

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Alison R. Lee, Circuit Court Judge

RECEIVED
FEB 25 2019
SC Court of Appeals

Appellate Case No. 2016-001553

Trey A. Williams, #341036,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX

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McCormick, South Carolina 29899

PRO SE RESPONDENT

1 (ON THE RECORD THURSDAY, APRIL 15, 2011 AT 04:36 PM.)

2 MS. COLTON: Trey Williams.

3 And, Your Honor, this is a motion for a speedy trial.

4 (DEFENDANT ENTERING COURTROOM.)

5 THE COURT: All right. Yes, ma'am.

6 MS. COLTON: Thank you, Your Honor.

7 Your Honor, standing before you is Trey Alexander
8 Williams, he's been indicted by the Grand Jury of York
9 County on one count of criminal sexual conduct with a
10 minor in the first degree. True Bill Indictment 2009-GS-
11 46-02636. He was indicted on June 18th of 2009. He's
12 represented by Mr. Eric Delaney. I understand there is
13 some issue, that Mr. Delaney has requested to be put on
14 the record in this case.

15 THE COURT: All right.

16 MR. DELANEY: Thank you, Your Honor, may it please
17 the Court. And I guess my client Mr. Williams does want
18 to address Your Honor, but I think I will address Your
19 Honor first and then he can address and go from there.

20 THE COURT: All right. Well, you've told your
21 client, of course, that he has the right to remain silent?

22 MR. DELANEY: Yes I have, Judge.

23 THE COURT: And you have told your client that the
24 Court Reporter is taking down everything that's being said
25 by he, I, and you and Ms. Colton in this matter? Does he

1 understand?

2 MR. DELANEY: He is aware of that, Your Honor.

3 THE COURT: And he understands that whatever he says
4 can be used at any time later against him, or sometime
5 later against him if the State so chose?

6 Do you understand all that?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: Okay. Go ahead.

9 I'm not trying to make you not talk; I just want you
10 to understand that once you say it, the cat's out of the
11 bag.

12 MR. DELANEY: I appreciate that, Judge.

13 And mainly what I was going to be talking with Your
14 Honor about and I told Mr. Williams I would do this for
15 him; he has been incarcerated since March 31st, 2009. He
16 obviously has a very serious charge.

17 THE COURT: All right, wait just one minute. I put
18 down 6/18/09 is when he was indicted.

19 MS. COLTON: That's when he was indicted, Your Honor.

20 THE COURT: Okay. But he's been arrested March - -

21 MR. DELANEY: His date of arrest was March the 31st,
22 2009.

23 THE COURT: All right. I got you.

24 MR. DELANEY: So obviously he has been incarcerated
25 now a little more than one year. It is obviously a

1 serious charge. Mr. Williams has been patient and I will
2 say that Mr. Williams has filed a number of -- on his own
3 -- a number of speedy trial motions which he sent to me,
4 he sent to Ms. Colton, he sent to the Clerk of Court. I
5 believe he said to the judges here.

6 I've explained to Trey that at that time there were
7 some issues that still were open as far as DNA testing
8 that was being done, but the State was waiting back on. I
9 informed Mr. Williams that we were waiting on that and
10 that the Solicitor does control the docket. Hopefully
11 we're going to get our day in court as soon as possible,
12 but with that testing going on, it wasn't a whole lot we
13 could do at that point.

14 Now, we are at a point where that is done with, we
15 are ready to proceed with his trial and that's where this
16 case is going at this point. We've had a last offer
17 that's been made by the State which was for a ABHAN charge
18 which Mr. Williams has turned down. And we are ready to
19 take this to a trial. Next term of court I have been and
20 I informed Mr. Williams, I have been noticed for trial the
21 next term of court, April the 26th on another case,
22 possession with intent to distribute heroin third. I know
23 in speaking with Solicitor Colton she has, she is planning
24 to be out of the country next term of court. I have ask,
25 I would be asking the prosecutor, the court, we are ready

1 to go the term of May the 17th. I know Trey wants to get
2 in court sooner than that. There has been a number of
3 conversations we had where Trey has wanted me off this
4 case and he's wanting to proceed on his own. Now we also
5 had a lot of conversations about I do not believe that's
6 in his best interest but obviously that is a decision that
7 is his. And if that's what he wants to and that's what he
8 wants, to represent himself here, that's going to be his
9 decision, so I do not know what he is going to say
10 regarding that today, but I would want to put on the
11 record, Trey has written disciplinary counsel here. And
12 I've told them the same that I would do my best to try to
13 get a some type of a date in the near future. And again I
14 would just be letting the Court know that we are prepared.
15 I would be prepared to go to trial the term of May the
16 17th to represent him. And that essentially is what I
17 just wanted to put on the record. And I know Mr. Williams
18 may want to add a few things.

19 THE COURT: Mr. Williams, do you want to say
20 anything?

21 MR. WILLIAMS: Uh, Your Honor, yes, sir. I think I
22 want -- Could I represent myself today? Could I be able
23 to represent myself through out my case today?

24 THE COURT: Well I would have to relieve Mr. Delaney
25 and if you want to proceed by yourself and represent

1 yourself, you can't do half and half. You either have an
2 attorney or you don't.

3 MR. WILLIAMS: Yes, sir.

4 THE COURT; And if I relieve your attorney then you
5 don't have one. And that's dangerous because you're not
6 an attorney and an attorney could be of a benefit to you.
7 And of course you've got an attorney appointed to you at
8 no expense to you. But you have a right to hire an
9 attorney and you also have a right to waive your right to
10 counsel and proceed on your own if you wish. What do you
11 wish to do?

12 MR. WILLIAMS: Well honestly what I ask was could I
13 speak with him before I came in here but I wasn't able to.
14 Right now I don't wish to bother him right now. I had
15 some things that I wanted to ask him. And he just said
16 right now some things that I have wanted to ask - -

17 THE COURT: Well I'll give you all a chance to do
18 that. Would you want me to wait then and not hear
19 anything further on this until you've had a chance to talk
20 to your attorney?

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: All right. When can we do that? Can we
23 do that first thing in the morning?

24 MS. COLTON: Yes, sir.

25 THE COURT: All right. I'll give you -- I'll let you

1 all talk tonight and we'll start back at 9:30.

2 We'll start back at 9:30 and we'll do this first
3 thing.

4 MR. DELANEY: Okay. Thanks, Judge.

5 THE COURT: All right. Thank you.

6 (COURT IN RECESS AT 04:43 PM.)

7 (BACK ON THE RECORD FRIDAY, APRIL 16, 2010 AT 09:35
8 PM.)

9 MS. COLTON: Trey Williams.

10 (DEFENDANT REENTERING COURTROOM.)

11 THE COURT: Good morning. All right, we're going to
12 follow up on what we talked about yesterday.

13 We were kind of in the middle of a speedy trial,
14 releasing your attorney, and you want to talk to your
15 attorney. So I gave you the over night to talk to your
16 attorney, now I'm going to ask Mr. Delaney to kind of tell
17 me where we are and what I need to be thinking about.

18 MR. DELANEY: Yeah, we're -- I believe we're at, is
19 that Mr. Williams is going to want me off his case, he's
20 going to want to represent himself. Now I have, I have
21 concerns about that. We've been in a process -- and I
22 think I told Your Honor yesterday that Mr. Williams has
23 sent me letters, many letters recently in the past, also
24 the court members, saying he wanted me off the case. And
25 there have been occasions he's brought up here, we talked

1 in the holding cell before being brought up to the judge,
2 and ultimately a decision was made by him not to have me
3 off the case. You know he is at this point going to trial,
4 and facing a charge that carries a maximum of life
5 imprisonment, mandatory minimum twenty-five years. And I
6 told him that I'm really concerned for him as far as
7 representing himself at that trial. Mr. Williams has made
8 it clear that he does not trust me, he does not believe me,
9 he does think that I am not being truthful with him about
10 his case. He is very disappointed that he cannot or he
11 feels that he's not going to be able to go to trial next
12 term of court. I had indicated to him in one of our last
13 real sit down conversations that I was going to try my best
14 to get him into court that term. But I've also tried to
15 make clear to him I don't control the docket. You know
16 when I came in here yesterday saying that I've been noticed
17 for trial already and that the Solicitor from my
18 understanding was not going to be calling the case next
19 term -- this particular one -- I would be asking for May
20 the 17th. I believe he feels that I have mislead him
21 regarding that. I've tried to tell him that, that was not
22 my intention. But that's kind of where we stand right now,
23 Judge.

24 THE COURT: Let me get this posture. You indicated
25 yesterday that you would be able to try him the week of May

1 17th, I thought.

2 MS. COLTON: No, sir. I - -

3 THE COURT: I know you said you couldn't try him the
4 next term the 26th but you could try him - -

5 MS. COLTON: I don't believe I said that I could. I
6 was planning on trying him in June once the seven-year-old
7 is out of school. But right now it's contingent on two
8 physicians availability. I have not heard back from either
9 one of them as far as setting a confirmed date. So I've
10 got two physicians and the issue with the seven year old as
11 well as one other person who's not going to be problematic
12 getting here, someone from Safe Passage, I don't believe
13 that's going to be an issue. My biggest difficulty is the
14 physician. I've been unable to confirm his schedule.

15 THE COURT: Well, he's really been in jail a year.

16 MS. COLTON: Yes, sir. Your Honor, and also another
17 concern, I don't think its been an undue delay. SLED
18 completed the DNA analysis in January and we received a
19 copy of it in February. I requested probably since
20 November a copy of the forensic interview that the State
21 intends to offer into evidence against Mr. Williams, I have
22 been requesting that we get a protective order signed by
23 Your Honor controlling the distribution of that or the
24 potential distribution of that. I do not have a copy of
25 the protective order. I also have been unable to turn that

1 DVD over. I was hesitant to call this case to trial and
2 not -- the defense not having all the discovery.

3 MR. DELANEY: Judge, I'll just say on that note, I've
4 seen that video in her office and I made it clear to Mr
5 Williams that he has every right to see that video. At
6 this point he is not interested in watching that video, and
7 obviously we're going to get that for him and he's going to
8 have an opportunity to review that.

9 But the video isn't really isn't as far as being an
10 issue - -

11 THE COURT: Mr. Williams, I talked to you yesterday
12 and told you about the dangers of self representation and
13 the benefits of having an attorney and your right to have
14 an attorney. And of course your right not to have an
15 attorney. I told you that it would be in your benefit to
16 have an attorney and it's dangerous not to have an
17 attorney. And if my memory serves me correctly you said
18 you thought your family was arranging to have - -

19 Mr. Wellborn?

20 MR. DELANEY: No. That was a different client.

21 THE COURT: That was a different one. Okay. All
22 right, so if you release or if you convince me that I
23 should let Mr. Delaney cease to represent you, you will be
24 without an attorney and you will have to go to trial on
25 your own. All right, anything you want to say, keeping in

1 mind what I told you also yesterday that everything's being
2 taken down on the record.

3 MR. WILLIAMS: Yes, sir. Do you know -- can I get a
4 date set today in the courtroom when I can go to trial?

5 THE COURT: Unfortunately not, because in this state
6 not only to Mr. Delaney as a public defender to not set
7 your trial date, a judge cannot either. It is very clear
8 in South Carolina that the Solicitor controls the docket.
9 I have certain ways I can assist them in picking a time but
10 I can't pick a time. So right now it looks like it would
11 be in the June term which is June 7th. So I'm going to
12 encourage the State to try you the week of June 7th. Do
13 you have a bond?

14 MR. WILLIAMS: That's what I was going to ask. Could
15 I be eligible for some kind of a bond?

16 THE COURT: Well, here's what I'm gonna do. I'm going
17 to tell the State to try you in June. If they do not try
18 you in June, you can come before the Court, either me or
19 another judge, and see about getting a bond set because
20 you've been in jail for over a year. We'll either see
21 about getting you tried or maybe let you out on bond. Now
22 I'm not promising that. And I'm not promising if we set
23 bond, obviously it would be something you could make. We
24 wouldn't intentionally at least I wouldn't try to put it in
25 a situation where I give you a bond but it would be hollow

1 because I know you couldn't make it. But I will certainly
2 give you the right if you are not tried in June to come
3 back before the Court and seek a bond being set.

4 MR. WILLIAMS: The reason why -- See when I came in
5 here yesterday I had no idea about the 26th and my lawyer
6 having another court case because he told me specifically
7 that he would give me his all to fight for the 26th of this
8 month. And that Ms. Colton was trying to get May the 17th
9 changed for trying to push away because she was about to go
10 out of town on a vacation. So the May 17th I didn't know
11 that, that was what he was trying to do because I had no
12 idea that the 12th is first what my lawyer was telling me
13 that I would go to trial for. But he said he wouldn't be
14 able to so the 26th was going to be the only -- that's what
15 I didn't know that until he came in here and said and was
16 speaking as everybody knew. And I didn't understand who
17 was in on those terms.

18 THE COURT: Well the bottom line is, it looks like it
19 will be June and do you want the Court to relieve Mr.
20 Delaney? And of course I remind you that means you -- I'm
21 not going to appoint another attorney, you don't get to
22 pick -- if you get an attorney appointed to you at the
23 State's expense you don't get to chose that attorney. The
24 State chooses, or the Judge does. And if I relieve Mr.
25 Delaney then you are without an attorney and you will have

1 to go to trial what they call pro se. That is without an
2 attorney.

3 MR. WILLIAMS: All right. Yes, sir.

4 THE COURT: Is that what you want to do?

5 MR. WILLIAMS: Yes, sir.

6 THE COURT: All right. Mr. Delaney, I am going to go
7 ahead now and appoint you as standby counsel for Mr.
8 Williams.

9 That means that during the trial, not that does not
10 mean he has to do anything at this point to help you
11 negotiate a plea or do any investigations. Of course
12 you're your own lawyer. But during the trial I will have
13 him sit at the table with you or behind you and you can
14 turn to him for questions of procedure. He won't be
15 talking for you but he will be there to be a resource
16 during the trial. Do you understand that?

17 MR. WILLIAMS: Yes, sir.

18 THE COURT: Okay. Thank you.

19 MS. COLTON: Your Honor, if I may just to be sure.
20 He's representing himself and he's received all discovery.
21 Mr. Delaney will be giving him the discovery that he has.
22 We still have the issue of the video and at this point my
23 understanding is he's waiving receiving that discovery,
24 that item of discovery?

25 THE COURT: I don't believe he's really waiving it.

1 He's just - -

2 MR. DELANEY: He has all of the -- everything in my
3 file Mr. Williams has at this point as far as discovery.
4 Now I was still would like to get the video from the State
5 and have -- give that to Mr. Williams and give him
6 obviously the opportunity, if he chooses, to watch that
7 video.

8 MS. COLTON: I would ask that Mr. Williams also sign
9 the protective order.

10 THE COURT: All right.

11 MR. DELANEY: I will get him to do that, Judge.

12 THE COURT: Who is going to do that?

13 MS. COLTON: Generally I think we leave it in the
14 hands of the defense attorney.

15 THE COURT: Well he doesn't have an attorney now, I'm
16 relieving him. All right, so would you do a protective
17 order? And I'll ask Mr. Delaney to at least look at it and
18 Mr. Williams you will end up signing the protective order.
19 Basically what the protective order says is that you're
20 entitled to have this and entitled to have the State make
21 arrangements for you to be able to see it. I know you
22 can't see it -- you might not even be able to possess it in
23 your cell -- but the State will have to make arrangements
24 for you to see it. But while you physically have it in
25 your hands you cannot share it with any other persons. That

1 is what the protective order means. It's just something
2 that involves a child and we don't want it spread all over
3 the world so to speak. Now with Youtube and all these
4 things if somebody has a video by one person gets it the
5 next day everybody in the world has it and we don't want
6 that to happen. You can certainly have access to it but
7 you understand that after the trial it will be turned back
8 over to the state.

9 You can put that in the protective order.

10 MS. COLTON: Yes, Your Honor.

11 THE COURT: But you can't share it with anybody other
12 than your attorney. Of course you have a right to hire
13 another attorney if you wish but otherwise you will be
14 going on your own.

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: All right. Thank you all.

17 MS. COLTON: Thank you, Your Honor.

18 (END OF TRANSCRIPT)

19 (COURT IN RECESS AT 09:47 AM.)

20

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)
)
 County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 15th and 16th days of April 2010.

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

Wanda Nelson

Wanda Nelson, CVR

Certified Verbatim Reporter,
 Official Court Reporter,
 Notary Public in and for the
 State of South Carolina
 My Commission Expires: 01/21/2021

DATE: 12-1 / 1 / 2011

STATE OF SOUTH CAROLINA)
)
)
)
)
)
)
COUNTY OF YORK)

IN THE GENERAL SESSIONS
COURT OF YORK
CASE NO.: 2009-GS-46-2646

STATE OF SOUTH CAROLINA.,)
)
PLAINTIFF.,)
)
-V-)
)
TREY ALEXANDER WILLIAMS.,)
)
DEFENDANT.)

TRANSCRIPT OF RECORD

YORK, SOUTH CAROLINA
MAY 24, 26, 2010

B E F O R E:

HONORABLE JOHN C. HAYES, III., JUDGE.

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

MS. JENNIFER COLTON
MS. ERIN JOYNER
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SIXTEENTH JUDICIAL CIRCUIT
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AT LARGE

E X A M I N A T I O N

WITNESS	BY:	PAGE:
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	MR. WILLIAMS	30-31
DR. THOMAS WILKINS	SOLICITOR COLTON	32-36
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E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
ST.1	DIAGRAM	23	24
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REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE YORK COUNTY CLERK OF COURT'S OFFICE.

1 SOLICITOR COLTON: Your Honor, this is Trey Williams
2 2009-GS-46-2646. He has Mr. Delaney appointed as standby
3 counsel. Mr. Delaney was relieved a couple of weeks ago,
4 Your Honor. I scheduled this case for trial this week.
5 I've got both doctors I needed available as well as a
6 forensic interviewer available on Wednesday. I went and
7 spoke with Mr. Williams to make sure that he's gotten his
8 subpoenas covered, et cetera. The only individual he asked
9 me to subpoena is Annie Dacus. I've subpoenaed her. She
10 has called and confirmed. We received receipt on the
11 subpoena from the Sheriff's Office and she indicated that
12 she will be here on Wednesday. When I spoke with Mr.
13 Williams we were trying to make arrangements that we
14 provide him with a suit. At the time he indicated, he
15 asked me how procedurally this would begin when he would
16 get dressed for court and I started to explain to him the
17 jury selection process. He indicated at that time he did
18 not want a jury so I'm bringing him before the court to
19 address that issue, Your Honor, because we do have a seven-
20 year-old victim and I'm trying to do my best to make sure
21 that she can, the amount of school she misses this week is
22 as limited as possible.

23 THE COURT: What's the charge?

24 SOLICITOR COLTON: It's criminal sexual conduct with a
25 minor in the first degree, Your Honor.

1 THE COURT: All right. Mr. Williams, you had an
2 attorney and you relieved your attorney and --

3 Was he before me?

4 SOLICITOR COLTON: Yes, Your Honor.

5 THE COURT: I appointed Mr. Delaney to be your standby
6 counsel which means he will sit with you during the trial
7 and answer your questions and give advice but not
8 communicate with the court or make any arguments on your
9 behalf or examine any witnesses. Do you understand that?

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: And you opted to go without an attorney.
12 Is that what you were planning to do?

13 MR. WILLIAMS: Yes, sir.

14 THE COURT: You know you have a right to an attorney.
15 I think I explained to you that before. An attorney could
16 be of benefit to you and even though I have relieved and
17 there is a danger in your representing yourself since you
18 are not an attorney. You have waived your right to an
19 attorney on the record before. But you are still between
20 now and Wednesday if you wish to hire an attorney you of
21 course could do that. You understand that?

22 MR. WILLIAMS: Yes, sir.

23 THE COURT: And do you understand you have a right to
24 a trial by jury? That is you have a right to have twelve
25 jurors picked impartially and have them seated and have

1 them hear the case, have the case submitted to them; make
2 an argument to them yourself. The State would have the
3 right to make an argument. And then I will charge them on
4 the law and they will then deliberate and determine whether
5 or not the evidence was sufficient for them to find you
6 guilty of this offense beyond a reasonable doubt. Do you
7 understand you have all those rights?

8 MR. WILLIAMS: Yes, sir.

9 THE COURT: Do you have any questions about them?

10 MR. WILLIAMS: Yes, sir. So if I wanted, if I wanted
11 an attorney I could get an attorney now?

12 THE COURT: You waived your right to have an appointed
13 attorney. You can hire an attorney if you wish but I will
14 tell you that you're going to trial, noticed for trial on
15 Wednesday, so we have a jury downstairs, so you could be
16 tried by a jury or without a jury. I'm told by Ms. Colton
17 you talked about going forward on a bench trial without a
18 jury but you are going to trial on Wednesday. But if you
19 were to hire an attorney that attorney if they were willing
20 to take the case that's fine, but you are going to trial
21 either with or without an attorney.

22 MR. WILLIAMS: Wednesday.

23 THE COURT: You understand that?

24 MR. WILLIAMS: Yes, sir.

25 THE COURT: Do you want to have a jury or go without a

1 jury?

2 MR. WILLIAMS: Without a jury.

3 THE COURT: You want a bench trial, all right.

4 That will be before me?

5 SOLICITOR COLTON: Yes, Your Honor.

6 THE COURT: Well you still have a right to argue your
7 case to me. You have a right to confront the witnesses
8 that the State calls. You have the right to testify or
9 remain silent. You have the right to call your own
10 witnesses. Do you understand that?

11 MR. WILLIAMS: Yes, sir.

12 THE COURT: And Mr. Delaney will be available during
13 the trial to answer any questions you might have regarding
14 the procedure and you understand that?

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: Okay. Anything else, Ms. Colton?

17 SOLICITOR COLTON: I don't believe so if that's the
18 extent of the witnesses eh wants me to subpoena on his
19 behalf?

20 THE COURT: Any other witnesses you want?

21 MR. WILLIAMS: No, sir.

22 THE COURT: All right. We'll be ready Wednesday for a
23 bench trial.

24 SOLICITOR COLTON: Thank you, Your Honor.

25 (END OF HEARING.)

1 (BACK ON THE RECORD, WEDNESDAY, MAY 26, 2010 AT 10:08
2 A.M..

3 THE COURT: All right. We need a short break for
4 the Clerks' office to get some things in order then we are
5 ready to go to trial.

6 SOLICITOR COLTON: Your Honor, I believe the defense -
7 - Mr. Delaney is here today as stand by counsel and has
8 indicated to the State his former client is going to wish
9 to address the court. He has changed his mind and now
10 wants to request a jury trial.

11 THE COURT: All right.

12 SOLICITOR COLTON: We are otherwise prepared to go to
13 trial.

14 THE COURT: Well I'm certainly not shocked. When we
15 put this on the record I almost anticipated this. Bring
16 him in. Bring the Defendant in and then we will take a
17 break.

18 (NOTE: DEFENDANT ENTERING COURTROOM.)

19 THE COURT: Are you Mr. Trey Alexander Williams?

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: All right. And you are here to be tried
22 and Monday you told me you were giving up your right to a
23 trial by jury. I'm told now that you changed your mind
24 and through Mr. Delaney the State has been informed that
25 you now wish to have a jury trial.

1 MR. WILLIAMS: Yes, sir.

2 THE COURT: Well I'm not going to let you have a jury
3 trial. You waived that right and I think that your tactics
4 are one that it would be nice to be called avoidance that
5 is an effort to not have to face these charges. You're not
6 going to manipulate the court by asking for one thing and
7 affirmatively on the record with clear advice from the
8 court and counsel as to your right to a jury trial. You
9 made a -- You freely voluntarily knowingly and
10 intelligently waived your right to a jury trial and so you
11 are going to go to trial without a jury and that's going to
12 be starting right now. Do you understand that?

13 MR. WILLIAMS: Yes, sir.

14 THE COURT: All right. You can have a seat.

15 All right.

16 MR. DELANEY: Your Honor, I have some clothes
17 downstairs. Mr. Williams indicated - -

18 THE COURT: All right.

19 MR. DELANEY: - - - he would like to change.

20 THE COURT: All right. We will take a break and let
21 him get street clothes so that I won't know that he's been
22 in the holding cell.

23 MR. WILLIAMS: I'm okay.

24 THE COURT: You okay dressed like you are?

25 MR. WILLIAMS: Yes, sir.

1 THE COURT: Okay. He's waiving his right to civilian
2 -- To civies as they are sometimes called civilian clothes.

3 All right. You can be seated.

4 Is the State ready to go?

5 SOLICITOR COLTON: We are, Your Honor.

6 THE COURT: Okay. Is the State going to make any
7 opening statement?

8 SOLICITOR COLTON: No, Your Honor. We would call the
9 case in the amended Indictment 2009-GS-46-2646. The State
10 would waive their opening argument, Your Honor. And it's
11 criminal sexual conduct with a minor first degree.

12 THE COURT: All right. Mr. Delaney, you looked
13 exercised out there. What can I do for you?

14 MR. DELANEY: My client has asked me for something to
15 write with and I'm trying to find see what I can get him.

16 THE COURT: All right. I believe we've got him
17 something now.

18 MR. DELANEY: All right.

19 THE COURT: Mr. Williams, anything you want to say
20 before we start taking testimony?

21 MR. WILLIAMS: Yes, sir.

22 THE COURT: All right.

23 MR. WILLIAMS: I would like to say -- See I honestly
24 believed that I was comfortable with taking a bench trial
25 and the reason why I changed a lot of people was giving me

1 their advice and opinion on a jury and a bench. I was
2 okay with a bench trial and I wasn't trying to avoid but
3 some people was just talking to me and asking me about what
4 would they rather do but I mean what they thought I could
5 do and I just thought about it and I was going to ask you
6 and request to see if you would but I was okay with just
7 presenting myself in the court today regardless. I wasn't
8 trying to avoid - I didn't want you to think that I was
9 just trying to avoid the charge or anything like that. I
10 understand everything is very serious. I just want you to
11 know that.

12 THE COURT: All right. How long you been in jail?

13 MR. WILLIAMS: Like a year and two or three months.

14 THE COURT: Well the only reason I'm raising that is
15 this advice from fellow inmates about whether to go with a
16 trial or a bench trial or a jury trial you certainly had
17 time to explore that and think through all those things so
18 in any event we're going forward with the trial. You want
19 to make any opening statement or are you ready to go
20 forward with the presentation of evidence?

21 MR. WILLIAMS: I'm ready for the evidence.

22 THE COURT: Okay. All right, Ms. Colton.

23 SOLICITOR COLTON: Your Honor, there are a few things
24 I would like to make a part of the record before if we may.
25 The State in this case has fully complied with discovery.

1 When Mr. Delaney was representing the defendant and we
2 turned over everything to Mr. Delaney; made available of
3 everything to Mr. Williams including the forensic
4 interview. Mr. Delaney has specifically told us that he
5 does not want to see including last week when I spoke so I
6 will say that he's not seen that video but we have offered
7 to show the video and he has told us that he does not want
8 to see it. Beyond that Mr. Williams has requested one
9 witness to be subpoenaed that is Annie Dacus. I subpoenaed
10 her and she is present today, Your Honor. The State has
11 made Mr. Williams aware that we are going to move for the
12 admission of the out of court statement pursuant to 17-23-
13 175 that would be the forensic interview and the State
14 intends to offer that into evidence, Your Honor. The final
15 thing is Mr. Williams previously indicated that he may have
16 other witnesses here. We were able to run a rap sheet on
17 Ms. Dacus but we would ask that Mr. Williams provide us
18 with a list of any other witnesses that he may have so that
19 we are able to run rap sheets and not delay the trial, Your
20 Honor.

21 THE COURT: Mr. Williams, do you have any witnesses
22 other than Annie Dacus?

23 MR. WILLIAMS: No, sir, she told me -- No, sir.

24 THE COURT: Okay. All right, Ms. Colton, you may
25 proceed.

1 SOLICITOR COLTON: Your Honor, we've also went ahead
2 and were able to -- I'm sorry mark as Court's Exhibit
3 correspondence that Mr. Williams has sent to my office that
4 is going to be Court's Exhibit One. Just one, Your Honor.
5 This is the totality of the correspondence I've received
6 from Mr. Williams I would ask that it be made a part of the
7 record. It contains his various motions and request to
8 fire his attorneys; request about regarding not to see the
9 video; his request to subpoena all of which I've complied
10 with and they are written in form communicating with my
11 office and I would ask the court to make that - -

12 THE COURT: Well let's do this. We will make them
13 part of the record.

14 SOLICITOR COLTON: Yes, sir.

15 THE COURT: Are they stapled? I see they are paper
16 clipped.

17 MADAME COURT REPORTER: They are stapled and paper
18 clipped.

19 THE COURT: All right. If they are stapled together
20 tell me how many pages there are for the record?

21 SOLICITOR COLTON: There are - -

22 THE COURT: If there is one exhibit.

23 SOLICITOR COLTON: Fourteen, Your Honor, actual
24 letters. And six envelopes.

25 THE COURT: Are the letters one page letters?

1 SOLICITOR COLTON: Some of them are back and front,
2 Your Honor.

3 THE COURT: All right. But I wanted to know which one
4 -- I'm thinking about the record in the future. Tell me
5 which one's by date are back and front.

6 SOLICITOR COLTON: There is an undated letter, Your
7 Honor, that has attached to it an envelop the date on the
8 envelop is December 31st, 2009. That would be the first
9 front and back letter.

10 THE COURT: All right.

11 SOLICITOR COLTON: The second letter also undated has
12 attached envelop dated January 25, 2010. The third letter
13 has an envelop attached to it dated March 3rd, 2010. I
14 believe that is the extent of front and back letters, Your
15 Honor.

16 THE COURT: All right. I don't need to see them
17 unless you want to point something out to me. I think they
18 just need to be a part of the record.

19 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND
20 MARKED, ENTERED INTO EVIDENCE.)

21 SOLICITOR COLTON: Your Honor, the only other issue
22 that we have our first witness will be the seven-year-old
23 child and I know it's unusual for the court to ask that any
24 spectators and non essential court personnel and we do have
25 some concern that he is pro se we would ask that they not

1 be in the courtroom as she is seven years old. The
2 defendant is going to be asking questions himself and we do
3 have some concerns about keeping her uncomfortable as
4 possible, Your Honor.

5 THE COURT: All right. Well anybody that's not
6 connected with this case unless you have some vehement
7 objection I would ask that you absent yourself from the
8 courtroom. I'm not -- I quite frankly don't feel like
9 kicking people out of the courtroom so I'm not going to
10 demand that people leave but unless you have some reason to
11 be in here I think it would help everybody's comfort level
12 for you not to be here.

13 SOLICITOR COLTON: Thank you, Your Honor. One matter
14 has come up that we need to disclose pursuant to Brady.
15 Initially speaking with the victims mother I believe she
16 conveyed that this occurred during the weekend they were
17 going to the beach. We further clarified that with her she
18 was going to the beach the following weekend but she
19 initially told us that she discovered the child's condition
20 when she was at the beach.

21 THE COURT: All right. Call your first witness.

22 SOLICITOR COLTON: The State would call Jada
23 Westbrook, Your Honor.

24 SOLICITOR JOYNER: If I may pull up a chair?

25 THE COURT: Sure.

JADA WESTBROOK: DIRECT EXAMINATION BY SOLICITOR JOYNER

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(WHEREUPON: JADA WESTBROOK,

BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION

JADA WESTBROOK BY SOLICITOR JOYNER:

Q. How do you feel today, Jada?

(PAUSE.)

You have to talk out loud. How do you feel?

A. Fine.

Q. Fine. Now remember when we talked before? I'm going to have to ask you to keep your voice up because remember Ms. Janet needs to record everything you say and Judge Hayes and Ms. Colton need to hear everything you say too okay?

A. (NODS HEAD.)

Q. Can you tell the judge what your name is?

A. Jada.

Q. Jada. Talk a little louder. What's your last name?

A. Westbrook.

THE COURT: The Defendant needs to be able to hear too.

Can you hear?

MR. WILLIAMS: Yes, sir.

THE COURT: Okay.

Q. Jada, say your last name loud and clear okay.

A. Westbrook.

JADA WESTBROOK: DIRECT EXAMINATION BY SOLICITOR JOYNER

16

- 1 Q. How old are you, Jada?
- 2 A. Seven.
- 3 Q. Seven. What's your date of birth?
- 4 A. September 17.
- 5 Q. Can you speak a little louder and clearer?
- 6 A. September the 17.
- 7 Q. Okay. What grade are you in?
- 8 A. First.
- 9 Q. Where do you go to first grade?
- 10 A. Meadowfield.
- 11 Q. Okay. Can you keep your voice up? Make sure
- 12 everybody can hear you okay. What's your teacher's name?
- 13 A. Ms. Myers.
- 14 Q. Ms. Myers? How many days of school do you have left?
- 15 A. Two.
- 16 Q. Two.
- 17 THE COURT: What was school? I didn't hear?
- 18 A. Meadowfield
- 19 Q. Meadowfield. Where -- Can you tell the judge where
- 20 Meadowfield is?
- 21 A. Columbia.
- 22 Q. Columbia. How long have you lived in Columbia?
- 23 A. A long time.
- 24 Q. A long time. Who lives with you in Columbia?
- 25 A. My mom and my . . .

1 Q. Can you keep your hand away from your mouth when
2 you're talking? Can you say that answer again?

3 A. My mama and me, Walter and my sister.

4 Q. Okay. Who is Walter?

5 A. My mama's boy friend.

6 Q. And how old is your sister?

7 A. Five.

8 Q. What's her name?

9 A. Leah.

10 Q. Do you have any other brothers and sisters?

11 A. Jayuan and Leah.

12 Q. Who are they?

13 A. Jaywan and Leah.

14 Q. Say that again please.

15 A. Jaywan and Leah.

16 Q. Jayuan and Leah. How old is Jayuan do you know?

17 A. No.

18 Q. You have to speak your answer okay. So you don't know
19 how old Jayuan is? Put your hand down. Can you do that
20 for me?

21 A. (NO RESPONSE.)

22 Q. Before we start talking about some other stuff I'm
23 going to ask you some questions; just general questions
24 okay, Jada? Is that okay?

25 A. Yes.

JADA WESTBROOK: DIRECT EXAMINATION BY SOLICITOR JOYNER

18

1 Q. If I ask you this question can you answer this? Is it
2 good or bad to tell the truth?

3 A. Good.

4 Q. Is it good or bad to tell a lie?

5 A. Bad.

6 Q. Now if you were home and you told a lie to your mom or
7 to Walter what do you think would happen?

8 A. I'd get in trouble.

9 Q. You'd get in trouble. And if you were at school in
10 the first grade and you told Ms. Myers a lie what would
11 happen?

12 A. I'd have to go to Mr. Simmons.

13 Q. Can you say that again please?

14 A. I'd have to go to Mr. Simmons.

15 Q. You would go to Mr. Simmons? Is he the principal?
16 Yes or no? Or do you know?

17 A. No.

18 Q. Okay. Do you know where you are today, Jada?

19 A. Courtroom.

20 Q. Courtroom. Now you know that Ms. Janet is taking down
21 everything you say and Judge Hayes is listening. Now if
22 you or somebody were to tell a lie to the judge what would
23 happen?

24 A. They'd go to jail.

25 Q. I'm sorry say that again.

1 A. They'll go to jail.

2 Q. Go to jail. So while you are in this courtroom is it
3 good or bad to tell the truth?

4 A. Good.

5 Q. Okay. And is it good or bad to tell a lie?

6 A. Bad.

7 Q. Do you think you can tell the truth about what
8 happened when I ask you questions today?

9 A. Yes.

10 Q. Okay. Just one more question. If I told you that I
11 was wearing a bright red jacket would that be the truth or
12 would that be a lie?

13 A. Lie.

14 Q. That would be a lie? What color is my jacket?

15 A. Black.

16 Q. Black. Well the black could it be brown yes or no?

17 A. Yes.

18 Q. Okay. Jada, I'm going talk with you about some things
19 from when you were in kindergarten. Tell the judge if you
20 can where you went to kindergarten?

