22 MR. THOMAS: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 BY MR. THOMAS:

25 Q. Counsel, and I'm going to --

1 MR. THOMAS: Your Honor, this is Page 23 at the  
2 pretrial transcript. I'm looking at Lines 13 through  
3 17.

4 BY MR. THOMAS:

5 Q. Counsel, I'll let you look at that and see if it  
6 refreshes your memory.

7 THE COURT: Page 23?

8 MR. THOMAS: It's Page 23 of the -- of the  
9 pretrial, your Honor. And it's Lines 13 through 18, are  
10 what we're going to be talking about.

11 BY MR. THOMAS:

12 Q. Or Counsel, if you just want to read through that  
13 page and the top of the next page for the questions I'm  
14 going to be asking you.

15 A. Okay. And that's Ms. Keeney on direct with John  
16 Kelleher that's -- okay.

17 Q. All right. Does it appear from that that he made  
18 some -- he told the police that he was going to contact  
19 Bruce Marshall?

20 A. It appears that way. It appears to me that if  
21 you're asking it this way, that Investigator Kelleher  
22 did have some type of notice that Mr. Lewis [sic] was in  
23 contact with an attorney.

24 Q. All right.

25 A. What the scope of that was, it's not clear.

1 Q. All right.

2 MR. THOMAS: Your Honor, may I approach again? I'm  
3 sorry.

4 THE COURT: Yes, sir.

5 BY MR. THOMAS:

6 Q. And this may be easier.

7 A. Sure.

8 Q. I'm going to let you look at the same Page 23.

9 A. Okay.

10 Q. Lines 24 and 25. If you could tell us what that  
11 testimony is about.

12 A. It appears Kelleher saying on the 18th that the  
13 detective was contacted by Mr. Marshall by phone;  
14 informed him he was not presently representing Lewis,  
15 Mr. Chisolm. *It should be known that I have a working*  
16 *relationship with Mr. Marshall, so I knew him; we have a*  
17 *good relationship.*

18 Q. All right, sir. And then, I'll have you look at  
19 this right fast. If you'll look at same on Page 24,  
20 Lines 8 through 10, if you don't mind.

21 A. Okay.

22 Q. Does it appear the investigator is saying that the  
23 attorney had contacted him about a sit-down, coming in  
24 with Mr. Chisolm?

25 A. Right. And this particular investigator I have no

1 respect for, but that's beside the point. It looks like  
2 when he was saying he would honor his request, that they  
3 were trying to establish an attorney/client  
4 relationship; and that the detective, as a professional  
5 relationship, was going to respect Mr. Marshall's  
6 wishes, and looks like he was going to interview Lewis  
7 with Mr. Marshall present. Of course, that didn't  
8 happen.

9 Q. Yes, sir. Now, the third statement, the one that  
10 there's an alleged admission in, did the -- how did that  
11 happen? Do you remember how that happened that the --

12 A. If I recall -- and Judge, if I'm wrong, we can  
13 defer to the record. I'd gone through some of this, but  
14 I didn't specifically note that. I think that Kelleher  
15 on his own showed up at Mr. Chisolm's residence. I  
16 don't know if he -- Mr. Chisolm was getting ready to go  
17 to work, leave for work, something like that, and in my  
18 opinion, put the high pressure on him that we need to  
19 get a statement, we need to get a statement right now.  
20 I think Mr. Chisolm's responses were, well, you know,  
21 I'm not prepared to do this right now. And Kelleher was  
22 very insistent. And Kelleher either knew or Mr. Chisolm  
23 had made him aware, Mr. Chisolm had a son, I don't  
24 remember his age, that had some fairly serious medical  
25 conditions. I think he was on disability and maybe was

1 a patient at MUSC. And there was certainly a flavor  
2 from this detective that DSS may have to become involved  
3 if we can't get a statement right now.

4 Q. Yes, sir.

5 A. Kelleher didn't -- said he mentions DSS, but put a  
6 little bit different spin on it to soften -- to soften  
7 that down. As a result of that, right there in I  
8 believe it was on the porch, Mr. Chisolm made a  
9 inculpatory statement that I think was later reduced to  
10 writing at the Sheriff's Department.

11 MR. THOMAS: Your Honor, may I approach again?

12 THE COURT: Yes, sir.

13 MR. THOMAS: Your Honor, I'm looking at Page 35 of  
14 the pretrial transcript, and this is Lines 1 through --  
15 will be 1 through 16.

16 BY MR. THOMAS:

17 Q. Counsel, I'm going to ask if you'd just look at  
18 that, please.

19 A. I'm on 35?

20 Q. Yes, sir, it's 35.

21 A. 1 through 16?

22 Q. Yes, sir.

23 A. Yes, sir.

24 Q. All right. And who is testifying there?

25 A. This is my cross-examination of Investigator

1 Kelleher.

2 Q. And what does Investigator Kelleher -- does he talk  
3 about the thing about DSS and the child?

4 A. He does. I mean, I -- I just can't tell you my  
5 disdain for this particular detective. He's retired  
6 now, and he was a terrible guy.

7 Q. Yes, sir. And are there -- he makes comments of  
8 the child having to go to DSS?

9 A. Oh, yes, he mentions that. And then, as I said, he  
10 kind of deflects that off.

11 Q. Yes.

12 A. And at least according to Mr. Chisolm, the clear  
13 implication was you're going to give this statement  
14 right here and now or your little boy is going to get  
15 snatched from you immediately.

16 Q. Do you remember whether the investigator said he  
17 was going on vacation and he needed a statement then?

18 A. Yeah, that's John Kelleher, absolutely, I got to  
19 have it right now, I'm going on vacation.

20 Q. Yes, sir. And --

21 A. And it's odd to note that Kelleher went along.  
22 That's not part of their policy.

23 MR. THOMAS: Your Honor, may I approach one more  
24 time?

25 THE COURT: Yes, sir.

1 MR. THOMAS: Your Honor, and this is Page 36, Lines  
2 1 through 8.

3 BY MR. THOMAS:

4 Q. Counsel, I'm just going to let you look at that.

5 A. 1 through 8.

6 Q. Yes, sir.

7 A. Yes, sir.

8 Q. So does he make further reference to DSS in that  
9 statement?

10 A. He does.

11 Q. All right.

12 A. Telling he rather not have to do that

13 Q. Rather not take him, put him and put him in DSS  
14 custody?

15 A. Correct.

16 Q. Now, you made an argument at pretrial that the  
17 third statement, I believe, the one that's the so-called  
18 admission, to be suppressed?

19 A. Yes, I believe that's correct.

20 Q. And do you remember your argument in that case?

21 A. I -- I do not. I think it was more focused not as  
22 to the custody issue specifically, because I think  
23 that's what Judge Goldsmith was hung up on, but as to  
24 the voluntariness aspect. To me, it was very clear that  
25 Mr. Chisolm had clearly, to the Sheriff's Department, to

1 Kelleher, had asserted his *Sixth Amendment* right to  
2 counsel, whether in custody or not.

3 Q. Right.

4 A. And I think the judge just focused whether the  
5 statement was voluntary or not, and that was an  
6 argument. He found it by a preponderance of the  
7 evidence and that I could argue to the jury that, you  
8 know, they still had to find it was beyond a reasonable  
9 doubt that it was voluntary.

10 Q. Okay. And do you believe that that was an  
11 appealable issue?

12 A. Yes.

13 Q. Okay. All right. And let's go ahead, I guess, and  
14 cover that before I forget it. So, after -- after the  
15 plea, this, of course, the statement was not suppressed.  
16 And after the plea, did you in fact talk with Mr.  
17 Chisolm about the appeal? Do you remember?

18 A. I did after -- after the fact. I know we'd had  
19 some discussions. I mean, the statement concerned me.  
20 If his statement came in, you know, admitted that he had  
21 performed oral sex on her and attempted to -- to  
22 penetrate her, if that statement comes in, jury's going  
23 to find him guilty. End of story. I mean, it -- it --  
24 it's enough to wrap that up.

25 Specifically, you know, I went over with him that

1 he'd be waiving his rights. I don't know that I  
2 specifically went over that he's waiving his right to  
3 that appeal issue. You know, we don't have conditional  
4 guilty pleas in South Carolina.

5 Q. Yes.

6 A. So, in effect, yes, by pleading guilty, he would be  
7 waiving any appellate issues he had as to his statement.

8 Q. But not necessarily the argument about the  
9 suppression of the statement. Would he still be able to  
10 argue that in the appeal?

11 A. I -- I don't know. I -- it's my understanding, if  
12 you appeal, you waive all non-jurisdictional issues. I  
13 maybe wrong on that.

14 Q. All right. But you, in fact, filed the appeal for  
15 him.

16 A. I did, as a pro se. Our relationship did not  
17 include an appeal. And typically, what I will do is  
18 I'll prepare the first -- you know, an appeal's easy.  
19 I'll prepare the pro forma paperwork. I had Mr. Chisolm  
20 sign it, and got it notarized as a pro se applicant. I  
21 filled out an affidavit of indigency; had him sign that;  
22 filed it with the clerk of court here. The Court of  
23 Appeals sent a courtesy copy to appellate defense.

24 Q. All right.

25 MR. THOMAS: Your Honor, may I approach?

1 BY MR. THOMAS:

2 Q. I'll show you this document. You recognize that?

3 A. Yes, I received a copy of this.

4 Q. And what is that document?

5 A. This document is a order from the Court of Appeals  
6 advising the appellant, which would be Mr. Chisolm at  
7 this point, has failed to provide an explanation as  
8 required by Rule 203, subsections of the Appellate Court  
9 rules. Accordingly, this matter is dismissed.  
10 Remittitur -- and they send remittitur back to you, the  
11 court.

12 Q. So it was dismissed for failure to provide the  
13 explanation as pursuant to the rules.

14 A. Correct. There is -- and I believe I sent it to  
15 Mr. Chisolm. There is a document that I was unaware of  
16 until we did it. It's a rather complicated form, too.  
17 If you appeal a guilty plea, you've got to jump through  
18 all these hoops to say why and what are your specific  
19 grounds. You can't just say involuntary guilty plea.

20 Q. Right.

21 A. And I believe I sent that to Mr. Chisolm, along  
22 with a notice. And I believe at this point --

23 THE COURT: You sent the form to Mr. Chisolm?

24 A. Yes.

25 THE COURT: Okay.

1 A. And I believe at this point Mr. Chisolm was getting  
2 copied directly. Yeah, it has got his inmate number on  
3 it, on a copy with the forms. And I don't -- I don't  
4 think at this point appellate defense had had any  
5 representation. My concern for Lewis, but I was not  
6 representing him on the appeal --

7 Q. Yes, sir.

8 A. -- being -- I mean, I'm a lawyer and I had  
9 difficulty understanding that form. So my guess is, Mr.  
10 Chisolm, out of frustration, never sent it in. That's  
11 just speculation on my part, and the appeal was  
12 dismissed.

13 Q. Or would not necessarily have known what the  
14 document was?

15 A. Or known the document -- yeah, I agree with that.  
16 Mr. Chisolm was an intelligent person. I'm not saying  
17 that.

18 Q. Yes, sir.

19 A. I'm just telling you, that form, as a lawyer, was  
20 complicated to me.

21 Q. Yes, sir.

22 MR. THOMAS: Your Honor, I don't think I need to  
23 introduce this. This should be part of the Court's  
24 packet.

25 THE COURT: It is.

1 MR. THOMAS: Okay. Thank you, your Honor.

2 BY MR. THOMAS:

3 Q. Counsel, what was the -- do you remember the thing  
4 about the amending the indictment? I saw that in the  
5 pretrial transcript where solicitor's office amended it  
6 to a CSC third, which carried zero to ten. And then, I  
7 notice that he pled to criminal sexual conduct with a  
8 minor. Do you know how that happened?

9 A. I'd have to see the indictment -- the indictment he  
10 pled to. Did he -- I mean, I don't remember if he pled  
11 to CSC third.

12 Q. I just, well --

13 A. I do know the discussion -- Judge Griffith was very  
14 good about letting us talk to him in chambers.

15 Q. Yes, sir.

16 A. To give us what he thought might be a sentencing  
17 range. Of course, with the caveat he'd have to hear all  
18 the facts.

19 Q. Right. What was his exposure on his plea? Do you  
20 remember?

21 A. I'd have to look. As indicted on the CSC second, I  
22 believe -- I want to say that carries up to twenty. I'm  
23 not sure.

24 Q. Yes, sir. And I think --

25 A. CSC third, I believe, carries a max of ten.

1 Q. Yes, sir. And I think it was -- he was informed at  
2 the plea that it carried up to twenty.

3 A. If I remember now, he was not indicted correctly,  
4 and the Solicitor's Office never picked it up. And  
5 then, when we started getting in gear and/or toward  
6 trial mode and/or toward plea, they were -- to get the  
7 -- because I think the facts fit a CSC second degree,  
8 and for some reason they indicted him. I want to say we  
9 waived grand jury presentment on the CSC second, but I'm  
10 not sure.

11 MR. THOMAS: Your Honor, if I could beg the Court's  
12 indulgence just for a second.

13 Your Honor, I have no further questions.

14 THE COURT: Cross-examination.

15 MR. SAVILLE: Thank you.

16 MR. JARED NEWMAN

17 CROSS-EXAMINATION BY MR. SAVILLE:

18 Q. Good morning, Mr. Newman. How you doing?

19 A. Hey, good morning.

20 Q. Appreciate you being here today.

21 A. Yes, sir.

22 Q. How long have you been practicing law in South  
23 Carolina?

24 A. Since 1989.

25 Q. And have you been practicing criminal law for all

1 that time?

2 A. Oh, yeah.

3 Q. Okay. Were you appointed or retained in this case?

4 A. I was retained.

5 Q. Retained. So defendant didn't want Bruce Marshall  
6 to represent him?

7 A. As I remember, Lewis had knew Mr. Marshall from the  
8 community and Mr. Marshall had practiced law for longer  
9 than I have. He's a good attorney. What I think Lewis  
10 did not know was Mr. Marshall was -- was very, very ill,  
11 going through his cancer treatments at the time.

12 Q. I see.

13 A. And was not able to accept clients.

14 Q. Yes, sir. How many times did you meet with Mr.  
15 Chisolm prior to the *Jackson v. Denno* hearing?

16 A. I don't know. A fair number of times. Lewis would  
17 come in the office; we'd go over things as needed. I  
18 keep my office open to my clients. I take walk-ins.  
19 but we met a number of times. And when I start -- when  
20 a case looks like it's getting hot -- it may sit off the  
21 radar screen for a year, because nothing's happening.  
22 Then, all of a sudden, you're making a trial roster and  
23 you're starting to have to work on it. But Lewis and I  
24 met a number of times. I was comfortable he understood  
25 my conversations and I answered his questions for him.

1 Q. Did you all get a chance to meet after the *Jackson*  
2 v. *Denno* hearing but before the guilty plea?

3 A. Oh, yeah, I'm sure we did.

4 Q. Did you discuss Mr. Chisolm's version of the facts?

5 A. Yes, and the discussions were the two -- the two  
6 versions, which pretty much mirrored the -- the two  
7 statements. A semi- -- a non-inculpatory statement that  
8 mirrored the facts up to a point; and then, the  
9 inculpatory statement, which mirrored the facts from  
10 start to finish.