21 A. Oakdale.

22 Q. Where?

23 A. Oakdale.

24 Q. Oakdale. Is Oakdale here in York County?

25 A. (NODS HEAD YES.)

JADA WESTBROOK: DIRECT EXAMINATION BY SOLICITOR JOYNER

20

1 Q. Do you know where Oakdale is? Is it in Rock Hill

2 A. Yes.

3 Q. Okay. When you went to Oakdale where did you live?

4 A. Mun's house.

5 Q. Mun's house. Who is Mun? Tell the judge who Mun is.

6 A. (WITNESS POINTS.)

7 Q. You're pointing. Is Mun Annie Dacus your grandmother?

8 A. (NODS HEAD.)

9 Q. Your Honor, let the record reflect that she has
10 pointed out her grandma.

11 Now back when you lived with Mun who else lived with
12 you?

13 A. Trey.

14 Q. Who?

15 A. Trey.

16 Q. Okay. Jada, can you take your hand out of your mouth
17 for me? Are you nervous?

18 A. Yes.

19 Q. Okay. Who else lived with you at Mun's house?

20 A. (WITNESS POINTS.)

21 Q. You have to say the name.

22 A. Trey.

23 Q. Trey. Do you see Trey in the courtroom?

24 A. (NODS HEAD.)

25 Q. Can you point him out for the judge?

1 A. (WITNESS POINTS.)

2 Q. Your Honor, let the record reflect that she's
3 identified Trey Williams.

4 THE COURT: She has pointed toward the defendant.

5 SOLICITOR JOYNER: Thank you, Your Honor.

6 When you lived at Mun's house did you have your own
7 bedroom?

8 A. Yes.

9 Q. Did you have toys in your bedroom?

10 A. Yes.

11 Q. Did Trey have a bedroom?

12 A. No.

13 Q. Where would Trey sleep?

14 A. In my room.

15 Q. In your room. When Trey slept in your room where did
16 you sleep?

17 A. In Mun's room.

18 Q. In Mun's room. Did your mom live with you at Mun's or
19 did she live in Columbia?

20 A. Sometimes.

21 Q. In Columbia. Did she visit you on the weekends?

22 A. Yes.

23 Q. Yes. Did you visit her on the weekends sometimes?

24 A. Yes.

25 Q. Okay. Do you remember back when you were in

1 kindergarten when you were supposed to go with your mom to
2 the beach?

3 A. (NODS HEAD.)

4 Q. You have to answer yes for the record.

5 A. Yes.

6 Q. And that weekend that you were supposed to go to the
7 beach did you get to go to the beach?

8 A. No.

9 Q. Why didn't you get to go to the beach, Jada?

10 A. Because I was . . .

11 Q. I can't hear what you said.

12 A. My private was burning.

13 Q. Your private was burning. When your private started
14 burning did you tell anybody?

15 A. Yes.

16 Q. Who did you tell?

17 A. My mom.

18 Q. And what did you tell your mom, Jada?

19 A. Trey put his thing in mine.

20 Q. I need you to say it a little louder, Jada.

21 A. Trey put his thing in mine.

22 Q. Trey put his thing in yours?

23 A. (WITNESS NODS.)

24 Q. I want to make sure that when we're talking about this
25 that we're all talking about the same thing okay. So I'm

1 going to get some pictures and I'm going to be right back
2 okay?

3 (PAUSE.)

4 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE AND TWO
5 PREMARKED FOR IDENTIFICATION.)

6 Q. Okay, Jada, I've got here two pictures and I'm going
7 to show the pictures. In the first picture that I am going
8 to show you is marked for identification purposes as
9 State's Exhibit Two. And I'm just saying that so Ms. Janet
10 knows what I'm showing you. I am going to show the judge
11 what I'm showing you. Now this picture State's Exhibit Two
12 do you know what this is a picture of?

13 A. A girl.

14 Q. A girl okay. Now State's Exhibit One and I'm saying
15 that so Ms. Janet knows which thing I'm showing you and I
16 am going to show it to the judge is State's Exhibit One.
17 What is that a picture of?

18 A. A boy.

19 Q. A boy. When you said a minute ago that Trey -- You
20 said something about Trey's thing. Can you point out if
21 you see it on this picture what you mean by thing? Okay.
22 I need you to pick up the picture. Can you pick up the
23 picture for me? And I need for you to point to it so that
24 everybody in the courtroom can see.

25 THE COURT: Well everybody can't see.

JADA WESTBROOK: DIRECT EXAMINATION BY SOLICITOR JOYNER

24

1 Q. Just so that Judge Hayes can see. Can you point; can
2 you point out the thing?

3 Your Honor, let the record reflect that she identified
4 the penis.

5 Now, Jada, you talked about yours. You said that
6 Trey stuck his thing in yours?

7 A. (NODS HEAD YES.)

8 Q. Okay. I'm going to show you State's Exhibit Two. Now
9 can you show the Judge where if you see what you mean by
10 yours on the picture?

11 A. (POINTS.)

12 Q. Your Honor, let the record reflect that she's pointed
13 to the vaginal area. Your Honor, we would ask to move
14 State's Exhibit One and Two into evidence.

15 THE COURT: Any objection?

16 MR. WILLIAMS: No, sir.

17 THE COURT: In without objection.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE AND TWO
19 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

20 BY SOLICITOR JOYNER:

21 Q. Thank you, Your Honor.

22 Now, Jada, I'm going to have to ask you a few
23 questions about what you mean by -- By his thing. You told
24 your mommy that Trey put his thing in yours. Can you tell
25 me what you mean by that?

1 A. No.

2 Q. All right.

3 THE COURT: For the record she shook her head.

4 Q. We're going to come back to that in just a minute
5 okay/

6 A. Okay.

7 Q. Okay. Do you remember what happened; do you remember
8 what happened after you told your mom?

9 A. No.

10 Q. No. Did you -- Did your mom call -- Did you go talk
11 to the policeman at some point?

12 A. Yes.

13 Q. Did you talk to Ms. Diane?

14 A. (NOI.)

15

16 Q. Do you remember Ms. Diane?

17 A. Yes.

18 Q. And she talked with you a lot and you, you drew some
19 pictures in her office didn't you?

20 A. Yes.

21 Q. Is that a yes?

22 A. Yes. Yes.

23 Q. Okay. When you stayed with Mun would Mun be home when
24 you got home from school?

25 A. Yes.

1 Q. Did you and Mun always stay in the same room or did
2 Mum go and do things in one part of the house and you went
3 to do things in another part of the house?

4 A. Room.

5 Q. Room?

6 Q. What's that?

7 A. No.

8 Q. No. You would go into your room?

9 A. No Mun's room.

10 Q. Mun. Okay. I'm sorry you know I didn't ask that
11 question quite right. Let me ask it again. Were you
12 always with Mun at home?

13 A. Yes.

14 Q. Yes. Were you always in the same room with Mun?

15 A. Sometimes.

16 Q. Sometimes. Okay. But sometimes were you apart from
17 Mun?

18 A. At school.

19 Q. At school. Sometimes when you were at home?

20 A. (NODS HEAD.)

21 Q. You have to answer yes or no.

22 A. Yes.

23 Q. Yes. Would you sometimes go into your room at home?

24 A. Yes.

25 Q. Did Trey ever come into your room?

1 A. Yes to sleep.

2 Q. When he sleeps. Any other time did Trey come into
3 your room?

4 A. Yes.

5 Q. You have to answer out loud yes.

6 A. Yes.

7 Q. When Trey came into your room sometimes did something
8 bad happen?

9 A. (NODS HEAD YES.)

10 Q. You have to answer out loud.

11 A. Yes.

12 Q. What happened when bad things would happen?

13 A. Trey would . . .

14 Q. Say it again, Jada.

15 A. He put his thing in mine.

16 Q. He put his thing in yours. Where were you in your
17 room when Trey put his thing in you?

18 A. In the bed.

19 Q. Okay. Where was Trey?

20 A. Behind.

21 Q. Behind. He was behind you? You have to say yes or
22 no.

23 A. Yes.

24 Q. Did that happen once or more than once?

25 A. More than one.

- 1 Q. Did it happen right before you told you mom?
- 2 A. Yes.
- 3 Q. Yes. When Trey would touch you in that bad way would
4 his thing go inside your thing?
- 5 A. Yes.
- 6 Q. Yes. How did that feel, Jada?
- 7 A. (SHRUGGED SHOULDERS.)
- 8 Q. You don't know?
- 9 A. No.
- 10 Q. Okay. After Trey put his thing inside you would he do
11 anything else?
- 12 A. No.
- 13 Q. You have to answer out loud.
- 14 A. No.
- 15 Q. No. When we talked -- Before you talked to me about a
16 towel. Do you remember talking about a towel?
- 17 A. Yes.
- 18 Q. Can you tell the Judge about the towel?
- 19 A. He rubbed me with a white towel.
- 20 Q. He rubbed you where with a white towel?
- 21 A. My privates behind me.
- 22 Q. Where?
- 23 A. Behind me.
- 24 Q. Behind you. Did you understand why he was doing that?
- 25 A. No.

1 Q. Where was Mun when Trey would come into your room?

2 A. In the kitchen or in the room.

3 Q. Okay. I need to ask you to say that again.

4 A. In the kitchen or in the room.

5 Q. Did Trey ever say anything to you after?

6 A. No.

7 Q. No. Did Trey ever ask you to do anything else that
8 you didn't want to do?

9 A. No.

10 Q. No?

11 A. No.

12 Q. Do you remember when you talked to Ms. Diane?

13 A. Yes.

14 Q. Did you tell Ms. Diane about anything else that Trey
15 had asked you to do?

16 A. No.

17 Q. Jada, can you hold on for one minute and let me go
18 talk to Ms. Jennifer and I'll be right back.

19 (PAUSE.)

20 Q. Just a few more questions, Jada, okay? Did Trey ever
21 talk to you about his lollipop?

22 A. No.

23 Q. No. Are you sure?

24 A. Yes.

25 Q. Jada, thank you very much for talking with me. Please

JADA WESTBROOK: CROSS EXAMINATION BY MR. WILLIAMS

1 answer any questions that Mr. Williams has, okay?

2 THE COURT: Mr. Williams, you can come up here close
3 if you like. Not too close of course but about - -

4 MR. WILLIAMS: To ask questions?

5 THE COURT: Yes.

6 MR. WILLIAMS: To Jada?

7 THE COURT: Yes if you would like to.

8 SOLICITOR JOYNER: Your Honor, since she's so soft
9 spoken is it okay if I stand up?

10 THE COURT: Sure.

11 You can sit down too that's fine.

12 MR. WILLIAMS: I can just ask if some of them was the
13 same as she asked?

14 THE COURT: Sure. You can ask whatever you like.

15 Jada, do you need a minute to get your - have some
16 water or take a rest or do you want to go forward and go
17 ahead? Go ahead? All right. You need to look at Mr. Trey
18 or Mr. Williams and answer his questions.

19 CROSS EXAMINATION

20 JADA WESTBROOK BY MR. WILLIAMS:

21 Q. Do you remember when you moved with your mom?

22 A. (NODS HEAD.)

23 THE COURT: You got to say yes or no.

24 A. Yes.

25 BY MR. WILLIAMS:

JADA WESTBROOK: CROSS EXAMINATION BY MR. WILLIAMS

31

1 Q. Was it after -- Did you move -- Do you remember the
2 weekend when you left to go visit with your mom?

3 A. Yes.

4 Q. Was you living with her then or afterward?

5 A. Then.

6 Q. You was living with your mom then not after.

7 I don't got no more questions.

8 THE COURT: Okay. Any redirect?

9 SOLICITOR JOYNER: No, sir, Your Honor.

10 THE COURT: All right. Jada, thank you. You can step
11 down and have a seat. We are going to take a break and
12 then we will start back. We are going to take about a ten
13 minute break.

14 Thank you, Jada.

15 (COURT IN RECESS AT 10:42 A.M.)

16 (COURT RESUMES AT 11:02 A.M..)

17 THE COURT: I'm going to let them take your handcuffs
18 off for a while so you can function better.

19 And the defendant is back and call your next witness.

20 SOLICITOR COLTON: Thank you, Your Honor.

21 The State calls Doctor Thomas Wilkins.

22 MADAME CLERK: Please raise your right hand and place
23 your left on the Bible.

24 (WHEREUPON: DOCTOR THOMAS

25 WILKINS BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS

DOCTOR THOMAS WILKINS: DIRECT EXAMINATION BY SOLICITOR COLTON

32

1 FOLLOWS:)

2 MADAME CLERK: Thank you. Please have a seat.

3 THE COURT: Good morning.

4 DIRECT EXAMINATION

5 DOCTOR THOMAS WILKINS BY SOLICITOR COLTON:

6 Q. Good morning, Doctor Wilkins.

7 A. Good morning.

8 Q. Can you please state your full name for the record?

9 A. Thomas Leroy Wilkins.

10 Q. And what do you do for a job or occupation?

11 A. I'm an emergency medicine physician.

12 Q. And what about education and special training do you
13 have to go through to become specialized in emergency
14 medicine?

15 A. I have a Bachelor of Arts Degree from the College of
16 Charleston and a Doctorate of Medicine Degree from USC.
17 And I did a emergency medicine residency at LSU in
18 Louisiana.

19 Q. And how long have you been practicing emergency
20 medicine?

21 A. About fourteen years.

22 Q. And do you have any priviliges in any hospitals?

23 A. Yes.

24 Q. Which ones are those?

25 A. As part of many actually but Piedmont Medical Center

1 in Rock Hill is one.

2 Q. I don't recall if I ask this but how long have you
3 been practicing emergency medicine?

4 A. About fourteen years.

5 Q. Your Honor, at this time I would offer Doctor Wilkins
6 as an expert in emergency medicine.

7 THE COURT: Mr. Williams, do you want to ask him any
8 questions about his qualifications as a doctor?

9 MR. WILLIAMS: No, sir.

10 THE COURT: All right. I find that he is qualified.

11 SOLICITOR COLTON: Thank you, Your Honor.

12 And during that time frame you were practicing
13 emergency medicine did you have an opportunity to ever
14 examine the victims of sexual abuse trauma?

15 A. Yes I have.

16 Q. Adults and children?

17 A. Yes.

18 Q. And you obviously treated them and in that process
19 performed sexual assault examinations on them?

20 A. Yes.

21 Q. Were you working at Piedmont Medical Center on
22 February 23rd 2009?

23 A. Yes.

24 Q. And did you have the opportunity to encounter Jada
25 Westbrook?

1 A. I did.

2 Q. Do you recall how old she was?

3 A. She was six years old.

4 Q. And what was the circumstances under which you
5 encountered Ms. Westbrook?

6 A. Well her mother brought her in and said that she was
7 giving her a bath and noticed a vaginal discharge and got
8 to talking to her daughter and ask her about it and she
9 said she that had been sexual abused and she brought her to
10 the emergency department.

11 Q. What did you notice if anything about the victim's
12 physical appearance or condition when you were examining
13 her?

14 A. The physical exam finding?

15 Q. Yes, sir.

16 A. Yes. In the vaginal area it was red and there was a
17 small amount of blood present.

18 Q. What about her emotional state?

19 A. She seemed scared and nervous.

20 Q. And what specific area of her anatomy were you able to
21 examine?

22 A. I did examine her genitalia.

23 Q. Internally or just externally?

24 A. Externally.

25 Q. Were you able to or is it common place to examine the

1 interior portion of her genitalia to know if a sexual
2 assault had taken place?

3 A. Not with children. My job as an emergency medicine
4 physician is to report any bruises, scratches, lacerations
5 that kind of thing. A more complete examine is usually
6 done later by proboscopy where I take a small fiberoptic
7 lens and look around but then that takes a little bit more
8 training in that particular area.

9 Q. Were there stain test performed or did you actually
10 perform a stain test on Ms. Westbrook?

11 A. Oh no.

12 Q. And why did you not?

13 A. Well she had had several baths and it had been over a
14 seventy-two hour period.

15 Q. And what's the significance of taking baths or a
16 seventy-two-hour period lapsing?

17 A. Well that is to look for pubic hairs, of semen and
18 that type of thing which you would have expected to have
19 been washed away after several times.

20 Q. In your opinion would you have found a serological or
21 physical evidence consistent with a rape and alike after
22 that seventy-two hours would you have found any? Did you
23 feel that you would have found any evidence had you
24 performed that?

25 A. Because then some lacerations, bruising and that type

1 of thing would have been there yes.

2 Q. Where specifically did you find the blood?

3 A. It was at the opening of the vagina.

4 Q. And how did you -- Did you use anything to collect
5 that blood or anything like that?

6 A. We did the wet prep test.

7 Q. And what is a wet prep?

8 A. That's where we basically use a swab over the vagina
9 and send it to the lab and put it on a glass plate and put
10 it under a microscope and determine what type of cells if
11 any were there.

12 Q. And did you -- You did send that to the lab?

13 A. Yes.

14 Q. And they did analyze the blood?

15 A. Yes.

16 Q. And it was determined it was blood cells present?

17 A. That's correct.

18 Q. In your opinion and experience would the presence of
19 blood in the vagina and a fissure be consistent with sexual
20 abuse with sexual assault?

21 A. It is.

22 Q. Is that something you commonly encounter in a child
23 that had not been abused?

24 A. No.

25 Q. Thank you. Please answer any questions the defendant

1 may have for you.

2 CROSS EXAMINATION

3 DOCTOR THOMAS WILKINS BY MR. WILLIAMS:

4 Q. Can you tell me what a vaginal discharge is?

5 A. Usually that's some type of infection either bacterial
6 or yeast.

7 Q. Is it the time that you found blood did you found
8 blood around at the opening of the vagina?

9 A. That's correct.

10 Q. Is there a time period on how long this blood has been
11 present without it leaving; without it not being present?

12 A. Well you might expect that there had been a cut or
13 tear that might have healed to some extent by then but
14 possibly that was noticed after a bath possibly the scab or
15 a blood clot was scraped off during the bath.

16 Q. Do you know where the blood came from?

17 A. Yes it came from the vagina at some point.

18 Q. And do you have a time frame on how long the blood
19 could have been present?

20 A. I would say probably less than twelve to twenty-four
21 hours.

22 Q. Is there any other way -- Did you do any other
23 examinations on Jada Westbrook?

24 A. As far as pelvic exam or vaginal exam goes no.

25 Q. Did any other body parts did you examine?

DOCTOR THOMAS WILKINS: CROSS EXAMINATION BY MR. WILLIAMS
REDIRECT EXAMINATION BY SOLICITOR COLTON

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1 A. Just the normal physical exam.

2 Q. So correct you say twenty four hours that the blood
3 would probably still be fresh on the - in her area?

4 A. Right.

5 Q. Do you know how to view a vaginal discharge when you
6 see it?

7 A. Yes.

8 Q. Do you know how long that could be present without it
9 being -- Without it leaving?

10 A. Say that again.

11 Q. Do you know how long would a vaginal discharge
12 degrade?

13 A. Well it depends. It could be present if left
14 untreated.

15 Q. Until it's treated?

16 A. Uh-HUH.

17 Q. Oh the infection okay then I understand. All right I
18 don't have any more questions.

19 SOLICITOR COLTON: One follow up question, Your Honor.

20 REDIRECT EXAMINATION

21 DOCTOR THOMAS WILKINS BY SOLICITOR COLTON:

22 Q. Doctor, you mentioned that normally a wound would heal
23 within twenty four hour but that it could have been
24 reopened?

25 A. That's correct.

DOCTOR THOMAS WILKINS: REDIRECT EXAMINATION BY SOLICITOR COLTON 39

1 Q. Did you say where the blood clot could have - I'm
2 sorry I'm not trying to totally confuse you.

3 A. Yeah the blood clot or the scab could have been wiped
4 away with a wash cloth that kind of thing.

5 Q. Okay. And that would cause the wound to reopen and
6 bleed again?

7 A. Yes.

8 Q. Thank you.

9 THE COURT: You can step down.

10 Do you have any other questions?

11 MR. WILLIAMS: Do I have any more questions?

12 THE COURT: For this - -

13 MR. WILLIAMS: No.

14 THE COURT: Okay. Thank you. We appreciate your
15 time. You can be excused.

16 THE COURT: All right.

17 SOLICITOR COLTON: Your Honor, the State would call
18 Diane Cranford.

19 MADAME CLERK: Raise your right hand.

20 (WHEREUPON: DIANE CRANFORD,

21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 MADAME CLERK: Thank you. Please have a seat.

23 CROSS EXAMINATION

24 DIANE CRANFORD BY SOLICITOR COLTON:

25 Q. Ms. Cranford, can you please state your full name?

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

1 A. Diane E. Cranford.

2 Q. And what do you do for a job?

3 A. I am the program coordinator for Sexual Trauma and
4 Child Advocacy at Safe Passage in Rock Hill.

5 Q. And can you please tell the court about your
6 educational back ground and training?

7 A. I have a Bachelor's Degree from Gardner Webb
8 University in Human Services. I have a Master's Degree in
9 Social Work from the University of South Carolina and I am
10 a licensed master social worker.

11 Q. Do you have any special training in interviewing
12 children for sexual abuse?

13 A. Yes I'm trained in Child First South Carolina and
14 Advanced Child First South Carolina.

15 Q. What is Safe Passage?

16 A. Safe Passage provides individual and group counseling
17 for survivors of sexual trauma and domestic violence as
18 well as child advocacy for the area.

19 Q. And are part of your duties there more on forensic
20 interviews?

21 A. Yes.

22 Q. And can you please tell the court what a forensic
23 interview is?

24 A. A forensic interview is a child focused interview that
25 is performed at the request of either the Department of

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 Social Services or law enforcement to find fact when there
2 is an allegation of sexual abuse or physical abuse.

3 Q. And are you required to take any continuing education?

4 A. Yes.

5 Q. What's that?

6 A. We are required to do thirty hours of child
7 development or sexual trauma education.

8 Q. And how many years have you been doing forensic
9 interviews with children?

10 A. Approximately a year and a half.

11 Q. How many interviews would you estimate that you have
12 performed?

13 A. Approximately a hundred and fifty.

14 Q. Your Honor, the State would move to have Ms. Cranford
15 certified as an expert in the forensic interviewing of
16 sexual assault victims.

17 THE COURT: You want to ask her any questions, Mr.
18 Williams?

19 MR. WILLIAMS: Yes, Your Honor.

20 THE COURT: Now this just has to do with her
21 qualifications.

22 MR. WILLIAMS: Oh no. No, sir.

23 THE COURT: Okay. Later you can cross her after she
24 gives her whatever her opinions are. Or whatever her
25 testimony will be. All right I find she is qualified.

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 SOLICITOR COLTON: Thank you, Your Honor.

2 And again what is a forensic interview specifically?

3 A. A forensic interview is conducted to find facts and
4 see in the event there is an allegation of sexual abuse or
5 physical abuse.

6 Q. And how are these forensic interviews conducted?

7 A. They are conducted in the techniques know as rat tack.
8 It allows for raipur building, anatomy identification,
9 touch continuing, the child to give their abuse scenario
10 and closure.

11 Q. And why do you use rat tack?

12 A. It is a technique designed to provide for the comfort
13 of the child and a semi structured method in which to
14 interview a child.

15 Q. And do you know of any other professionals in your
16 field that use rat tack?

17 A. Yes.

18 Q. And how many would you approximate?

19 A. In the mere thousands.

20 Q. Would it basically be the national standard that's
21 used?

22 A. Yes.

23 Q. And are there any rules or guidelines set forth or any
24 protocols for the interview process?

25 A. Yes. The rat tack protocol is what we use when we do

1 our forensic interviews.

2 Q. Are children instructed to only talk about things that
3 are true? Do you review those rules?

4 A. Yes. The rules are reviewed. The child is taken into
5 the interview room explained that the rules of the room are
6 to talk about things that are real and true. That they
7 will be asked some questions again that they are allowed to
8 tell the interviewer and encouraged to tell the interviewer
9 if they do not know the answer to a question or do not
10 remember and they are also encouraged to correct the
11 interviewer if we do repeat something back to them in
12 error.

13 Q. And you inform the children of these guidelines?

14 A. Yes.

15 Q. And are the children's parents or guardians are they
16 present for these interviews?

17 A. No.

18 Q. Its just you and the child?

19 A. Yes.

20 Q. And these are video taped?

21 A. Yes they are.

22 Q. And why don't you have the parents or guardians
23 present during the interview process?

24 A. Because the child is not likely to disclose as much as
25 they may if a parent or guardian was in the room.

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

1 Q. Did this particular type of rat tack interview was
2 that performed on Jada Westbrook?

3 A. Yes it was.

4 Q. Are people allowed to come in and observe these
5 interviews?

6 A. The only people that are allowed to observe while the
7 interview is being done is who ever orders the interview
8 which is typically a law enforcement officer or a DSS
9 worker.

10 Q. And would they be in the room with the children and
11 you?

12 A. No they view this interview by closed circuit TV.

13 Q. And they would not be active participants in the
14 interview?

15 A. No.

16 Q. Do you obtain the child's family or social history?

17 A. Yes. A short collateral interview is conducted.

18 Q. And why would this information be important to you?

19 A. It helps in the raipur building to establish whether a
20 child can communicate effectively about her family his or
21 her family and leisure activities.

22 Q. And do you assess the child's level of competency?

23 A. Yes.

24 Q. And how do you do that?

25 A. With raipur building questions and with questions

1 about touches and anatomy identification.

2 Q. And why is that important?

3 A. It's important to assure that a child can communicate
4 effectively about touches that she did and can identify
5 parts of her body.

6 Q. And what about any medical history?

7 A. Some take a detailed medical history but we do
8 determine if a child is taking prescribed medication.

9 Q. And why would you do that?

10 A. We do that in the event that a child is receiving
11 medications for ADHD to find out if they have in fact taken
12 it that day or has been ill recently to make sure that
13 there is nothing that would perhaps make a negative effect
14 on the interview.

15 Q. And how do you determine a child's knowledge of
16 anatomy in an interview?

17 A. We use anatomy identification exercise. What we do is
18 we have some very generic line drawings of age appropriate
19 children and we circle parts of the body and ask a child
20 what they call each part of the body.

21 Q. And why do you do it that way?

22 A. Because that provides an opportunity not only to
23 reduce the stress of the interview by identifying
24 everything from toes to nose and everything in between. It
25 also lets a child give us their language for parts of the

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 body so that if we need to talk about what we are
2 communicating with them in the language that they use.

3 Q. And what type of questioning format would you use when
4 you are asking the children?

5 A. We use very open ended non leading questions.

6 Q. And why do you use non leading questions?

7 A. To prevent suggestibility and so that we can just
8 follow up with what the child responds.

9 Q. And do you have any follow up questions and would that
10 follow the same format in a little bit more detail?

11 A. That's correct.

12 Q. So essentially not putting words in the child's mouth

13 - - -

14 A. Right.

15 Q. - - - is your goal? Are you familiar with the term of
16 delayed reporting?

17 A. Yes.

18 Q. And what is delayed reporting?

19 A. Delayed reporting is a child not disclosing abuse
20 until sometime after the event.

21 Q. And based on your training and experience how common
22 is delayed reporting on a victim?

23 A. A little more common than not.

24 Q. And what based upon your training and your experience
25 what factors play a role in the child delaying disclosure

1 of abuse?

2 A. Many factors. The age that the abuse began, if the
3 abuse by a family member, if there has been some coercion
4 or threats as far as abuse is concerned.

5 Q. Beyond external factors are there any family pressures
6 such as you mentioned would there be an internal factor
7 within the child delayed disclosure?

8 A. The fear of not being believed. The fear of losing
9 people losing trust in her. Fear of retribution. Not
10 wanting to disturb the family dynamics if it was a family
11 member.

12 Q. If a family member, if the perpetrator is a family
13 member how would this effect based upon your training and
14 experience a child living with that perpetrator ability to
15 disclose?

16 A. If the perpetrator is in the house even without
17 coercion they may just not want to disrupt you know the
18 family situation may be financial they may be the bread
19 winner. Just not wanting to upset other family members by
20 accusing a trusted family member of abusing them may
21 prevent disclosure.

22 Q. In your experience are you more or less likely to see
23 delayed reporting in those type situations?

24 A. More.

25 Q. Based upon your experience can you give us an example

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 of the time span that you have seen in the past with
2 delayed reporting?

3 A. I've seen adults that did not reveal child abuse until
4 very later in years. I've seen adults who did not reveal
5 child abuse until they had a child of their own that they
6 knew would be a possible involvement with a perpetrator.
7 Just seen incest victims well into adulthood that never
8 revealed it until they came to a certain point in life
9 where they were experiencing some other trauma and then
10 that came up.

11 Q. How long generally did you specifically with reference
12 to Jada as well how much time do you spend when you
13 interview generally do you take to complete?

14 A. Usually fifteen to twenty minutes.

15 Q. And during that time frame do you generally have full
16 disclosure?

17 A. Not generally.

18 Q. And are you familiar with piece meal or partial
19 disclosure?

20 A. Correct.

21 Q. Can you please tell the court what that is?

22 A. Children typically will reveal their abuse in just
23 minor detail on what they're doing in trying to basically
24 see how the first person that they revealed some sort of
25 event responds to it.

1 Q. Is it basically testing the waters?

2 A. Yes just testing.

3 Q. The response to it?

4 A. If they get a positive response or a supportive
5 response then they may go on and reveal more details.

6 Q. And so when you conduct these forensic interviews you
7 are not you are actually - expectation is not complete
8 disclosure?

9 A. Is not full disclosure no.

10 Q. And it is very common to see disclosure, full
11 disclosure after the fact?

12 A. Correct.

13 Q. Can I ask you about chronological order of events when
14 children are revealing are you generally in your experience
15 do you find children who chronologically recall what
16 happened to them?

17 A. No there's many reasons that a child may not know the
18 exact order of events. Depending on how young a child is
19 or the abuse starts they may not even recognize the first
20 incident asked and the actual event of the abuse. They may
21 be so traumatized that they block it out and they are just
22 young and not developed mentally able to recall things in
23 appropriate order.

24 Q. Based upon your training and experience in this case
25 with reference to Jada was her delayed reporting do you

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

1 feel that that was consistent or inconsistent with her
2 history of abuse?

3 A. Consistent.

4 Q. Specifically referencing Ms. Westbrook do you recall
5 what day; the date of that forensic interview?

6 A. March 3rd, 2009.

7 Q. And who referenced her to the forensic interview?

8 A. Detective William Burris from the City of Rock Hill
9 Police Department.

10 Q. And when you spoke with Ms. Westbrook did she appear
11 to be competent?

12 A. Yes.

13 Q. Do you recall how old she was at the time?

14 A. She would have been six I believe.

15 Q. What did you do to try to determine her competency
16 level?

17 A. Did raipur building activities with here where I
18 talked about -- I asked her family and ask her about
19 school, pets and what she liked to do outside of school.

20 Q. And how -- Was she receptive to those questions?

21 A. She was.

22 Q. And you were able to establish a raipur with her?

23 A. Yes.

24 Q. And what specifically if any safe guards did you use
25 with Jada to determine or prevent any type of influence

1 upon her?

2 A. With Jada and with other children reinforcement of the
3 rules that they need to focus on only things that are true
4 and reassurance that they are not in the interview because
5 they are in any kind of trouble.

6 Q. What type of questions did you ask her?

7 A. Just open ended and then any followup was based on her
8 responses to the open ended questions.

9 Q. And so no non leading questions?

10 A. Right.

11 Q. With followup?

12 A. With followup right.

13 Q. Did you know what had happened to her specifically
14 before she came to the forensic interview?

15 A. No. I am generally given a referral by law
16 enforcement and a police report. But I do not ask my
17 questions based upon what's on the police report.

18 Q. And what if anything did Jada during that interview
19 relate to you concerning places or place where these sexual
20 assaults occurred?

21 A. Jada said that the assault happened in her bedroom at
22 the grandmothers home.

23 Q. And what did you do to document this child's
24 disclosure?

25 A. I asked her where the room was in the house and what

1 color the bed clothes and windows were.

2 Q. Did you follow up and generate a forensic interview
3 written document - - -

4 A. Yes.

5 Q. - - - report? Was the interview video taped?

6 A. Yes,

7 Q. Was it also audio taped?

8 A. Yes.

9 Q. Based on your training and experience is there
10 anything about this disclosure by Ms. Westbrook that caused
11 you to believe that this was influenced by a third party?

12 A. No.

13 Q. Why not?

14 A. She did not show any evidence of coaching or other
15 influence.

16 Q. During the course of your years of interviewing people
17 you've seen this before?

18 A. Yes.

19 Q. And what types of -- Well let me ask you this. Is
20 that something you look for in a forensic interview and if
21 you had noted that what would you have done if you felt
22 there was a third party influence on Ms. Westbrook?

23 A. Generally I would do follow up questions to did anyone
24 tell you to tell me anything or did anyone ask you to tell
25 me anything or tell you not to tell me anything.

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 Q. And ultimately would you tell law enforcement or the
2 referring agency that as well?

3 A. Yes.

4 Q. What if any recommendation did you make on her
5 disclosure?

6 A. No contact with Mr. Williams and follow up by law
7 enforcement.

8 Q. In this particular case besides the rat tack and the
9 oral interview with these non leading questions were there
10 any other techniques that you used in speaking with Ms.
11 Westbrook?

12 A. I did use the anatomical dolls.

13 Q. And what is the anatomical dolls?

14 A. They are dolls that are especially designed for
15 forensic interviewing that are basically anatomically
16 correct.

17 Q. And why are they commonly used in your field?

18 A. They can be used. They are used to reinforce
19 disclosure.

20 Q. And why did you choose to use them on Jada?

21 A. I chose to use them because she was a little bit
22 uncomfortable with verbally describing what happened and I
23 did ask her which is protocol if she would be willing to
24 demonstrate using the doll and she agreed to.

25 Q. You mentioned that the interview was audio -- Had

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 audio and visual recording?

2 A. Yes.

3 Q. Did you generate a DVD?

4 A. Yes.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE PREMARKED
6 FOR IDENTIFICATION.)

7 Q. Let me show you what's been marked for identification
8 purposes as State's Exhibit Three. Do you recognize that?

9 A. Yes.

10 Q. Can you please tell the court what it is?

11 A. It is the forensic interview I conducted.

12 Q. Did you generate this DVD?

13 A. Correct.

14 Q. And obviously you've reviewed the DVD?

15 A. Yes.

16 Q. And does that DVD truthfully and accurately reflect
17 your forensic interview with Jada?

18 A. Yes it does.

19 Q. And does this DVD contain all those items that you
20 spoke about as far as the details - - -

21 A. Correct.

22 Q. - - - on what transpired in the abuse?

23 A. Yes:

24 Q. Your Honor, at this time the State would move to
25 introduce State's Exhibit Three into evidence the forensic

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 interview of Ms. Westbrook.

2 THE COURT: Any objection, Mr. Williams?

3 MR. WILLIAMS: No, sir.

4 THE COURT: In without objection.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE IDENTIFIED
6 AND MARKED, ENTERED INTO EVIDENCE.)

7 BY SOLICITOR COLTON:

8 SOLICITOR COLTON: And, Your Honor, the state would
9 move to publish this, Your Honor.

10 (PAUSE.)

11 SOLICITOR COLTON: Your Honor, may we have a few
12 minutes to get this straight?

13 THE COURT: We'll take a short break to figure this
14 out.

15 (COURT IN SHORT RECESS.)

16 (COURT RESUMES AT 11:48 A.M..)

17 THE COURT: We will continue our break while you get
18 that fixed.

19 (COURT RESUMES AT 11:52 A.M..)

20 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE PUBLISHED TO
21 THE COURT ON OVER HEAD.)

22 BY SOLICITOR COLTON:

23 Q. Just a couple of follow up questions. The video of
24 Ms. Westbrook was identifying body parts. Were those on
25 photographs?

DIANE CRANFORD: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 A. They are on anatomical drawings.

2 Q. On anatomical drawings when she was referred to her
3 bottom what part of the anatomy was she referring to?

4 A. Buttocks.

5 Q. And was she referring to her ----- what part of her
6 was that she was referring to?

7 A. Vagina.

8 Q. And when she was referring to her titty's what part of
9 her anatomy was she referring to?

10 A. Breast.

11 Q. And when she was referring to tail what was she
12 referring to?

13 A. Penis.

14 Q. Thank you. Please answer any questions the defense
15 might have.

16 THE COURT: Mr. Williams.

17 MR. WILLIAMS: I don't have any questions.

18 THE COURT: All right. You can step down and be
19 excused we appreciate your time.

20 All right. Call your next witness.

21 SOLICITOR COLTON: Doctor Dwight Reynolds.

22 MADAME CLERK: Please raise your right hand place your
23 left hand on the Bible.

24 (WHEREUPON: DOCTOR DWIGHT

25 REYNOLDS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS

DOCTOR DWIGHT REYNOLDS: DIRECT EXAMINATION BY SOLICITOR COLTON 57

1 FOLLOWS:)

2 DIRECT EXAMINATION

3 DOCTOR DWIGHT REYNOLDS BY SOLICITOR COLTON:

4 Q. Good afternoon, Doctor Reynolds. Would you state your
5 full name for the record.

6 A. Dwight Raymond Reynolds.

7 Q. And what is your occupation?

8 A. I am a physician pediatrician.

9 Q. Okay. And what do you specialize in?

10 A. Special interest in child abuse in children; sexual
11 child abuse.

12 Q. And what is your background and training?

13 A. After I finished medical school and established a
14 practice in Lexington I became interested in the community
15 center and alcohol Dickerson Center where you see children
16 and do counseling for children that have been physically or
17 sexually abused. Essentially I became the medical director
18 there and I've held that position for about ten years now.