11 Q. So this story changed over time?

12 A. I will put it this way, it changed from the story  
13 that he gave Investigator Kelleher.

14 Q. Okay. What were the versions of the story that he  
15 gave you?

16 A. Basically matching up; that he knew who this young  
17 lady was; he knew her mother; they were family friends  
18 for I don't know, life long maybe, here in the  
19 community. That it was raining; that he wanted to offer  
20 her a ride. She was either at the bus stop or walking to  
21 the bus stop. That he had to check on something vague.  
22 I don't remember what it was. He got a -- a house that  
23 had behind it either a shed or described as a man cave.  
24 It had a couch. I think a refrigerator, T.V. in it, a  
25 restroom. And that they were either going to stop there

1 because they were early for school and watch T.V. for a  
2 few minutes, or just get out of the rain. And that they  
3 chitchatted; and then, nothing happened; and then, he  
4 took her to school.

5 Q. Do you recall Mr. Chisolm telling you that they  
6 went back to his house on your way to school because he  
7 thought he left a light on?

8 A. Yeah, that was it; that he wanted to check on the  
9 lights or had left a light on somewhere.

10 Q. But she came in, too.

11 A. Yes.

12 Q. Okay. So it was raining that day.

13 A. As I understood it, yes.

14 Q. So she came out of the car in the rain to go with  
15 him.

16 A. Correct.

17 Q. To turn the light off.

18 A. Correct.

19 Q. Is there a recollection that she made it to school  
20 on time that day?

21 A. I believe she was not incredibly late, but that she  
22 was late. The thing that was killing me in this case,  
23 you know, we look for things in these type cases,  
24 delayed disclosure, different things like that. As I  
25 got the facts, she immediately told a friend of hers

1 that was about her same age, fourteen-year-old girl in  
2 the school. The girl gave a statement that the alleged  
3 victim was visibly upset; had related to her that she'd  
4 been sexually assaulted. Fortunately, the other teenage  
5 girl knew what to do. They went to the guidance  
6 counselor; told again essentially the same thing; and  
7 the principal and guidance counselor -- I don't remember  
8 if it was the SRO or law enforcement, but they called  
9 the law enforcement in immediately, and the case was  
10 investigated immediately afterwards.

11 Q. So we spoke earlier about some discrepancies in Mr.  
12 Chisolm's version of events. Were there any  
13 inconsistencies in the victim's version of the events?

14 A. No, she was -- she was pretty spot on to her  
15 statement to her friends, statement to law enforcement  
16 and forensic interview as to what went on. It was not  
17 incredibly detailed, but it was detailed in the fact  
18 that it was raining; she was at the bus stop; she went  
19 to his house to check on a light or something like that;  
20 that Mr. Chisolm began I guess rubbing on her leg;  
21 pulled her pants down; had oral sex with her; attempted  
22 to get something and have I guess vaginal sex with her;  
23 and that -- that didn't work; that Mr. Chisolm had wiped  
24 her up; and she gathered her -- gathered her stuff; and  
25 that he dropped her off at school; and that she was

1 predictably some minutes late.

2 Q. Was she articulate?

3 A. Yes.

4 Q. Do you think she would have made an effective  
5 witness for the State?

6 THE COURT: Move forward, please, sir.

7 MR. SAVILLE: Yes, sir.

8 A. Absolutely.

9 BY MR. SAVILLE:

10 Q. Did Mr. Chisolm give you any potential alibi  
11 witnesses?

12 A. No. I don't think he ever denied from the  
13 beginning that -- that he'd picked this girl up and  
14 taken her. He'd denied that he'd sexually assaulted  
15 her.

16 Q. Now, Mr. Chisolm is alleging that you did not  
17 adequately challenge the statements he made to the  
18 police officers. Did you bring up the *Miranda* issue  
19 during the pretrial hearing?

20 A. Yes. Brought up that issue. And again, my focus  
21 was more a *Sixth Amendment* right-to-counsel issue. I  
22 don't think *Miranda* applied. I don't believe he was in  
23 custody. Clearly wasn't in custody on his doorstep.  
24 When he was at the police station, I would argue that he  
25 was in custody.

1 Q. As to the issue regarding Bruce Marshall, were you  
2 able to bring that up at the *Jackson v. Denno* hearing as  
3 well?

4 A. I'd have to create reference to the record. I  
5 believe I asked some questions about that, based on the  
6 statements that Mr. Thomas showed me on my cross-  
7 examination of the officer.

8 MR. SAVILLE: Beg the Court's indulgence, your  
9 Honor.

10 BY MR. SAVILLE:

11 Q. Do you recall Applicant's testifying at the *Jackson*  
12 *v. Denno* hearing that he made the statement, the third  
13 statement, orally to the police officer before there was  
14 conversation about his son going to DSS?

15 A. I create reference to the record. I -- I don't  
16 remember.

17 Q. For your reference, it was on Page -- this is Page  
18 48 of the pretrial hearing transcript. And Ms. Keeney  
19 asked Mr. Chisolm did -- asked him if Officer Kelleher  
20 made the statement about his son before or after the  
21 verbal statements. And Mr. Chisolm says it was before  
22 he wrote the statements, but then he talks about making  
23 the verbal statement earlier.

24 A. As I got the flavor of it, what Mr. Chisolm told  
25 me, the stuff about the DSS was going on right at the

1       doorstep of his house, and that that spilled over when  
2       it ended up at the Sheriff's Department.

3       Q.    But you were able to discuss this at the Jackson v.  
4       Denno hearing before the judge?

5       A.    Yes.

6       MR. SAVILLE:   That's all, your Honor.   Thank you.

7       THE COURT:   Re-direct.

8       MR. THOMAS:   If it please the Court.

9               JARED NEWMAN

10              RE-DIRECT EXAMINATION BY MR. THOMAS:

11       Q.    Just a follow-up on that line of questioning.   When  
12       the detective went over to speak with Mr. Chisolm, there  
13       was a verbal statement, but he also reduced it to  
14       writing.   Is that correct?

15       A.    That's correct.   And if I remember that correctly,  
16       it was kind of the cat-out-of-the-bag thing.   He makes  
17       the statement; they get back to the police station; I  
18       think Lewis is taken into custody after he makes the  
19       statement.   And then, the detective puts down the pen  
20       and paper and says let's -- let's get this down on  
21       paper.

22       Q.    All right.   And clearly, the reference to DSS would  
23       have been prior to the written statement, because he had  
24       to go somewhere to make a written statement.

25       A.    Yeah, I believe so.   I believe the record bears

1 that out, and Mr. Chisolm's statements -- statements to  
2 me initially when we were preparing for it bear that  
3 out.

4 Q. All right.

5 A. I don't think the detective denies that.

6 Q. Just in asking about the case, if the statement had  
7 been suppressed, the so-called admission had been  
8 suppressed, there was no DNA evidence, so it would have  
9 basically been a situation of her testimony versus his?

10 A. That's correct, with the caveat that -- that I've  
11 done a number of these cases; that I was extremely  
12 concerned about the immediacy of the report.

13 Q. Yes.

14 MR. THOMAS: Your Honor, I have no further  
15 questions.

16 THE COURT: May Mr. Newman be excused.

17 MR. THOMAS: No objection, your Honor.

18 MR. SAVILLE: No objection, your Honor.

19 A. Thank you. It's nice to see you, sir.

20 THE COURT: Nice to see you.

21 Any additional witnesses for the applicant?

22 MR. THOMAS: Yes, your Honor. If it please the  
23 court, we'd put Mr. Chisolm on the stand.

24 THE COURT: Come around, Mr. Chisolm, please.

25 MADAM CLERK: Will you place your left hand on the

1 Bible and raise your right hand as best you can. Do you  
2 solemnly swear or affirm to truthfully answer all  
3 questions asked of you by this Court, so help you God?