19 Q. And you said you established your practice in
20 Lexington what type of practice?

21 A. Pediatrics.

22 Q. And how long have you been practicing pediatrics and
23 medicine in general?

24 A. Twenty-five years.

25 Q. And how long were you at the Dickerson Center?

1 A. About ten years there.

2 Q. And you mentioned that you counseled children; what
3 other things occur at the Dickerson Center?

4 A. I don't counsel children we have counselors who do
5 that. My job is to do examinations looking for physical or
6 sexual abuse.

7 Q. And if you can approximately how many physical
8 examinations on children have you performed over the years
9 in your medical field?

10 A. Are we speaking of specifically for sexual abuse?

11 Q. In general and then with reference specifically to
12 sexual abuse.

13 A. Frankly I have no idea. I would estimate ten thousand
14 for exams for children in general. The number of forensic
15 examinations that I've done at the Dickerson Center
16 approaches three hundred.

17 Q. And when you perform -- Please tell the court a little
18 bit about what type of physical exam in looking for sexual
19 abuse or evidence of sexual abuse what that would entail?

20 A. In general we try to do an exam that is very similar
21 to what the children would have experienced if they were at
22 a regular doctor's office or we do a full exam of the ears
23 and down to toes and we everything in between. We do
24 emphasize the exam of the genitalia after we've done a
25 pretty good survey of the skin looking for bruises or

1 scrapes or anything that shouldn't be there but beyond the
2 normal wear and tear injuries. We have some specialized
3 equipment, basically a culpa scope which is a device
4 originally invented for the gynecologist and obstetrician
5 that gives me a good light source of magnification and
6 focus our exam on the genitalia when it comes up during the
7 examination.

8 Q. Have you written any books or have you published in
9 the field of child sexual abuse?

10 A. Do I read them?

11 Q. Excuse me?

12 A. Do I read them?

13 Q. No have you published any?

14 A. Have I ever published any? No I've done an article
15 that I sent you that I believe

16 Q. And a physician and also specializing in child sexual
17 abuse do you have to take continuing education classes and
18 read periodicals et cetera to follow up and keep current
19 with the status of law -- The status of the field. I'm
20 sorry.

21 A. Yes. Well the Dickerson Center is an official child
22 advocacy center so there are some very stringent
23 requirements that not only the medical arm but the
24 counseling are that they continuing to get updated
25 education and attend state wide meetings on the subject

DOCTOR DWIGHT REYNOLDS: DIRECT EXAMINATION BY SOLICITOR COLTON 60

1 three times a year and we do perform these are all required
2 multi disciplinary team once a month with the sheriff's,
3 solicitor's and other folks who have interest social
4 services.

5 Q. Your Honor, - - I'm sorry.

6 A. And staff from the Dickerson Center we gather its
7 usually about twenty or thirty people that discuss cases.

8 Q. And at this time, Your Honor, the state would move to
9 qualify Doctor Reynolds as both an expert in pediatric and
10 child sexual assault.

11 THE COURT: Do you have any questions?

12 MR. WILLIAMS: Yes, sir.

13 THE COURT: I mean about his ability - -

14 MR. WILLIAMS: No not his reference.

15 THE COURT: Okay. I find he is qualified.

16 SOLICITOR COLTON: Thank you, Your Honor.

17 Doctor Reynolds, did you have the opportunity to
18 examine Jada Westbrook?

19 A. Yes I did.

20 Q. And what was the purpose of you examining her?

21 A. She was referred to the facility. At the time I
22 wasn't aware of her history I was just ask to examine her
23 to see if there was any evidence of abuse.

24 Q. And what specifically did you -- how specifically did
25 you examine her?

1 A. In the same fashion I mentioned we put her --
2 Undressed her and put her in a little hospital gown and she
3 sat on the table and we did the usual eyes, ears, nose,
4 throat thing, we listened to her heart and lungs. Then
5 laid her on the table to examine her tummy and her private
6 parts. And used a culpa scope to again improve the
7 lighting and it's a restricted area and so I see a little
8 bit better.

9 Q. And you talked about the internal area?

10 A. We don't do an internal exam much like the
11 gynecologist might do. We do a good look at the external
12 area of the genitalia the vagina and the anus area.

13 Q. As part of the examination you did examine her hymen?

14 A. Yes:

15 Q. And what were you findings in reference to Jada
16 Westbrook?

17 A. She had a normal examination.

18 Q. And what do you mean by a normal examination?

19 A. Well I didn't see any physical injury that concerned
20 me above and beyond the things like healing scrapes and
21 scratches. The genital area she had a normal exam. That
22 means basically there was no discharge, no particular
23 irritation, bleeding, and her hymen was present and had a
24 sort of a circular shape to it that we typically see in a
25 female hymen. She is prepubic so there wasn't much

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1 estrogen effects not much hormone effects she was an
2 immature female.

3 Q. Were you able to determine if there was actual
4 physical evidence of sexual abuse?

5 A. No nothing on my examine would have indicated that
6 there were.

7 Q. And is that something that's common or uncommon when
8 you examine victims of sexual abuse?

9 A. The vast majority of the examinations I do of children
10 who are abused and in children who are not abused it's a
11 normal examination. There's kind of a myth that any
12 penetration of the hymen will destroy it somehow and it's
13 going to be absent and not -- When anyone looks down there
14 thereafter will be able to tell if there has been some
15 penetration when the truth is children heal very well and
16 they also heal in that area very well so if there's been
17 any delay at all beyond a matter of hours or at least days
18 there will be no evidence.

19 Q. So you examined her approximately a month after this
20 was reported to law enforcement?

21 A. That's my understanding.

22 Q. And it is your opinion then you said it would be more
23 common not to find any evidence of physical trauma?

24 A. Probably.

25 Q. Does the penetrating injury does that necessarily

1 leave scaring and tears?

2 A. No.

3 Q. And are you aware of how a child may confuse actual
4 penetration or deep penetration with an attempted
5 penetration?

6 A. Yeah it's pretty common for us to encounter some
7 confusion on the part of children about what in what's on
8 and rubbing so those terms often lose meaning in the
9 situation where there is a lot of emotional over lay and
10 there is pain and fear. We kind of witnessed it the
11 terminology is critical well those terms get often confused
12 for kids and maybe for adults.

13 Q. The court's indulgence.

14 (PAUSE.)

15 Q. Would your opinion change if there was some chronic
16 abuse in a child? Would that necessarily or automatically
17 lead to physical evidence upon an exam you performed?

18 A. No. There are forgiving tissues and they get out of
19 the way of and as I mentioned they heal. Plus the chronic
20 abuse does not automatically leave a defect in the hymen or
21 scarring or any other evidence necessarily can but it
22 doesn't necessarily.

23 Q. And your finding was normal but that does not preclude
24 sexual assault?

25 A. That's correct.

DOCTOR DWIGHT REYNOLDS: CROSS EXAMINATION BY MR. WILLIAMS

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1 Q. Thank you. Please answer any questions the defendant
2 may have for you.

3 THE COURT: Mr. Williams.

4 CROSS EXAMINATION

5 DOCTOR DWIGHT REYNOLDS BY MR. WILLIAMS:

6 Q. Can you explain how there was a normal exam?

7 A. Yes I will be glad to. Penetration does not
8 necessarily leave physical evidence after a child has had a
9 chance to heal. So statistics are that ninety-five percent
10 of the exams in abused children are normal exams. They
11 just heal well.

12 Q. Is there a specific time frame that it would take for
13 a child to heal?

14 A. There is. Depending on the degree of injury it might
15 take three or four days it might take two weeks.

16 Q. Would that be two weeks at the most or could it take a
17 month?

18 A. I don't think there is any -- not in my experience no.

19 Q. Do you know what the accusations of the charge of it
20 was for you to do an exam? Do you know what the actual
21 reason for the exam?

22 A. Actually I don't. Its very common for me to see
23 children without knowing much history. I know they're
24 there because somebody thinks something happened but I
25 don't know the specifics no.

1 Q. So what's the definition of penetration?

2 This may be wrong?

3 THE COURT: Ask him what you want.

4 Q. What are you looking for? What kind of penetration
5 would it show in the private areas?

6 A. I'm not too sure of the question. Penetration is a
7 legal term and involves any part of the penis penetrating
8 beyond the labia minora. But as far as if your question is
9 -- I'm not sure what your question is. Can you ask it
10 again for me?

11 Q. Can you tell me what a skin pathology is?

12 A. Skin pathologist? That's things like scars or lesions
13 or injuries; signs of injury.

14 Q. Did you examine the victim anus?

15 A. Yes I did.

16 Q. What did you find from it?

17 A. It was a normal exam too.

18 Q. But they could have healed the same way as the vagina
19 could have healed?

20 A. Well, anal exams are a little bit different. The
21 rectum and anus are kind of designed to stretch and once a
22 day evacuate sometimes a fairly bulky amount of stool so
23 it's meant to stretch. It's unusual for it to be injured
24 during stretching and in all my experience I've only seen
25 one or two anal exams that gave me any cause to be

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1 concerned at all but that area does heal well fortunately.
2 And again in a few days after the incident your unlikely to
3 see anything; any kind of penetration.

4 Q. From a six year old if she was penetrated several
5 times in the anus or the vagina is there any kind of way
6 you would be able to figure out through a period of time
7 that it did occur?

8 A. No way I know to document the timing of issues or the
9 frequencies. So I think the answer to your question is no.
10 Really I can't put a time frame on those.

11 Q. Could you tell if it was -- If the anus had been
12 entered several times?

13 A. No. I would expect to have a normal examination.
14 Sometimes you do get some scaring occasionally and you can
15 see something must have happened but the majority of the
16 time its a normal examination and that doesn't mean nothing
17 happened.

18 Q. Okay. If the victim was entered in the vagina or anus
19 several times would you know how long the -- Is it possible
20 for the pain not to be on the spot and happened several
21 days and the pain occurred several -- A week or so later
22 after the time frame or would it be right on at the time
23 that it happened?

24 A. I would expect most of the pain would be right at the
25 time it happened.

1 Q. So if there was no report of any pain through these
2 accusations and a week later pain was brought up would you
3 consider that -- What would you consider that?

4 A. Well I think there is a difference between pain and
5 reporting pain.

6 Q. Pain.

7 A. Children may have pain but whether they tell anybody
8 about it its kind of a different thing.

9 Q. All right I have no further questions.

10 THE COURT: All right.

11 Any redirect?

12 SOLICITOR COLTON: Just briefly. Judge, I don't have
13 any redirect.

14 THE COURT: All right you can step down to be excused.
15 We appreciate your time. Thank you.

16 DOCTOR REYNOLDS: Thank you, sir.

17 THE COURT: Call your next witness.

18 SOLICITOR COLTON: The State would call Clyfeba Page,
19 Your Honor.

20 THE COURT: Ms. Page, if you will come up and put your
21 left hand on this Bible and raise your right.

22 (WHEREUPON: CLYFEBA PAGE, BEING
23 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 MADAME CLERK: Thank you.

25 DIRECT EXAMINATION

CLYFEBA PAGE: DIRECT EXAMINATION BY SOLICITOR COLTON

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1 CLYFEBA PAGE BY SOLICITOR COLTON:

2 Q. Can you please state your full name for the record?

3 A. My name is Clyfeba Page.

4 Q. And, Ms. Page, what city do you currently reside in?

5 A. Columbia, South Carolina, Richland County.

6 Q. Ms. Page, did you formerly live in the Rock Hill area?

7 A. Yes, ma'am.

8 Q. Okay. Do you have any children?

9 A. Yes. I have two.

10 Q. And what are their names and ages?

11 A. Jada and Juleah. Jada is seven Juleah is five.

12 Q. And do they currently live with you?

13 A. Yes.

14 Q. And back -- Well let me ask you this about Jada.

15 Where -- Do you recall a year ago?

16 A. Yes.

17 Q. Where was she going to school last year?

18 A. Oakdale.

19 Q. And where is that located?

20 A. In Rock Hill in South Carolina.

21 Q. And were you living with her at the time?

22 A. I was in and out.

23 Q. Can you explain to the court basically what was going

24 on at that period of time?

25 A. What was going on? My grandmama's house was over

1 crowded and Jada was mostly staying with her while I was
2 working. I worked different shifts so that's why Jada was
3 with her most of the time.

4 Q. And who is your grandma?

5 A. Anne.

6 Q. Anne, which - -

7 A. Annie Dacus.

8 Q. And Ms. Dacus where specifically did she live?

9 A. 984 Southland Drive.

10 Q. And that's in the City of Rock Hill?

11 A. Yes, ma'am.

12 Q. In York County, South Carolina?

13 A. Yes, ma'am.

14 Q. And generally since Jada was going to school up here
15 would you ever drive her up here to this school from
16 Columbia?

17 A. No.

18 Q. What basically was your longer time in kindergarten
19 what were her days like?

20 A. Monday through Friday she was in and out with my
21 grandmama and like when I'm off I come to get her and we be
22 in Rock Hill most of the time. But that particular weekend
23 that the incident took place we was in Columbia, South
24 Carolina when she told me about it.

25 Q. Monday through Friday she stayed with Ms. Annie?

1 A. Uh-huh.

2 Q. At her house in Rock Hill?

3 A. Yes, ma'am.

4 Q. And who else stayed at that house?

5 A. Trey.

6 Q. And who is Trey?

7 A. Trey is my cousin.

8 Q. And we will bring you back was there a period of time
9 last year around February that you all were supposed to be
10 taking a trip?

11 A. Yes.

12 Q. And was Jada still in school at the time?

13 A. Yes she was.

14 Q. And Monday through Friday when she stayed at her
15 grandmother's house her grandmother would wait for her at
16 the bus?

17 A. Yes.

18 Q. And she'd spend the night there?

19 A. Yes.

20 Q. Back when you all were supposed to go to the beach do
21 you recall something happening to Jada?

22 A. Yes. She -- After she got out of the bath or whatever
23 she - -

24 Q. Let me bring you back; bring you back that whole week.

25 A. Okay.

1 Q. She would have been at Ms. Annie's house from Monday
2 through Friday?

3 A. Uh-huh.

4 Q. And do you recall around what time -- What date this
5 was?

6 A. Like the 21st around that area. I know that Saturday
7 when she told me it was on the 21st; I'll never forget it.

8 Q. Okay. Let me back you up a little bit.

9 A. Okay.

10 Q. Jada had been to school. Was she there Monday
11 through Friday?

12 A. Uh-huh.

13 Q. When did you get to see her that week?

14 A. Friday.

15 Q. And how did that happen?

16 A. My grandmother was going out of town. Anderson if I'm
17 not mistaken. Her husband was sick and so therefore I had
18 to get Jada and therefore we - -

19 Q. When did you pick her up?

20 A. Friday.

21 Q. On Friday. Was it before or after school?

22 A. After school.

23 Q. And was she already at the house when you got her?

24 A. Yes.

25 Q. And what did you do with Jada after you picked her up?

1 A. We just went around to my Aunt Louise house and then
2 we later on went back to Columbia.

3 Q. And when you went to Columbia where did you go in
4 Columbia?

5 A. Walter's house the house that I'm staying now.

6 Q. And who is Walter?

7 A. Walter is my boyfriend.

8 Q. Was Walter home at the time?

9 A. No he wasn't.

10 Q. Where was Walter?

11 A. He was I think in Charleston over at his mom at the
12 time.

13 Q. So Jada was she around Walter at all; had she seen him
14 that weekend?

15 A. No.

16 Q. And so let's talk about Friday going into Saturday.
17 Did something on Saturday?

18 A. Yes. She told me that she was burning in her private
19 area.

20 Q. And what was she doing after?

21 A. After?

22 Q. She got up that morning just kind of run through
23 everything that happened.

24 A. Well I had her in the tub or whatever after she got
25 out and she got dressed I noticed she was kind of like you

1 know walking funny and I seen her messing around with her
2 private area and then she told me it was burning and I lied
3 her on the bed and I examined and I noticed that she was
4 like having a heavy discharge. And that's when I
5 questioned her and ask her has anybody other than me and
6 Mun which is my grandmother ever touched you. And she told
7 me yes. She was scared at first and I told her you need to
8 tell me what happened if something bad happened. And then
9 she went on to tell me.

10 Q. Did she tell you where this had happened?

11 A. Yes.

12 Q. And where did it happen?

13 A. In Southland.

14 Q. At Mun's house?

15 A. Uh-huh.

16 Q. And did she tell you when it had happened?

17 A. Yes. She told me it happened several times and she
18 told me it happened earlier in the week before I picked her
19 up. That she was forced to lie on the bed and that he was
20 behind her.

21 Q. After Jada told you this what did you do?

22 A. Well immediately I called my grandmother and ask her
23 did she have -- Did she know that he was doing that to her.
24 And she told me you know -- I guess she got upset and that
25 was basically it.

1 Q. Did you ultimately take her to the doctor?

2 A. Yes. I wanted to take her. I was afraid to take her
3 then because I was told that if I was to take her they
4 would try to take my kids away from me.

5 Q. Who was that; who did you think was going to take your
6 kids?

7 A. DSS. And so we was in a whole different county so
8 Monday morning I got up I called my case worker which is my
9 DSS case worker for food stamps and all that. I called her
10 and I informed her what Jada told me and I told her I know
11 that usually they do try to take the kids out of the home
12 and I told her I don't want to loose my kids I wasn't aware
13 of it. And then she told me to meet at Piedmont, to take
14 her to Piedmont and she would have -- I think the sheriff
15 officer was there waiting on me when I got there.

16 Q. Now you were in Columbia. Before Monday when you
17 talked to your DSS case worker, did you have anyway to get
18 back to Rock Hill?

19 A. No I didn't.

20 Q. And ultimately they didn't take your children did
21 they?

22 A. No. Well at first it was like they were until I told
23 her my case worker and I told her I had already talked to
24 someone and that I wasn't aware of what was going on or I
25 would have been there sooner. But I told her I gave her a

CLYFEBA PAGE: DIRECT EXAMINATION BY SOLICITOR COLTON
CROSS EXAMINATION BY MR. WILLIAMS

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1 bath and they told me they couldn't do a rape kit or
2 whatever.

3 Q. That would be the medical personnel?

4 A. Uh-huh.

5 Q. You also took her to the Dickerson Center?

6 A. Yes.

7 Q. Examined there and to see Ms. Diane at Safe Passage as
8 well?

9 A. Yes, ma'am.

10 Q. Okay. Court's indulgence, Your Honor.

11 You mentioned before that she told you on Saturday I
12 believe this was the 21st, February 21st, 2009. It was 2009
13 would be my question.

14 A. Uh-huh.

15 Q. Okay. How old was your daughter at the time?

16 A. Six.

17 Q. Thank you. Please answer any questions the defendant
18 may have for you.

19 THE COURT: Mr. Williams.

20 CROSS EXAMINATION

21 CLYFEBA PAGE BY MR. WILLIAMS:

22 Q. How did you find out about the accusation?

23 A. How did I find out? Jada told me.

24 Q. What did she tell you when you found out about that?
25 What led to the accusation coming out?

1 A. Her private area was burning.

2 Q. What did the pain come from that Jada was in that
3 morning?

4 A. I can't tell you that because I don't know.

5 Q. How long has Jada been living with you?

6 A. Now she's been living with me since the incident took
7 place.

8 Q. Why did Jada wake up that morning and not want to go
9 to school?

10 A. She didn't never wake up that morning -- On the
11 weekend she don't have to go to school.

12 Q. All right. I'm going to get back to that. Did you --
13 Jada any vaginal area?

14 A. No.

15 Q. How long was Jada away from me when this accusation
16 came up?

17 A. A day.

18 Q. A day?

19 A. Yes.

20 Q. You sure?

21 A. Yes.

22 Q. I have a report from you saying that it was three
23 days. I been away from Jada three days.

24 A. She told me on a Saturday she was around you that
25 Friday so that was a day.

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 Q. I have a report of you saying three days.

2 A. Well.

3 Q. And I also have a report saying that you specifically
4 saying why did Jada -- I'm just going to get to the report
5 before I continue my questions. One says -- Which out of
6 the three is true on what brought up the accusations
7 against me? One report said Jada waking up sore in her
8 genital area on February the 23RD a.m. which led to the
9 discussion regarding me touching her with my genitals and
10 performing oral sex. That's written in the report.

11 A. Well.

12 Q. Two you notice in the vaginal discharge when you was
13 giving her a bath and you asked her a question. It doesn't
14 say what question. And then he was told the accusation.

15 Three - -

16 SOLICITOR COLTON: Your Honor, I hate to interrupt but
17 I'm going to object because she's not been informed of the
18 time and place where the alleged statement occurred.

19 MR. WILLIAMS: I got the paper.

20 SOLICITOR COLTON: I think that she has to have the
21 opportunity if she's being asked about what she said when
22 they were allegedly said and done.

23 THE COURT: Why don't you let her look at those
24 statements?

25 MR. WILLIAMS: To her?

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 THE COURT: Yes.

2 A. Well I can say this, Your Honor, I haven't heard of no
3 statements. I haven't answered any questions previously
4 now to Trey until he tried to talk to me calling my phone
5 and I wouldn't talk to him.

6 THE COURT: Okay. Well these are statements
7 apparently he has that you may have given to the
8 Solicitor's office.

9 A. Okay.

10 THE COURT: Or to the police.

11 A. All right.

12 THE COURT: Make sure you tell her which exact one you
13 are referring to.

14 MR. WILLIAMS: It's three of 'em.

15 THE COURT: I know.

16 MR. WILLIAMS: There - -

17 A. There's a lot on these papers, Your Honor. I mean I
18 don't know which one.

19 BY MR. WILLIAMS:

20 Q. Read them in order. One.

21 A. Chest x ray do not involve Jada.

22 THE COURT: Wait. Wait. Let's do this. Tell her
23 which one, Mr. Williams, you wish her to - -

24 Q. The first one is when mom noticed the vaginal
25 discharge.

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 THE COURT: Wait. Is there any way to identify them
2 like a date?

3 A. I don't see none of that.

4 MR. WILLIAMS: It has February the 23rd on -- All of
5 them has February the 23rd. History of illness - -

6 THE COURT: All right. Wait just one second.

7 Have you got copies I can be looking at maybe I can
8 help?

9 SOLICITOR COLTON: I have no idea what he's looking
10 at, Your Honor.

11 A. I mean -- Okay I can answer this.

12 THE COURT: Let me --

13 A. Okay.

14 THE COURT: First let me see what they talking about.

15 MADAME CLERK: You want me to make copies?

16 THE COURT: Yeah it might be good if you make copies
17 if you don't mind.

18 MR. WILLIAMS: I got a copy that don't have no written
19 on it.

20 THE COURT: All right.

21 MR. WILLIAMS: There's written on the back of it.

22 THE COURT: Let's just give him those back get clean
23 copies. One set for myself and for the Solicitor and for
24 the witness.

25 MR. DELANEY: Is it okay if there is writing on the

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 top of it?

2 THE COURT: That's no problem.

3 No no here's what they are. They're from the Piedmont
4 Medical Center Records. From -- Starting from top left is
5 the date of 2/23/09 and its Page 6 of 8. And the other is
6 Page 2 of 8. It starts out with history of present illness
7 shows Doctor Wilkins as the doctor. And the third document
8 that I have is - says at the top reporter looks like they
9 got it misspelled but its Page and then its got Reporter's
10 comment and I don't know where it comes from.

11 SOLICITOR COLTON: Your Honor, if I may approach the
12 witness to take a look at what she has? It might be I can
13 visually identify that document.

14 (PAUSE.)

15 THE COURT: Yes, ma'am.

16 SOLICITOR COLTON: Your Honor, the last page I don't
17 believe I have a copy in my file but - -

18 THE COURT: I'll give you mine I don't think I need
19 it.

20 SOLICITOR COLTON: Thank you, Your Honor. I do recall
21 seeing it before. Your Honor, my only objection to cross
22 examining her on these is that I believe we're looking at
23 the two statements of people that were not Ms. Page's
24 statements. They were generated by -- I'm going to assume
25 it's Piedmont's Medical records a nurse and recorded in the

1 medical documentation. I don't think we know who actually
2 recorded the statement. Obviously Doctor Wilkins who was
3 here to sign off on them. And as far as the other
4 documents I hate to guess but I think this was part of the
5 DSS -- Maybe the DSS file. Again my objection would be the
6 same that they are hearsay; that they were documentation of
7 people that are not here in court and he's asking her about
8 their interpretation of what she alleged to have said so
9 that does concern me.

10 THE COURT: Well I share your concern however since
11 there is no jury I'm going to allow them in.

12 Do you want to submit these into evidence so they will
13 be part of the record in case this goes up on appeal?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: You don't have to but we've been talking
16 about them a lot.

17 MR. WILLIAMS: I been talking about them a lot?

18 THE COURT: I been talking about them a lot.

19 MR. WILLIAMS: Oh. Yes, sir.

20 THE COURT: I'll make them - -

21 If you will hand me that third page back. Have you
22 identified it?

23 SOLICITOR COLTON: I don't know where it came from,
24 Your Honor, I'm just guessing that its part of the DSS
25 cover sheet but I will -- I've seen this form before - -

1 THE COURT: Well I'm going to make this a Court's
2 Exhibit so that you don't have to put it in since you are a
3 little hesitant on that. And I will consider it for
4 whatever its worth but I am going to let you ask questions
5 concerning it. And for the record it's three pages the
6 first is -- I don't know where it came from but at the top
7 it says February 23, 2009 11:16 a.m. livesocommunications
8 and it's got a telephone number and Page Five. I presume
9 that's York County Sheriff's Office. And it has what looks
10 to me like a log of somebody making a report because it
11 talks about a reporter. The other two are Piedmont Medical
12 Center Reports Page 2 of 8 and Page 6 of 8. Those have a
13 DOS which I guess is the day of something 2/23/2009 at
14 10:44 it doesn't say am or pm and it doesn't appear to be
15 in military time either but for what it's worth those are
16 the reports. I will make them all one exhibit.

17 (WHEREUPON: COURT'S EXHIBIT NUMBER TWO IDENTIFIED AND
18 MARKED, ENTERED INTO EVIDENCE.)

19 SOLICITOR COLTON: Your Honor, along those lines I do
20 have that form. It is South Carolina Department of Social
21 Services Child Welfare Services In Take and Central
22 Registry Sheet that was filled out. I assume by whoever
23 was taking the report so that Dss can investigate this
24 case.

25 THE COURT: You can go ahead and ask her whatever you

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 want to about them. And I know this is all subject to
2 objection based on hearsay. I don't know if there are any
3 other objections but based on hearsay.

4 SOLICITOR COLTON: It would be based on hearsay, Your
5 Honor, thank you.

6 THE COURT: Okay.

7 MR. WILLIAMS: Can I ask the court a question?

8 THE COURT: Well I'm not under oath.

9 MR. WILLIAMS: If its hearsay the papers just state
10 that how the incident came about.

11 THE COURT: Well I know but I'm going to let you ask
12 her about it but keep in mind when we say it's hearsay it's
13 a report that's taken by a nurse or a doctor or somebody
14 and they wrote down what they heard or what they thought
15 they heard and the State doesn't have the right because we
16 don't know who it was to ask these people questions about
17 whether what's written on here is accurate. Also keep in
18 mind that this was taken and I've looked on the 2009
19 calendar and this was Monday, February 23rd, 2009 so this
20 would be the Monday following Saturday which would have
21 been the 21st and really they reference the three days but
22 the way it reads its three days from this report which
23 means it was three days before February 23rd 2009. But
24 anyway I'm going to let you ask her whatever questions you
25 want.

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 BY MR. WILLIAMS:

2 Q. So it starts she says she had pain in her vaginal
3 area?

4 A. Yes.

5 Q. Which lead to discussion with cousin touching her
6 genitals and performed oral sex?

7 A. Yes.

8 Q. Did she go to the doctor on that day?

9 A. Like I just said she went to the doctor on Monday when
10 I took her.

11 Q. Was that the same day - -

12 A. Monday the 23rd.

13 Q. So she had pain that morning?

14 A. She had pain that Saturday when she told me her
15 private area was burning.

16 Q. So it says patient mother reports that -- I mean
17 parent's mother reports the patient states she was sore in
18 her genital area this a.m. which led to discussion
19 regarding patient -- Cousin touching her in her genital
20 area?

21 A. I don't understand.

22 Q. So meaning that it says that she woke up it says that
23 you said she woke up that morning and not - -

24 A. The morning we are all talking about is the morning of
25 the 21st.

1 Q. That's the morning she went to the doctor?

2 A. No it's not.

3 Q. Its not the morning she went to the doctor. The 23rd?

4 A. I mean you see the paperwork right in front of you
5 it's got the date on it.

6 Q. It says the 23rd.

7 A. Okay. That's the day she went to the doctor.

8 Q. And it's the same day that she woke up and to the
9 pain.

10 A. Just like I said she told me on the 21st about her
11 pain and burning in her private area.

12 Q. It says nothing about the 21st. And then it says she
13 denies any pain but it she was - -

14 A. Well I don't know.

15 Q. All right. Now she was in pain. Was she in any pain
16 -- Did she complain of any pain before she came - -

17 A. Burning is not pain. Burning means that she had
18 irritation in her private area.

19 Q. Sore in her genital area. All right. So it's not
20 true that you ever said that she woke up that morning and
21 did not want to go to school mom says to tell about
22 nothing. And then she told you of the accusations. You
23 never told any cases that?

24 A. Never told any cases what?

25 Q. That she woke up that morning and did not want to go

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 to school - -

2 A. Okay Number One she don't go to school on a Saturday
3 so of course on Monday morning she did not go to school
4 because I had to get her examined.

5 Q. It never says anything about a Saturday. Everything
6 is reported on the 23rd waking up that a.m..

7 A. Well I don't have nothing to do with that.

8 Q. All right. I got no more questions I guess. Does it
9 say that I was -- Did she ever tell you that I would harm
10 her in any way she told you that?

11 A. She told me the 21st of everything that happened.

12 Q. And what was she told - what was it that she told you?

13 A. I just went through that. She told me that you was
14 touching her. You bent her over on the bed and you forced
15 her to do whatever you did to her.

16 Q. Did she say that I would harm her too?

17 A. Yes..

18 Q. What did she say what I said that I would do?

19 A. I don't know.

20 Q. In the paperwork it states that you said I would kill
21 her - -

22 A. Well I think you are capable of telling her all those
23 things. I wasn't physically there to know what you told
24 her.

25 Q. Did you ever coach her; did you ever tell her - -

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 A. No I didn't.

2 Q. - - - anything what to say?

3 A. No..

4 Q. Do you know why - -

5 A. If I think that a child was coached she wouldn't be
6 able to coach for a whole year round. That's how I feel
7 when she's never been around any other men and she don't
8 have no reason to lie.

9 Q. She was around more people -- Who was she around the
10 most out of family members you or her grandmother?

11 A. She was around her grandmother and you.

12 Q. Did she -- Was she living with you before this?

13 A. No.

14 Q. You was no where -- was you anywhere around before she
15 came to pick you up -- Before you came to pick her up?

16 A. Was she anywhere around me?

17 Q. Around you? Like how often was she around you?

18 A. She comes -- She would come around me when I come to
19 pick her up.

20 Q. Can you prove that you had a job?

21 A. Do I need to prove that?

22 Q. During that time?

23 A. Yes I do.

24 Q. You stated you did.

25 A. Yes and DSS has records of my job.

CLYFEBE PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 Q. Can you -- Do you have them for the court?

2 SOLICITOR COLTON: Your Honor, I'm going - -

3 A. No I wasn't subpoenaed.

4 THE COURT: This is cross examination and there is no
5 jury involved and he is not an attorney so I'm going to
6 allow him some leeway.

7 BY MR. WILLIAMS:

8 A. All right then is the police report is that not here
9 in fact hearsay? The police report.

10 THE COURT: We always hope the police report is
11 factual but it is usually based on hearsay.

12 BY MR. WILLIAMS:

13 Q. So when you reported this to the police it says Page
14 states that Westbrook stays with the grandmother Annie
15 Dacus at night when she was working. Williams lives with
16 Dacus. Westbrook states to Officer Highland that Williams
17 stays with her in the bedroom and makes her lay down on the
18 bed. Westbrook also states that she is not supposed to
19 tell anyone and Williams will hurt her. So is it true does
20 she only stay at night well why did you ever say that she
21 stays at night and stays when you are working and then she
22 goes back to you?

23 A. No I didn't.

24 Q. Its in the police report so the police report is not
25 true?

CLYFEBA PAGE: CROSS EXAMINATION BY MR. WILLIAMS

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1 A. Just like I say you know when she's there and you know
2 when I'm there. You are aware of all of those questions
3 that you are asking me. The only thing you need to be
4 concerned with is why did you choose to do that to a child.

5 Q. Has this situation ever happened before?

6 A. What do you mean?

7 Q. Have you ever -- Has she ever been involved - -

8 A. No. And I asked her why didn't she tell me before and
9 she told me she was scared and I expect that from a six
10 year -- A seven year old now.

11 Q. Has not the family ever had accusations with this
12 before involving Jada Westbrook?

13 A. Involving you they say you was capable of a lot of
14 things if that's what you are asking.

15 Q. No. Was Jada Westbrook ever involved in a - -

16 A. No because we would have been here a lot sooner if she
17 would have told me earlier.

18 Q. You just didn't report a lot of things on --
19 I've got no further questions.

20 THE COURT: Any redirect?

21 SOLICITOR COLTON: No, Your Honor.

22 THE COURT: All right you can step down to be excused.
23 We appreciate your time.

24 A. Uh-huh. Thank you.

25 THE COURT: Thank you. We will break for lunch it's

1 ten after One. We will break till 2:15.

2 (COURT IN RECESS AT 1:11 P.M. May 26, 2010.

3 (COURT RESUMES AT 2:25 P.M..)

4 THE COURT: State ready?

5 SOLICITOR COLTON: Yes, Your Honor.

6 THE COURT: Mr. Williams ready?

7 Mr. Williams is present. All right.

8 Call your next witness.

9 SOLICITOR COLTON: Thank you, Your Honor. That would
10 be the State's case, Your Honor.

11 THE COURT: All right. Mr. Williams, you have the
12 right to present witnesses. The State is through
13 presenting their testimony and evidence so you have a right
14 to call witnesses. I know you have one and it's Ms. Dacus
15 subpoenaed and she's supposedly here. I don't know her so
16 I don't know if she is here or not but she is available to
17 testify. And you have a right to testify although you also
18 have a right to remain silent. If you testify you will be
19 under oath and the State will have -- will be able to ask
20 you questions and you will be required to answer them
21 because you will be under oath.

22 Does he have any impeachment -- I hate to bother you
23 all.

24 SOLICITOR COLTON: I'm sorry, Your Honor.

25 THE COURT: How can you answer the question when you

ANNIE DACUS: DIRECT EXAMINATION BY MR. WILLIAMS

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1 don't know the question?

2 SOLICITOR COLTON: Yes, Your Honor, we respectfully
3 ask the court to repeat the question.

4 THE COURT: All right. Does he have anything that
5 would be used against him for impeachment?

6 SOLICITOR COLTON: He does not, Your Honor.

7 THE COURT: Okay. All right. Now if you chose to
8 remain silent I'm -- That doesn't bother me at all I won't
9 consider that against you. You don't have to prove you are
10 innocent. Right at this minute as far as everybody in this
11 courtroom is concerned you are innocent. You are innocent
12 until the State convinces me since I'm the jury in this
13 case beyond a reasonable doubt that you committed this so
14 you don't have to prove your innocence but you have the
15 right to testify if you wish. Now do you want to call any
16 witnesses or do you wish to testify or do you - -

17 MR. WILLIAMS: I want to call Ms. Annie Dacus.

18 THE COURT: Okay. let's find Ms. Dacus and bring her
19 in.

20 (WHEREUPON: ANNIE DACUS, BEING
21 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION

23 ANNIE DACUS BY MR. WILLIAMS:

24 Q. Do you remember when this accusation first came about?

25 A. Yes.

ANNIE DACUS: DIRECT EXAMINATION BY MR. WILLIAMS

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1 Q. Do you know at the time of the accusation would you
2 say Ms. Page was employed? Around the time the accusation
3 came about do you know if Clyfeba Page was employed?

4 A. She was working with a guy doing floor covering.

5 Q. But would that be under; could that be proven?

6 A. Yeah I guess so.

7 Q. I don't know if everything have to be a question or if
8 everybody have to be questions?

9 THE COURT: Yeah you have to ask questions. That's
10 just the way it works.

11 BY MR. WILLIAMS:

12 Q. So you are saying that's the truth?

13 A. Yes.

14 Q. All right. What about the beach; do you remember
15 anything about going to the beach?

16 A. Well she come and got Jada that weekend and, Trey, I
17 went out of two to see my husband that weekend.

18 Q. I remember that night too.

19 A. Uh-huh.

20 Q. Do you remember that morning, that Monday morning when
21 you first brought this to me?

22 A. Yes. After I got back home.

23 Q. We talked about this?

24 A. Yeah.

25 Q. Do you remember all the things that was said? Do you

ANNIE DACUS: DIRECT EXAMINATION BY MR. WILLIAMS

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1 remember anything that was said then to the police or to
2 you that you presented to me?