4 APPLICANT LEWIS CHISOLM: I do.

5 MADAM CLERK: Thank you.

6 MR. THOMAS: Your Honor, if it please the Court.

7 THE COURT: Yes, sir.

8 APPLICANT LEWIS CHISOLM

9 DIRECT EXAMINATION BY MR. THOMAS:

10 Q. Mr. Chisolm, you're currently being housed in the  
11 South Carolina Department of Corrections. Is that  
12 correct?

13 A. Yes.

14 Q. And in what institution are you?

15 A. Allendale Correction Institute.

16 Q. Allendale. All right, sir. And you pled to what  
17 crime?

18 A. Criminal sexual conduct, second.

19 Q. With a minor?

20 A. With a minor, yes.

21 Q. All right. And there was no recommendations or  
22 negotiations in this case?

23 A. No.

24 Q. All right, sir. And you were sentenced to what?

25 A. Ten years.

1 Q. And you understand -- were you aware of what the  
2 case, how much time this crime carried?

3 A. No, I wasn't aware.

4 Q. And but do you remember if the Court told you that  
5 it carried up to twenty years?

6 A. I can recall this stating that the prosecution, I  
7 think she actually requested fifteen years, and Mr.  
8 Newman asked for ten years, suspended to five.

9 Q. Yes.

10 A. Actually, I thought that -- he never said anything  
11 about me receiving ten years. He came to me with -- he  
12 said that I had a plea agreement -- he had a plea  
13 agreement worked out for five years for me, and I need  
14 to take it right then, or else, we was going to go to  
15 trial.

16 Q. Okay. Now, did you understand your exposure in  
17 this case?

18 A. No.

19 Q. Do you understand your exposure in the post-  
20 conviction case? You understand that you're asking that  
21 your sentence be set aside?

22 A. Yes, yes, yes. Yeah.

23 Q. Okay. And -- you understand that this crime  
24 carries more than the ten that you have?

25 A. Yes.

1 Q. And you're willing to go -- you want to go forward  
2 today?

3 A. Yes.

4 Q. All right. Okay. Now, you were arrested, and  
5 then, did you hire Bruce Marshall?

6 A. Well, actually, I went to Marshall first in this  
7 case. And at the time, I didn't know Bruce was ill.  
8 And he was -- he asked me to give him \$7,500.00, you  
9 know, up front. And then, I told him, well, give me a  
10 day, and I have the money sent to him, which was coming  
11 from my sister in New York.

12 Q. Yes, sir.

13 A. Yes.

14 Q. Now, did you discuss your situation with Mr.  
15 Marshall?

16 A. Yes, I did.

17 Q. Okay. And when you went in for the second  
18 statement, did Mr. Marshall go with you?

19 A. Yes, he did.

20 Q. And he was there with you.

21 A. Yes.

22 Q. Okay. And do you remember who the investigators  
23 were when you went in for that second statement?

24 A. Detective Kelleher. I can't recall. On the second  
25 statement?

1 Q. Yes.

2 A. It was just me and Mr. Marshall and Mr. Kelleher.

3 Q. Okay.

4 A. Detective Kelleher.

5 Q. And that Detective Kelleher is the same gentleman  
6 that came out to see you the third time.

7 A. Yes.

8 Q. He came to your house.

9 A. Yes.

10 Q. All right. Now, were you out on bond?

11 A. Yes, I got out on bond.

12 Q. Okay. So, when you were --

13 A. Like two months later.

14 Q. All right.

15 A. Yes.

16 Q. Now, when did you hire Mr. Newman?

17 A. After they arrested me that Friday, it was like a  
18 week later I paid him a retainment fee.

19 Q. Okay. And how did you all prepare the case?

20 A. Actually, basically, Mr. Newman, he called me in  
21 and after I got out and talked to him a couple times, he  
22 basically that, you know, they didn't -- they have a  
23 partial -- at that time he told me they had a partial  
24 DNA; he wasn't worried about that; that he was going to  
25 get it throwed out. But like I said, I didn't -- and up



1 came to the house.

2 Q. Okay. But you were concerned that if -- that if he  
3 did -- if you didn't give the statement that he was  
4 going to put your son in DSS?

5 A. Yes.

6 Q. Why'd you think that?

7 A. Well, I mean, me and Mr. Kelleher had a run-in  
8 before concerning another incident, which he told -- he  
9 come back and told me then if I run across you again --  
10 he said this one is on me -- I mean, this one is on you,  
11 next one going to be on me; that he's going to, you

12 know, do what he got to do, lock me up.

13 Q. Yes, sir. Now, were you present when the pretrial  
14 arguments were made?

15 A. Yes. Yes.

16 Q. In the courtroom?

17 A. Yes.

18 Q. Okay. And you were there when the judge made the  
19 ruling that he was not going to suppress that third  
20 statement. Is that correct?

21 A. Uh, no, actually, we didn't -- he didn't complete  
22 because they was going through a argument about some  
23 case, Jackson something, and he told me we was going to  
24 report back next day.

25 Q. Did you go back the next day?

1 A. No.

2 Q. How come?

3 A. I got shot.

4 Q. You got shot.

5 A. Yeah, I was robbed.

6 Q. Okay. When did you find out that the statement was  
7 going to come in if you went to trial?

8 A. I never did until -- well, Mr. Newman has told me  
9 that the day I made the plea that, you know, he think it  
10 was best for me to just take the plea.

11 Q. Okay. And that was because of the statement.

12 A. Yes. Uh-huh.

13 Q. Okay. All right. Well, let me ask you this, and  
14 this is fairly important. Did you discuss with your  
15 attorney about taking this case to trial?

16 A. Yes, we did.

17 Q. Okay. Did you want to take it to trial?

18 A. Yes, I did.

19 Q. And why would you want to take this case to trial?

20 A. I mean, because after I find out there was no DNA,  
21 and I mean, honestly being I was pressured at the time,  
22 you know, to write that statement. And that's what I,  
23 you know, -- if I had to go to trial, I was looking at a  
24 drug trafficking they was holding over my head. So  
25 that's -- that was one reason I didn't go to trial,

1 because I had two drug charges. And if I get a third  
2 drug charge, you know, conviction, you know, I was gone  
3 a long period of time.

4 Q. Let me ask you this. If they had, if your attorney  
5 had been successful in suppressing the third statement,  
6 the confession, would you have taken this case to trial?

7 A. Yes, I would.

8 Q. All right. Did you enter the plea for a partial  
9 reason that the statement was not suppressed?

10 A. Uh, can you --

11 Q. Okay. All right. So, so, let me simplify this, I  
12 guess. So the reason that you took the plea was because  
13 the statement had not been suppressed.

14 A. Yes.

15 Q. Okay. All right. Now, do you feel that your plea  
16 was -- and we have talked about this. Do you believe  
17 that your plea was freely and voluntarily given?

18 A. No.

19 Q. And why don't you think it was freely and  
20 voluntarily given?

21 A. Because Mr. Newman didn't -- he didn't, I mean,  
22 really give me a layout on, you know, what I was  
23 actually facing. You know, he came outside and -- and  
24 like I said, I was with my wife and Missionary Williams.  
25 He came out, said I have a plea deal for you. And he

1 said, the prosecutor, Ms. Keeney or whatever, she wanted  
2 I consented right away. And I -- I was jumping into it.  
3 And I discuss it with my wife and Missionary Williams  
4 for a few minutes, and I said, well, if you going to get  
5 me the five years. Then, plus, he said, well, I'm going  
6 to get you -- he got five -- you get the five years, and  
7 I'm looking like let you go home for the remainder of  
8 the week, you know, to get your things organized with  
9 your business.

10 Q. Were you allowed by the Court to report later, or  
11 did they take you into custody?

12 A. No, they took me into custody.

13 Q. Okay. Now, did the fact that they had threatened  
14 you with DSS, did that have any play in you entering  
15 into this plea?

16 A. Well, the main thing, because with my son heart  
17 condition, you know. And then, I mean, if you ever --  
18 if anybody ever seen him, when he cry, say he's about to  
19 have a heart beat. When he get real -- get real  
20 emotional, you know, his heart -- he grab his chest, you  
21 know.

22 Q. How's your son today?

23 A. He's -- he's coming along.

24 Q. Okay.

25 A. They moved back to Florida.

1 Q. All right.

2 MR. THOMAS: Your Honor, if I could beg the Court's  
3 indulgence.

4 THE COURT: Not long.

5 MR. THOMAS: Thank you, your Honor.

6 BY MR. THOMAS:

7 Q. All right. Let me ask you the last question. This  
8 is your day in court, and I know you been waiting a long  
9 time to get here. Is there anything -- I'm not  
10 suggesting that I have forgotten anything or left  
11 anything out. Is there anything else that you feel is  
12 important that should be brought to the Court's  
13 attention?

14 A. Well, I mean, right after this Mr. Kelleher left my  
15 house, you know, I called 911. I also had a call to --  
16 I filed a case with internal affairs, saying he  
17 threatened me. None of -- none of -- any of this ever  
18 came up anymore. Had nothing -- nothing more on those  
19 issues, you know.

20 Q. Yes.

21 A. Yeah.

22 Q. All right.

23 MR. THOMAS: I have no further questions, your  
24 Honor.

25 THE COURT: Thank you. Cross-examination.

1 MR. SAVILLE: Thank you.

2 APPLICANT LEWIS CHISOLM

3 CROSS-EXAMINATION BY MR. SAVILLE:

4 Q. Good morning, Mr. Chisolm. You doing all right?

5 A. Yes, sir.

6 Q. Really appreciate you being here. Now, you  
7 testified that you weren't aware of the time you could  
8 have faced for pleading guilty. Do you recall the judge  
9 advising you that you would face up to twenty years if  
10 you pled guilty to --

11 A. I think I mentioned that earlier. Yes, he did  
12 state it, you know, could face up to twenty years.

13 Q. Now, you testified that Bruce Marshall asked you  
14 for money?

15 A. Yes.

16 Q. Do you have anything in writing to confirm that?

17 A. No.

18 Q. Now, do you recall telling the plea judge that you  
19 were satisfied with your attorney's services?

20 A. Yes, at that time. Yes, after I went back to my --  
21 like I said, more discovery and seeing, you know, the  
22 information that I wasn't aware of.

23 Q. And you remember testifying that you understood  
24 your conversations with your attorney?

25 A. Well, -- can you repeat that again?

1 Q. Yes, sir. You recall testifying that you  
2 understood the conversations with your attorney?

3 A. Yes, I can remember saying that.

4 Q. Do you remember telling the judge that no one had  
5 promised you or threatened you in order for you to plead  
6 guilty?

7 A. Yes, I do, because, like I said, when I was  
8 outside, when my lawyer informed me, just go through the  
9 -- the regular protocol, yes, sir, no, sir. So that's  
10 what I did.

11 Q. So you say you were just going through the motions?

12 A. Yes. He said, you know, just go in there, be  
13 polite, respectful, say yes, sir, or no, you know.

14 Q. Yes, sir.

15 A. Yeah.

16 Q. Do you remember swearing on the Bible to tell the  
17 truth?

18 A. Yes.

19 Q. Now, do you recall telling the plea judge that you  
20 were indeed guilty?

21 A. No, I don't recall.

22 Q. Okay. Sure. It's on -- for reference, it's on  
23 Page 12, Line 18 of the guilty plea transcript. Do you  
24 recall issuing an apology?

25 A. Well, I mean, just to my family and even to my

1 friend, you know, Ms. Cooper, you know. I did apologize  
2 for whatever trouble I may have caused her during, you  
3 know, through this whole situation.

4 Q. And do you recall claiming that you have taken  
5 responsibility for your actions?

6 A. Yes, I did.

7 Q. Now, about the statement made about your son, was  
8 there anybody else there who could have watched your son  
9 had you been arrested?

10 A. Well, after the time I gave the statement, --

11 THE COURT: Move forward. That's not relevant.

12 MR. SAVILLE: Yes, your Honor. This will be --  
13 this will be my last question.

14 THE COURT: Okay.

15 BY MR. SAVILLE:

16 Q. Do you recall -- do you recall testifying at the  
17 hearing before the guilty plea that you had actually  
18 already given an oral statement to Officer Kelleher  
19 before the comment about your son?

20 A. No, I don't remember telling you that.

21 MR. SAVILLE: That's all I have, your Honor. Thank  
22 you very much.

23 THE COURT: Mr. Thomas, have you got --

24 MR. THOMAS: Nothing further, your Honor.

25 THE COURT: Thank you, sir. You may step down.

1 MR. THOMAS: Your Honor, if it please the Court, we  
2 have one more very short witness.

3 THE COURT: Very good. Call him, please.

4 MR. THOMAS: Your Honor, we would call Ella Frazier  
5 to the stand. Is Ms. Frazier here?

6 MADAM CLERK: Will you please place your left hand  
7 on the Bible and raise your right hand, please. Do you  
8 solemnly swear or affirm to truthfully answer all  
9 questions asked of you by this Court, so help you God?

10 ELLA FRAZIER: I do.

11 MADAM CLERK: Thank you. Will you please state  
12 your first and last name, and spell your last name for  
13 the court reporter.

14 ELLA FRAZIER: My name is Ella Frazier,  
15 F/r/a/z/i/e/r.

16 MR. THOMAS: Please the Court, your Honor.

17 ELLA FRAZIER

18 DIRECT EXAMINATION BY MR. THOMAS:

19 Q. Ms. Frazier, how are you related, if any, to Lewis  
20 Chisolm?

21 A. I'm assistant minister at the church he attended.

22 THE COURT: I'm sorry. What was your --

23 A. I'm assistant minister at the church he attended.

24 Q. And you're here to testify on his behalf?

25 A. Yes, sir, I am.

1 Q. Okay.

2 THE COURT: Is this going to be relevant to the  
3 claims in this case?

4 MR. THOMAS: Yes, your Honor.

5 THE COURT: Or just to say he's a good character?

6 MR. THOMAS: We won't go into that.

7 THE COURT: All right, sir.

8 BY MR. THOMAS:

9 Q. Ms. Chisolm [sic], you understand that you're here  
10 to tell the truth?

11 A. Ms. Frazier. Yes, sir.

12 Q. Okay. You're not here to reward anybody or do  
13 anything; you're here to tell the truth.

14 A. No. Yes, sir.

15 Q. Okay. Are you aware of your own personal knowledge  
16 anything about the threats of the taking his child for  
17 DSS?

18 A. Yes, sir, I am.

19 Q. And to your own knowledge, what do you know about  
20 that situation?

21 A. Mr. Chisolm called me right after that indication,  
22 and he said -- he was crying, and I asked him what was  
23 wrong. And he told me that he had signed this paper,  
24 and I asked him, why did you do that? And he began to  
25 let me know his little son, which was about seven to

1 eight at the time, ~~CHILD~~ (phonetic spell), and I could  
2 hear ~~CHILD~~ crying in the back. And I said, well, why  
3 did you do that. And he said, because he was afraid  
4 that the officer told him that they were going to take  
5 his little boy to the DSS.