3 A. I told you that they had called me and told me what
4 had happened and I asked you did it happen and you didn't
5 give me no specific answer. The only thing you said well
6 you gonna believe what you want to believe anyway.

7 Q. Did you -- After you presented that to me how did I --
8 Do you remember how I was how I reacted to that?

9 A. You said you gonna believe what you want to believe
10 anyway. That's the way you said it to me. You didn't say.
11 You didn't give me no answer.

12 Q. That's not true.

13 THE COURT: Well you can't argue with her. You got to
14 take her answer.

15 BY MR. WILLIAMS:

16 Q. Do you remember -- Can you say some of the accusations
17 that was brought up?

18 A. I ask you did you do that to Jada and the only thing
19 you said well you gonna believe what you want to believe
20 anyway and you just walked out the room, Trey. You know I
21 always have got on you about when I would be talking to you
22 how you would always react and wouldn't give me a definite
23 answer on anything so.

24 Q. So is that the honest truth while you on the stand?

25 A. Yes it's the honest truth.

1 Q. That's all I have, Judge.

2 THE COURT: All right. Any cross?

3 SOLICITOR COLTON: No, Your Honor.

4 THE COURT: All right. You can step down to be
5 excused. We appreciate your time. Thank you.

6 All right you gonna testify?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: All right. Come on up and be sworn. You
9 can bring anything you wish. Just set those down and put
10 your left hand on the Bible and raise your right.

11 (WHEREUPON: TREY WILLIAMS,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 THE COURT: Come on up and have a seat up here. Of
14 course you can have a seat and nobody is going to be asking
15 you questions unless they do a cross examination so you can
16 just basically you are under oath. Testify to what you
17 want to testify. You don't have to do it in question and
18 answer. You don't have to ask yourself a question just
19 tell us everything you want to tell us about your position
20 in this matter.

21 MR. WILLIAMS: Can I read something that I wrote
22 first?

23 THE COURT: You may. Yes you may.

24 MR. WILLIAMS: First I would like to say throughout
25 this trial -- I can say anything?

TREY WILLIAMS

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1 THE COURT: Yeah. You're not going to hurt my
2 feelings and he's not going to waive -- I mean I'm going to
3 base my decision on the facts and determine whether the
4 State has proven their case beyond a reasonable doubt.
5 That's all I can tell you. You know you just testify to
6 whatever you feel is relevant and it should be something
7 that is relevant to this case and not -- You know not like
8 strawberry ice cream or something like that we don't need
9 to know that. But yeah you can tell us whatever you want.

10 MR. WILLIAMS: First I do realize that this was the
11 wrong choice for me to come through here representing
12 myself throughout the case or whatever. I wrote and
13 intended to write when I wrote this off yesterday or this
14 weekend when I was preparing for myself its kind of
15 different now now that it's laid out like this. This is
16 what I wrote before I came here to explain what all I have
17 to say.

18 It says "first of all I am not guilty of criminal
19 sexual conduct first degree with a minor. Nor have I ever
20 committed such a crime or anything related to a sexual act
21 against anyone. I have been advised by friends and
22 associates and many more people the risk of even taking
23 this to trial yet alone represent myself and choosing a
24 bench trial which people disagree with. I have turned down
25 time served to ABHAN without even knowing registry was a

TREY WILLIAMS

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1 part of the plea. Just these things alone should cause
2 some kind of a bell to ring off for me to be heard as an
3 innocent man.

4 Whoever believes strongly in truth that it would bring
5 out justice in court or a guilty man gambling with his life
6 to be set free. I'm here to show you which man I am
7 because I say that these accusations have no truth. I
8 would not say that they were just made up because the life
9 of my family on both sides history its for - It's a lot of
10 pain out of these things.

11 Now me -- I'm trying to explain -- The reason I'm
12 not -- The charge criminal sexual conduct is a false charge
13 but throughout the trial the truth was never presented.
14 But it's been plenty of times this situation Jada -- I
15 can't -- Jada being involved in an act like this and they
16 been questioned on acts like this years and years ago
17 involving in the situation but I was told not to bring it
18 up." I got nothing further else to say.

19 THE COURT: All right. You want to ask any questions?

20 SOLICITOR COLTON: Can we have one moment, Your Honor?

21 THE COURT: Yes.

22 SOLICITOR COLTON: Your Honor, I don't have any
23 questions.

24 THE COURT: All right you can step back to your seat.

25 Do you have any other witnesses you want to call?

1 MR. WILLIAMS: No, sir.

2 THE COURT: All right. Anything in reply?

3 SOLICITOR COLTON: No, Your Honor.

4 THE COURT: All right. I'll be glad to hear any
5 closing remarks the State wishes to make.

6 SOLICITOR COLTON: Your Honor, I'll be brief.

7 Obviously the Defendant is charged with criminal sexual
8 conduct with a minor. She's been consistent in her
9 disclosure. Consistent from the inception with her mother
10 and the social worker who performed the forensic interview
11 and consistent today in court. She indicated through a
12 diagram in court that he engaged in sexual intercourse and
13 the doctors confirmed as a result they found blood from a
14 wet prep a vaginal swab. And I think that her testimony is
15 credible, Your Honor, believable. She stated repetitively
16 that he had taken his penis that she called his tail and
17 her private thing and placed it inside her and I think that
18 makes the it sexual conduct with a minor.

19 THE COURT: Mr. Williams, anything you want to say?

20 MR. WILLIAMS: Yes, sir. Jada has been living with me
21 and my grandmother for -- Well with my grandmother really
22 since she's been born. Throughout all of these --
23 Throughout all these periods of time Jada states that this
24 crime has been committed several times in the household
25 with my grandmother. This never came out. It was never no

1 issue or no problem of fear. My grandmother washes her
2 every night and baths her everything regularly. The night
3 before I remember when Jada left that night I couldn't even
4 get her out of my room. She -- I spent time I do
5 everything with Jada. Her mother she didn't even work she
6 didn't have no job. She's unstable and I come from an
7 unstable family. My family is messed up. It's how -- That
8 shows this ended up like this. She goes on one weekend
9 with her mother which states that she would take -- Through
10 these reports that she had been living up there and she was
11 visiting down here. And in the accusation the things did
12 change all the way around from one weekend to Friday to
13 Saturday to Sunday. Smiled when she left and Monday
14 morning I get presented with this information that she was
15 in pain and she notices when she was washing -- My
16 grandmother washed her Friday night. She seen how my
17 little cousin was playing with me before she left. But it
18 comes out that I been doing these things which was never
19 found about when I was at home.

20 Now I was just introduce to my family side. I grew up
21 in a group home. I just met -- I really started living
22 with them in 2004 after I finally got out of jail as a
23 juvenile. Its no -- I wouldn't be in here today I would
24 never have gambled with my life like this. I would take a
25 plea if I felt like I could take that plea to come out of

1 this. I'm not -- I can't even -- I couldn't question
2 nobody today. I thought I was making the right decision
3 based off an emotional type of choice that I been living in
4 and I realize that I made a wrong decision. So I had no
5 choice but to accept the outcome of this even though it
6 kind of makes really makes no -- It says Jada in the report
7 she states that one thing and I didn't want to question her
8 because she always the first question I asked her on the
9 stand she answered differently from in the report. I mean
10 it's all in the report. And not even just off of that
11 penetration anally and vaginally and I performed oral sex
12 then she said I didn't. Her mother has coached her. I know
13 it has. I know these people the people has no job. She --
14 My grandmother even lied on the stand on me. How can I
15 fight that it's impossible. I can't do nothing. It's
16 weighed against me. People -- the only way for people to
17 understand is to understand the household and the broken
18 home we coming from. This goes on every day with us. This
19 situation seems absorb to people who don't understand the
20 life that we live. I mean we got people who smoke, sell
21 drugs, steal from each other and everything and it's not
22 going to change. Relatives everybody. And they have
23 things go on like this. We been fighting as a family ever
24 since the beginning and it's not going to come out I can't
25 its above my control. So I just ask at least say something

SENTENCE

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1 that I be able to say instead of just letting everything go
2 by.

3 THE COURT: All right. Any concluding remarks from
4 the State?

5 SOLICITOR COLTON: No, Your Honor.

6 THE COURT: All right. Well, Mr. Williams, I do find
7 you guilty after considering the evidence and exhibits,
8 testimony, accessing the credibility of the witnesses. I
9 find that the named victim Jada Westbrook was less than
10 eleven years of age at the time period set forth in the
11 indictment that is September 2008 February 23rd 2009. I
12 find that Mr. Trey Alexander Williams committed sexual
13 battery with the victim Jada Westbrook by engaging in
14 sexual battery as defined by our law particularly Section
15 15-3-651 to wit he engaged in sexual intercourse with the
16 victim. He committed this by the insertion of his penis
17 into her genitals. As to the forensic interview DVD as
18 required by the statute Section 17-23-17 I find that the
19 statements given by Jada Westbrook were not elicited by
20 leading questions. Admittedly there were some questions
21 that tended to be leading but they were follow up questions
22 and in the nature of confirmation of the testimony as
23 stated by Jada Westbrook and not a request for information.
24 I find that the interviewer was adequately trained in
25 conducting investigative interviews based on her education

SENTENCE

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1 and her detailed testimony about the protocol and
2 guidelines for conducting forensic interviews. I find that
3 the child Jada Westbrook's statements represent a detailed
4 account of the alleged offense consistent with her trial
5 testimony. I find that her statement was internally
6 coherent and I heard in court the testimony of the
7 interviewer. I find under 17-23-175 that Jada Westbrooks
8 statements were made in response to questions conducted
9 during an investigative interview of her. That there exist
10 an audio and visual recording of statements that she
11 testified in this proceeding and had been subject to cross
12 examination by Mr. Williams and that the totality of the
13 circumstances surrounding the making of the statement the
14 video interview forensic statement provides a
15 particularized guarantee of trustworthiness. Therefore
16 again I find the defendant guilty and I also make an
17 affirmative finding as required by Section 16-3-655 that
18 the sexual battery involved sexual intercourse by the
19 defendant Trey Alexander Williams.

20 All right. I want you to come around, Mr. Williams,
21 and stand up here. And the State will come up and I will
22 be glad to hear anything about his prior record. He said
23 something about as a juvenile experience in court and I
24 also don't have a sentencing sheet.

25 Just a minute.

SENTENCE

1 SOLICITOR COLTON: Your Honor, it goes back to 1997 he
2 had -- I will read you everything that's on there. Petit
3 or simple larceny which was diverted to arbitration. And
4 ill treatment of animal torture in 1997 again diverted to
5 arbitration. He was prosecuted in the Fifth Circuit of
6 public disorderly conduct, simple assault and battery. He
7 was sent to an evaluation center and that occurred in 2002.
8 Then in April of 2002 he was prosecuted in our circuit for
9 public disorderly conduct and getting probation.
10 Disturbing school, simple assault and battery. Actually
11 three counts of simple assault and battery, Your Honor. We
12 reviewed his records he does have a criminal domestic
13 violence high and aggravated nature about ten, first
14 offense, second offense CDV. I had sat down with our
15 Family Court prosecutor we think that this may have been
16 one incident and that it was a duplicate entry but we were
17 unable to ascertain that but at least one criminal domestic
18 violence. He was committed to the Department of Juvenile
19 Justice in 2002. He had in 2003 a simple assault and
20 battery. In 2005 disturbing school. We do believe
21 ultimately he was committed to DJJ once but he was
22 committed by two jurisdictions ours and Richland County.
23 He does have some charges from Anderson County which was
24 handled in our jurisdiction. His record does not reveal
25 any adult convictions.

SENTENCE

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1 THE COURT: Okay. Mr. Williams, anything you want to
2 say?

3 MR. WILLIAMS: Can I -- I would like to put on the
4 record that I ask for a jury trial? Could I request for an
5 appeal?

6 THE COURT: All right. You have ten days from today
7 to file an appeal. I am going to ask Mr. Delaney to tell
8 you about that and if you wish to have a notice of intent
9 to appeal I am going to ask Mr. Delaney to do that. I'm
10 not reappointing him as your attorney but in his capacity
11 as your standby attorney and I am asking him to make sure
12 that you get that filed. Most probably it will then be
13 taken over by the Appellate Defense out of Columbia to
14 handle your appeal. So after he's done that act which I am
15 asking him to do on behalf of the court and on behalf
16 protecting your time limits because being incarcerated I
17 know it is sometimes difficult for incarcerated individuals
18 to meet time dead lines. But after that he will not be or
19 representing you in any capacity and he will advise you
20 about those things.

21 The sentence is thirty years and you are to be given
22 any credit for any time you've already served. And you are
23 to be -- You are required to be registered on the sex
24 offender registry when you are released. Do you understand
25 that?

SENTENCE

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6

MR. WILLIAMS: Yes, sir.

THE COURT: Thank you.

(END OF PROCEEDINGS.)

(COURT IN RECESS AT 2:48 P.M..)

CERTIFICATE

I, THE UNDERSIGNED WANDA NELSON, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE SIXTEEN JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR MARLBORO COUNTY, SOUTH CAROLINA, ON THE 24TH and 26TH DAY OF MAY 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Wanda Nelson

WANDA NELSON, CVR
OFFICIAL COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
 Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case No.: 2009-GS-46-2646

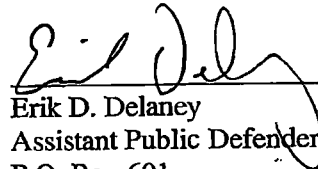
The State of South Carolina, Respondent
 v.

Trey Williams, Appellant

FILED-RECEIVED
 2010 MAY 28 PM 12:56
 DAVID HAMILTON
 C.C.P. & G.S.
 YORK COUNTY, SC

NOTICE OF APPEAL

Trey Williams appeals his conviction and sentence imposed by the Honorable John C. Hayes, III. On May 26, 2010, the Appellant was convicted of Criminal Sexual Conduct with a Minor 1st degree and was sentenced to thirty (30) years.



Erik D. Delaney
 Assistant Public Defender
 P.O. Box 691
 York, SC 29745
 (803) 628-3031
 On behalf of Appellant Trey Williams

This 28th day of May, 2010.
 York, South Carolina

Other Counsel of Record:
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THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

John C. Hayes, III, Circuit Court Judge

Case Nos.: 2009-GS-46-2646

The State of South Carolina, Respondent
v.

Trey Williams, Appellant

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Jackie Davis
Legal Secretary for Erik D. Delaney
On Behalf of Appellant Trey Williams

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TREY WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2010-162886

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in not granting appellant's motion for a jury trial although Appellant had requested a bench trial initially but changed his mind two days later and asked for a jury trial after his attorney had been relieved and appellant was representing himself?

STATEMENT OF THE CASE

In May 2010, the York County Grand Jury indicted Trey Alexander Williams on the charge of criminal sexual conduct with a minor first degree (CSC). On April 15-16, 2010, Williams appeared before the Honorable John C. Hayes, III for a hearing on pretrial motions. He was represented by Eric Delaney, and the state was represented by Jennifer Colton, Assistant Solicitor. At that hearing, Judge Hayes relieved Mr. Delaney at Williams' request, and allowed Williams to proceed with his trial *pro se*. Mr. Delaney was appointed to serve as standby counsel. R. April 15-16, 2010 p. 12, ll. 4 – p. 13, ll. 18. On May 24, 26, 2010, Williams proceeded to trial before the Honorable John C. Hayes on a bench trial although Williams had withdrawn the request and asked for a jury trial which Judge Hayes denied. R. May 24, 2010 p. 19, ll. 1 – 25; R. 20, ll. 1 – 25; R. 21, ll. 1 – 25; R. 22, ll. 1 – 15. Williams represented himself, and the state was represented by Jennifer Colton, Assistant Solicitor. The judge found Williams guilty as charged, and sentenced him to thirty years. R. May 26, 2010, p. 105, ll. 21 – 24. Williams' stand-by counsel, Mr. Delaney, filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in not granting appellant's motion for a jury trial although Appellant had requested a bench trial initially but changed his mind two days later and asked for a jury trial after his attorney had been relieved and appellant was representing himself.

Trey Williams was charged with having vaginal and anal sexual intercourse in February 2009 with his six year old girl cousin. He and the girl lived with their grandmother. R. 2, ll. 1 – 25; R. 33, ll. 1 – 25; R. 34, ll. 1 – 25; R. 35, ll. 1 – 25; R. 36, ll. 1 – 25; R. 37, ll. 1 – 24; R. 38, ll. 1 – 14.

When the girl's mother picked her up to stay with her for the weekend shortly after the alleged incident, the girl told her that she had burning in her private area. When the mother checked, she saw a "heavy discharge" from the girl's vaginal area. When the mother asked the girl if anyone had touched her other than her mother and grandmother, the girl told her what Trey had allegedly done. R. 76, ll. 13 – 25; R. 77, ll. 1 – 25; R. 78, ll. 1 – 25.

The mother took the girl to the hospital the following Monday, and the police talked to them there. No rape kit was done due to the time that had passed, and the bathing. R. 79, ll. 1 – 25; R. 48, ll. 1 – 19.

Dr. Thomas Wilkins, the ER physician, treated the girl when she came in. He found that the vaginal area was red with a small amount of blood present. R. 47, ll. 1 - 24. Dr. Dwight Reynolds was the pediatrician who examined the girl about a month after the incident because he was an expert in child sexual assaults. R. 68, ll. 1 – 25; R. 69, ll. 1 – 25; R. 71, ll. 19 – 21. Dr. Reynolds testified that the girl had a normal examination with no evidence of sexual abuse. R. 70, ll. 1 – 25; R. 71, ll. 1 – 24.

Diane Cranford was the program coordinator for sexual trauma and child advocacy at Safe Passage in Rock Hill. She did forensic interviews there. R. 51, ll. 1 – 25. She interviewed the girl on March 3, 2009 regarding the incident. After the interview, Ms. Cranford recommended that the girl have no contact with Williams, and that law enforcement follow up on the case. R. 61, ll. 1 – 25; R. 62, ll. 1 – 25; R. 63, ll. 1 – 25; R. 54, ll. 1 – 25.

Williams testified that he was not guilty of CSC with a minor. He said he had never committed a sexual act against anyone. He acknowledged he had made a mistake in representing himself. R. 97, ll. 1 – 25; R. 98, ll. 1 – 25; R. 99, ll. 1 – R. 102, ll. 5.

At the pretrial hearing in April 2010, Williams' attorney told the judge that Williams had been incarcerated over a year since March 31, 2009. Williams was asking for a speedy trial and had sent several motions regarding this to the clerk of court. However, the attorney said that he understood that the state had been waiting on the DNA report from SLED. That had been resolved, and he was now ready to proceed with the trial. April 15-16, 2010, R. 2, ll. 1 – R. 4, ll. 25.

Williams then asked the judge if he could represent himself. The judge explained that he would have to relieve Williams' attorney, and then Williams would not have one. The judge told him to talk to his attorney over night, and the court would revisit the issue the following morning. April 15 – 16, 2010 , R. 5, ll. 19 – 25; R. 6, ll. 1 – 25; R. 7, ll. 1 – 5.

The next day, Williams' attorney, Delaney, told the judge that Williams wanted him relieved as counsel and wanted to represent himself. April 15-16, 2010, R. 7, ll. 11 – 25; April 15-16, 2010, R. 8, ll. 1 – 25. Judge Hayes then explained to Williams the dangers of representing himself. The judge explained that Williams would be without an attorney and

would represent himself at trial. Mr. Delaney would be standby counsel to assist him. April 15-16, 2010, R. 10, ll. 21 - R. 15, ll. 17.

On May 24, 2010, as Williams' trial was about to begin, he told the court that he did not want a jury trial but wanted a bench trial instead. The judge ruled he could have the bench trial after the judge explained his rights to a jury trial. R. 19, ll. 1 - 25; R. 20, ll. 1 - 25; R. 21, ll. 1 - 25; R. 22, ll. 1 - 25.

Then Williams asked the judge if he could have an attorney now if he wanted one. The judge told him that he waived his right to an appointed attorney, but could hire one if he wanted. The judge told him he was going to trial on Wednesday (two days later) with or without an attorney. R. 21, ll. 9 - 24.

Two days later when Williams appeared for trial, he asked the judge to have a jury trial as he changed his mind. R. 23, ll. 1 - 25; R. 24, ll. 1-25. The judge spoke:

Well, I'm not going to let you have a jury trial. You waived that right and I think that your tactics are one that it would be nice to be called avoidance that is an effort to not have to face these charges. You're not going to manipulate this court by asking for one thing and affirmatively on the record with clear advice from the court and counsel as to your right to a jury trial. You made a-----you freely, voluntarily, knowingly, and intelligently waived your right to a jury trial, and so are going to go to trial without a jury and that's going to be starting right now. Do you understand that?"

R. 24, ll. 2 - 13.

Williams replied that he understood. R. 24, ll. 13.

Williams later told the court that he changed his mind because he had taken the advice of other people. He was not trying to avoid. He said he understood that everything was very serious. R. 25, ll. 23 - 25; R. 26, ll. 1 - 12.

The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.

State v. Passmore, 363 S.C. 588, 611 S.E.2d 273 (Ct. App. 2005).

In State v. Passmore, Id., the Court of Appeals cited the United States Supreme Court case, Duncan v. Louisiana, 391 U.S. 145 (1968) where the Supreme Court wrote:

Because we believe that trial by jury in criminal cases is fundamental to the American scheme of justice, we hold that the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which – were they to be tried in federal court – would come within the Sixth Amendment’s guarantee.

The Supreme Court further wrote that “a general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriages of justice and for assuring that fair trials are provided for all defendants.” State v. Passmore, supra.

The court of Appeals in State v. Passmore, supra, also cited Codispoti v. Pennsylvania, 418 U.S. 506 (1974), where the United States Supreme Court held:

The jury trial guarantee reflects a profound judgment about the way in which law should be enforced and justice administered. A right to a jury trial is granted to criminal defendants in order to prevent oppression by the government. The Sixth Amendment represents a deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement.

The judge in Williams’ case should have granted Williams’ request to have a jury trial even if it was made at the last minute and regardless of the fact that Williams changed his mind. Williams was facing a long prison sentence, and every benefit of the doubt should

have been granted him in order to protect his due process rights. The judge said he had a jury downstairs. R. 21, ll. 12 – 24.

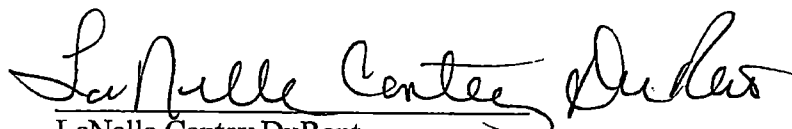
Williams was also representing himself which made his request for a jury trial more significant.

In State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998), the Supreme Court held that the trial judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self-representation, and makes a knowing and intelligent waiver of the right to counsel. The Supreme Court also wrote that it is well established that an accused may waive the right to counsel and proceed *pro se*.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for a new trial.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

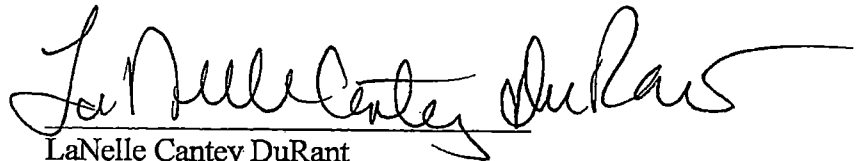
ATTORNEY FOR APPELLANT

This 10th day of October, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 10, 2012



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from York County

 John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

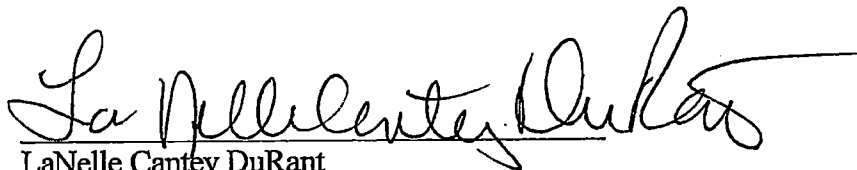
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 CERTIFICATE OF SERVICE

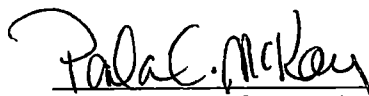
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of October, 2012.



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of October, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County
Honorable John C. Hayes, III, Circuit Court Judge

THE STATE,

Respondent,

vs.

TREY WILLIAMS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General
Bar # 100145

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL**I.**

The trial judge did not abuse his discretion when he denied Appellant's motion to withdraw his waiver of right to a jury trial because Appellant waited until the day of the trial to make the motion to withdraw and the witnesses would have been unduly inconvenienced.

STATEMENT OF THE CASE

On May 13, 2010, a York County Grand Jury indicted Appellant for first-degree criminal sexual conduct with a minor.

On April 15-16, 2010, Appellant appeared before the Honorable John C. Hayes, III in order to discuss some pretrial matters. Eric Delaney represented Appellant, and Assistant Solicitor Jennifer Colton represented the State. During that hearing, Appellant informed Judge Hayes that he wanted to proceed to trial *pro se*. (April R. p. 5; R. pp. 7-8; R. pp. 12-13.) After explaining to Appellant the dangers of proceeding *pro se*, Judge Hayes granted Appellant's *pro se* request; however, Judge Hayes appointed Mr. Delaney to serve as standby counsel. (April R. pp. 12-13.)

On May 24, 2010, two days before the State planned to call Appellant's case to trial, Appellant asked Judge Hayes for a bench trial. (May R. pp. 19-22.) Even after Judge Hayes explained to Appellant the right to a jury trial, Appellant stated he wanted a bench trial. (May R. pp. 20-22.)

On May 26, 2010, the day of trial, Appellant told Judge Hayes that he changed his mind and wanted a trial by jury. (May R. pp. 23-24.) However, Judge Hayes denied Appellant's motion to withdraw his waiver of a jury trial. (R. p. 24.) Appellant, who represented himself, proceeded to a bench trial before Judge Hayes. Assistant Solicitors Jennifer Colton and Erin Joyner represented the State. Judge Hayes found Appellant guilty as charged and sentenced Appellant to thirty years of imprisonment. (May R. p. 105.) On May 28, 2010, Appellant's standby counsel, Mr. Delaney, filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

In February 2009, Appellant had sexual intercourse with his six-year-old cousin ("the victim"). (R. p. 35; R. p. 37; R. p. 40; R. p. 41; R. pp. 66-67; R. p. 75.) At trial, the victim testified that Appellant would come behind her and put his penis in her vagina on multiple occasions. (R. pp. 35-37; R. p. 40.) Appellant would rub the victim's private parts with a white towel. (R. p. 41.)

Soon thereafter, the victim's mother noticed that the victim was walking funny and was messing with her private parts. (R. p. 78.) The victim informed her mother that her "private was burning." (R. p. 35; R. p. 77.) The victim's mother examined the victim's vaginal area and noticed a "heavy discharge." (R. p. 78.) When the victim's mother questioned the victim, the victim informed her mother of the sexual assault.

On February 23, 2009, the victim's mother took the victim to the emergency room. (R. pp. 46-47.) Dr. Thomas Wilkins treated the victim. According to Dr. Wilkins, the victim's vaginal area was red and there was a small amount of blood present. (R. p. 47.) In his experience, the presence of blood in the vaginal area of a child was consistent with a sexual assault. (R. 49.)

On March 3, 2009, Diane Cranford, the program coordinator for sexual trauma and child advocacy of Safe Passage in Rock Hill, conducted a forensic interview. (R. p. 51; R. p. 61.) The victim told Ms. Cranford about the sexual abuse. (R. pp. 65-67.) Ms. Cranford recommended that the victim have no contact with Appellant, and she recommended that law enforcement follow up on the case. (R. p. 64.)

In his defense, Appellant testified that he was not guilty of first-degree criminal sexual conduct with a minor, and he claimed he never committed a crime or anything related to a sexual act against anyone. (R. p. 97.)

Prior to trial, on May 24, 2010, Appellant demanded a bench trial. (R. pp. 21-22.) The State informed the trial judge that it was ready to call the case that Wednesday. Furthermore, the State made sure the trial judge knew that because there was a seven-year-old victim involved the State and trial court needed to minimize the amount of school the victim missed. (R. p. 19.) The trial judge explained to Appellant that Appellant had the right to a jury trial. Furthermore, on the day Appellant demanded a bench trial, the trial judge informed Appellant that a jury was downstairs; therefore, a jury trial was possible at that point, but Appellant needed to make a decision. (R. p. 20-21.)¹ Appellant insisted on a bench trial. The record is unclear on whether the jury was relieved.

Two days later, on the morning of trial, Appellant asked the trial judge for a jury trial. (R. pp. 21-22.) When the State informed the trial judge that Appellant changed his mind and wanted a jury trial, the trial judge stated, "Well I'm certainly not shocked. When we put this on the record I almost anticipated this. Bring him in. Bring the Defendant in and then we will take a break." (R. p. 23.) When Appellant entered the courtroom and informed the trial judge that he wanted a jury trial, the trial judge stated the following:

Well I'm not going to let you have a jury trial. You waived that right and I think your tactics are one that it would be nice to be called avoidance that is an effort to not have to face these charges. You're not going to manipulate the court by asking for one thing and going affirmatively on the record with clear advice from the court and counsel as to your right to a jury trial. You made a – You freely voluntarily knowingly and intelligently waived your right to a jury trial and so you are going to trial without a jury and that's going to be starting right now.

(R. p. 24.)

¹ Contrary to Appellant's assertion, the trial judge did **not** indicate that there was jury downstairs on the day Appellant made a motion to withdraw his waiver. (R. p. 21.) The trial judge said that there was a jury downstairs two days prior when Appellant made the initial waiver of a jury trial.

Appellant replied that he understood. Appellant claimed he was not trying to delay the proceedings; however, he spoke with some people and they told him that they would rather have a jury trial if they were in his situation. (R. pp. 25-26.) Appellant indicated he had been incarcerated for a little over a year. The trial judge stated that Appellant had enough time to ask the advice of fellow inmates about whether or not to have a bench or jury trial. (R. p. 26.)

ARGUMENT

I.

The trial judge did not abuse his discretion when he denied Appellant's motion to withdraw his waiver of right to a jury trial because Appellant waited until the day of the trial to make the motion to withdraw and the witnesses would have been unduly inconvenienced.

Appellant claims the trial judge erred when he refused to allow Appellant to withdraw his waiver of a jury trial on the day of trial. However, the trial judge did not abuse his broad discretion when he denied Appellant's motion to withdraw his waiver of a jury trial because Appellant waited until the day of trial to make a motion to withdraw his waiver of a jury trial, the witnesses were already at the courthouse that day, and the seven-year-old victim was already missing school in order to testify that day.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "[T]he trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the trial court's decision lacks evidentiary support or is controlled by an error of law. State v. Lopez, 352 S.C. 373, 378, 574 S.E.2d 210, 212 (Ct. App. 2002).

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed" U.S Const. amend. VI.

However, a defendant can waive his or her constitutional rights, including the right to a jury trial. See Rule 14 (b), SCRCrimP; Spooone v. State, 379 S.C. 138, 142, 665 S.E.2d 605, 607 (2008) (" [I]t is clear that a defendant may, in a valid plea agreement, waive [a federal statutory] right of appeal, just as more fundamental rights such as the right to counsel and the right to a jury trial may be waived." (quoting United States v. Wessells, 936 F.2d 165, 167 (4th Cir.1991))).

Once a defendant waives a constitutional right, he or she can **potentially** withdraw the waiver. See Rolen v. State, 384 S.C. 409, 414, 683 S.E.2d 471, 474 (2009) (holding once a guilty plea has been entered and formally accepted, a defendant is permitted to move to withdraw the guilty plea but forfeits the ability to withdraw the plea as a matter of right).

However, the decision regarding whether or not to allow the waiver of a constitutional right to be withdrawn rests in the sound discretion of the trial judge. See State v. Thomason, 355 S.C. 278, 283, 584 S.E.2d 143, 146 (Ct. App. 2003) (holding the decision as to whether to grant or deny a motion to withdraw a guilty plea rests in the sound discretion of the trial judge); State v. Cantrell, 250 S.C. 376, 378, 158 S.E.2d 189, 191 (1967) (holding that in the absence of a clear abuse of discretion by the trial judge, appellate courts will not interfere in a trial judge's discretionary decision regarding the withdrawal of a guilty plea).

When determining whether or not to grant a motion to withdraw a waiver of a jury trial, courts from other jurisdictions look at "the timeliness of the motion to withdraw the waiver, the reason for the requested withdrawal and the possibility that undue delay of the trial or inconvenience to witnesses would result from granting the motion." People v. Chambers, 498 P.2d 1024 (Cal. 1972); see e.g., Marquez v. State, 882 S.W.2d 100, 102 (Tex. Crim. App. 1994) ("The right to trial by jury is a valuable one. But like any valuable right, the right to trial by jury cannot be manipulated for the purpose of delay."); United States v. Holmen, 586 F.2d 322, 323-324 (4th Cir. 1978) (holding the trial court did not abuse its discretion when it denied the defendant's motion to withdraw his waiver of jury trial where the defendant waited until the day before the trial to make the motion to withdraw, and the witnesses, who lived far away, had already been subpoenaed); United States v. Venable, 233 Fed. Appx. 313, 315 (4th Cir. 2007) (holding the trial court did not abuse its discretion when it denied the defendant's request to withdraw his waiver of jury trial when the defendant understood the rights he was giving up and waited until the day before the trial to make the request to withdraw); State v. Villareall, 644

P.2d 614, 616 (Or. Ct. App. 1982) (where the trial would have been delayed and the witnesses would have been unduly inconvenienced, the court held that the trial court did not abuse its discretion when it denied the defendant's motion to withdraw his waiver of jury trial on the day of trial and the waiver occurred two days prior to trial).

Turing to the case at hand, two days before the trial was supposed to begin, the trial judge and Appellant engaged in a full colloquy during which Appellant knowingly, voluntarily, and intentionally waived his right to a jury trial. Two days later, immediately before the bench trial was supposed to began, Appellant made a last minute request to withdraw his waiver of right to a jury trial. Appellant never offered a legitimate reason to support his request to withdraw his waiver of a jury trial.

At that point, the decision regarding whether or not to grant Appellant's motion to withdraw his waiver was within the sound discretion of the trial judge. Because Appellant waited until the morning of the trial to make a motion to withdraw his waiver, the witnesses were already at the courthouse ready to testify, and the seven-year-old victim was already missing school so that she could testify, the trial judge did not abuse his discretion when he denied Appellant's motion to withdraw his waiver of a jury trial.

Moreover, the trial judge was rightfully concerned that Appellant's last minute motion to withdraw his waiver of a jury trial was an intentional and manipulative delay tactic. Although the right to a jury trial is an important constitutional right, Appellant cannot be allowed to use his right to a jury trial to manipulate the court for the purpose of delay.

CONCLUSION

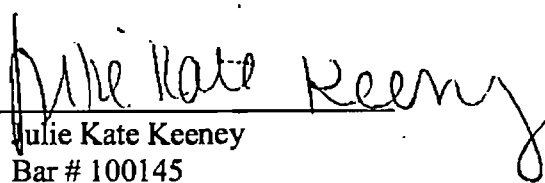
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY:


Julie Kate Keeney
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ATTORNEYS FOR RESPONDENT

October 5, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
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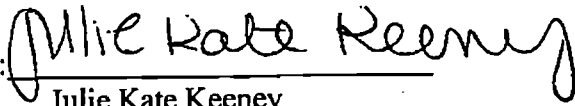
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

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Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey Durant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 5th day of October, 2012.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

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

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Trey Williams, Appellant.

Appellate Case No. 2010-162886

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2013-UP-102
Submitted January 1, 2013 – Filed March 13, 2013

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Julie Kate Keeney, all of Columbia;
and Solicitor Kevin S. Brackett, of York, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006) ("In criminal cases, this [c]ourt sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown."); *United States v. Holmen*, 586 F.2d 322, 323-24 (4th Cir. 1978) (finding no error in trial court's denial of defendant's motion to withdraw a waiver of his right to a jury trial when the defendant made his motion on the day prior to trial and the witnesses had already been subpoenaed).

AFFIRMED.¹

FEW, C.J., WILLIAMS, J., and PIEPER, J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



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APR 05 2013

ATTORNEY GENERAL

JL

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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April 03, 2013

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Williams, Trey
Lower Court Case No. 2009GS4602646
Appellate Case No. 2010-162886

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

DEPUTY CLERK

Enclosure

cc: LaNelle Cantey DuRant
Julie Kate Keeney

56 FORM 5
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2013 CP46 01797

STATE OF SOUTH CAROLINA

2013 JUN 10 AM 9:30

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

TREY A. WILLIAMS, 341036

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

2013 JUN 12 AM 8:17

CERTIFIED TRUE COPY

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 fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CI, 990 WISACKY HWY., BISHOPVILLE, S.C.
2. Name and location of Court which imposed sentence YORK CO., Gen. SESS.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-46-2646; CSC W/RIN. 1st.
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MAY 26, 2010; THIRTY (30) YEARS
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty **XXX** _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES _____

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. **S.C. COURT OF APPEALS** _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. **AFFIRMED** _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. **MARCH 13, 2013** _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. **SEE UNPUBLISHED OPINIONS, ect.** _____
 - ii. _____
 - iii. _____

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

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

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

- (a) SEE ATTACHED MEMORANDUM OF ISSUES, etc.
- (b) _____
- (c) _____

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

- (a) SEE ATTACHED MEMORANDUM OF LAW SUPPORTING ISSUES
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction: **N/A**

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed: **N/A**
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition: **N/A**

i. _____

ii. _____

iii. _____

iv. _____

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

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: **N/A**

(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) **NOT APPROPRIATE FOR DIRECT APPEAL, etc.**

(b) **PROPER EXHAUSTION DOCTRINE, etc.**

(c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ~~xxx~~ _____
- (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. **ERIK DELANEY, esq.**

ii. **LaNELLE C. DURANT, esq.**

iii. _____

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

i. **TRAIL STANDBY COUNSEL**

ii. **DIRECT APPEAL**

iii. _____

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

OVERTURN CONVICTION, REMAND FOR NEW TRIAL, DISMISS, W/PREJUDICE.

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

NO

PCR ADDENDUM 1., etc.

10-a:

APPLICANT WAS DENIED THE RIGHTS TO EFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSEL BY THE 6th & 14th OF THE U.S. CONST. AS GUARANTEED AND ACCORDINGLY TO THE S.C. CONST. ART. I, §§ 3 and 14, DURING ALL PHASES OF THE CRIMINAL AND APPEAL CASE, etc.

11-a:

STANDBY TRIAL COUNSEL FAILED TO PROVIDE REASONABLE AND COMPETENT LEGAL WORK, TO COMMUNICATE WITH APPLICANT ABOUT HIS CASE, TO IMPLEMENT REASONABLE REQUESTS THAT WERE MADE TO COUNSEL, AND TO KEEP APPLICANT INFORMED OF KEY DEVELOPEMENTS OF HIS CASE, AND TRIAL COUNSEL ABANDON APPLICANT DURING THE BENCH TRIAL, etc., STANDBY COUNSEL AND APPELLATE COUNSEL PERFORMANCE DURING THE TRIAL AND APPEAL WAS UNREASONABLE AND PREJUDICED AGAINST THE APPLICANT ACCORDINGLY TO SEE AT: STRICKLAND V. WASHINGTON, 466 U.S. 688 (1984), ACTIONS AND NON-ACTIONS ARE AS THE FOLLOWING HEREIN AND NOT LIMITED TO AS STATED BELOW:

- * APPELLATE COUNSEL FAILED TO BRIEF EVERY PROPERLY PRESERVED ISSUES OF THE BENCH TRIAL RECORDS, AND SUBMIT THEM TO THE APPELLATE COURT FOR A REVIEWS, PURSUANT TO THE FOLLOWING AUTHORITES: GILCHRIST V. STATE, ANDERSON V. STATE, AND SOUTHERLAND V. STATE, *supras*, etc.;
- * APPELLATE COUNSEL FAILED TO PROPERLY EXHAUST APPLICANT'S CASE ON APPEAL THRU THE APPELLATE COURT BY WAY OF CERTIORARI PETITION AS IT WAS AN AVAILABLE REMEDY TO APPLICANT TO GIVE THE SC SUPREME COURT AN OPPORTUNITY TO CORRECT ALL ERRORS OF LAWS COMMITTED IN APPLICANT'S CASE ON APPEAL, etc.;
- * STANDBY TRIAL COUNSEL FAILED TO PRETRIAL CRUCIAL ISSUES AS TO THE HOSPITAL REPORTS, PHYSICAL EXAMINATIONS TO HAVE SUCH CHARGES DISMISSED BASED UPON LACK OF EVIDENCE BEFORE THE YORK CO. GRAND JURY, etc.;
- * STANDBY TRIAL COUNSEL WAS A CONFLICT OF INTEREST TO THE APPLICANT'S CASE, THE COUNSEL TOOK A ROLE AS THE ADVERSE COMPONENT TO THE APPLICANT BECAUSE OF THE COUNSEL'S DISHONESTY TOWARDS THE COURT ABOUT THE FALSE LEADINGS FROM COUNSEL TO APPLICANT MAKING TO BELIEVE THAT HE WAS GOING TO COURT AS A CERTAIN TIME AND HE WAS NOT, etc.;
- * TRIAL COURT FAILED TO EXAMINE THE AVAILABLE RECORDS TO MAKE A JUDICIAL FINDING THAT ARE REQUIRED TO FIND THAT THE APPLICANT COULD NOT ESTABLISH A WORK TRUST BETWEEN TRIAL COUNSEL ON HIS CASE ACCORDINGLY TO THE LAWS, etc.;
- * PROSECUTOR MISCONDUCT BASED UPON APPLICANT'S CONSTITUTIONAL RIGHTS VIOLATED WHEN THE SOLICITOR FAILED TO DISCLOSE TO THE APPLICANT INFORMATION THAT COULD HAVE EXONERATED APPLICANT BASED UPON THE FACTS THAT THE VICTIM WAS NOT EXAMINE BY THE DOCTORS IN THE REQUIRED TIME FRAMES AS WAS REQUIRED BY SC LAWS, etc.;

PCR ADDENDUM #2., etc.

* TRIAL COURT FAILED TO CONDUCT A JUDICIAL HEARING TO PROPERLY DETERMINE WHETHER IF THE APPLICANT SUFFICIENTLY WAIVED HIS RIGHTS TO A JACK. DENO. HEAR., THE APPLICANT MAKES CLAIMS THAT THERE WERE NOT AN INTELLIGENTLY WAIVER GIVEN TO THE COURT'S RECORD FOR THIS PURPOSES, etc.;

* STANDBY TRIAL COUNSEL FAILED TO SEEK A LESSER INCLUDED CHARGE BASED UPON THE LACK OF EVIDENCE TO CHARGE THE APPLICANT WITH THE PRIMARY OFFENSE, etc.;

* STANDBY TRIAL COUNSEL FAILED TO PRODUCE HIS WORK ETHICS TO THE COURT OF APPLICANT'S CASE TO REVEAL WHAT UNDERTAKEN ACTIONS TO APPLICANT'S CASE, THE COUNSEL FAILED TO INVESTIGATE, EXAMINE AND RESEARCH ALL RECORDS FULLY, CONDUCT INTERVIEWS WITH THE WITNESSES OF THE PROSECUTOR'S WITNESSES LIST, etc.;

* STANDBY TRIAL COUNSEL FAILED TO OBJECT TO THE GUILTY VERDICT FINDINGS BY THE JUDGE AND MOVE FOR A DIRECT VERDICT OF NOT GUILTY DUE TO THE FACTS THAT STATE DID NOT PROVE THEIR CASE BEYOND A REASONABLE DOUBT, etc.

°°THE APPLICANT EXPLICITLY STATES THAT HE DOES NOT WAIVE ANY RIGHTS TO HIS PCR AND PROCEDURES UNDER NO CIRCUMSTANCES WHATSOEVER, AND THE APPLICANT DOES INTEND TO HAVE HIS PCR AMENDED "PER RULE 71.1(d), SCRCP, etc., BY THE ATTORNEY POTENTIALLY APPOINTED TO PCR CASE, etc.

6/7, 2013

SI *Trey Williams*
 TREY A. WILLIAMS
 990 WISACKY HWY.
 BISHOPVILLE, S.C. 29010
 APPLICANT, pro se

PCR ADDENDUM #3., etc.

FACTS SUPPORTING ISSUES A,F, AND K, etc.

APPLICANT ARGUES THAT THE TRIAL JUDGE ERRED IN RULING THAT THE APPLICANT COULD NOT CHANGE HIS MIND ABOUT PROCEEDING pro se ONCE DECIDED TO DISMISS HIS COURT APPOINTED ATTORNEY, etc., FERRETTA V. CALI., 422 U.S. 806 (1975); STATE V. FULLER, 337 S.C. 236, 523 S.E.2d 168 (1999); STATE V. BATEMAN, 296 S.C. 367, 373 S.E.2d 470 (1988); STATE V. BOYKIN, 324 S.C. 552, 478 S.E.2d 689 (Ct. App. 1996); PRINCE V. STATE, 301 S.C. 422, 392 S.E.2d 462 (1990), APPLICANT ESTABLISHED BY TRIAL RECORD THAT IT WAS THE TRIAL JUDGE RESPONSIBILITY TO DETERMINE WHETHER THERE WERE AN INTELLIGENT AND COMPETENT WAIVER GIVEN TO THE TRIAL RECORDS, etc., BY THE DEFENDANT AND IN THE APPLICANT'S CASE MATTER IT WAS NOT, THE APPLICANT ALSO SHOWS THAT THE WAIVER THE TRIAL JUDGE CONSTRUED AS ONE WAS WITHOUT A PRODUCT OF KNOWING, VOLUNTARY, AND INTELLGENT DECISION, AND FURTHER IT IS SHOWN THAT THE APPLICANT DID NOT HAVE A BACKGROUND SUFFICIENT TO PROCEED pro se OF THE PERILS, etc., NO SPECIFIC INQUIRIES MADE BY THE TRIAL JUDGE EXPRESSLY ADDRESSING THE DISADVANTAGES OF SELF-REPRESENTATION, etc., AND NOR WAS THE APPLICANT APPRAISED BY ANY OTHER SOURCES ABOUT HIS DECISIONS TO GO pro se IN TRAIL, APPLICANT WAS PREJUDICED BY THE TRIAL JUDGE'S RULINGS BECAUSE IT VIOLATED HIS 6th AND 14th AMENDMENT OF THE US CONST., etc., AS THE CONSTITUTIONS GUARANTEES A PERSON TO A TRIAL IN ANY STATE OF FEDERAL AND STATE COURTS, etc., MUST BE AFFORDED THE RIGHT TO THE ASSISTANCE OF COUNSEL BEFORE HE CAN VALIDLY CONVICTED AND PUNISHED BY IMPRISONMENT AND HERE IN THE APPLICANT'S CASE HE WAS DENIED THIS RIGHT BY THE TRIAL JUDGE WHEN THE COURT STATED TO APPLICANT YOU HAVE A RIGHT TO BAIVE YOUR RIGHTS TO COUNSEL AND PROCEED ON YOUR OWN IF YOU WISH, WHAT DO WISH TO ? SEE TRANSCRIPT OF RECORD DATED APRIL 15-16, 2010, PAGE 6., LINES 4-11, COLLOQUY OF TRIAL JUDGE, etc.

FACTS SUPPORTING B AND C, etc.

APPLICANT MAKES FACTUAL CLAIMS THAT THE APPELLATE COUNSEL FAILED TO BRIEF AND SUBMIT ALL PROPERLY PRESERVED ISSUES OF THE TRIAL RECORDS TO THE APPEALS COURT FOR THE ENTITLED REVIEWS AND AS THE APPELLATE COUNSEL FAILED TO DO SO IT IS INEFFECTIVE ASSISTANCE BY THE APPELLATE COUNSEL, THE APPLICANT'S RIGHTS WAS VIOLATED BY THE APPELLATE COUNSEL, SHOWING BY THE RECORD OF THE TRIAL, THE APPEAL COUNSEL DID NOT BRIEFED THE ISSUES IN REGARDS TO THE JUDGE NOT MAKING A JUDICIAL FINDINGS TO THE TRIAL RECORDS TO DETERMINE WHETHER THE APPLICANT GAVE A COMPETENT WAIVER TO ASSISTANCE OF TRIAL COUNSEL PER S.C. LAWS, etc., APPLICANT WAS PREJUDICED AGAINST BY THE APPELLATE COUNSEL ACCORDINGLY TO HIS 6th AMENDMENT RIGHT OF THE U.S. CONST., GILCHRIST V. STATE, ANDERSON V. STATE, & SOUTHERLAND V. STATE, *supras*, etc., APPLICANT WAS DENIED HIS

PCR ADDENDUM #3.(a), etc.

RIGHTS TO AN APPELLATE REVIEWS DUE TO THE APPELLATE COUNSEL'S DEFICIENT AND UNREASONABLE ACTIONS IN PREPARING APPLICANT'S APPEAL BRIEF AS THEY WERE INCOMPLETED AND THIS DID DEPRIVED APPLICANT OF A FULL AND FAIR REVIEWS BY THE APPELLATE COURTS, etc, THE APPLICANT DILIGENTLY AND APPROPRIATELY STATED HIS COMPLAINTS TO THE COURTS ABOUT HIS APPELLATE COUNSEL AND THE ISSUES BEING SUBMITTED TO THE COURT ABOUT COUNSEL ARE ATTACHED AS POINTED EVIDENCE IN THIS MATTERS, SEE AT CASE CITES AS: GILCHRIST V. STATE, 364 S.C. 173, 612 S.E.2d 705 (2005); ANDERSON V. STATE, 354 S.C. 431, 581 S.E.2d 834 (2003); SOUTHERLAND V. STATE, 337 S.C. 610, 524 S.E.2d 833 (1999), ALL AUTHORITIES APPLICANT TAKES HIS POSITIONS BY HERE IN THIS CLAIM SUBMITTED FOR A FINDING OF FACTS AND FOR A SPECIFIC CONCLUSION OF LAWS TO BE GIVEN TO IT BY THE PCR COURT.

THE NEXT PAGE IS CONTINUED...

PCR ADDENDUM #4, etc.

FACTS SUPPORTING ISSUES: D.E.G.H.I.J.L, etc.

TRIAL JUDGE ABUSED HIS DISCRETION WHEN APPLICANT DISCLOSED TO THE RECORD THAT TRIAL COUNSEL WAS NOT HONEST WITH APPLICANT ABOUT HIM GOING TO COURT ON THE DATE THAT HE WAS TOLD HE WAS GOING, THE TRIAL JUDGE FAILED TO GIVE CONSIDERATION TO THE APPLICANT'S CLAIMS THAT HIS ATTORNEY MISLEAD HIM ABOUT WHEN HE WERE TO APPEAR IN THE COURT FOR TRIAL, etc.;

TRIAL JUDGE FAILED TO GIVE THE APPLICANT THE BENEFIT OF THE DOUBT TO THE LESSER INCLUDED CHARGE BASED UPON THE EVIDENCE PRESENTED IN CASE MATTER, APPLICANT WILL RELY ON CARTER V. STATE, 392 SE2d 184 (SC 1990)("LESSER INCLUDED CHARGE" IN FAVOR OF THE DEFENDANT AS RESOLVED BY BUTIES).

APPLICANT'S PCR IS BASED UPON HIS CLAIMS THAT HE DID NOT HAVE THE EFFECTIVE ASSISTANCE OF A COUNSEL BECAUSE OF THEIR INCOMPTENCY AND THIS ALLEGATION SET FORTH A PRIMA FACIE VIOLATION OF THE APPLICANT'S CONSTITUTIONAL RIGHTS, AND UNDER WELL SETTLED LAWS DO RAISES A MANY QUESTIONS OF FACTS WHICH COULD ONLY BE DETERMINED IN THE PCR COURT DURING AN EVIDENTIARY HEARING WITH THE ASSISTING ATTORNEY WHOM IS APPOINTED AND OR RETAINED, etc., APPLICANT TAKES THE POSITIONS OF LAW AUTHORITY OF SEE CITED AS: ROGERS V. STATE, 199 SE2d 761 (1973), etc.;

APPLICANT'S MAKE CONTENTIONS THAT HE WAS PREJUDICED AGAINST AND DENIED DUE PROCESS RIGHTS AND EQUAL PROTECTION TO A FAIR TRIAL, AND THE TRIAL RECORD DOES DISCLOSES APPLICANT WAS NOT GIVEN A CHANCE TO PROFFER PROCURED EVIDENCE TO THE COURT DURING HIS BENCH TRIAL, AND IT IS CLEARLY SHOWN BY THE TRIAL REOCRDS THAT APPLICANT DID NOT HAVE A FULL BRADY MATERIAL DISCLOSURES GIVEN TO HIM FROM THE SOLICITOR'S OFFICE COUNSELS, etc., THE APPLICANT SHOWS BY THE RECORDS THAT TRIAL JUDGE NEVER ADDRESSED THE ISSUE AS IT WAS PRESENTED BY THE STANDBY COUNSEL DURING THE JUDGE GIVING ORDERS ABOUT THE VIDEO BEING VIEWED BY THE APPLICANT, etc. AND HAVING AN ORDER OF PROTECTION SIGNED BY THE APPLICANT. APPLICANT MAKES CONTENTIONS TO THE RECORDS THAT THE STANDBY COUNSEL DID NOT AND CAN NOT PRODUCE HIS WORK ETHICS TO THE RECORD AND SHOW THAT HE ASSISTED APPLICANT IN ANYTHING REGARDING HIS CASE MATTERS FOR TRIAL, THE COUNSEL FAILED TO COMMUNICATE WITH THE APPLICANT, FAILED TO IMPLEMENT REASONABLE REQUESTS MADE TO HIM FROM THE APPLICANT, FAILED TO KEEP APPLICANT INFORMED OF KEY DEVELOPMENTS OF HIS CASE AND IT APPEARED THAT THE COUNSEL ABANDONED APPLICANT ONCE HE MADE THE COMPLAINTS ABOUT HIM TO THE BAR ASSOC. OF SC., .SEE AUTHORITY AS GOEDEKE V. McBRIDE, 437 F.SUPP2d 590 (S.D.W.Va. 2006)(SHOWING COUNSEL'S ASSURANCES).

EXHIBIT #1.

FOR SHEETS
1-11, front,
etc. SC CODE
§17-27-80-
§17-27-90.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
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The State, Respondent,

v.

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Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2013-UP-102
Submitted January 1, 2013 – Filed March 13, 2013

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Julie Kate Keeney, all of Columbia;
and Solicitor Kevin S. Brackett, of York, for Respondent.

EXHIBIT #2.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006) ("In criminal cases, this [c]ourt sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown."); *United States v. Holmen*, 586 F.2d 322, 323-24 (4th Cir. 1978) (finding no error in trial court's denial of defendant's motion to withdraw a waiver of his right to a jury trial when the defendant made his motion on the day prior to trial and the witnesses had already been subpoenaed).

AFFIRMED.¹

FEW, C.J., WILLIAMS, J., and PIEPER, J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

EXHIBIT #3.

Child's Name Jada Westbrook DOB 9-17-02

OVERALL MEDICAL ASSESSMENT
(Based on history and physical findings)

Diagnosis & Conclusions:

Normal exam. This cannot preclude abuse, including penetration.

Miscellaneous Sexually Transmitted Diseases

- Herpetic balanitis
- Herpetic vulvovaginitis
- None
- HPV Condyloma Acuminata
- Perianal Herpes
- Trichomonas Vaginalis

Miscellaneous Diseases/Conditions

- Birth Trauma
- Candida vulvovaginitis
- Encopresis
- Enuresis
- Glutaric Aciduria
- Hemangioma
- Impetigo
- Lichen Sclerosus et Atrophicus
- None
- Molluscum Contagiosum
- Mongolian Spots
- Obesity
- Osteogenesis Imperfecta
- Perianal streptococcal dermatitis
- Pinworm
- Rickets
- Straddle Injury
- Streptococcal vulvovaginitis
- Urethral prolapse
- Urinary Tract Infection
- Vaginitis, non-specific
- Vitamin K Deficiency Bleeding
- Von Willebrand's Disease
- Other Specify:

RECOMMENDATIONS AND TREATMENT

[Empty box for recommendations and treatment]

Healthcare Providers Signature [Signature] Date 9-18-09

ARGUMENTS AND LEGAL AUTHORITIES

EXHIBIT #4.

(1) APPELLANT MAKE MATERIAL CLAIM THAT ARE RESERVED BY THE TRIAL RECORD AS INDICATED THAT THE TRIAL RECORD IS EX PARTE FORMATION DUE TO THE TRANSCRIBING INCOMPLETENESS OF THE JUDGE GIVING THE RULING OF LAW AND FINDINGS AS TO HOW HE MADE THE DETERMINATION TO RELIEVE TRIAL COUNSEL FROM CASE AND THE TRIAL RECORD DON'T HAVE ANY PROCEEDING OF A HEARING BEING HELD ABOUT ANY OF THE COMPLAINTS MADE BY THE APPELLANT REGARDING THE CONFLICTS BETWEEN APPELLANT AND TRIAL COUNSEL, THE TRIAL RECORD BEING INCOMPLETED AS IT IS VIOLATES DUE PROCESS OF LAW AND DEPRIVES APPELLANT OF PROPERLY PRESENTING HIS CASE ON APPEAL THAT OF WHICH RESULTS TO A SUBSTANTIAL RIGHT BEING VIOLATED BY THE APPEAL PROCESS ALONE, THE APPELLANT DID NOT HAVE A CHANCE TO MAKE HIS OBJECTIONS TO THE TRIAL RECORD AFTER BEING PREPARED BY THE REPORTER WHEN HE SHOULD HAVE IN THE GRACE PERIOD THAT IS PURSUANT TO THE APPELLATE COURT RULES, HOWEVER, THE APPELLANT PRIMARY ARGUMENT IS THAT THE RECORD IS INCOMPLETED DUE TO THE NON STATING OF THE RULING OF LAWS GIVEN TO THE SPECIFIC MATTER ABOUT WHEN TRIAL COUNSEL WAS RELIEVED BY THE TRIAL JUDGE AND THAN AFTER HE BEING RELIEVED THE TRIAL COURT APPOINTED THE SAME ATTORNEY AS A STANDBY COUNSEL, THIS PORTION OF THE TRIAL TRANSCRIPT IS NOT INCLUDED AND THEREFORE MAKING IT EXIST AN EX PARTE FORMATION OF THE RECORD, THE APPLICANT WILL RELY ON U.S. V. RONALD D. SKIPPER, SUPRA., FOR EX PARTE COMMUNICATION MANDATES, THE JUDGE'S COMMUNICATIONS WITH THE TRIAL ATTORNEY ARE NOT A PART OF THE TRIAL TRANSCRIPT AND THEREFORE ALSO MAKING IT TO BE A EX PARTE COMMUNICATION BY THE COURT AS WELL, THIS IS A VIOLATION TO THE APPELLANT'S SIXTH AND FOURTEENTH AMENDMENT RIGHT;

EXHIBIT #5

(2)-(3) APPELLANT MAKE CONTENTIONS THAT THE TRIAL COURT ABUSED IT DISCRETION WHEN THE JUDGE RELIEVED TRIAL COUNSEL AND DID NOT REAPPOINT APPELLANT ANOTHER COUNSEL DUE TO A CONFLICT OF INTEREST THE TRIAL COUNSEL CREATED AMONG APPELLANT AND HIMSELF, THE TRIAL JUDGE FIRST FAILED TO GIVE AN EVALUATION TO THE MATTERS THAT EXISTED BETWEEN THE APPELLANT AND HIS TRIAL COUNSEL, AND IT WAS AN ASSAULT TO AN INJURY WHEN THE TRIAL JUDGE MADE IT JUDICIAL MESSAGE SENT TO THE APPELLANT IN AN AGGRESSIVE TONE TOWARDS THE APPELLANT BY MAKING THE VERY SAME TRIAL COUNSEL AS A STANDBY COUNSEL TO THE APPELLANT FOR HIS TRIAL, THIS IS ITSELF BY THE TRIAL JUDGE CONTRIVES LAW AGAINST THE APPELLANT IN HIS BELIEF, AND IN THIS SCENARIO INDEED ARE A PARODOX TO JUSTIFY REVOKING APPELLANT'S RIGHTS TO A CONFLICT FREE REPRESENTATION, THAT OF WHICH IS WELL SETTLED LAW BY OUR SUPREME COURT, SEE THAT APPELLANT HAVE A GUARANTEED RIGHT PURSUANT TO THE 6th AMENDMENT OF THE US CONSTITUTION, APPELLANT RIGHT TO COUNSEL TO REPRESENT HIM EVEN THOUGH THE TRIAL JUDGE FAILED TO EVALUATE THE TOTAL SITUATION THAT OCCURRED BETWEEN HIM AND HIS COUNSEL THIS STILL DID NOT EXEMPTED THE APPELLANT FROM HAVING ANOTHER ATTORNEY APPOINTED TO HIM BY THE TRIAL COURT, THE TRIAL COURT EVEN RECOGNIZED THAT IN WAS A DANGER TO THE APPELLANT TO REPRESENT HIMSELF DURING TRIAL AND THE TRIAL JUDGE WERE AWARE OF THIS FACT, SEE TRIAL RECORD AS INDICATED, THE TRIAL JUDGE ABUSED HIS DISCRETION BY RELIEVING TRIAL COUNSEL AND NOT MAKING A JUDICIAL FINDING ON THE RECORD AS TO WHY HE MADE HIS RULING AND IT BEING WITHOUT ANY LEGAL AUTHORITIES, THE TRIAL JUDGE FAILED TO PROTECT THE APPELLANT'S CONSTITUTIONAL RIGHTS DURING THIS PARTICULAR ISSUE, THE JUDGE WENT OUTSIDE OF HIS BOUNDARIES WHEN HE CONCLUDED THAT APPELLANT MADE A KNOWINGLY AND INTELLIGENTLY WAIVER TO ASSISTANCE OF A COUNSEL FOR TRIAL, THE APPELLANT UNDERSTANDING OF LAW WERE NOT EVEN ADDRESSED AND BY IT NOT BEING ADDRESSED EVENMORESO SHOWS THAT THE TRIAL JUDGE ABUSED HIS DISCRETION, THE EVIDENTIARY FACTUAL HERE IN THIS SUBJECT IS FOR THE SIMPLE FACT THAT THE JUDGE NEVER AT ONCE APPLIED ANY ANALYSIS TO TEST THE APPELLANT'S ABILITY TO UNDERSTAND LAW AND THIS IS AN ERROR OF LAW COMMITTED BY THE TRIAL JUDGE THAT MUST BE CORRECTED POINT BLANK, IT IS EVENMORE ABSOLUTE BY THE APPELLANT'S NONAGREEING ACTIONS WHERE HE HAD TO ACCEPT STANDBY COUNSEL AND THIS WERE NOT OBJECTED TO FOR THE SIMPLE FACTS THAT THE WAY THE TRIAL JUDGE MADE REMARKS TO THE APPELLANT IN A AGGRESSIVE TONES AND BEING IN RESENTMENT TYPES OF RESPONDING TOWARDS APPELLANT IN HIS ZEST TO SEEK THE EXERCISING HIS CONSTITUTIONAL RIGHTS TO HAVE A CONFLICT FREE PRESENTATION OF HIS DEFENSE TO THE COURT, THIS GAVE EVIDENCE ALL THE INDICATIONS THAT THE APPELLANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS TO HAVING A COUNSEL TO EFFECTIVELY ASSISTANCE HIM FOR TRIAL, THE COURT MADE A DETERMINATION THAT HE WAS AGAINST THE APPELLANT REPRESENTING HIMSELF FOR TRIAL AND IN THIS ALONE SHOULD COMPELLED THE COURT TO REAPPOINT AN ATTORNEY TO REPRESENT THE APPELLANT BASED UPON THE CONFLICT BETWEEN THE ATTORNEY AND APPELLANT, BUT THE JUDGE MADE A PURSUIT TO KEEP PUSHING THE APPELLANT TO ANSWER AN ERRONEOUS FINDING IN THE SITUATION TO THE RECORD AND OVERLOOKING THE FACTS THAT THE TRIAL COURT WAS CHARGED WITH THE RESPONSIBILITY TO SEE

PRESERVED ISSUES

EXHIBIT #6.

ISSUE 1):

APPELLANT'S TRIAL RECORD IS AS A FLAWED INCOMPLETED RECORD, THERE EXISTS AN EX PARTE FORMATION OF THE TRIAL RECORD COLLOQUY BY THE JUDGE GIVING A RULING OF LAW TO THE RECORD AS TO WHY HE RELIEVED TRIAL COUNSEL AND MADE TRIAL COUNSEL A STANDBY COUNSEL FOR APPELLANT, SEE TRIAL TRANSCRIPT Pg. 4. LINES 14-21 AND 5. LINES 12-21;

ISSUE 2):

APPELLANT'S TRIAL JUDGE ABUSED HIS DISCRETION WHEN HE ENFORCED THE APPELLANT TO REPRESENT HIMSELF FOR TRIAL WHILE KNOWING THAT THE APPELLANT WAS NOT ABLE TO CONDUCT HIS OWN DEFENSE INTELLIGENTLY AS AN ATTORNEY WITH THE EXPERTISE AND SKILLS TO PRACTICE LAW, TRIAL JUDGE DID NOT CONDUCT A FAIR JUDICIAL REVIEW ACCORDINGLY TO THE PROCEDURAL OR SUBSTANTIAL RULES OF THE COURT AS REQUIRED, SEE TT. Pg. 4. LINES 14-21;

ISSUE 3.)

APPELLANT'S U.S. CONST. 6th AND 14th AMEND. RIGHTS VIOLATED WHEN THE TRIAL JUDGE FORCED APPELLANT TO HAVE A THE TRIAL COUNSEL WHOM THE TRIAL COURT RELIEVED BEFORE TRIAL AND MADE THE SAME COUNSEL A STANDBY COUNSEL TO APPELLANT, THE TRAIL COUNSEL WAS RELIEVED DUE TO A CONFLICT OF INTEREST ARISE BETWEEN APPELLANT AND COUNSEL DURING THE INITIAL PREPARATION FOR TRIAL, BECAUSE APPELLANT WANTED TO HAVE INPUT INTO HIS DEFENSE STRATEGIES AND HELP ORGANIZE IT WAS NOT A REASON FOR TRIAL COUNSEL TO MAKE CONFLICTS BETWEEN CLIENT/ATTORNEY, etc., SEE APPELLANT COMPLAINTS MADE TO THE S.C. DISCIPLINARY COUNSEL;

EXHIBIT #7.

THAT IT EXISTED A CONFLICT OF INTEREST AND IT WAS INTERESTING ~~THE~~ ^{interests} ~~THE~~
 APPELLANT MAKING HIS DECISIONS ABOUT HIS DEFENSE BEING PRESENT
 AND STRATEGIES TO ARTICULATED BASE UPON THE EVIDENCE OF THE
 RECORD, AND TESTING THE ADVERSARIAL PROCESS, THE TRIAL COUNSEL
 MADE NO ATTEMPTS TO PERFORM HIS DUTIES IN SUCH MANNERS AND
 MATTERS AND THIS CREATED THE CONFLICTS BETWEEN COUNSEL AND
 APPELLANT, AND IN RETURN PROVOKED APPELLANT TO RAISE IT TO THE
 TRIAL COURT, AND THIS IS THE MATTER THAT WAS IGNORED BY THE TRIAL
 JUDGE AS TO THE WAY OF RESULTS THAT THE TRIAL COURT RELIEVED THE
 ATTORNEY AND STILL MADE THE ATTORNEY BE AS A STANDBY COUNSEL TO
 THE APPELLANT EVEN AFTER THE CONFLICT AROSE BETWEEN THEM, THE
 APPELLANT WILL TAKE THE SOLE POSITIONS AS LIKE SEE IN CASES:
CUYLER V. SULLIVAN, 446 U.S. 335, 100 S.Ct. 1708 (1980)(SEE THE
 ANALYSIS THAT THE COURT MUST APPLY TO FIND A CONFLICT OF
 INTEREST (VIOLATION TO THE APPELLANT'S 6th AMENDMENT
 RIGHT..)); UNITED STATES V. TATUM, 943 F.2d 370 (4th CIR.
 1991)(HOLDING THAT IF ADVOCACY OF COUNSEL IS IMPAIRED THE
 DEFENDANT MAY ASSERT A CLAIM OF INEFFECTIVENESS OF COUNSEL
 REGARDLESS OF WHETHER THE DEFENDANT WAIVED HIS RIGHT TO A
 CONFLICT-FREE REPRESENTATION, quoting WHEAT V. US, 486 U.S. 153
 (1988). CLEARLY THE TRIAL JUDGE DUCKED THE ISSUE AS IT BEING
 PRESENTED TO THE COURT AND THIS CLEARLY DENIED APPELLANT DUE
 PROCESS OF LAW, IN VIOLATION OF THE 14th AMENDMENT OF THE US
 CONST.;

EXHIBIT #8.

IN ORDER TO WAIVE THE RIGHT TO COUNSEL, THE ACCUSED MUST BE (1) ADVISED OF HIS RIGHT TO COUNSEL AND (2) ADEQUATELY WARNED OF THE DANGERS OF SELF-REPRESENTATION, PRINCE V. STATE, 301 SC 422, 392 SE2d 462 (1990)(CITING FERATTA V. CALIFORNIA, 422 US 806, 95 S.Ct. 2525, 45 L.ED.2d 562 (1972)). IT IS THE TRIAL JUDGE'S RESPONSIBILITY TO DETERMINE WHETHER THERE IS A COMPETENT, INTELLIGENTLY WAIVER BY THE DEFENDANT, STATE V. DIXON, 296 SC 107, 236 SE2d 419 (1977)(CITING JOHNSON V. ZERBST, 304 US 458, 58 S.Ct. 1019, 82 L.ED. 1461 (1938)). IF THE TRIAL JUDGE FAILS TO ADDRESS THE DISADVANTAGES OF APPEARING *pro se*, AS REQUIRED BY THE SECOND PRONG OF FERRETTA V. CALIF., THIS IS ERROR OF LAW, THE COURT MUST LOOK AT THE RECORD TO DETERMINE WHETHER APPELLANT HAD SUFFICIENT BACKGROUND OR WAS APPRAISED OF HIS RIGHTS BY SOME OTHER SOURCES, PRINCE, 301 S.C. AT 424, 392 SE2d AT 463 (CITING WROTEN V. STATE, 301 SC 793, 391 SE2d 575 (1990)). HAVING THESE PRINCIPLES APPLIED THE COURT MUST ONLY FIND THAT IT IS ERROR OF LAW COMMITTED BY THE TRIAL JUDGE AND THE ONLY REMEDY IS TO REVERSE CONVICTION AND REMAND FOR A NEW TRIAL TO THE APPELLANT IN THIS PARTICULAR CASE MATER ON APPEAL. SEE IN STATE V. WILLIAMS, 2010-GS-46-2626, etc.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of LEE)

STEVE A. WILLIAMS

I, ; 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.

Steve Williams

**STEVE A. WILLIAMS, #341036
LEE CI
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010**

SWORN to and subscribed before me this 7
day of June, 2013.

John Sures (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

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

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

Trey Williams

Applicant

**TREY A. WILLIAMS, #341036
LEE CI
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
APPLICANT**

SWORN or affirmed to and subscribed before me this

7 day of June, 2013.

Debra Siss

Notary Public

My Commission Expires: 11-4-2015

TREY A. WILLIAMS, #341036
 LEE CI/DARL. UNIT
 990 WISACKY HWY.
 BISHOPVILLE, S.C. 29010

, 2013

OFFICE OF THE CLERK
 P.O. Box 7049
 York, S.C. 29745-0649

RE: T.A. WILLIAMS, 341036 V. THE STATE, PCR APPLICATION FILED
 AS IS REQUIRED, etc.

DEAR MR. WICKENSIMER:

PLEASE SEE ENCLOSED MY PCR APPLICATION FOR YOUR RESPECTFUL FILING
 AND IT BEING COMPLETELY FILLED OUT AND SIGNED BY MYSELF AND
 THE NOTARY PUBLIC WHOM IS REGISTERED WITH THE STATE OF SOUTH
 CAROLINA.

PLEASE RETURN MY COPY TO ME SOON AS PRACTICAL AND OR ONCE YOU
 HAVE THE TIME TO DO SO AS IT BECOMES AVAILABLE.

THANKING YOU IN THE ADVANCE FOR YOUR TIME AND ASSISTANCE
 GIVEN TO ME IN THIS CRUX MATTER AND I LOOK FORWARD IN HEARING
 FROM YOU IN THIS VERY NEAR FUTUTRE.

6/7


, 2013

RESPECTFULLY SUBMITTED,

ENCLOSURES:

TAW/cm

cc: FILES/TAW


 TREY ALEXANDER WILLIAMS
 990 WISACKY HWY.
 BISHOPVILLE, S.C. 29010
 APPLICANT

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Trey A. Williams #344266)

Plaintiff)

v.)

State Of South Carolina)

Defendant.)

174

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-46-1797

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Leah B. Moody, Bar No.