6 MR. SAVILLE: Your Honor, we're going to object on  
7 the basis of hearsay.

8 THE COURT: Overruled, but you're going a little  
9 bit off the reservation. Let's get back, please.

10 MR. THOMAS: All right. Your Honor, I have no  
11 further questions.

12 THE COURT: Thank you. Cross-examination.

13 ELLA FRAZIER

14 CROSS-EXAMINATION BY MR. SAVILLE:

15 Q. Just brief -- just very briefly. Good morning, Ms.  
16 Frazier.

17 A. Good morning.

18 Q. What was the -- did Mr. Chisolm tell you his  
19 version of the story with the victim?

20 A. Yes.

21 Q. Okay. And have you heard the victim's version of  
22 the facts?

23 A. Beg pardon?

24 THE COURT: No, no, no. Let's move forward,  
25 please, sir. Ask a question.

1 MR. SAVILLE: That's all I have.

2 THE COURT: Mr. Thomas.

3 MR. THOMAS: I have nothing further, your Honor.

4 THE COURT: All right. Thank you, ma'am. You may  
5 be excused.

6 Any additional witnesses?

7 MR. THOMAS: No, your Honor. If it please the  
8 Court, that's the Applicant's case.

9 THE COURT: Thank you, sir. Any witnesses on  
10 behalf of the State?

11 MR. SAVILLE: That's all, your Honor. We would  
12 like to make a brief closing argument.

13 THE COURT: Sir?

14 MR. SAVILLE: We would like to make a brief closing  
15 argument, if you'd like.

16 THE COURT: Be glad to. You go first, and Mr.  
17 Thomas has the -- Thomas has the burden of proof. I'm  
18 going to let him go last.

19 MR. THOMAS: Thank you, your Honor.

20 MR. SAVILLE: Thank you, your Honor.

21 ARGUMENT ON BEHALF OF RESPONDENT

22 BY MR. SAVILLE:

23 MR. SAVILLE: Essentially, we'd just like to state  
24 that we're here for a PCR, not exactly trying to have  
25 another *Jackson v. Denno* hearing. Mr. Thomas has made

1 some good arguments about the statements that were made,  
2 but all these arguments were advanced, effectively, by  
3 counsel at the *Jackson v. Denno* hearing. They went over  
4 the issue with Bruce Marshall; they went over the  
5 *Miranda* issue; they went over the issue with the  
6 Applicant's son.

7 Furthermore, we heard that we had a very reliable  
8 and articulate victim, whose story remained consistent,  
9 as opposed to Mr. Chisolm's, which has changed over  
10 time.

11 As to his other allegations of involuntary guilty  
12 plea, we think the record speaks for itself; that he  
13 understood what he was pleading to, and voluntarily pled  
14 guilty; and therefore, Applicant has failed to meet his  
15 burden of proof.

16 Thank you. That's all.

17 ARGUMENT ON BEHALF OF APPLICANT

18 BY MR. THOMAS:

19 THE COURT: Thank you. Your Honor, if it please  
20 the Court, and I appreciate the Court's indulgence in  
21 regards to the information about the *Jackson v. Denno*  
22 hearing. And the reason that we took the time to do  
23 that is, I think it's important in regards to the issues  
24 of whether or not there is a viable appeal, are there  
25 issues for the appeal, and I think so.

1 Now, if we look at it and kind of follow it, what  
2 the testimony says that we've got, he says I've got an  
3 involuntary guilty plea because of the Court not  
4 allowing the suppression of the statement. And trial  
5 counsel, or plea counsel, says, yes, that's damaging; we  
6 couldn't win this case.

7 And he had the notice of intent to appeal filed,  
8 and due to the fact that he's a lay person, and we've  
9 got an order that comes back from the court not making a  
10 ruling on the merits of anything, just saying we're  
11 going to dismiss it saying the rules weren't complied  
12 with, I believe that he is entitled to a belated appeal  
13 just to find out. I mean, and the argument with the  
14 Supreme Court will be that, you know, but for the  
15 suppression, he wouldn't have entered into the guilty  
16 plea; so therefore, there is some link in saying, well,  
17 he pled guilty and he admitted to it, but it's but-for  
18 the failure of the suppression, your Honor.

19 THE COURT: That's under *White*?

20 MR. THOMAS: Yes. Yes, sir, that would be *White*.

21 THE COURT: Well, doesn't *White* stand for the  
22 proposition not that -- you have to be advised of your  
23 appellate rights, not that you have to perfect it in.

24 MR. THOMAS: Well, and I --

25 THE COURT: You have to be advised rights, but not

1 that you meet the procedural requirements. Right?

2 MR. THOMAS: Yes, sir. And what I would say is  
3 that it does -- it's a little different from *White*, but  
4 then, in some ways, it's still the same. I think that  
5 he still has an obligation to be advised -- he was  
6 advised of his appellate rights; he elected to appeal;  
7 counsel did file the appeal; but then, nothing else was  
8 explained to him. And I think it's interesting that you  
9 look at the order from the Supreme Court, it's also got  
10 Robert Dunning on here from Appellate Defense, and you  
11 know, the question is, why didn't it go any further; why  
12 didn't anybody ever explain it to him. Therefore, I  
13 think it does still comply with *White*.

14 THE COURT: I hear you.

15 MR. THOMAS: Yes, sir.

16 RULING:

17 THE COURT: Okay. As to the voluntariness of the  
18 guilty plea, I find that Mr. Chisolm did make a knowing,  
19 intelligent, voluntary plea of guilty to second degree  
20 criminal sexual conduct. Looking through Judge  
21 Griffith's transcript, he goes through all the elements  
22 constitutionally required. Goes beyond what is  
23 required. So I think that there is a sufficient, more  
24 than sufficient, colloquy before the Court. And  
25 defendant acknowledged his representation of his

1 counsel, and he acknowledged his guilt, and he  
2 apologized. So I think there's no merit to the claim  
3 otherwise, and to the extent he says it's not, it's not  
4 credible.

5 There is an issue, seems to me, on appeal. Mr.  
6 Newman did advise him of his right to an appeal; he  
7 perfected that appeal. Defendant chose to represent  
8 himself. He is required to meet the standards on  
9 appeal. I may be incorrect, but I'm not going to give  
10 him another chance to appeal the case under *White*.

11 MR. THOMAS: Yes, sir.

12 THE COURT: He's had that chance, as he  
13 acknowledged his right to do that. So I'm going to deny  
14 his petition.

15 MR. THOMAS: All right, sir. Thank you, your  
16 Honor.

17 THE COURT: Now, these issues should be preserved  
18 in case I am incorrect.

19 Now, one question I have, Mr. Thomas.

20 MR. THOMAS: Yes, sir.

21 THE COURT: I saw a transcript where the indictment  
22 was allegedly or purportedly amended to third degree,  
23 but the pled to second degree. I don't know if the CDC  
24 code is for second -- you know, when Judge Griffith went  
25 through it, he went up to twenty years, so that was in

1 the second degree.

2 MR. THOMAS: Yes, sir.

3 THE COURT: Can you explain the difference in that,  
4 or?

5 MR. THOMAS: I don't know, your Honor. That's why  
6 I asked counsel about it.

7 THE COURT: Well, that may be an issue that needs  
8 looked at.

9 MR. THOMAS: Yes, sir.

10 THE COURT: Anyway, I'm denying his petition.

11 MR. THOMAS: Okay. Thank you. Thank you, your  
12 Honor.

13 THE COURT: All right. Good luck to you.

14 MR. SAVILLE: Thank you, your Honor.

END PROCEEDING 12:00 P.M.