Address:

Post Office Box 1015 Rock Hill, SC 28731

phone: fax:

e-mail: other:

Defendant's Attorney:

J. Rutledge Johnson, Bar No. 78871

Address:

PO Box 11549 Columbia, SC 29211-1549

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

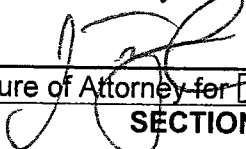
Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

September 12, 2013

Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:

EXEMPT: Rule to Show Cause in Child or Spousal Support

(check reason) Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRPC)

Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE: _____ Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
)	
Trey A. Williams, #344266)	2013-CP-46-1797
)	
Applicant,)	
)	
v.)	
)	RETURN
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed June 12, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted at the May 2010 term of the York County Grand Jury for criminal sexual conduct with a minor, first degree (2009-GS-46-2646). Erik Delaney, Esquire represented the Applicant.

The Applicant proceeded to trial, pursuant to which he was found guilty on May 26, 2010. The Honorable John C. Hayes, III, sentenced the Applicant to thirty (30) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Lanelle C. Durant, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentences. State v. Williams, Op. No. 2013-UP-102 (S.C. Ct. App. filed March 13, 2013).

Attached herewith and incorporated herein by reference are the records of the York

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records.

II.

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

1. Ineffective assistance of counsel.
 - a. "Standby trial counsel failed to provide reasonable and competent legal work, to communicate with Applicant about his case, to implement reasonable requests that were made to counsel, and to keep Applicant informed of key developments of his case, and trial counsel abandon Applicant during the bench trial, etc."
 - b. "Appellate counsel failed to brief every properly preserved issue of the bench trial records."
 - c. Appellant counsel failed to pursue a petition for writ of certiorari.
 - d. Standby counsel failed to adequately pursue pre-trial motions.
 - e. Standby counsel had a conflict of interest and took positions adverse to Applicant's best interests.
 - f. Trial court should have discovered the conflict between Applicant and trial counsel.
 - g. Prosecutorial misconduct.
 - h. Applicant did not sufficiently waive his right to a Jackson v. Denno hearing.
 - i. Standby trial counsel failed to ask for a lesser-included charge.
 - j. Standby counsel failed to properly investigate the case.
 - k. Standby counsel failed to object to the guilty verdict.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

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

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not

conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

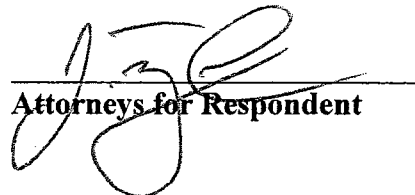
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

RUTLEDGE JOHNSON
Assistant Attorney General

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

By:


Attorneys for Respondent

September 12 2013

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2013-CP-46-1797

TREY A. WILLIAMS, 344266)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

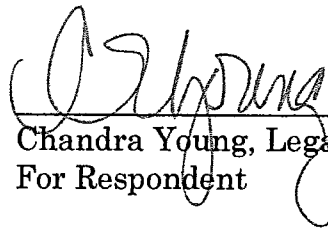
1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Post Office Box 1015
Rock Hill, SC 28731

DATED this 12th day of September, 2013.


Chandra Young, Legal Assistant
For Respondent

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STATE OF SOUTH CAROLINA.

-----x

TREY A. WILLIAMS,

Petitioner,

Case No.

-against-

2013-CP-46-1797

STATE,

Respondent.

-----x

November 18, 2014

York, S.C.

B E F O R E:

HONORABLE ALLISON LEE

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

Charles T. Brooks, III

Attorney for the Petitioner

J. Rutledge Johnson

Attorney for the State

Aileen Butler

Official Court Reporter

		<u>I N D E X</u>			
	WITNESS	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Trey Williams				
4	Mr. Brooks	5		45	
5	Mr. Johnson		39		
6					
7	Erik Delaney				
8	Mr. Brooks	46			
9	Mr. Johnson		50		
10	The Court		51		
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NO.

DESCRIPTION

I.D.

EVD.

NO EXHIBITS RECEIVED

1 THE COURT: Good afternoon. Be seated please.

2 Yes, sir.

3 MR. JOHNSON: May it please the Court, Your Honor.
4 This is the case of Trey Williams versus State of South
5 Carolina. It is case number 2013-CP-46-1797. Mr.
6 Williams was indicted at the May 2010 term of York
7 County Grand Jury for criminal sexual conduct with a
8 minor in the first degree. Eric Delaney at one point
9 represented him. On I believe April 15th -- let me grab
10 the transcript. On April 15th of 2010, Mr. Williams
11 moved to relieve Mr. Delaney before the Honorable John
12 C. Hayes the III. Judge Hayes granted that motion. Mr.
13 Williams proceeded pro se at his trial. That trial was
14 on May 26, 2010 and he was sentenced to 30 years
15 imprisonment. A Notice of Appeal was filed on his
16 behalf. An appeal was perfected. South Carolina Court
17 of Appeals affirmed his conviction and sentences on
18 March 13, 2013. He thereafter filed a timely PCR
19 application June the 12th, 2013 and the State filed its
20 return on September 12th, 2013.

21 This case has been called I believe three times
22 before. Mr. Williams has had two prior attorneys and
23 had both of those relieved. Mr. Brooks then took the
24 case and in August I moved for summary judgement on this
25 case based upon the fact that Mr. Williams was pro se at

1 his trial. Judge Kinard granted a continuance because
2 Mr. Brooks had just gotten on the case I think like two
3 weeks prior to. So at this time Your Honor I renew my
4 motion under 56(B) as a defending party, party against
5 who a claim is asserted may at any time move with or
6 without supporting affidavits for summary judgement.

7 I believe the State is entitled as a matter of law
8 for judgement because there is no genuine issues of
9 material fact. Mr. Williams decided to proceed pro se,
10 therefore there can be no ineffective assistance of
11 counsel as he was his own counsel and therefore the
12 State is moving to dismiss this under 56(B) and (C). I
13 will turn this over to Mr. Brooks.

14 THE COURT: Mr. Brooks.

15 MR. BROOKS: Judge, before we begin my client is
16 adamant that he wants to address the Court.

17 THE COURT: And Mr. Brooks, you are well aware
18 that when someone is represented by counsel that they
19 don't have that opportunity. That is something that
20 there's not dual representation or hybrid
21 representation. That because they have -- because there
22 is an attorney that's been appointed to represent them
23 any discussions or addressing of the Court must come
24 through the attorney.

25 MR. BROOKS: I understand that judge, but I at

1 least want to tell the Court what my client wants.

2 THE COURT: I understand, and I understand that
3 your client may have asked -- requested that and I am
4 sure you advised him of the laws as it relates hybrid
5 representation.

6 MR. BROOKS: Yes.

7 THE COURT: So at this time because he is
8 represented by counsel I will decline to allow him to
9 address me specifically and he can go through you and I
10 will be patient in that regard.

11 MR. BROOKS: Yes, ma'am. If I can have one
12 minute?

13 THE COURT: Yes, sir.

14 MR. BROOKS: May it please the Court, judge.

15 THE COURT: Yes, sir.

16 MR. BROOKS: The issue that my client is raising
17 are issues about ineffective assistance of standby
18 counsel, ineffective assistance of appellant counsel.
19 These are issues that we think survive any type of
20 summary judgement motion raised by the State. We do
21 admit that my client represented himself at bench trial
22 in front of Judge Hayes and was convicted and received
23 thirty plus years. Be that at it may, Judge, since this
24 is his only bite at the apple we would request that the
25 Court at least hear from him through testimony.

1 THE COURT: And I understand the motion that has
2 been made by the State and I had some questions about
3 since he was representing himself whether or not why
4 there was a claim of ineffective assistance of counsel.
5 I will allow him to -- and I understand that in his
6 application he raised issues relating to the role of
7 standby counsel as well as some other issues, and also
8 raised an issue relating to appellant counsel, and so I
9 believe that at least as it relates to appellant counsel
10 certainly those issues would be preserved but I will
11 allow him to create a full record and make a decision
12 based upon the full record and have the appellant courts
13 make the ultimately the decision as it relates to
14 whether or not he was able to go forward with this
15 application.

16 MR. BROOKS: With that being said we would go
17 ahead and call Mr. Trey Williams to the stand.

18 THE COURT: Mr. Williams if you step forward
19 please and be sworn.

20 TREY WILLIAMS, called as a witness, having been
21 duly sworn by The Clerk, was examined and testified as
22 follows:

23 MR. WILLIAMS: Can I say something about that or
24 I'm not allowed to say nothing about that?

25 THE COURT: Do you swear or affirm that the

1 testimony that you will give this Court will be the
2 truth so help you God?

3 MR. WILLIAMS: I mean I'm going to tell the truth
4 on the stand. I am going to tell the truth throughout
5 this entire proceeding.

6 THE COURT: The question is, do you swear or
7 affirm that the testimony you shall give this Court
8 shall be the truth so help you God?

9 MR. WILLIAMS: Yes, I do.

10 THE COURT: All right. Swear or affirm. If I have
11 you a problem swearing on a Bible I give you the
12 opportunity to affirm. So, that's why I say do you
13 swear or affirm.

14 MR. WILLIAMS: I affirm.

15 THE COURT: Thank you. State your full name
16 please.

17 MR. WILLIAMS: Trey Alexander Williams.

18 THE COURT: Thank you. Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q Mr. Williams, how are you today?

22 A Not so good.

23 Q Okay. I will ask you some questions about your post
24 conviction relief application that you submitted to the Court.
25 Okay. It's important that you give a verbal response because

1 this lady seated next to you is a court reporter and she can't
2 take down you know head movements or nodding or uh-huh and stuff
3 like that. Do you understand?

4 A Yes.

5 Q Now you brought this application alleging ineffective
6 assistance of standby counsel. Who was your standby counsel in
7 your case?

8 A Eric Delaney was my standby counsel.

9 Q Okay. And what did he fail to do in his role as
10 standby counsel for you?

11 A I kind of had it prepared. I had it drafted out where
12 in a manner of presenting my issues in an order. We never had
13 any communications whatsoever about any questions that you would
14 be questioning me.

15 Q Let me ask you this, Mr. Williams. Nobody knows it
16 better than you because you are locked up for 36 years, correct?
17 Tell us what Mr. Delaney did wrong as standby counsel?

18 If you need to look at your notes to refresh your memory
19 that's fine.

20 A Eric Delaney really didn't have any communication
21 really in depth about my case and what was going on. That for
22 one, the Indictment, the first Indictment that came -- that came
23 out was -- was June the 18th of 2009.

24 Q Okay.

25 A And the allegations in the Indictment are made up.

1 Allegations that does not -- that is not consistent with any of
2 the allegations that was made by the victim or the victim's mom
3 in any reports whatsoever. The allegations is involving an
4 entire different charge. It doesn't include any penetration,
5 any of the evidence of the indictment of when I went to trial
6 for.

7 My trial Indictment was after my waiving. Was after I had
8 had an invalid waiver of counsel.

9 MR. JOHNSON: Objection. That is a direct appeal
10 issue and furthermore the indictment issue because Mr.
11 Williams was acting as an attorney that is for him to
12 challenge and that is not for PCR.

13 THE COURT: I am going to let him raise these
14 issues and then I'll weed them out. He can go through
15 them and review information. I just want to make sure
16 that I understand all of his claims and those things
17 that are not appropriate for PCR I will be able to take
18 up at that particular time.

19 MR. JOHNSON: Thank you, Your Honor.

20 Q Go ahead and finish what you are explaining.

21 A So I have to present my case the way you ask me the
22 questions or can I present it the way I had it prepared to
23 present.

24 Q Let me ask you this question Mr. Williams, are you just
25 going to read some things that we have already put in the court

1 file?

2 A No.

3 Q Okay. Tell me what issues you want to cover.

4 A The issue that -- I mean I had -- I had wanted to point
5 to my judicial notice of adjudicated facts that I sent to you
6 that you revamped and edited and filed on my behalf.

7 Q Okay, that's in the court file, but if you want to
8 refer to it.

9 MR. JOHNSON: It's in the clerk's file but the
10 judge may not have a copy of it.

11 MR. BROOKS: Okay.

12 THE COURT: Are you talking about the PCR addendum.

13 MR. JOHNSON: That what it is.

14 MR. BROOKS: It was filed October 17th of this
15 year.

16 THE COURT: No, I don't have copies of that. What
17 I have is a copy of original post conviction relief
18 application which contains a number of typewritten pages
19 that has an addendum with exhibit eight, seven, six, et
20 cetera.

21 MR. JOHNSON: I'll get this in. We'll make a
22 copy, Your Honor. Mr. Brooks filed it. I took as an
23 amendment to the original application.

24 THE COURT: I don't have a copy.

25 MR. JOHNSON: And you don't have a copy of it.

1 THE COURT: No, sir. And just for the record what
2 I have is the original PCR application that was filed on
3 June the 10th of 2013, with various attachments, a copy
4 of the sentencing sheets, the indictment, the arrest
5 warrant. I have the return of the State. I also have
6 the Court of Appeals' opinion. I have the transcript
7 from April 15th and 16th of 2010, as well as the trial
8 transcript from May 24th and 26th of 2010 and I have
9 read all of those documents. So I am familiar with the
10 testimony. I am familiar with the issues relating to
11 Mr. Delaney being relieved as counsel and the trial
12 proceeding itself.

13 MR. BROOKS: Ready judge.

14 THE COURT: I am.

15 DIRECT EXAMINATION

16 BY MR. BROOKS:

17 Q Mr. Williams, specifically if you need to look back at
18 your notes, for one focus on what your allegations are about Mr.
19 Delaney in the case role as standby counsel and why he was
20 ineffective?

21 A Ineffective assistance of standby trial counsel, I
22 allege that trial counsel pretrial performance was the low
23 professional norm and it is the cause of petitioner's decision
24 to proceed pro se. That the courts made it clear that a waiver
25 can not be voluntarily or intelligent if the Court failed to

1 advise defendant of the nature of charge, the statute offense,
2 range of allowable punishments and possible defense could never
3 be constitutionally correct. The petitioner asserts that it is
4 because of this conflict of interest which existed between
5 counsel and client in pretrial proceedings petitioner felt like
6 he had to choose between the right of self-representation or
7 poor counsel. Which by its very nature was coercive, pro se
8 prejudice.

9 Petitioner asserts that trial counsel pretrial failure to
10 object and and preserve for appeal the following errors; waiver
11 of objection of Denno hearing, waiver of jury trial, waiver of
12 counsel, the amended Indictment and the guilty verdict after
13 trial, and failure of the trial court to properly provide a
14 Ferrata inquiry into allegations of conflict of interest claims.
15 See Whitner versus Bale 130, Federal 3rd edition, 1161, 1169-70
16 (Sixth Circuit 1997). Failure to conduct any preparation for
17 trial amounted to total failure to actively advocate his
18 client's cause. It is because of trial court's failure to
19 communicate effectively with petitioner to establish counsel's
20 ability to desire, to require the -- to -- to counsel's ability
21 or to desire to require the prosecution's case to survive the
22 crucible or meaningful adversary testing. Petitioner was under
23 the belief based on pretrial unprofessional performance that
24 counsel could not and did not want to work with with petitioner.
25 This -- thus the conflict of interest reflected on the face

1 of the record leading up to the court appointing the same
2 conflict of interest attorney to be standby counsel to advise me
3 on procedural rules, pro se prejudice. Petitioner asserts that
4 standby counsel prevented, stopped, impeded the petitioner from
5 making objections to testimony and evidence, advising petitioner
6 that he could not object to testimony of any of the witnesses
7 and/or any of the evidence or procedural rules. And nor before
8 trial standby counsel did not advise me of any procedural
9 requirements or how or when to object when he could have or
10 objected. It was a situation where I told standby counsel that
11 I was going to cross examine the witnesses when they was leaving
12 off -- when they was leaving off the stand when the solicitor
13 was finished and that's when he told me that once they are
14 leaving they're not coming back. And I had told him that I
15 thought that when I get up that I will have an opportunity to
16 bring them back in the courtroom for me to address the questions
17 that I will have. And he was like it's too late. So I was
18 holding ---

19 Q So you're saying you didn't cross examine the State's
20 witness because you were relying on the standby counsel to tell
21 you about the rules and procedure?

22 A I was never advised of any rules or procedures. Once
23 -- I was under the impression that when the solicitor was
24 calling for the witnesses after she had finished her cross
25 examinations and the judge asked me did I have any cross

1 examinations at that moment that I didn't have to because I
2 would have a turn to recall them to the stand.

3 I thought that solicitor had her total opportunity to go
4 first and call the witnesses and then I would have my
5 opportunity at the end.

6 Q And when did you discover that wasn't the case?

7 A In the middle. After the Doctor Dwight Renolds --
8 after Doctor Dwight Renolds from the child advocacy center had
9 left off the stand. The second medical doctor to testify.

10 Q Okay, and that's when you realized that it wasn't the
11 way you thought it was. That you would be able to call these
12 people back at a later time?

13 A Yes.

14 Q Okay. Anything else about standby counsel that you
15 want to tell the judge?

16 A In my allegations before this Court I alleged that
17 performance of counsel in pretrial was below professional
18 standard of competent attorneys is the cause and prejudice
19 forcing unconstitutional and involuntary waiver of trial
20 counsel. That he felt the risk of self representation as
21 opposed to poor counsel is pro se coercive by nature. Counsel
22 was ineffective.

23 Petitioner was prejudiced making the waiver involuntarily
24 because of any ineffective assistance of counsel. Petitioner
25 asserts that if a waiver such as a plea, counsel's performance

1 leading up to the plea and included in that plea surely the
2 right should exist for a waiver of counsel, especially when the
3 defendant felt that he had to choose between the right to self
4 representation or poor counsel.

5 I rely on Patterson versus Illinois 487, U.S.208, 292 n.4
6 (1988), an involuntary waiver when the defendant given choice
7 between unprepared counsel and self representation. Pazden
8 versus Maurer, 424 Federal 3d, 303, 316-18 (Third Circuit,
9 2005). James versus Brigano, which is B-r-i-g-i-n-o 470,
10 Federal 3rd edition, 636, 644, (Sixth Dircuit 2006). United
11 States versus Silkwood, 893 F2d 245, 248-49 (10th Circuit,
12 1989). Involuntary waiver when trial court impermissibly forced
13 defendant to choose between self representation and poor
14 counsel. The adversarial process protected by the 6th amendment
15 requires that the accused have counsel acting in the role of an
16 advocate. Anders versus California 386, US738, 745, 875 S.Ct.
17 1396, 1399, the right to the effective assistance of counsel is
18 the right of the accused to require the prosecution's case to
19 survive the crucible meaning adversarial testing. It's stated if
20 the process looses it's character is a confrontation between
21 adversary the constitution the guarantee is a violated. Cronic,
22 104 S.Ct. At 2045-46.

23 Strickland versus Washington, the test applies to challenges
24 of constitutional waivers of effective assistance of counsel at
25 all critical stages. See Hill versus Lockhart, versus Kentucky,

1 versus Frye, versus Cooper. See McMann versus Richardson, 397
2 U.S.759, 771, 90, SC. T 1441. The Sixth Amendment requires
3 effective assistance of counsel at all critical stages critical
4 proceeding. Here the question is the fairness or the
5 reliability of the waiver was it caused by ineffective
6 assistance of counsel.

7 MR. JOHNSON: Your Honor, at this point I have to
8 object and move to strike all that testimony just to
9 preserve it for the record. First of all he has a
10 lawyer who is suppose to make his legal arguments for
11 him. Second of all, this is unresponsive to any
12 questioning. He is just rambling off a piece of paper
13 and listing cites and I object and move to strike all of
14 that testimony.

15 THE COURT: I'm giving him some leeway, but Mr.
16 Williams what you need to do is state in your own words
17 without reading all these legal citations the reasons
18 why you believe that counsel, standby counsel, was
19 ineffective and what he did that put you in a position
20 that you felt was inappropriate for you to be have to
21 represent yourself.

22 I understand -- I understand what your argument is.
23 I understand that what you read basically says that he
24 was ineffective in failing to either discuss with you
25 the issues relating to the case, or issues relating to

1 your ability to be able to determine whether or not you
2 should waive your right to counsel, but to the extent
3 that you have legal citations, that's what your attorney
4 is here for. So you just need to state in your own
5 words what you think occurred and what you believe
6 occurred that put you in a position to have to decide to
7 represent yourself and whether or not you were properly
8 informed of the things to consider in making a decision
9 as to whether or not you should waive your right to
10 counsel.

11 DIRECT CONT'D:

12 Q Do you understand that Mr. Williams?

13 A Yeah, I understand what she said.

14 THE COURT: Because when you speak in your own
15 words I can understand it a lot better than what you
16 are reading from the paper.

17 Q So, back to Mr. Delaney and his role as standby
18 counsel. One of the things that you told the Court was about
19 him not telling you about the rules and procedures and being
20 able to cross examine the State's witness once they took the
21 stand, is that correct?

22 A Yes.

23 Q Is there anything else in regards to Mr. Delaney's role
24 as your standby counsel that you feel he made mistakes and was
25 error?

1 A I mean we -- I'm facing-- I was facing criminally
2 sexual conduct first degree with a minor. It's a family
3 oriented case. My uh -- the uh -- I mean I explained to him my
4 whole situation, my family situation.

5 Q What did you explain to him?

6 A Can I at least just refer to the transcript?

7 Q In your own words. Hold on a second. You were there
8 with him. He was there with you. What did you tell him about
9 family situation that you are talking about?

10 A I spoke about it on the stand in my transcript.

11 Q Tell us now?

12 A I told him my entire life's story.

13 Q Okay. And how did that relate to your going to trial
14 on these charges?

15 A Because the accusers in my case, for one, they
16 fabricated this case and they wanted to drop the charges but
17 they were threatened by the State that they couldn't. I told
18 him that. I mean I was offered time served.

19 Q Did he tell you --

20 A Yeah, he told me. It's on the record. The State spoke
21 it on the record. He came to me multiple times and the
22 solicitor came to me multiple times for time served for a lesser
23 included offense; assault and battery of high an aggravated
24 nature. I refused to take their plea multiple times because I
25 did not do the crime at all.

1 MR. JOHNSON: Objection. Actually innocence is
2 not a claim in PCR.

3 MR. BROOKS: I would just ask the Court to let him
4 answer and let him explain it.

5 THE COURT: Yes, sir, and I understand this is not
6 unlike similar testimony which we've heard that somebody
7 was made an offer and they refused the offer. The
8 question -- the question is is that how did that -- what
9 was it that caused you to refuse the offer and what did
10 they do during the course of the representation that
11 effected your ability to be able to get a fair trial or
12 that you can point to that shows they were ineffective.
13 And let me say -- and I'm talking way more then I
14 usually talk Mr. Williams -- I did read the transcript.
15 I read the comments that you made to the Court before
16 the sentence was imposed. I am aware that there was
17 some discussion about ABHAN offer based upon the things
18 that are in the record. So I did read the transcript.
19 I did read the testimony of the witnesses who testified.
20 I did read the questions that you asked them on cross
21 examination for those that you did ask questions and I
22 am familiar with that. I understand that there was a
23 conflict that you felt that you and your attorney could
24 not get along and that you wanted him to be relieved of
25 counsel and I read those things. So you just need to

1 tell me exactly what else occurred that I may not it be
2 aware of that is not reflected in the record.

3 MR. WILLIAMS: In 2009 I filed a fast and speedy
4 trial motion. A motion to suppress the evidence and
5 motion to dismissal to the clerk of courts multiple
6 times before I even seen counsel and when he came to see
7 me he told me it was no such things as a fast and speedy
8 trial motion. I asked him about my preliminary hearing
9 and he said there I waived. There's no need for a
10 preliminary hearing because they have probable cause.
11 It's just about probable cause and they always find it,
12 so there is no need for a preliminary hearing.

13 DIRECT EXAMINATION

14 CONT'D BY MR. BROOKS:

15 Q Mr. Williams, let me ask you this, how were you in jail
16 before you actually went to trial?

17 A I turned myself in when I found out I was arrested --
18 they was looking for me for this charge on March the 31st of
19 2009.

20 Q Okay. I went to trial on May the 26th of 2010?

21 Q And you stayed in jail the entire time?

22 A That entire time.

23 Q Okay, go ahead. I didn't mean to interrupt but I
24 wanted to get that out.

25 A So I filed for multiple fast and speedy trial motions

1 and they didn't exist. I heard they had existed by a fellow
2 inmate. That's all I had to rely on.

3 Q Mr. Williams how far did you go in school?

4 A I never completed the 8th grade.

5 Q Okay, go ahead and finishing the question that you are
6 talking about?

7 A I went to the 9th grade. I completed the 8th grade.

8 Q Okay, and I didn't mean to interrupt you but I wanted
9 to hi-light that. What else happened after you said you relied
10 on the inmate and filed these motions?

11 A I mean facing the charge like that I asked them is
12 there any way -- I just wanted -- I didn't want to plead at
13 all. We had no communications at all really about this. I
14 asked them to contact my family members who I felt that would
15 assist me who I knew that didn't know about my case because they
16 are not in relationship with that side of the family. None of
17 them was contacted so I could try to obtain an attorney or
18 anything.

19 Q How old are you Mr. Williams?

20 A I am 26 now.

21 Q So back then?

22 A I was 20.

23 Q Okay. All right. Go ahead.

24 A And I wasn't advised much of nothing. Facing the
25 charge, discussing with them, but I see the Indictment. The

1 Indictment that I had if I would have had my fast and speedy
2 trial -- if I'm even guaranteed the right to a fast and speedy
3 trial or if he would had acknowledged my motion of suppression
4 of the evidence or dismissal. The allegations that was directed
5 towards me in the first Indictment on June the 18th of 2009
6 alleges no vaginal penetration or nothing. It alleges oral
7 intercourse and that's on June the 18th of 2009. The whole
8 allegations in this Indictment has nothing to do -- I have the
9 Indictment. It has nothing to do with vaginal -- with the
10 accusation that I went to trial for or any of the reports that I
11 was accused of doing. Had me timely being able to go in front
12 of the judge or for a preliminary hearing or even to know that I
13 was even being accused of these allegations that really the
14 solicitor had to make up because I am not being accused of --

15 MR. JOHNSON: Objection to speculation on the
16 solicitor making up the charge Your Honor.

17 THE COURT: I will overrule the objection. I'm
18 allowing him to testify and then you can ask him
19 questions on cross examination.

20 MR. JOHNSON: Thank you, Your Honor.

21 Q Go ahead Mr. Williams.

22 A Well, I have -- I have the warrant. I have the police
23 reports. I have the doctor medical reports. I have every
24 accusation that was ever alleged against me by the victim's mom
25 or by the victim and no report in my discovery or the trial

1 transcript was I ever alleged, not one time of any of the
2 accusations that was in that first indictment. No where. So
3 the only person whoever put those allegations together in that
4 Indictment had to create that.

5 Q Let me ask you this. You have stated to the Court that
6 you were strongly convinced of your innocence, is that correct?

7 A I'm one hundred percent. They are convinced of my
8 innocence. My grandmother and victim do not want to have
9 anything to do with this charge right now. They would dismiss
10 it.

11 Q Let me finish asking. Is that something that you
12 communicated to Mr. Delaney when he was still your counsel?

13 A Absolutely.

14 Q Okay. Did you -- and are you saying to the Court that
15 you felt frustrated and had no other recourse but to represent
16 yourself because of the that difference of opinion between you
17 and Mr. Delaney?

18 A If on June the 18th of 2009 I'm not being alleged to
19 have actually committed a -- a -- a -- a rape is what it is.
20 It's hard to even say. But if I'm not even being alleged in
21 this Indictment to have done it what I went to trial for doing
22 and knowing that I filed a motion for suppression of evidence
23 and a dismissal if my attorney -- if my attorney would have
24 advised me that I am being indicted and it was true billed on
25 June the 18th of 2009 and I went in front of the courts and what

1 I was being -- and the warrant's allegations is totally
2 different, some type of evidence or something would have had to
3 be suppressed at a hearing, at preliminary hearing. How am I
4 being alleged in this Indictment to have not vaginally
5 penetrated this victim or had did anything with the assertions
6 of my genitals into this victim's vaginal area. I filed these
7 motions. These motions was ignored. Not even addressed by my
8 attorney and and he was my attorney for over a year.

9 Q Is that why you ended up representing yourself?

10 A Yeah, because he did nothing for me. He told me of no
11 -- no -- I mean I did what I could. I filed the motion of
12 suppression of evidence. I filed the motion for dismissal and
13 several fast and speedy trial motions to get these proceedings
14 done and he was telling me he was waiting on the State. There
15 was absolutely nothing that he could do. And due to it not
16 being filed, due to it not being acknowledged or addressed
17 allowed the State to prepare and falsify and fabricate and amend
18 the Indictment. After I waived my -- the Indictment I went to
19 trial for happened after I waived my counsel and I had the
20 attorney -- had my standby counsel, attorney at that time had
21 put into effect those motions that I filed to the clerk of
22 Court, or had me have a preliminary hearing something would have
23 had to be different because something would have had to be done
24 behind me being indicted -- behind the accusations that is
25 totally diverse and does not constitute the elements that it

1 takes for me to be found guilty of the assertion of my genitals
2 into the victim's genitals. This was ignored and this allowed
3 13 days before my trial for amended Indictment that I didn't
4 know about to occur. I mean, I didn't know really nothing. All
5 I knew is I was innocent and I told him I will use my discovery.
6 That's all I knew. He didn't help me so ---

7 Q Let me ask you this. So basically that's why you ended
8 up representing yourself? You wanted to try and get rid of Mr.
9 Delaney?

10 A I wanted another. I didn't want him on my case. I
11 would have liked other counsel.

12 Q Now, you also raised issues about appellant counsel, is
13 that correct?

14 A Yes.

15 Q What are the issues that you allege ineffective
16 assistance of appellant counsel?

17 A I mean, since I can't read anything.

18 Q Just in your own words. What are you saying your
19 appellant counsel -- is there something they should have argued
20 or something they should have tell the judge?

21 A I felt like my waiver of counsel was invalid, for one
22 because ---

23 Q And you also waived your right to go to a jury trial,
24 is that correct?

25 A That was invalid.

1 Q Are those issues that you felt your appellant counsel
2 should have raised?

3 A Yes, and abusive discretion by the judge -- abusive
4 discretion by the judge for not -- for allowing insufficient
5 evidence. Allowing the solicitor to use false allegations of
6 false testimony and introduce it into the record when the
7 doctors never testified to any -- that there was any -- that it
8 was official or anything consistent actually of a rape even
9 occurring.

10 The solicitor reshaped what the -- what the expert witnesses
11 said in the emergency medicine physician.

12 Q And this is all part of people that you didn't know how
13 to cross examine, is that correct? You didn't know how to ask
14 them questions after the State asked them questions, correct?

15 A No. Mr. Delaney I also told him that I was emotionally
16 challenged and it was in my discovery that I was labeled
17 emotionally challenged and I went through mental health
18 institutions growing up all my life and with my family.

19 Q Did you tell Mr. Delaney that?

20 A Yeah, I told Mr. Delaney that and several other things
21 but I never heard nothing back from him.

22 Q Now let me ask you this, Trey, do you understand what
23 you are here today and the only relief you can get from the
24 Court is to get a new trial. Do you understand that? The only
25 relief the Judge Lee can grant you is to get you a new trial and

1 start over. Okay. And if Judge Lee grants that you can start
2 over with another lawyer and have a trial and have a jury trial
3 and all that. Do you understand that?

4 A Yeah, that you say that, yes.

5 Q Now and that's something that you do want, is that
6 correct? You want to start this over, right, because you don't
7 want to sit in jail for thirty plus years. You want to have
8 another crack at it, right?

9 A I mean if I had to have a new trial and that's it, yes.

10 Q Well, hold on a second. Listen to me carefully, Trey.
11 Either you get a new trial or you stay on the path you are on.
12 You do want a new trial?

13 A Yes.

14 Q Okay. Now, knowing that, okay, that's why we are here.
15 This is what we are trying to do for you. Do you feel that if
16 you got that new trial that you would have another lawyer that
17 you could tell these things to and put up a better defense, is
18 that correct?

19 A Yes, I talked to the doctors. The Doctor Dwight
20 Renolds and before Thomas L. Wilkin (phonetics) the emergency
21 medicine physician at the Piedmont Medical Center has passed
22 away in June of this year, but I spoke with him. Doctor Dwhite
23 Renolds, and both of them had agreed that they was going come
24 for my PCR hearing to testify that the blood from the
25 microbiology lab was a normal finding and all of the females of

1 all ages at various times because the blood was not detectable
2 from the human eye. It can be a speck of blood was found and
3 that it was never official or any sign of intrusion that was
4 there. That was in -- that was -- that was a finding in the
5 examine at all and in the emergency medicine physician who the
6 solicitor used to confirm that it was evidence consistent with a
7 rape. It was wrong. He said on the record that he does not
8 specialize in child sexual abuse and that he is emergency
9 medicine physician and his only job is to look at the physical
10 scraps and scabs and apply immediate care. But in at his
11 finding he sent off the -- the -- the -- the lab of a swab of
12 the vaginal area and sent it to a micro specialist who confirmed
13 -- that alleged that it was confirmed that it was blood, but it
14 was not -- that was not consistent with a rape. It was a normal
15 finding and she had an irritation down there that could have
16 came from anything.

17 The allegations was that I had committed this act on the
18 victim, but it was never official that the solicitor introduced
19 that herself. She asked the emergency medicine physician who
20 does not specialize in that field that would blood and a fissure
21 be consistent with a rape and he said yes. And I agree, blood
22 and a fissure would be consistent with a rape. He never said
23 that there was a finding and it was not a finding. And the
24 blood was a normal finding. I had an expert witness that would
25 have come today to testify today, the victim's mother and my

1 grandmother that was at trial. They do not want to uphold those
2 charges any more. I have been talking to them multiple times.
3 Quite often, and I wanted them here today and so ---

4 MR. JOHNSON: Your Honor. Objection at this time.
5 I let him go on long enough, multiple levels. First of
6 all speculation as to what these experts and other
7 witnesses would have said. He is not expert. He is not
8 allowed to give his opinion under 702 concerning any
9 type of medical findings. He is going into expert
10 testimony and it's all hearsay as well. So, I object
11 and move to strike on those grounds.

12 THE COURT: And I understand that it is hearsay
13 testimony. I understand what he is talking about is
14 what he believes that the witnesses would appear and
15 testify to, and of course under case law the witnesses
16 must appear at the hearing in order to be able to
17 testify to those things.

18 MR. JOHNSON: Thank you, Your Honor.

19 THE COURT: I noted that.

20 Q Mr. Williams is there anything else you want to tell
21 this Court?

22 A Yes. I can refer to these transcripts and show and to
23 my discovery right now to show it was not a fissure and I can
24 show from the discovery in the transcript that the doctors's
25 testimony never said that it was any finding of a sexual abuse

1 at all. Actually I can show in these transcripts that it was
2 only speculation that was. The solicitor waited -- the State 3-
3 -- an entire month after these allegations was brought forth to
4 get the examines done. It was only -- and the solicitor said
5 that if we -- if you would have had an opportunity to get the
6 victim to examine her earlier, would you have found any evidence
7 of a rape or sexual abuse and he said probably so. All of the
8 evidence used against me was speculation according to these
9 trial transcripts.

10 Q Okay. You heard Judge Lee she has got the transcripts
11 and she actually read them. Is there anything else you want to
12 tell the Court?

13 A As far as my ineffective assistance of appellant
14 counsel, my direct appeal attorney actually had the issues that
15 I wanted alleged and raised which I have here today, she agreed
16 they were meritorious. I have the letters from her. She just
17 forgot. I was on my direct appeal since 2010 and she filed my
18 initial brief in like 2012. And I do a lot of litigation in my
19 letters back and forth to my attorneys, so she asked me to
20 submit my own brief along with issues that I wanted her to put
21 in to her initial brief when she filed it. And I sent them to
22 her and I got multiple letters from her saying that she received
23 my issues and that she would consider them when she prepared the
24 brief. However when she had prepared the brief and I'd seen the
25 issue that she had raised I had filed a complaint and she

1 responded to me and she said that I'm sorry that you don't like
2 the issue that I raised. That you don't like the brief that I
3 prepared, but I asked you to send me the issues or a brief that
4 you wanted but I never received them. So either she forgot or
5 she deliberately did not choose to use them, but I got her
6 saying that she received my issues on multiple occasions and I
7 also got her saying that she didn't after the fact.

8 Q Okay. Is there anything else you want to tell the
9 Court?

10 A I mean I had -- I mean, for my direct appeal attorney
11 did not -- I don't want to leave the record messed -- I don't
12 want to leave my record messed up. Since my direct appeal
13 attorney -- I can show that my direct appeal attorney did not
14 raise the issue that she should have raised and that she got my
15 issues that I wanted raise. I got the list from her and I
16 got --

17 Q What issues do you think she should have raised that
18 she didn't?

19 A That a -- the invalid waiver of the jury trial.

20 Q Okay.

21 A My invalid waiver of counsel because I had my counsel
22 waiver. I waived my counsel on April the 16th of 2010. On
23 April the 16th of 2010 then the alleged Indictment that I was
24 indicted for allegations was or intercourse that I still allege
25 was made up by the solicitor because it doesn't support any

1 other documents or any other testimony or any other records in
2 the totality of this case of what is being alleged in those
3 allegations and in that indictment.

4 On the day of my trial the solicitor introduced the amended
5 Indictment that just alleges sexual battery as the allegation
6 that was committed in the Indictment. If I waived my counsel on
7 April the 15th of 2010 and I waived my counsel if I was under an
8 Indictment with allegations that is not supported by the record
9 or I don't think it's supported by the elements of the charge of
10 me being charged by both my trial Indictment and the Indictment.
11 My trial Indictment was in indicted before the Grand Jury on May
12 13th of 2010. The first Indictment has June the 18th of 2009
13 and both of them are true billed. Got the true true bill stamp
14 on the same day which is June the 18th of 2009. I have the
15 Indictment. They both have true billed on the same date which
16 was June the 18th of 2009 under the same charge but different
17 elements --

18 Q Okay.

19 A -- alleging two different accusations in the Indictment
20 at that time elements is totally different from the Indictment
21 of my trial and if -- how can I waive my counsel validly when I
22 didn't even -- wasn't even appraised of the nature of the
23 charges and the accusation that I was going up against. And I
24 wasn't asked any -- I wasn't asked any other -- any other
25 questions. I can't cite any cases. I was told I can't cite

1 anything.

2 Q Trey, what you are doing is you are testifying as to
3 facts as to what your lawyer did or didn't do. Standby counsel
4 did or didn't do, or what your appellant counsel did or didn't
5 do. And you said that your appellant counsel should have raised
6 the indirect waiver of counsel and waiver of a jury trial?

7 A Prosecutorial misconduct.

8 Q Okay.

9 MR. JOHNSON: Objection. That was not alleged in
10 the application.

11 MR. WILLIAMS: Yes, it was.

12 MR. JOHNSON: Withdraw my objection, Your Honor.

13 THE COURT: I got that it was raised. Maybe not
14 as to appellant counsel but there was an issue raised.

15 Q Mr. Williams, what do you mean by prosecutorial
16 misconduct?

17 A The solicitor deliberately misrepresented the facts of
18 the medical testimony by the doctors.

19 Q Okay.

20 Q Any other instances of prosecutorial misconduct?

21 A I can't specifically point to all the instances.

22 Q Mr. Williams, think about this. You have been living
23 with this for the last several years, right? Right? You have
24 been living with this, is that yes? Remember you can't nod your
25 head.

1 A I have been living with.

2 Q Nobody knows this better then you and what went on and
3 what went on in court, right?

4 A Right.

5 Q Okay. So you should know this as far as what you are
6 saying that the prosecutor engaged in misconduct on? You said
7 that the prosecutor misrepresented medical expert testimony,
8 correct?

9 A Yes.

10 Q Okay. Anything else that you feel that the prosecutor
11 engaged in misconduct?

12 A The prosecutor -- well, this can't really be proved by
13 fact though because the prosecutor advise me. Once I remove
14 counsel the prosecutor came to see and told me that if I was
15 that she knows that the allegations in my charge --

16 MR. JOHNSON: Objection hearsay.

17 MR. WILLIAMS: All right, I would not use it,
18 but --

19 MR. BROOKS: Judge, I would ask latitude and ask
20 him to explain what it is evidently this would have been
21 some discussion between him and the prosecutor after he
22 no longer had counsel.

23 THE COURT: Well, in order to raise the issue of
24 prosecutorial misconduct he has got to testified as to
25 what occurred, so I'll allow him to testify.

1 A On the record the prosecutor said that she had came --
2 once I removed counsel I had relied on her for procedures
3 because she stated on the record that she came to see me to ask
4 me about the plea and I had asked her procedurally how the
5 proceedings would go for the jury trial and all that, on the
6 record she was saying. So it clearly shows that I -- that my
7 standby counsel once I removed him I had no other communications
8 with him until I came for my trial and she told me that I should
9 not take a jury trial because if I'm found guilty I would have a
10 better chance of coming back on appeal but I should take this
11 plea today and because I would not get guilty based upon the
12 evidence but by technicality.

13 The Indictment -- the Indictment situation I feel like
14 the Indictment is insufficient and in error behind the two
15 different Indictments.

16 Q All right. All right. Now Mr. Williams you have been
17 here. You have been on stand for quite a while. I think we
18 have covered everything that you ever written me and written
19 this Court. Is there something we missed? You don't want to
20 talk about stuff we talked about again, but I think we got
21 everything in. Is that correct?

22 A I didn't know the proceedings of this trial. This PCR
23 going like this.

24 Q Mr. Williams, listen. You have been on the stand now
25 for a little over an hour and we talked about everything from

1 appellant counsel to standby counsel and what your standby
2 counsel did when he was still your counsel, okay.

3 A My invalid waiver of a jury trial.

4 Q We talked about that. Is there anything else that we
5 haven't talked about?

6 A Yeah, my judicial notice of adjudicated facts. Can I
7 be sure that the judge be able to see that?

8 Q Well, now she has got a copy of that. We pulled that
9 out. The clerk has given her a copy. It was filed on October
10 17th of this year.

11 Is there any other thing that you need to tell the judge
12 other than things that the Court can read? Is there anything
13 else that we haven't discussed?

14 A I ain't allowed to present it, so I guess I have to
15 close off.

16 Q Is there anything else that you need to tell the judge
17 that we haven't told her?

18 A It's a lot of stuff, but I have been affected the way I
19 was going to present my case. Evidently I am not able to present
20 it so -- I had a witness that I asked you to have subpoenaed
21 that would testify on behalf of me so it wouldn't be hearsay
22 with the doctor. Doctor Dwight Renolds said that he would come
23 in the response to a subpoena. The medical doctors who assisted
24 the emergency medicine physician at Piedmont Medical Center. I
25 have their names. They said they would come.

1 Q These are people that testified at the trial, is that
2 correct?

3 A Yes, but I was found guilty based off of evidence that
4 was insufficient and that they would not testify to.

5 Q Is there anything else in regard to PCR that we tell
6 the judge that we haven't said?

7 A The assistant people at Piedmont Medical Center did not
8 testify at trial.

9 Q Okay. What else do we need to tell the Court?

10 A We are at the end. I ain't able to present nothing.

11 Q What else do we need to tell the Court that we haven't
12 told?

13 A That you ain't helping me. That you lied out a lot to
14 me.

15 Q So now you're saying I lied and I hid stuff from you.
16 Is that what you are telling this Court?

17 A Yeah, I mean, I asked to you bring the issue -- my real
18 issue -- I had to quickly come up with what I had presented here
19 today because I sent you what I was going to use and argue and
20 alleged for my PCR. I sent you the only copy that I had.

21 Q Mr. Williams, what else do you need tell the Court that
22 that you hadn't told?

23 A You told me I was going to bring my stuff and you
24 didn't bring it.

25 Q Mr. Williams, listen to me. I am trying to help you.

1 You might not believe that, but I am trying to help you get a
2 new trial.

3 You talked about standby counsel. You talked about what your
4 standby counsel did before he was relieved. You talked about
5 your appellant counsel. You talked about certain issues that
6 you felt they should have raised. Okay.

7 Is there anything else you need to tell the Court that we
8 haven't discussed since you have been on the stand? Now I
9 believe we covered just about everything you sent me and
10 everything you filed?

11 A Not adequately.

12 Q Not adequately, but we covered it, is that correct?
13 You testified to it. Is that a yes? Is that a yes?

14 A Yeah.

15 Q Okay. All right. Now I am going to sit down and this
16 gentleman may have some questions for you, okay?

17 A Yes.

18 MR. JOHNSON: May it please the court.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. JOHNSON:

22 Q Mr. Williams, let's go from the beginning. One of the
23 first things you testified to is that Mr. Delaney didn't explain
24 the procedure of the trial to you, is that correct?

25 A Yes.

1 Q And one of the specific allegations is that you believe
2 that you were going to have a right to recall witnesses so you
3 didn't cross examine the witnesses, is that correct?

4 A Yes.

5 Q But in fact you actually cross examined witnesses, did
6 you not?

7 A Yes, I cross examined witnesses.

8 Q And you testified that the medical evidence doesn't
9 prove that you committed this crime, right?

10 A Right.

11 Q So you had a chance to cross examine those doctors,
12 correct?

13 A No.

14 Q You had a chance to cross examine those doctors did you
15 not at trial?

16 A No.

17 Q You didn't have a chance to cross examine?

18 A Not properly if I didn't know -- if I'm under the
19 impression that when I get to come back to present my case that
20 I get to recross examine these doctors according to the
21 questions that I wanted to ask then I did not have -- I have to
22 be advised of procedures of the proceedings at trial. So if I
23 was not advised the proper way then I didn't get a proper chance
24 to examine these doctors.

25 Q Are you aware that when you become your own lawyer you

1 have to do your own research?

2 A I wasn't aware or advised of that.

3 Q Did Judge Hayes not tell you there are dangers to self
4 representation?

5 A That's all he said, it was a danger because I wasn't an
6 attorney.

7 Q And you said you still wanted to represent yourself
8 right?

9 A I also asked if I get counsel.

10 Q Yes or no. You still asked to represent yourself, yes?

11 A When? I don't --

12 Q In the transcript of April 15th and 16th, 2010 when you
13 had Mr. Delaney relieved. You stated that you wanted to
14 represent yourself?

15 A Yes.

16 Q Okay, and he told you on April 15th that there are
17 danger to self representation, correct?

18 A Yes.

19 Q And you also state that the only evidence that was used
20 to convict you was fabricated, right? That was on your direct
21 examination. That all this evidence was fabricated. That the
22 solicitor used fabricated evidence to convict you?

23 A Yes, he used fabricated evidence to convict me.

24 Q But didn't the victim testify against you?

25 A Yes, she testified.

1 Q And she testified that you put your penis into her
2 vagina, correct? Not in those terms, but she stated that you
3 put your genitalia inside of hers. That was the testimony at
4 trial am I not correct?

5 A Probably so. I don't remember.

6 Q You also state that the -- you testify that the State
7 amended the Indictment after you went pro se or you were your
8 own attorney, right?

9 A Yes.

10 Q Okay. But you didn't object to the amendment of that
11 indictment did you?

12 A No.

13 Q And you state that Judge Hayes April 15th, 16th, didn't
14 advise you of all the rights to self representation, correct?

15 A Correct.

16 Q But you were adamant about representing yourself,
17 right?

18 A No.

19 Q In the transcript you asked him that you wanted to
20 represent yourself, correct?

21 A Yes.

22 Q Okay. So after that you didn't object to him allowing
23 you to represent yourself, did you?

24 A No.

25 Q Now, the waiver of a jury trial that was objected to by

1 you, right? You told the judge the next day you wanted a jury
2 trial. You didn't want to have a bench trial?

3 A That is not an objection.

4 Q Was it raised on appeal is my next question? Was that
5 the issue that your appellant counsel raised on appeal?

6 A Yes -- no. No.

7 Q Do you have a copy -- you have a copy of your appellant
8 opinion? What you put in your application?

9 A I allege involuntarily waiver. She did not. She
10 allege that I should have been granted a jury trial by the judge
11 when I went back and requested it. I alleged that my waiver of
12 jury trial was involuntary. Those are two different
13 allegations.

14 Q But you didn't object to your waiver of being
15 involuntary did you? The next day you go back and ask the judge
16 for a jury trial and he said no. You go on to a bench trial,
17 right?

18 A Yes.

19 Q And that's what your appellant counsel raised, correct?

20 A That I should have got granted the jury trial?

21 Q Yes, that's the issue the appellant counsel raised?

22 A Yes.

23 Q But you are saying that it involuntarily, right?

24 That's your testimony right now, correct?

25 A Yes.

1 Q Okay. You didn't object to that, did you? You are
2 representing yourself and you did not object to that issue, did
3 you?

4 A No.

5 Q Okay. All right. You also say that the judge abused
6 his discretion at this trial, correct?

7 A Yes.

8 Q You didn't object to that did you?

9 A The judge abusing his discretion?

10 Q Yes, you didn't say Your Honor I object, you are
11 abusing your discretion?

12 A No.

13 Q You also state that there was insufficiency of evidence
14 in this case?

15 A Yes.

16 Q You didn't object to that did you?

17 A No.

18 Q You state once again that solicitor allowed false
19 information by the doctors to help convict you, right?

20 A Yes.

21 Q But you didn't object to that issue when it came to
22 trial did you?

23 A No.

24 Q Last question I have for you Mr. Williams. The main
25 contention of prosecutorial misconduct is that the solicitor

1 made up this allegation. That's what you testified to on
2 direct, is that the solicitor had this allegation fabricated.

3 Am I not correct?

4 A Say that again.

5 Q Your testimony on direct when Mr. Brooks was asking
6 questions is that the solicitor, Miss Colton in this case, made
7 up these allegations?

8 A Yeah, in the Indictment. In the June 18th of 2009
9 Indictment.

10 Q But once we already established you did not object to
11 that Indictment did you?

12 A I was never presented that Indictment.

13 Q But she read it at your trial did she not?

14 A No, she didn't.

15 Q Well, the next question is did you stop her and say,
16 hey, I've never seen this Indictment before?

17 A No.

18 Q So you didn't object to it is my question?

19 A No,

20 MR. JOHNSON: That's all I have Your Honor.

21 MR. BROOKS: Just briefly.

22 REDIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q Mr. Williams, in response to Mr. Johnson's questions
25 and the fact that you didn't object to certain things. You know

1 that stuff, is that correct.

2 A No, I didn't know nothing about -- no, to object.

3 Q And you were relying on some assistance from your
4 standby counsel, correct?

5 A Yes.

6 MR. BROOKS: Okay. No other questions.

7 THE COURT: You may step down. Thank you.

8 Any additional witnesses Mr. Brooks.

9 MR. BROOKS: We call Mr. Delaney to the stand.

10 ERIK DELANEY, called as a witness, having been
11 duly sworn by the clerk, was examined and testified as
12 follows:

13 THE COURT: Yes, sir. If you state your full name
14 please.

15 MR. DELANEY: Erik Delaney.

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q Mr. Delaney how are you doing?

19 A Fine.

20 Q You were actually were appointed to represent Mr.
21 Williams?

22 A That's correct.

23 Q In your capacity through the public defender's office?

24 A Yes, it would have been I think the end of March
25 beginning of April 2009.

1 Q You were his attorney all the way up until you got
2 relieved in April 15, 2010?

3 A Yes, approximately a year.

4 Q During this time did you investigate this case or did
5 you have an investigator on this case?

6 A I did some I guess you would say investigative work
7 myself. I went to the house where the allegations stemmed.
8 Talked to I think it was the grandmother that I heard
9 referenced, Miss Dakus (phonetics), I believe is who I met with.
10 From the best that I can remember the alleged victim was there
11 at the time, but I can't say how much I had a discussion with
12 her. I know she was there. I don't believe I ever talked to
13 her at the house though.

14 Q Now, once you got relieved and were appointed as
15 standby counsel, you sat with with Mr. Williams during the
16 trial, is that correct?

17 A Yes, I guess technically I sat behind him. First row I
18 think is what I remember.

19 Q Did you at any time raise an issue about his competency
20 to go forward and represent himself?

21 A Not that I recall.

22 Q One you heard him waive his right to a jury trial did
23 you tell the Court that you had any issues with that and relate
24 that maybe back to his competency in understanding what was
25 going on?

1 A Well, obviously what I recall about my conversations
2 with Trey before I was relieved and after, obviously before I
3 was relieved I advised him to have a lawyer on these charges.
4 If it wasn't going to be me somebody needed to represent him and
5 went over with him the danger of representing himself, et
6 cetera. After I was relieved and was standby Mr. Williams
7 wanted a bench trial. I think there was some discussions we had
8 about that in the holding cell, and you know, I told him to
9 think long and hard about that. That I thought a jury trial
10 would be more appropriate. But that's what I remember about
11 those conversations.

12 Q Okay. Was there of any plea negotiations in this case?

13 A There were. Yeah, I think he had mentioned that he had
14 a deal up until the day that I stopped representing him. It got
15 progressively better and at the very end during my
16 representation it was I guess you could it was as good as a
17 reduction down to ABHAN for time served. Registry was the
18 sticking point from what I remember. They wanted him to
19 register and Mr. Williams was not going to register. That was
20 kind of sticking or breaking point.

21 Q So as he testified that deal was the deal that they
22 offered?

23 A Yeah, that was the deal from when I was representing
24 him that was the deal that was being offered and I think even
25 through when he was pro se I think as he said the solicitor was

1 going to see him at the jail and I think there was some
2 negotiations being discussed at that time.

3 Q Okay. During the trial of the case did you as his
4 standby counsel recognize any questions ever competency about
5 Mr. Williams or his ability to understand the rules and
6 procedures as they were going on in the course of his case?

7 A I don't specifically recall Mr. Williams coming to me
8 and asking me any specific questions. One of the things I do
9 recall stands out, from what I remember Mr. Williams was very
10 meticulous about writing a lot notes, questions he was going to
11 ask in anticipation of these witnesses. I had seen those in the
12 holding cell. But at some point very early on in the trial in
13 my opinion I remember some conversations with him back in
14 holding cell where essentially it was my opinion he just gave up
15 and said was not interested. Did not care about going forward
16 as far as cross examining the witnesses. That's what stands out
17 to me about -- what I remember about the trial is him just kind
18 of giving up in middle of the trial.

19 Q When that became apparent to you did you raise that as
20 issue to the judge?

21 A I don't recall.

22 Q If you don't recall you would rely on what's in the
23 transcript?

24 A Yeah, I don't believe that's in the transcript.

25 Q And if there is anything I guess it is fair to say if

1 there is anything that you don't necessarily recall you would
2 rely on the transcript?

3 A That's correct.

4 MR. BROOKS: No other questions judge.

5 MR. JOHNSON: Just briefly, Your Honor.

6 CROSS EXAMINATION

7 BY MR. JOHNSON:

8 Q Mr. Delaney, following up with Mr. Brook's questioning,
9 what I gleam from your testimony is that you did not see any
10 issues of competency from Mr. Williams?

11 A No, in my opinion no.

12 Q And you also testified that you advised him of the
13 danger of self representation, correct?

14 A Yes.

15 Q Can you extrapolate on the different danger of self
16 representation that you would have explained to Mr. Williams?

17 A One of the main things I would have discussed with him
18 is the potential penalties with his type of a charge, with some
19 of the issues that we are we going to have to deal with in this
20 trial. The cross examination of doctors we would have discussed
21 as well as far as I thought would have been dangers to him.

22 Q And that he can't call himself as witness?

23 A Yes.

24 Q And did you advise against him having you relieved as
25 counsel?

1 A I did.

2 Q And you were aware of his prior record?

3 A I was.

4 Q And in your professional opinion do you think he had
5 sufficient experience with the criminal justice system?

6 A I honestly don't recall as far as how extensive
7 his record. From what I remember I didn't think Mr. Williams
8 had too much of an adult record. I think most of his history
9 was with the juvenile justice system from what I remember, and
10 given his age when I represented him that was probably the case.

11 MR. JOHNSON: Thank you, Your Honor. No further
12 questions.

13 MR. BROOKS: No other questions of Mr. Delaney,
14 judge.

15 CROSS EXAMINATION

16 BY THE COURT:

17 Q Mr. Delaney, in the the transcript of record in April
18 of 2010 in which there was a motion to have you relieved as
19 counsel. For him to represent himself, do you recall -- the
20 record seems to discuss part of the dispute was about the speedy
21 trial issue and when the trial would take place. Were there
22 other issues relating to your relationship, your professional
23 relationship with Mr. Williams and your representation of him
24 that also contributed to his seeking to have you relieved and to
25 represent himself?

1 In other words was there something else besides just
2 when the trial was going to take place?

3 A I think Your Honor the main issue was the one that was
4 reflected in the transcript as far as when he could get to Court
5 and what I was saying to him. What I was telling him as far as
6 when that could happen. That was an issue that we were having
7 -- he was having with me with the case. I don't recall anything
8 else that stood out to me.

9 Q Other than the judge telling him that it was dangerous
10 for him to represent himself, do you recall any specific
11 discussions that may have taken place about -- either with the
12 judge or with you, and I know you mentioned a couple of things
13 about I guess the Faretta criteria in the discussion with him
14 about whether he was competent or able to represent himself and
15 what factors should be taken into consideration and whether to
16 represent himself?

17 A You are asking me do you recall having that
18 conversation?

19 Q Do you remember having a conversation with him?
20 Specifically, do you remember the judge specifically covering
21 those criteria with him during any discussions?

22 A As far as just what's on the transcript of record, is
23 what I remember with the judge, and I just know that it was an
24 on again. This was not something that was new with myself and
25 Mr. Williams. There were occasions where I would go see Mr.

1 Williams. He would want to fire me. I would have him brought
2 up here to the holding cell. That would change. So that was
3 something that was in fact un uncommon regarding myself and him.
4 So I know on a couple of different occasions I did tell him,
5 hey, I don't it's in your best opinion to represent yourself.
6 This is why -- but I don't remember as far as other then the one
7 time I think it was on the transcript that Judge Hayes
8 instructed him of some of the dangers.

9 Q And were you the only attorney who represented him
10 before Judge Hayes allowed him to represent himself?

11 A That's correct.

12 THE COURT: I don't have anything else. Any
13 additional questions?

14 MR. JOHNSON: No, ma'am.

15 MR. BROOKS: No, ma'am.

16 THE COURT: You may step down counsel. Thank you.

17 MR. BROOKS: Judge, that is applicant's case. He
18 did want me to make sure that there was one other issue
19 in regards to the judge letting everybody go. He felt
20 that was an example of judicial abuse of discretion. I
21 told him that I would make sure that I put that on the
22 record for Your Honor to consider.

23 THE COURT: Anything from the State?

24 MR. JOHNSON: Argument wise?

25 THE COURT: Witness or argument?

1 MR. JOHNSON: No further witnesses, but yes we do
2 have argument.

3 THE COURT: Okay. I guess I will let Mr. Brooks
4 go first.

5 MR. BROOKS: Judge, we think that this situation
6 is one that calls for Mr. Williams to have his PCR
7 granted and be given a new trial. What was most
8 concerning is that even during his testimony, even
9 through Mr. Delaney's testimony as to whether or not
10 this individual is totally competent to understand all
11 the rules and procedures that was going on and the fact
12 that waiving a jury trial and asking for a bench trial
13 and how problematic that was for him and to be able to
14 really have a true understanding of what was going on.

15 We feel that during the course of the trial while
16 standby counsel, you know, is obviously not the actual
17 counsel to raise these issues in Court, standby counsel
18 is there for a reason. And when there was issues like
19 Mr. Delaney said when he saw that he thought Mr.
20 Williams had just given up, that is something that
21 should have been at less raised during the course of the
22 trial. Raised an objection or something at some point.

23 Judge, we think that's a duty that at least standby
24 counsel would have had to raise because obviously the
25 whole system is predicated on cross examination of

1 prosecution's witnesses, and without any cross
2 examination -- I mean, lawyers go to school for years
3 and years for a long time to figure out how to do it but
4 without just the -- you know, the gentleman has
5 basically given up and that pretty much, you know, led
6 him to the wolves so to speak. And he had a standby
7 counsel. Standby counsel stands by for a reason and at
8 least at that point when he saw that the client was
9 unable to really understand and basically had given up
10 as he testified, standby counsel should have jumped in
11 and intervened or done something to bring that to the
12 Court's attention.

13 In addition to that as Mr. Williams testified to
14 issues that he had with appellant counsel and issues
15 that he had with standby counsel prior to standby
16 counsel being relieved as he has testified to on the
17 record. Judge, that is just something that stands out
18 to me in light of what Mr. Delaney had testified to and
19 we respectfully ask the Court to grant a new trial.

20 THE COURT: Yes, sir.

21 MR. JOHNSON: Thank you, Your Honor. As to -- I
22 will take them in Order. As to competency of Mr.
23 Williams, State's position is that there was no
24 objection at the trial about his competency and there
25 has been no report about his competency presented here

1 at the PCR hearing and therefore speculation as to
2 whether or not he was not competent. It's their burden
3 of proof to show that he was not competent at the time
4 of the trial or at the time of the charges. Simply that
5 has not been met the burden of proof here today.

6 As far as standby counsel, State's position is
7 there is no constitutional right to standby counsel.
8 The first case I present is United States versus
9 Lawrence, cite 161, F.3d, 250 at 253. That's Fourth
10 Circuit, 1998. "Sixth amendment does not require a
11 Court to grant an advisory counsel to a criminal
12 defendant who chooses to exercise his right to self
13 representation by proceeding pro se. Later in Lawrence
14 it is noted that there is no error in limiting the scope
15 of standby counsel responsibility because placing
16 reasonable limits on the advice to be given by standby
17 counsel, that a Court was under no obligation to provide
18 in the first instance does not constitute an abuse of
19 discretion. It follows thereafter is that once he
20 relieves counsel and standby is appointed there is no
21 constitutional right to standby counsel.

22 Judges, as Your Honor knows will do it. Will
23 appoint standby counsel to help the proceeding move
24 along, but standby counsel does not argue on the
25 applicant's -- well, defendant or applicant's behalf.

1 So because there is no violation -- there is no duty and
2 constitutional right to standby counsel there can be no
3 effective assistance of standby counsel.

4 As far as ineffective assistance of appellant
5 counsel has been raised here in the hearing today as
6 Your Honor knows that appellant counsel can only raise
7 issues that were objected to at the trial and preserve
8 for appellant record. I specifically asked Mr. Williams
9 did he object as counsel, as his own counsel to
10 Indictment issues, to the proceeding pro se, to waiver
11 of jury trial, the abuse and discretion of the judge
12 insufficiency of evidence, and the solicitor bringing
13 false information by the doctors. He candidly admitted
14 that he did not object to it therefore it is not
15 preserved. Appellant counsel would have a duty not to
16 raise those issues because they are frivolous. So, the
17 State's position is there no ineffective assistance of
18 appellant counsel.

19 As to the prosecutorial misconduct claim, he has
20 presented no evidence that the solicitor did anything
21 wrong in this case. She amended the application. There
22 was no objection to that therefore it is not preserved
23 for appeal and he did not show that the medical experts
24 fabricated any of their testimony.

25 As Your Honor pointed these medical experts didn't

1 testify here today and it is completely speculation that
2 they would change the outcome of this case.

3 For the forgoing reasons I ask that you deny this
4 application.

5 THE COURT: Mr. Johnson, let me ask, you had a
6 chance to read the transcript of the hearing in which
7 Judge Hayes made the decision to relieve counsel and to
8 allow the applicant to represent himself. Are all the
9 factors that would be required to -- all the factors
10 required by Faretta addressed during the course of that
11 hearing?

12 MR. JOHNSON: I would have to agree that they are
13 not, Your Honor, but they're not specific factors that
14 have to be considered. They are factors to be
15 considered, not exact factors that have to be met. Mr.
16 Delaney testified that he himself warned Mr. Williams
17 about the right of self representation and because of
18 the speedy trial motion he wanted Mr. Delaney off the
19 case. As further evidence Mr. Brooks is the forth PCR
20 attorney. That's a different issue, but Mr. Williams
21 has not been able to get along with any of his counsels.
22 So even under Faretta I would say that by his own
23 conduct he is not -- he has decided to go pro se.

24 Your Honor, just to add to my argument about
25 ineffective assistance of standby counsel I have two

1 other cases outside of the Fourth Circuit. First is
2 United States versus -- and I have to spell it.
3 Mikolajczwk, that is 137 F3d. 237, Fifth Circuit 1998,
4 holding that as defendant had no right to standby
5 counsel it seems unlikely that standby counsel's failure
6 to assist could be a violation of the defendant's sixth
7 amendment right. The second case is United States
8 versus Bova, B-o-v-a, 350 F.3d, 224. That's First
9 Circuit 2003. Noting that the defendant did not have
10 the right to both represent himself and to enjoy the
11 benefit of standby appointed counsel.

12 I hope that answers your question, the first part
13 of my argument.

14 THE COURT: Any response?

15 MR. BROOKS: Since the burden is on us and I heard
16 Mr. Johnson so eloquently state all those cases in
17 regards to Faretta, judge, I would ask the Court when
18 you are talking about going through these factors as
19 hi-lighted in Faretta, that because of what this
20 gentleman -- when you look at everything in the
21 totality, here is a young man who looking at everything
22 that Mr. Delaney testified to, he said right up until he
23 got relieved as counsel there was a deal to give him
24 ADHAN and time served. Obviously that would have been a
25 situation where this gentlemen would have been home and

1 as Mr. Delaney testified the issue was the registry.
2 When you look at it in the totality and then Mr. Delaney
3 testifies that Mr. Williams had written out questions
4 and then during the middle of the trial I believe Mr.
5 Delaney testified that he just gave up. Didn't ask
6 anything. Just didn't proceed. So I guess what I'm
7 saying is when you are talking about giving somebody
8 potentially a deal of time served and he gets 36 years,
9 you look at the fact that he got relieved as counsel.
10 Maybe a month later they are going to trial. He waives
11 his right to a jury trial which obviously, judge, as a
12 practicing criminal defense attorney I think that is
13 ludicrous to even think about doing, and then the next
14 day he comes in and says, no judge, I want to have a
15 jury trial and Judge Hayes says oh no, you've waived all
16 that. I think when you look at everything in the
17 totality and I think that is one of the things that you
18 look at, or should look at in a post conviction relief
19 action, is that when you factor all these things
20 together it just isn't necessarily fair and that
21 obviously here is a situation where, you know, the Court
22 perhaps should have gone through all of of these factors
23 because of the seriousness of what this gentleman was
24 facing versus the alternative here taking a plea he
25 would be home and that would cause -- should have caused

1 the Court to perhaps consider whether this young man
2 knew what was going on. Competent to stand trial with a
3 lawyer representing you is a different standard than
4 competent to try your own case. Two totally different
5 things; apples and oranges.

6 While, I don't think there is any question about
7 his competency to assist a lawyer in trying his case
8 which is the standard to determine if somebody is
9 competent to stand trial, but competent to try his own
10 case. He testified, Mr. Williams testified that he
11 wanted other counsel. So it's not like he choose on his
12 own on volition I want to represent myself. Don't want
13 any other lawyer. So I think when you factor all these
14 things in I think that he should have been had the
15 benefit of given all of those factors under Faretta, and
16 he is paying the price for that now. And we just think
17 as a result he should be granted a new trial.

18 MR. JOHNSON: May I reply, Your Honor?

19 THE COURT: Briefly.

20 MR. JOHNSON: Just to reply to Mr. Brook's
21 argument --

22 MR. BROOKS: Judge, I guess the last word don't I?
23 If the burden is on me I think I get the last word.

24 THE COURT: I will hear him out. I will give you
25 all the chance to say what you all need to say.

1 MR. JOHNSON: He goes into the fact that it's in
2 fairness of everything, but that's not a legal reason to
3 grant a PCR application.

4 Mr. Williams made a decision not to accept the
5 guilty plea. Mr. Delaney said that he refused it
6 because the sticking pointe was the registry. Time
7 served and registry. Now he has both, but he made that
8 decision and he has to live with the decision that he
9 makes. And I am not trying to be harsh when I say that,
10 but he should have accepted the guilty plea but he
11 didn't. But that's not the legal reason why to grant
12 this application. He made that decision. He proceeded
13 without counsel. He has a right to counsel. He does
14 not have the right to counsel of his choosing. He gave
15 that right up. He went to represent himself and it
16 didn't work out. Now he can't say in hind site, oh, Mr.
17 Delaney should have done this, should have done that.
18 The State's point is that this application should be
19 denied because he made his own decision. He was warned
20 of the dangers of self representation. Didn't go his
21 way and now he has to live with the consequences.

22 THE COURT: All right. I will review the
23 information. I would agree with Mr. Johnson that it's
24 not based upon whether or not he should have taken the
25 guilty plea. That's not -- you know, I get to hear that

1 all the time in post conviction relief. You know, it
2 doesn't always come out the way that someone thinks it
3 should and so there is always that hind site that
4 perhaps I should have taken the plea. But I will tell
5 you all that I am concerned about whether or not he was
6 adequately warned about the dangers of self
7 representation and given the issues relating to his age
8 and the seriousness of the offense and that in the lack
9 of a record to indicate that other than saying to him
10 it's dangerous to represent yourself without giving some
11 type of -- and I understand that Mr. Delaney testified
12 that he did give specific examples relating to cross
13 examination of the the physicians and being able to have
14 someone that would be able to ask those questions and to
15 help. I have some concerns about that.

16 I will review the information in particularly in
17 light of the document that was given to me today on the
18 -- with Mr. Brooks file relating to the judicial notice
19 of adjudicated facts. I have not had a chance to read
20 that and look at that. I will review all of the
21 information and go from there in making a determination
22 as to you know whether or not those are issues that are
23 cognizable under the post conviction relief. And so I
24 will review it and issue an Order.

25 MR. BROOKS: Thank you, Judge.

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MR. JOHNSON: Thank you, Your Honor.

* * *

(END OF TRANSCRIPT)

C E R T I F I C A T E

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3 I, the undersigned Aileen Butler, Official Court Reporter
4 for the 16th Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate, and
6 complete transcript of record of all the proceedings in the
7 captioned case, in the Circuit Court for York County, South
8 Carolina, on the 18th day of November, 2014.

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

11 September 29, 2016

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14 A. Butler
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Const. Art. I, §§ 3 and 14, during all phases of the criminal and appeal case, etc.” Applicant’s Application for Post-Conviction Relief at PCR Addendum 1, question 10-a. During the PCR hearing, it was determined that Applicant alleged that his waiver of counsel was invalid and that both his trial standby counsel and appellate counsel provided ineffective assistance of counsel. During the hearing, Respondent made a motion for summary judgment arguing that since Applicant represented himself, there could be no ineffective assistance of standby counsel.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, the Court had before it Applicant’s trial transcript, the records from the York County Clerk of Court regarding the convictions, Applicant’s appellate brief, and Applicant’s records from the South Carolina Department of Corrections.

Applicant testified at the PCR hearing. He explained that on April 15, 2010, he made a motion to remove Delaney as his trial counsel. Thereafter, Delaney was appointed to act as Applicant’s standby counsel during trial. Applicant testified that he did not have much communication with Delaney about the case. The first indictment, according to Applicant, contained allegations that were inconsistent with allegations the victim made or that the victim’s mother made. Applicant testified that he made a motion to relieve Delaney as trial counsel because he did not believe Delaney was doing anything for him. Applicant explained that Delaney did not seem to want to work with Applicant as standby counsel during trial. According to Applicant, Delaney failed to properly advise Applicant when to make objections during trial. Applicant, furthermore, testified that he did not cross-examine the State’s witnesses during trial because he thought the State’s witnesses were supposed to testify as witnesses for Applicant after the State closed its case-in-chief. In the end, Applicant explained that he represented himself at trial because Delaney failed to do anything for him.

Applicant then testified concerning how his appellate counsel, Lanelle Durant, Esquire, (“Appellate Counsel”) was ineffective. Appellate Counsel, according to Applicant, did not argue all the issues that he wanted her to argue. Specifically, Applicant testified that Appellate Counsel should have argued that Applicant’s waivers of trial counsel and a jury trial were invalid. Although Applicant did not specifically testify at the PCR hearing *why* his waivers of trial counsel and of a jury trial were invalid, Applicant’s PCR Application makes clear that, concerning his waiver of counsel, Applicant did not believe he was made aware of the dangers of self-representation before waiving counsel as required under *Faretta v. California*, 422 U.S. 806,

and #2

807 (1975). *See, e.g.*, Applicant's PCR Application at Exhibit #8 ("If the trial judge fails to address the disadvantages of appearing pro se, as required by the second prong of *Ferretta v. Calif.*, [sic] this is error of law, the court must look at the record to determine whether appellant had sufficient background or was appraised of his rights by some other sources[.]" Concerning Applicant's testimony that his waiver of a jury trial was invalid, it appears he was relying on the brief filed on his behalf by Appellate Counsel. *See, e.g.*, Applicant's Appellate Brief at 5 ("The trial court erred in not granting appellant's motion for a jury trial although Appellant had requested a bench trial initially but changed his mind two days later and asked for a jury trial after his attorney had been relieved and appellant was representing himself.").