## CERTIFICATE OF REPORTER

JANUARY 29, 2018 TRANSCRIPT OF PCR HEARING

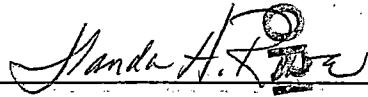
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing January 29, 2018 Transcript of PCR Hearing is a true and accurate record of the proceedings had on said date, in the case of Lewis Chisolm versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2016-CP-07-01560; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/mailing is prohibited.

Witness my signature June 7, 2018.

  
Wanda H. Rowe, CVR-M  
Official Court Reporter

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

2016-CP-07-1560

Applicant,

y.

State of South Carolina,

Respondent.

### ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 11, 2016, and later amended on May 30, 2017. Respondent submitted its return on April 17, 2017. An evidentiary hearing into the matter was convened on January 29, 2018, at the Beaufort County Courthouse. Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court are the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the State's Return, and the application. Based on these records and the testimony presented, the Court finds as follows:

## I. PROCEDURAL HISTORY

The records before this Court indicate that Lewis Chisolm (“Applicant”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. During their September 2015 term, the Beaufort County Grand Jury indicted Applicant for criminal sexual conduct with a minor, second-degree. (2015-GS-07-1529). Jared Newman, Esquire (“Plea Counsel”), represented Applicant. Assistant

Solicitor Julie Kate Keeney prosecuted the case. Applicant pleaded guilty as indicted before the Honorable Eugene C. Griffith, Jr. On November 9, 2015, Judge Griffith sentenced Applicant to imprisonment for ten years.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 6, 2016. The Remittitur was returned on May 23, 2016.

## II. ALLEGATIONS

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

### 1. Ineffective Assistance of Counsel

a. That trial Counsel was ineffective for the following additional reasons:

- i. Failure to adequately investigate the case.
- ii. Failure to adequately explain the State's evidence against Applicant.
- iii. Failure to investigate and/or use the fact that the Police threatened to take his son away from him unless he admitted to the crime.

b. Failure to adequately investigate and use inconsistent descriptions by the victim of the alleged incident.

c. Failure to adequately present and argue the Motion to suppress the statements at pre-trial hearing. However, there is no evidence that a Pretrial Motion to Suppress was ever held.

d. Failure to perfect an appeal.<sup>1</sup>

### 2. Involuntary guilty plea

a. That the Applicant is informed and believes that his guilty plea was not free, voluntarily.

b. That the Applicant is informed and believes that he lacked sufficient knowledge to enter the plea knowingly or intelligently.

## III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant's Plea Counsel also testified.

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<sup>1</sup> Applicant further amended his application at the PCR hearing to include the allegation that Plea Counsel failed to perfect an appeal.

*Applicant's testimony*

Applicant testified he pled to criminal sexual conduct, second-degree with no recommendations or negotiations and was sentenced to ten years. He stated he was unsure how much time the charge carried. Applicant testified he gave an inculpatory third statement to a Detective Kelleher after Detective Kelleher threatened to have Applicant's son put in the custody of Department of Social Services. While Applicant pled guilty after this statement was unsuccessfully challenged at a Jackson v. Denno hearing, Applicant testified at the PCR hearing he would have taken the case to trial. Applicant recalled the plea judge advising him of his sentence and his rights. He testified he did not recall telling the judge he was indeed guilty. However, Applicant testified he did recall taking responsibility for his actions and giving an apology at the plea hearing.

*Plea Counsel's testimony*

Plea Counsel testified he met a fair number of times with Applicant, and he believed Applicant understood what was said to him about the case. Plea Counsel believed they waived presentment on the criminal sexual conduct, second-degree charge.<sup>2</sup> He testified he investigated by looking into the statements Applicant made to police, personally inspecting the location of the incident, and looking at the forensic interview. Plea Counsel also testified Applicant did not inform him of any potential alibi witnesses. He stated Applicant's version of the facts were that Applicant offered a fourteen year-old girl a ride to school but then stopped at Applicant's house before taking her to school. Plea Counsel testified Applicant had told him nothing happened at his residence, though the victim's account was Applicant performed oral sex on her and attempted to penetrate her.

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<sup>2</sup> The record indicates criminal sexual conduct, second-degree was actually a true billed indictment.

Plea Counsel recalled Applicant had made three different statements to police. The third statement concerned him because he believed Applicant had retained an attorney (Bruce Marshall, Esquire) prior to making the third statement. Plea Counsel testified he contacted Mr. Marshall, who recalled speaking with Applicant but did not recall that Applicant retained him. Plea Counsel also testified he believes Detective Kelleher went to Applicant's house the day of the third, inculpatory statement to "put the heat on." He recalled Applicant had told him DSS was mentioned to convince him to write the statement. Plea Counsel testified he was able to cross-examine this detective about his tactics and argue the statement was not voluntary at the Jackson v. Denno hearing. Moreover, Plea Counsel testified he was also able to argue the issue about whether Applicant had retained counsel before his third statement to police at the Jackson v. Denno hearing. Plea Counsel believed the voluntariness of the statement was an appealable issue. Plea Counsel also testified he believed if the third statement was admitted it was "game over" for Applicant.

Plea Counsel testified not only was he concerned about their case due to Applicant's confession to police, but also the potential strength of the victim's testimony. He described the victim as an articulate, believable young woman who would have been a valuable witness for the State. He was also concerned with the immediacy of the victim's report of the incident. He recalled the victim was crying when she finally arrived at school and told a friend what happened.

Plea Counsel testified he effectively filed an appeal on behalf of Applicant by completing a form from the South Carolina Court of Appeals and sending it to Applicant for him to file. Plea Counsel testified his arrangement with Applicant did not include an appeal, but he did this for Applicant nonetheless.

#### IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

### INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

In the present case, this Court finds Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. Plea Counsel credibly testified he met with Applicant many times before the plea, and Plea Counsel's testimony described a more than adequate investigation into the facts of this case. This Court heard testimony regarding Applicant's allegation that a detective threatened to call DSS if he did not provide a statement.

The record reveals Counsel thoroughly challenged the admission of Applicant's self-incriminating statements at the Jackson v. Denno hearing and raised the same, among other, arguments.

Notwithstanding Applicant's failure to present any evidence of alleged deficiency of Plea Counsel, this Court finds Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies. Plea Counsel credibly testified the victim would have been an articulate, convincing witness for the State. Plea Counsel further testified the victim reported upon returning to school, leaving no argument regarding the timeliness of her claims against Applicant. Moreover, Applicant's confession to police was found to be freely and voluntarily given at the Jackson v. Denno hearing, and Plea Counsel believed it was "game over" if the confession was admitted. Applicant failed to prove he would have chosen to proceed to trial rather than plead guilty but for Plea Counsel's alleged deficiencies.

#### FAILURE TO PERFECT AN APPEAL

Applicant alleges he received ineffective assistance of counsel for failure to perfect an appeal, which deprived him of the right to appellate review of his conviction. See White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974) (holding that where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court may grant a belated review of direct appeal issues). However, the record before this Court establishes that Applicant did receive a full appellate review of his guilty plea conviction. Accordingly, this Court finds Applicant was not deprived of his right to a direct appeal and Plea Counsel was not ineffective in his representation on appeal.