Applicant also testified that the State committed prosecutorial misconduct because the assistant solicitor during his trial, Jennifer Colton, Esquire, ("Solicitor") misrepresented the facts of the medical testimony presented at trial. During the PCR hearing, Applicant did not testify *specifically* how the Solicitor misrepresented the facts at trial. A review of the record, moreover, does not help elucidate Applicant's argument on this ground. In Applicant's PCR Application, Applicant argues the Solicitor committed prosecutorial misconduct because she failed to provide certain information to Applicant. *See, e.g.*, Applicant's PCR Application at PCR Addendum 1, question 11-a (The Solicitor committed prosecutorial misconduct by "fail[ing] to disclose to the Applicant information that could have exonerated Applicant based upon the facts that the victim was not examine[d] by the doctors in the required time frames as was required by SC laws"). Moreover, in a document entitled "Judicial Notice of Adjudicated Facts," filed October 17, 2014, Applicant also argues that the Solicitor committed prosecutorial conduct in her presentation of certain facts to the court during trial.¹ *See, e.g.*, Applicant's Judicial Notice of Adjudicated Facts at 8 (The Solicitor committed prosecutorial misconduct "by way of misrepresenting the forensic evidence [] to the Courts, fraud upon the court by official court officers of the State, presenting perjured testimony and false documentation to deliberately deceive the Courts"). Accordingly, it appears that Applicant argues that the Solicitor committed prosecutorial misconduct in her representation (or lack thereof) of information to both Applicant and the trial court.

Upon cross examination at the PCR hearing, Applicant reiterated that Delaney failed to explain trial procedure. Again, Applicant testified that he thought he possessed the opportunity

¹ It is unclear whether this alleged improper presentation of facts occurred during the Solicitor's opening statements or closing arguments, or through some other mechanism.

to recall the same witnesses that the State called. Specifically, Applicant testified that he did not have an opportunity to cross-examine certain doctors who testified at trial because he failed to cross-examine them when they were on the stand as witnesses called by the State. Applicant, moreover, was not aware that he had to conduct his own research while acting as his own attorney. Applicant also testified that the Trial Judge informed Applicant that were dangers associated with self-representation but did not explain what those dangers were.

Next, Delaney testified at the PCR hearing. Delaney testified that he was appointed to represent Applicant around March 2009. Delaney explained that he was relieved as counsel in April 2010. Prior to being relieved as counsel, Delaney personally conducted some investigative work concerning Applicant's case. Delaney testified that he went to the home where the incident allegedly occurred and spoke with the victim's grandmother. Delaney then explained that during trial, he sat behind Applicant. Delaney also testified that he explained to Applicant the dangers of self-representation. Delaney also urged Applicant to think long and hard about proceeding in a bench trial. Delaney further testified that Applicant had informed Delaney that he had been offered a plea deal of Assault and Battery of a High and Aggravated Nature with registration on the Sex Offender Registry. Applicant, however, did not want to register as a sex offender, and thus, he did not accept the plea deal. Delaney explained that, during trial, Applicant was very meticulous about writing notes and potential questions to ask witnesses. Applicant did not ask Delaney any specific questions regarding the trial. According to Delaney, early on in the trial, Applicant gave up and explained that Applicant was no longer interested in the case.

On cross-examination, Delaney testified that he did not believe there were any issues regarding Applicant's competency. Delaney, moreover, testified that he would have advised Applicant of the dangers of self-representation, including: (a) the potential penalties associated with Applicant's underlying charge; (b) specific issues that would have to be addressed; (c) issues related to the cross-examination of the doctors who would testify during trial; and (d) the fact that Applicant could not call himself as a witness during trial.² Delaney testified that he specifically advised Applicant against having him relieved Delaney as counsel. Lastly, Delaney testified that he did not recall how extensive Applicant's prior record was but believed most of it consisted of juvenile matters.

² Rutledge asked Delaney "Can you extrapolate on the different dangers of self-representation that you would have explained to [Applicant]?"

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This Court then asked Delaney some questions. Delaney explained that the main issue with Applicant was that Applicant wanted the case to be tried in the near future. When asked whether he recalled any specific discussions with Applicant regarding self-representation, Delaney explained that he could only remember what was in the motion hearing transcript. Delaney reiterated that, on several occasions, he informed Applicant that it was not best to represent himself. Delaney again explained that the Trial Judge also instructed Applicant regarding the dangers of self-representation. Delaney, moreover, explained that he had been the only attorney to represent Applicant.

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 provided at the PCR hearing. This Court, further, has had the opportunity to observe the witnesses presented at the hearing, 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 (1976).

I. Waiver of Counsel

Applicant argues that his "waiver" of counsel was unconstitutional because he did not make a knowing and voluntary waiver of counsel. The Court notes, at the outset, that although Applicant phrases it as a "waiver" of counsel, it actually was a "relief" of counsel. Delaney was appointed to represent Delaney. Applicant decided, however, to represent himself, and thus, moved to have Delaney relieved as counsel. Nonetheless, the Court will review this issue as a waiver of counsel.

"The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to assistance of counsel before he can be validly convicted and punished by law." *Faretta v. California*, 422 U.S. 806, 807 (1975). A person, however, is not required to have counsel and may, instead, choose to represent himself. *See id.* "When an accused manages his own defense, he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel." *Id.* at 835. Therefore, for a defendant to represent himself, he must "knowingly and intelligently" forgo those relinquished benefits." *Id.* "To establish a valid waiver of counsel, *Faretta* requires the accused be: (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation." *Prince v. State*, 301 S.C. 422, 423-24, 392 S.E.2d 462, 463 (1990). "While

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a specific inquiry by the trial judge expressly addressing the disadvantages of a *pro se* defense is preferred, the ultimate test is not the trial judge's advice but rather the defendant's understanding." *Wroten v. State of South Carolina*, 301 S.C. 293, 294, 391 S.E.2d 575, 576 (1990). "In the absence of a specific inquiry by the trial judge addressing the disadvantages of proceeding *pro se*, [the reviewing court] will look to the record to determine whether [a PCR applicant] had sufficient background or was apprised of his rights by some other source." *Bridwell v. State*, 306 S.C. 518, 519, 413 S.E.2d 30, 31 (1992). "If the record demonstrates the defendant's decision to represent himself was made with an understanding of the risks of self-representation, the requirements of a voluntary waiver will be satisfied." *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576. If, however, "the record fails to demonstrate the [PCR applicant] made an informed choice to proceed *pro se*, with 'eyes open,' then the [PCR applicant] did not make a knowing and voluntary waiver of counsel, and the case should be remanded for a new trial." *Gardner v. State*, 351 S.C. 407, 412, 570 S.E.2d 184, 186 (2002).

On April 15, 2015, during a hearing concerning a speedy trial motion made by Delaney, Applicant informed the Trial Judge that he would like to relieve Delaney as counsel. Applicant and the Trial Judge engaged in the following colloquy:

Applicant: Uh, Your Honor, yes, sir. I think I want – Could I represent myself today? Could I be able to represent myself throughout my case today?

Trial Judge: Well I would have to relieve Mr. Delaney and it [sic] you want to proceed by yourself and represent yourself, you can't do half and half. You either have an attorney or you don't.

Applicant: Yes, sir.

Trial Judge: And if I relieve your attorney then you don't have one. And that's dangerous because you're not an attorney and an attorney could be of a benefit to you. And of course you've got an attorney appointed to you at no expense to you. But you have a right to hire an attorney and you also have a right to waive your right to counsel and proceed on your own if you wish. What do you wish to do?

Applicant: Well honestly what I ask was could I speak with him before I came in here but I wasn't able to. Right now I don't wish to bother him right now. I had some things I wanted to ask him. And he just said right now some things that I have wanted to ask.

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Trial Judge: Well I'll give you all a chance to do that. Would you want me to wait then and not hear anything further on this until you've had a chance to talk to your attorney?

Applicant: Yes, sir.

Trial Judge: All right. When can we do that? Can we do that first thing in the morning?

Solicitor: Yes, sir.

Motion Hearing Transcript of Record at 5:21-25 to 6:1-24. Accordingly, Applicant and the Trial Judge agreed to take up this matter the next morning on April 16, 2010.

On the morning of April 16, 2010, the Trial Judge began the hearing by asking Delaney to provide the procedural background behind Applicant moving to have Delaney relieved as counsel. Delaney explained that he had informed Applicant that since Applicant was "facing a charge that carries a maximum of life imprisonment, mandatory minimum twenty-five years . . . [Delaney was] really concerned for [Applicant] as far as representing himself at trial." Motion Hearing Transcript of Record at 8:4-7. Delaney also explained to the Trial Judge that: "[Applicant] has made it clear that he does not trust me, he does not believe me, he does think that I am not being truthful with him about his case." Transcript of Record at 8:7-10. Essentially, Applicant was discouraged that he could not go to trial in the immediate future. *See id.* at 8:10-12. Delaney had explained to Applicant that he did not have control over the docket. *Id.* at 8:14-15. Delaney explained to the Trial Judge that Applicant felt as if Delaney was misleading him. *Id.* at 8:20-21.

The Trial Judge then discussed with the Solicitor whether she would be able to try Applicant's case in the near future. *See id.* at 8:24-25 to 10:1-2. The Solicitor explained that trying the matter depended upon the availability of two physicians who were expected to testify at trial. *Id.* at 9:7-8. The Solicitor also explained that the South Carolina Law Enforcement Division ("SLED") had recently completed a DNA analysis of some evidence that the State intended to use at trial. *Id.* at 9:17-19. The Solicitor also expressed that she "was hesitant to call [Applicant's] case to trial [with] the defense not having all the discovery." Motion Hearing Transcript of Record at 10:1-2. Thereafter, the Trial Judge engaged in the following colloquy with Applicant:

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Trial Judge: Mr. Williams, I talked to you yesterday and told you about the dangers of self-representation and the benefits of having an attorney and your right to have an attorney. And of course your right not to have an attorney. I told you that it would be in your benefit to have an attorney and it's dangerous not to have an attorney. And if my memory serves me correctly you said you thought your family was arraigning to have – Mr. Wellborn?

Delaney: No. That was a different client.

Trial Judge: That was a different one. Okay. All right, so if you release or if you convince me that I should let Mr. Delaney cease to represent you, you will be without an attorney and you will have to go to trial on your own. All right, anything you want to say, keeping in mind what I told you also yesterday that everything's being taken down on the record.

Applicant: Yes, sir. Do you know – can I get a date set today in the courtroom when I can go to trial?

Trial Judge: Unfortunately not, because in this State not only to Mr. Delaney as a public defender to not set your trial date [sic], a Judge cannot either. It is very clear in South Carolina that the Solicitor controls the docket. I have certain ways I can assist them in picking a time but I can't pick a time. So right now it looks like it would be in the June term which is June 7th. So I'm going to encourage the State to try you the week of June 7th. Do you have a bond?

Applicant: That's what I was going to ask. Could I be eligible for some kind of a bond?

Trial Judge: Well, here's what I'm gonna do. I'm going to tell the State to try you in June. If they do not try you in June, you can come before the Court, either me or another Judge, and see about getting a bond set because you've been in jail for over a year. We'll either see about getting you tried or maybe let you out on bond. Now I'm not promising that. And I'm not promising if we set bond, obviously it would be something you could make. We wouldn't intentionally at least I wouldn't try to put it in a situation where I give you a bond but it would be hollow because I know you couldn't make it. But I will certainly give you the right if you are not tried in June to come back before the Court and seek a bond being set.

Motion Hearing Transcript of Record at 10:11-25 to 12:1-3. Applicant then explained to the Trial Judge that he was frustrated in not being able to get his case tried in the near future. *See id.* at 12:4-17. The Trial Judge thereafter continued his colloquy with Applicant:

Trial Judge: Well the bottom line is, it looks like it will be June and do you want the Court to relieve Mr. Delaney? And of course I remind you that

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means you – I'm not going to appoint another attorney, you don't get to pick – if you get an attorney appointed to you at the State's expense you don't get to choose that attorney. The State chooses, or the Judge does. And if I relieve Mr. Delaney then you are without an attorney and you will have to go to trial what they call *pro se*. That is without an attorney.

Applicant: All right. Yes, sir.

Trial Judge: Is that you want to do?

Applicant: Yes, sir.

Trial Judge: All right. Mr. Delaney, I am going to ahead now and appoint you as standby counsel for Mr. Williams[.]

Motion Hearing Transcript of Record at 12:18-25 to 13:1-8. Accordingly, Delaney was relieved as counsel for Applicant, and trial was scheduled in approximately two months.

In this matter, the Trial Judge did not specifically address the disadvantages of Applicant proceeding *pro se*. Instead, the Trial Judge merely explained to Applicant that representing himself would be “dangerous” and that an attorney “could be of some benefit” to Applicant. These comments to Applicant do not constitute a “trial judge addressing the disadvantages of proceeding *pro se*.” See *Bridwell*, 306 S.C. at 519, 413 S.E.2d at 31; see also *Wroten*, 301 S.C. at 294, 391 S.E.2d at 576 (where the South Carolina Supreme Court found that “the trial judge made no specific inquiry to determine whether petitioner made his choice to proceed *pro se* ‘with eyes open.’”). As explained above, “[i]n the absence of a specific inquiry by the trial judge addressing the disadvantages of proceeding *pro se*, [this court] will look to the record to determine whether [a PCR applicant] had sufficient background or was apprised of his rights by some other source.” *Bridwell*, 306 S.C. at 519, 413 S.E.2d at 31.

A review of the record makes clear that Applicant did not have a sufficient background to understand the dangers of self-representation. In determining whether “an accused has a sufficient background to understand the dangers of self-representation, the courts consider many factors,” including:

- (1) the accused's age, educational background, and physical and mental health;
- (2) whether the accused was previously involved in criminal trials;
- (3) whether the accused knew the nature of the charge(s) and of the possible penalties;

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- (4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation;
- (5) whether the accused was attempting to delay or manipulate the proceedings;
- (6) whether the court appointed stand-by counsel;
- (7) whether the accused knew he would be required to comply with rules of procedure at trial;
- (8) whether the accused knew of legal challenges he could raise in defense to the charge(s) against him;
- (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and
- (10) whether the accused's waiver resulted from either coercion or mistreatment.

Gardner v. State, 351 S.C. 407, 412-13, 570 S.E.2d 184, 186-87 (2002).

During the PCR hearing, Applicant exhibited little understanding of criminal proceedings. Shortly after Brooks began his direct examination of Applicant, Applicant asked Brooks "so I have to present my case the way you ask me the questions or can I present it the way I had it prepared to present?" Applicant continued on by stating "I had wanted to point to my Judicial Notice of Adjudicated Facts." The record indicates that Applicant was twenty-one years old at the time of the motion to relieve counsel hearing, and Applicant testified at the PCR hearing that he dropped out of high school in the ninth grade. Applicant also testified that he was "mentally challenged."³ Applicant, moreover, did not have any experience with criminal trial matters outside of an unspecified number of matters within the juvenile system.⁴ The facts of the instant matter are somewhat analogous to the facts in *Prince v. State*, 301 S.C. 422, 392 S.E.2d 462 (1990).

In *Prince*, the petitioner filed a PCR application alleging that he did not validly waive his right to counsel, and thus, that his guilty plea was invalid under *Faretta*. *Prince*, 301 S.C. at 423, 392 S.E.2d at 463. The petitioner had "pleaded guilty to escape and breach of trust and was

³ The Court acknowledges that the only evidence to support Applicant's allegation that he was mentally challenged at the time of the Motion to Relieve Counsel hearing was his self-serving testimony presented at the PCR hearing. At the PCR hearing, he testified that he was mentally challenged and that he had informed Delaney of his cognitive impairment when Delaney was still his attorney. However, even if the Court disregards Applicant's contention that he was/is mentally challenged, Applicant still did not have a sufficient background to understand the dangers of self-representation before relieving Delaney as counsel.

⁴ During the PCR hearing, Delaney testified that he did not recall how extensive Applicant's prior record was but believed most of it related to juvenile matters.

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sentenced to consecutive terms of one year and three years.” *Id.* Following a hearing, the PCR judge denied the petitioner’s PCR application. Thereafter, the petitioner filed a writ of certiorari with the South Carolina Supreme Court. Finding an “absence of a specific inquiry by the trial judge addressing the disadvantages of a *pro se* defense as required under the second *Faretta* prong, [the Court] look[ed] to the record to determine whether [the] petitioner had sufficient background or was apprised of his rights by some other source.” *Id.* at 424, 392 S.E.2d at 463. The Court determined that the petitioner did not possess a background sufficient to allow him to understand the dangers of self-representation.

The petitioner in *Prince* was twenty-two years old at the time of his plea; Applicant was twenty-one years old at the time of his motion to relieve counsel. The petitioner in *Prince* “was a high-school graduate and had some college education,” *see id.*; Applicant dropped out of school in the ninth grade. The *Prince* record “indicate[d] [the] petitioner was mentally disturbed at the time of his plea,” *see id.*; Applicant testified he had an intellectual disability at the time of his motion to relieve counsel hearing. “In response to questioning at the PCR hearing, [the] petitioner [in *Prince*] exhibited little understanding of criminal proceedings,” *see id.*; Applicant exhibited a similar misunderstanding of criminal proceedings at his PCR hearing evidenced, in part, by his belief that he did not need to cross-examine the State’s witnesses as they were called by the State, but instead, thought he could recall those same witnesses during the presentation of his case. After reviewing the record as described above, the *Prince* Court found that “the record [did] not demonstrate [the] petitioner was sufficiently aware of the dangers of self-representation to make an informed decision to proceed *pro se.*” *Id.* The Court, thus, held that “the PCR judge erred in finding a valid waiver of counsel.” *Id.* Accordingly, the PCR judge was reversed and the case was remanded for a new trial. *See id.* Just as in *Prince*, Applicant similarly did not have a sufficient background to understand the dangers of self-representation. This Court, thus, must review the record in this case, including the PCR hearing testimony, to determine whether Applicant was advised of the dangers of self-representation by some other source. *See Stevenson v. State*, 337 S.C. 23, 26, 522 S.E.2d 343, 344 (1999).

The record makes clear that Applicant was not apprised of the dangers of self-representation by any other source. As mentioned above, during the PCR hearing, Delaney testified that he *would have* advised Applicant of the dangers of self-representation, including:

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(a) the potential penalties with Applicant's underlying charge; (b) certain issues⁵ that would have to be addressed in preparing for trial; (c) issues concerning the cross-examination of doctors; and (d) the fact that Applicant could not call himself as a witness at trial. *See, e.g., Watts v. State*, 347 S.C. 399, 404, 556 S.E.2d 368, 371 (2001) (where the Supreme Court found that the solicitor's testimony that the trial judge "would have warned" the PCR applicant about the dangers of self-representation was insufficient to satisfy the requirements of *Faretta*). Moreover, Delaney testified that he informed Applicant that he could not call himself as witness in response to a leading question by Johnson.⁶

Outside of Delaney's testimony at the PCR hearing, there is no evidence in the record to show that Delaney explained these dangers to Applicant. Moreover, when asked by this Court whether Delaney recalled any specific discussions with Applicant regarding the dangers of self-representation, Delaney responded that he could only recall what was on the motion hearing transcript. Delaney also testified that the Trial Judge similarly instructed Applicant regarding the dangers of self-representation. However, in the Motion Hearing Transcript of Record, neither Delaney nor the Trial Judge specifically addressed the dangers of self-representation to Applicant. The record, also, does not reflect that Applicant was made aware of the dangers of self-representation by a source outside of Delaney or the Trial Judge. Accordingly, Applicant was not apprised of the dangers of self-representation "by some other source." *See Bridwell*, 306 S.C. at 519, 413 S.E.2d at 31.

Since Applicant did not possess the background sufficient to allow him to understand the dangers of self-representation, and because he was not apprised of those dangers by any other source, Applicant did not knowingly and intelligently waive his right to counsel. *See, e.g., Wroten*, 391 S.C. at 295, 301 S.C. 293 at 577 ("We find the record before us does not demonstrate petitioner was sufficiently aware of the dangers of self-representation to make an informed decision to proceed without counsel[.]"). Accordingly, Applicant has been denied his Sixth Amendment right to counsel, and his application for post-conviction relief is granted for this reason.

⁵ During the PCR hearing, Delaney did not elaborate on, or explain, these "issues."

⁶ Delaney testified that he explained (a) through (c) as noted above to Applicant. Following Delaney's response, however, Johnson posited to Delaney "and that he can't call himself as a witness?" to which Delaney hesitantly responded, "umm, yes."

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II. Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving the allegations in his application. *Hyman v. State*, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012). 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, 687, 104 S. Ct. 2052, 2064 (1984). Claims of ineffective assistance of counsel are evaluated under a two-prong test. *See Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). First, the applicant must prove that counsel’s performance was deficient. *Holden v. State*, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011). Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). To receive relief, a PCR applicant must overcome this presumption. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). 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.” *Suber*, 371 S.C. at 558, 640 S.E.2d at 886.

A. Standby Counsel

Applicant argues Delaney provided ineffective assistance of counsel for not adequately assisting Applicant throughout trial. Specifically, Applicant argues that Delaney “abandoned” him during the bench trial in front of the Trial Judge by failing to inform him of trial procedure, including how and when to cross-examine witnesses.

“The right to appear pro se exists to affirm the dignity and autonomy of the accused and to allow the presentation of what may, at least occasionally, be the accused’s best possible defense.” *McKaskle v. Wiggins*, 465 U.S. 168, 176-77, 104 S. Ct. 944, 950 (1984). Although, however, a defendant may represent himself, he is not entitled to simultaneously represent himself *pro se* and have counsel. *See State v. Stuckey*, 333 S.C. 56, 57, 508 S.E.2d 564, 564 (1998). In other words, in South Carolina, a defendant does not possess a constitutional right to “hybrid representation” whereby the defendant “choreograph[s] special appearances by counsel.” *Id.* Furthermore, although a defendant possesses the constitutional right to represent himself, “a

State may - even over objection by the accused - appoint a 'standby counsel' to aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." *Faretta*, 422 U.S. 806 at 834, n.46, 95 S. Ct. at 2541, n.46 (1975). (Emphasis added). The Sixth Amendment, however, "does not require a court to grant advisory counsel to a criminal defendant who chooses to exercise his right to self-representation by proceeding *pro se*." *United States v. Lawrence*, 161 F.3d 250, 253 (4th Cir. 1998). If appointed, standby counsel must allow the pro se defendant to "preserve actual control" over his case, and standby counsel's participation in the trial "must not destroy the jury's perception that the defendant is representing himself." *State v. Barnes*, 407 S.C. 27, 42 753 S.E.2d 545, 553 (2014). "[W]here standby counsel act[s] only within that limited role, the defendant cannot raise an ineffective assistance claim based on standby's performance or lack thereof." 3 Crim. Proc. § 11.5(f) The Constitutional Right to Self-Representation (2015); see also *United States v. Makolajczyk*, 137 F.3d 237, 246 (5th Cir. 1998) ("If [the defendant] had no right to standby counsel, it seems unlikely that standby counsel's failure to assist could be a violation of his Sixth Amendment rights.").

In this matter, Applicant decided to represent himself. Applicant, moreover, did not have a constitutional right to standby counsel. Since Applicant did not have a constitutional right to standby counsel, he cannot tenably claim that his standby counsel was ineffective. In other words, the law does not recognize ineffective assistance of *standby* counsel. Accordingly, Applicant's request to grant PCR on this ground is denied.

B. Appellate Counsel

Applicant also argues that his appellate counsel was ineffective for not raising the specific issues Applicant wanted her to raise. Applicant argues that Appellate Counsel should have raised both Applicant's invalid waiver of his right to a jury trial *and* his waiver of counsel. Appellate Counsel only raised and briefed Applicant's waiver of his right to a jury trial.

"A defendant is entitled to effective assistance of appellate counsel." *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). Appellate counsel, however, "is not required to raise every nonfrivolous issue that is presented by the record." *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). "For judges to second-guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy." *Jones v. Barnes*, 463 U.S. 745, 754,

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103 S. Ct. 3308, 3314 (1983). Thus, where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *See, e.g., Griffin v. Aiken*, 775 F.2d 1226, 1235 (4th Cir. 1985) (Appellate counsel “must be allowed to exercise [her] reasonable professional judgment in selecting those issues most promising for review[.]”). For a PCR applicant to show ineffective assistance of Appellate Counsel, the applicant must satisfy the two-prong *Strickland* standard: (1) the PCR applicant must show that appellate counsel’s performance was deficient; and that (2) but for appellate counsel’s deficiency, the result of the appellate proceeding would have been different. *See Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). In this matter, Appellate Counsel provided ineffective assistance of counsel.

On appeal, Appellate Counsel focused exclusively on Applicant’s waiver of his right to a jury trial. Specifically, Appellate Counsel argued that:

The trial court erred in not granting [A]ppellant’s motion for a jury trial although Appellant had requested a bench trial initially but changed his mind two days later and asked for a jury trial after his attorney had been relieved and appellant was representing himself.

Applicant’s Appellate Brief at 5. Appellate Counsel, however, failed to brief and argue Applicant’s waiver of counsel. In Appellate Counsel’s brief, she writes that during the motion hearing to relieve counsel, “Judge Hayes then explained to Williams the dangers of representing himself. The judge explained that Williams would be without an attorney and would represent himself at trial.” Applicant’s Appellate Brief at 6-7. It appears that Appellate Counsel interpreted the Trial Judge’s statement to Applicant that it was “dangerous” to represent himself as specifically addressing the dangers of self-representation as is required under *Faretta*. As has been detailed, however, this general statement *patently* did not satisfy *Faretta*. *See, e.g., Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (where the South Carolina Supreme Court ruled that “it [was] patent that if [appellate] counsel had raised the [subject] issue on direct appeal, [the defendant] would have been entitled to a reversal . . . [and] [a]ccordingly, [the defendant] has met his burden of demonstrating both that appellate counsel’s performance was deficient and that, but for the deficient performance, the result of his appeal would have been different.”). It, therefore, was deficient for Appellate Counsel not to brief and argue this issue before the Court of Appeals. This Court, moreover, is of the opinion that if Appellate Counsel would have raised this issue, the Court of Appeals would have determined that

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Applicant did not validly waive his right to counsel and would have remanded the matter to the trial court. Accordingly, since Appellate Counsel provided ineffective assistance of appellate counsel, Applicant's application for PCR on this ground is granted.

III. Prosecutorial Misconduct

In criminal prosecutions, the State possesses the duty to "refrain from improper methods calculated to produce a wrongful conviction . . . [and] use every legitimate means to bring about a just one." *Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 632 (1935). Prosecutorial misconduct occurs "when the government crosses the line between proper and improper methods." Peter J. Henning, *Prosecutorial Misconduct and Constitutional Remedies*, 77 Wash. L. Rev. Q. 714, 720 (1999). The label of "prosecutorial misconduct" "can be attached to as broad an array of acts as the prosecutor has authority to perform because the admonition to ensure 'justice' shadows every endeavor of the prosecutor." *Id.* In some instances, prosecutorial misconduct may "so infect[] the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S. Ct. 1867, 1872 (1974). "To constitute a due process violation, the prosecutorial misconduct must be of sufficient significance to result in the denial of the defendant's right to a fair trial." *Greer v. Miller*, 483 U.S. 756, 765, 107 S. Ct. 3102, 3109 (1987).

Applicant alleges that the State committed prosecutorial misconduct because the Solicitor misrepresented the testimony of the doctors who testified at trial and because Applicant's indictment was insufficient and erroneous. Applicant also alleges the Solicitor committed prosecutorial misconduct because she "failed to disclose to the Applicant information that could have exonerated Applicant based upon the facts that the victim was not examine[d] by the doctors in the required time frames as was required by SC laws". Applicant's PCR Application at PCR Addendum 1, question 11-a. During the PCR hearing, however, Applicant did not testify *how* the Solicitor misrepresented the testimony of the doctors at trial or *why* his indictment was insufficient and erroneous. Applicant, moreover, did not testify concerning what information the Solicitor could have provided Applicant that could have exonerated him. A review of the other materials in the record, moreover, does not help elucidate Applicant's arguments on these grounds. Accordingly, Applicant has not met his burden of proving the State committed prosecutorial misconduct. Therefore, Applicant's request to grant PCR on this ground is denied.


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ORDER

Based on all of the foregoing, this Court finds that Applicant has established a violation of his constitutional right to counsel and ineffective assistance of appellate counsel, requiring this Court to grant his application.

IT IS THEREFORE ORDERED that the Application for PCR is **GRANTED**. This matter is remanded to general sessions court for a new trial.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

July 14, 2016
Columbia, South Carolina

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COUNTY OF YORK STATE VS. Trey Williams

INDICTMENT/CASE#: 2009GS4602646

AKA: [blank] A/W#: K327945 Date of Offense: 2/23/2009

Race: B Sex: M Age: 21 S.C. Code §: 16-03-0655(A)(1)

DOB: [redacted] 1988 SS#: [blank] CDR Code #: 0385

Address: 984 Southland Dr

City, State, Zip: Rock Hill, SC 29730

DL#: [blank] SID#: [blank]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [] PLEADS

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First de

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] 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.

APPEARANCE: [Signature] 68591 SC Bar# [Signature] Defendant Pro Se (Knowing Waiver)

Colton, Jennifer S. SC Bar# [Signature] Attorney for Defendant (by Court)

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,

for a determinate term of 30 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:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP []

Total: \$ [] plus 20% fee: \$ [] [] days/hours Public Service Employment

Payment Terms: [] Obtain GED []

[] Set by SCDPPPS [] Attend Voc. Rehab. or Job Corp. []

Recipient: [] May serve W/E beginning []

*Fine: \$ [] Substance Abuse Counseling []

§ 14-1-206 (Assessments 107.5 %) \$ [] Random Drug/Alcohol testing []

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ [] pmts. of \$ [] beginning []

§ 56-5-2995 (DUI Assessment) \$12 \$ [] \$ [] paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ [] Other: []

§ 47.12 (Public Def/Prob) \$500 \$ []

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$100 \$ []

§ 50-21-114(BUI Breath Test Fee) \$50 \$ []

§ 56-5-2942(I) (Vehicle Assessment) \$40/ca. \$ []

§ 90.7 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ []

TOTAL \$ 30

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Janet Rich

Presiding Judge [Signature]

Judge Code: 2049

Sentence Date: 5-26-10

STATE OF SOUTH CAROLINA)
) CERTIFIED TRUE COPY INDICTMENT
 COUNTY OF YORK) 2013 JUN 12 PM 2: 49

At a Court of General Sessions, convened on May 13, 2010 the Grand Jurors of York
 County present upon their oath: DAVID HAMILTON
 YORK COUNTY, SC

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That on, about or between September 2008 and February 23, 2009, Defendant Trey Alexander Williams did in York County, South Carolina, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree, by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: **CHILD** [REDACTED] (Date of Birth: [REDACTED], 2002). All in violation of Section 16-3-655(A)(1), of the Code of Laws of South Carolina (1976, as amended).

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


 ASSISTANT SOLICITOR

AMENDED INDICTMENT:
DOCKET NO. 2009-GS-46-2646

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

WITNESSES

RHRD\Burris

The State of South Carolina
County of York

Defendant

COURT OF GENERAL SESSIONS

May 13 Term 2010

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

jwg

ARREST WARRANT NUMBER

K327945

Defendant

THE STATE

vs.

Witness:

ACTION OF GRAND JURY

TREY ALEXANDER WILLIAMS

C.C.C. PLS. AND G.S.

/s/ Jennifer Torsiello

06-18-09 True Billed

TRUE BILL

Foreperson of Grand Jury

Date:

5-13-10

VERDICT

Guilty - Sexual battery

involved sexual intercourse by

the Defendant, Trey Alexander Williams

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
FIRST DEGREE

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

CDR Code: 0385

Foreperson of Petit Jury

Date:

5/26/10

Judge

ARREST WARRANT

K- 327945

STATE OF SOUTH CAROLINA

County/ Municipality of Rock Hill Municipal Court

THE STATE against

Trey Alexander Williams
Address: 984 Southland Drive
Rock Hill, SC 29730
Phone: SSN:
Sex: M Race: B Height: 5'10" Weight: 235
DL State: SC DL#:
DOB: /1988 Agency ORI#: SC0460300
Prosecuting Agency: Rock Hill Police Department
Prosecuting Officer: William Burris
Offense: Criminal Sexual Conduct With A Minor First D
agree. Offense Code: 16-3-655
Code/Ordinance Sec: 16-3-655

This Warrant is CERTIFIED FOR SERVICE in the
County/ Municipality of York. The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: 2/27/09

RETURN

A copy of this arrest warrant was delivered to
defendant Trey Williams
on 3-21-09
Signature of Constable/Law Enforcement Officer SBlair 3533

RETURN WARRANT TO:
JANE NODLA, MUNICIPAL JUDGE
120 E. Black Street
Rock Hill, SC 29731-1706
803-329-5695

STATE OF SOUTH CAROLINA
County/ Municipality of
Rock Hill Municipal Court

AFFIDAVIT

Personally appeared before me the affiant William Burris who
being duly sworn deposes and says that defendant Trey Alexander Williams
did within this county and state on February 23, 2009 violate the criminal laws of the
State of South Carolina (or ordinance of County/ Municipality of Rock Hill Municipal Court)
in the following particulars:
DESCRIPTION OF OFFENSE: Criminal Sexual Conduct With A Minor First Degree. 385

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

The Defendant did willfully and unlawfully violate the South Carolina Code of Law section 16-3-655
Criminal Sexual Conduct With A Minor, in that he did engage in sexual intercourse with the victim CHILD
minor child age 6 years, date of birth being 2002. Defendant did use coercion and
Intimidation to accomplish the sexual battery. This incident occurred at 984 Southland Drive within the
city limits of Rock Hill SC
Police Investigation
Interview with child VICTIM.

Signature of Affiant

William Burris

STATE OF SOUTH CAROLINA
County/ Municipality of
Rock Hill Municipal Court

Affiant's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Affiant's Telephone 803-329-7295

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on February 23, 2009 defendant Trey Alexander Williams
did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Rock Hill Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct With A Minor First Degree.

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 03/26/2009

Signature of Issuing Judge (L.S.)
Judge Code: 6236

Judge's Address 120 E. Black Street
Rock Hill, SC 29731-1706
Judge's Telephone 803-329-7295
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

K-327945

Ref #: 0902231125

266
Approved by
S.C. Attorney General
April 21, 2003
SCCA 818

CERTIFIED TRUE COPY
2013 JUN 12 PM 2:49
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

FILED-RECEIVED
2009 APR -2 PM 12:37
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/30/13
OMCOMITA RELEASE DATE SCREEN C023981

SCDC# > 341036 LOC: LEE
WILLIAMS, TREY - SCDC CLASSIFICATION..: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: Y
SEXUAL PREDATOR...: PENDING
DNA STATUS.....: COMPLETED
GPS REQUIREMENT..: Y
PREA DECISION....:

CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ..: N
030-00-000 CURRENT SENT START DATE: 04/01/2009
PROJECTED COMPLETION DATES
MAXOUT DATE: 03/25/2039 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE..: 00/00/00
TOTAL SERVICE TIME EARNED ...: 001559 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

4-© 1 Sess-1 167.7.50.33 SCDC1380 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 07/30/13

C0239

WILLIAMS, TREY - FBI # 746423RC0 SID# SC01761338 SCDC # 341036

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: LEE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: ██████████

DORM.....: DAR2143T

RACE....:B SEX...:M

PROJ MAXOUT DATE: 03/25/2039

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 24 DATE OF BIRTH...: ████████/88

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE				COUNTY	SENTENCE			
	YRS	MOS	DYS			START	V/NV	CATEGORY	
CRIM SEX COND.W/MINOR(1S	30	0	0		YORK	4/ 1/20	9 V		5

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

CODE NOT IN TABLE

HOLD

IRO

CATEG: 5

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

5/24/11 STRIKING AN EMPLOYEE WIT DROPPED

MAJOR INMATE

12/19/10 FIGHTING WITHOUT A WEAPO CONVICTED

ADMIN

NON-ASSAULTIVE DISCIPLINARIES:

3/ 2/13 THREATENING TO INFLICT H CONVICTED

MAJOR

11/26/12 REFUSING OR FAILING OBEY CONVICTED

MAJOR

10/12/12 REFUSING OR FAILING OBEY CONVICTED

MAJOR

2/27/12 USE, POSS NARC, MARIJ, UNAU DROPPED

MAJOR

2/27/12 POSSESSION OF CONTRABAND DROPPED

MAJOR

12/21/11 OUT OF PLACE CONVICTED

ADMIN

12/21/11 INTERFERING WITH COUNT CONVICTED

ADMIN

8/ 7/11 REFUSING OR FAILING OBEY CONVICTED

ADMIN

5/24/11 REFUSING OR FAILING OBEY DROPPED

MAJOR

1/23/11 REFUSING OR FAILING OBEY NOT GUILTY

MAJOR

1/23/11 THREATENING TO INFLICT H CONVICTED

MAJOR

HISTORY OF MOVEMENTS:

12/18/12 LEE INCARCERATED

ADMINISTRATIVE

12/18/12 EVANS INCARCERATED

MEDICAL

3/27/12 LEE INCARCERATED

ADMINISTRATIVE

3/27/12 EVANS INCARCERATED

MEDICAL

7/21/10 LEE INCARCERATED

ADMINISTRATIVE

6/ 1/10 KIRKLAND INCARCERATED

NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WASH RACK ATTENDANT	10/13/10	5/ 3/11	UNSAT JOB PERFORM	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
NO SCHOOL ASSIGNMENTS			

***** END OF REPORT *****