At the evidentiary hearing, Plea Counsel credibly testified Applicant only retained him to represent Applicant at the trial level, and not on appeal. The record indicates Applicant filed a

*pro se* Notice of Appeal with the South Carolina Court of Appeals after his guilty plea. Thereafter, the Court of Appeals informed Applicant and Plea Counsel of deficiencies that needed correcting in order to perfect the appeal. Plea Counsel was directed by the Court of Appeals to provide an explanation for Applicant's appeal from the guilty plea pursuant to Rule 203(d)(1)(B)(iv). Plea Counsel then submitted an explanation to the Court of Appeals on January 29, 2016. After review of the explanation, the Court of Appeals dismissed the matter pursuant to Rule 203(d)(1)(B)(iv) on May 4, 2016. The remittitur was issued May 23, 2016.

Because Plea Counsel did perfect Applicant's appeal and Applicant did receive an appellate review of his guilty plea, this Court finds Applicant has failed to satisfy his burden of proving he was deprived of his right to an appeal, and this allegation is dismissed with prejudice.

#### OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

Applicant gave a written statement to police admitting to the sexual misconduct with the fourteen year-old victim. This statement was challenged by Plea Counsel at a Jackson v. Denno

hearing, but found to be given freely and voluntarily. Plea Counsel testified it was "game over," if Applicant's confession to police was admitted. Moreover, the victim's own testimony could have corroborated Applicant's statement at trial, as Plea Counsel credibly testified he believed the victim would have been an articulate, convincing witness for the State, and she reported her attack in a timely manner. Furthermore, circumstantial evidence existed of Applicant offering the fourteen year-old victim a ride to school but then driving her back to his residence before eventually taking her to school late and emotionally distraught.

Therefore, Applicant can show no prejudice from any of the allegations raised in his PCR application as no alleged deficiency on behalf of trial counsel could have reasonably induced Applicant to plead guilty rather than proceed to trial. This Court finds Plea Counsel represented Applicant well within the bounds of professional norms, and none of his actions were ineffective.

This Court finds neither deficiency nor prejudice on any ground, and the allegation of ineffective assistance of counsel is denied and dismissed with prejudice.

#### INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not entered freely and voluntarily. This Court disagrees and finds the record and testimony establishes that his plea was free and voluntary. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn,

judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

The guilty plea transcript reveals a more than adequate plea colloquy. The transcript shows Applicant was fully advised of his rights and the consequences of pleading guilty. Applicant testified on the record at the plea that he was not promised anything or threatened to plead guilty, and he had the opportunity to address the court with any concerns about the plea arrangement. Applicant testified he was guilty of the charges and he gave a statement to law enforcement admitting that he was guilty. This Court finds that there was no coercion affecting Applicant's decision to plead guilty, the record reflects that Applicant was fully advised of the rights he was waiving by pleading guilty, and that his plea was entered into knowingly and intelligently. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing and this Court finds Applicant's testimony that he pled guilty involuntarily and unaware of the possible sentence for the charge not credible. Applicant has failed to present any probative or credible evidence that he did not knowingly and voluntarily plead guilty. As a result, he has failed to meet his burden, and this allegation is denied and dismissed.

## VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

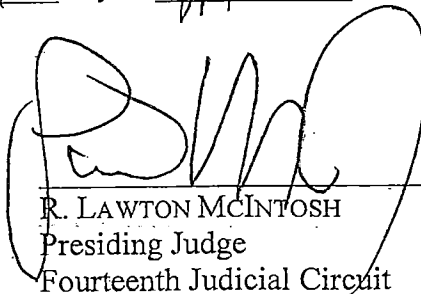
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

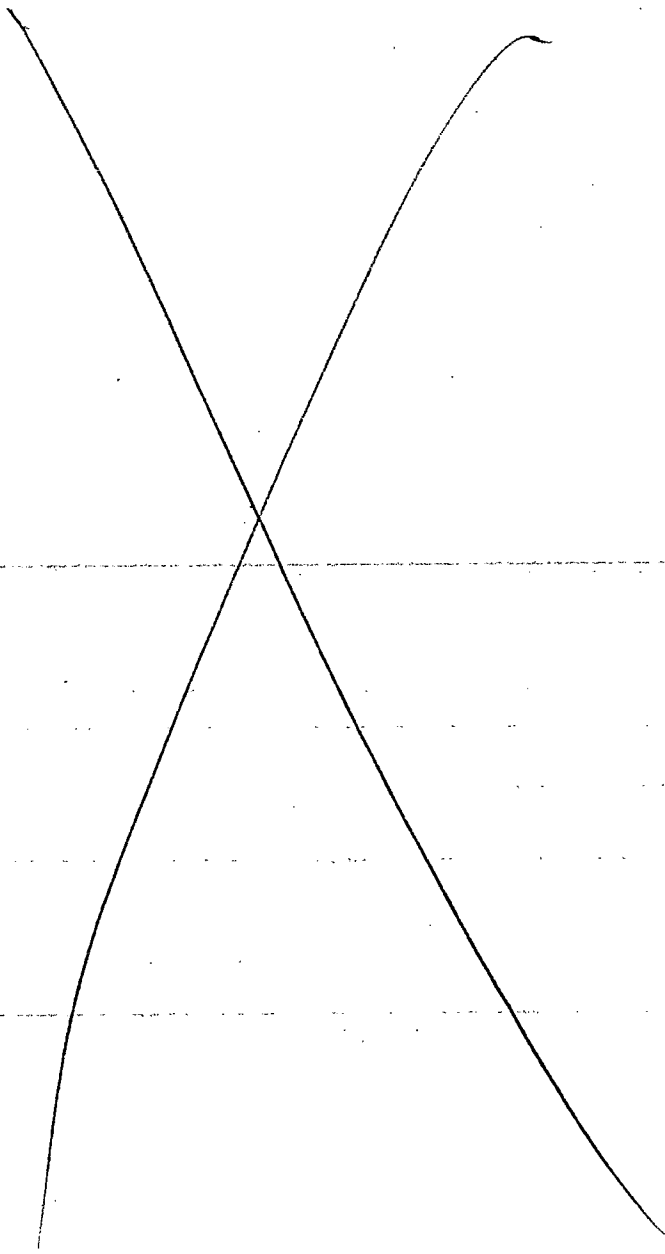
### IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 10 day of March, 2018.

Ande, South Carolina

  
R. LAWTON MCINTOSH  
Presiding Judge  
Fourteenth Judicial Circuit



000206

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Post-Conviction Relief

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2016-CP-07-1560

Lewis Chisolm #196380, ..... Appellant

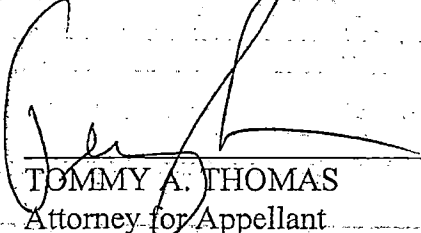
vs.

State of South Carolina, ..... Respondent.

2018 APR 16 PM 3:20  
JERRI ANN ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

NOTICE OF APPEAL

Lewis Chisolm #196380 appeals the Order of the Honorable R. Lawton McIntosh dated March 10, 2018 and filed on March 15, 2018. Appellant received written notice of entry of this order on March 19, 2018.

  
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Irmo, South Carolina  
April 12, 2018

000207

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Post-Conviction Relief

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2016-CP-07-1560

Lewis Chisolm #196380, ..... Appellant

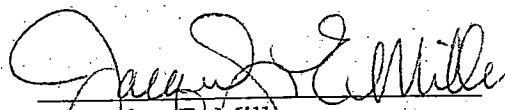
vs.

State of South Carolina, ..... Respondent

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of a Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Christian Saville Esq.  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

  
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April 12, 2018

2018 APR 16 PM 3:20  
LEAH ANN ROSENEAU  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

000208