

**VOLUME TWO OF TWO**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Darlington County

Honorable Thomas W. Cooper, Circuit Court Judge

\_\_\_\_\_  
JIMMY GALLISHAW, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000548

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

TAYLOR D GILLIAM  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JOHNNY ELLIS JAMES, JR.  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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1 evening.

2 (Whereupon, the Jury exits for the day at  
3 5:44 p.m..)

4 THE COURT: All right. Counsel, I want  
5 to revisit the objection that was made regarding the  
6 questions asked on redirect examination of Ms. Elliott  
7 regarding credibility.

8 The Court had counsel to approach the bench,  
9 and discuss the matter at the bench. And I am not sure  
10 it was all on the record. But I want the record to  
11 reflect that my notes reflect that the question of  
12 credibility, as stated on the video tape that was played  
13 before the Jury, was inquired about by Defense counsel.

14 I would not have allowed the State to have gone  
15 into the issue of credibility on direct examination. But  
16 it was my view that the question was asked on direct  
17 examination, and the State had the right to respond to  
18 the question. As the old colloquial saying goes: the  
19 door was opened by the Defense. So the State had the  
20 right to clear up that point. And that was the reason  
21 for the Court's ruling, overruling the objection of the  
22 Defense to the State's redirect examination on  
23 credibility.

24 The other thing counsel is, and today I want it  
25 settled. I know we have been busy and been going hard

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1 all day, but on this matter with these two letters, which  
2 I think are 8 and 9, that has got to be resolved. And  
3 here is the way that I suggest that you do it.

4 I suggest that you photocopy the letters so as  
5 not to tamper with the originals. Photocopy the letters  
6 and then go through and redact from the photocopies what  
7 you think should be redacted and see if y'all can agree  
8 on that. But that needs to be done either first thing in  
9 the morning, or this afternoon before you leave, because  
10 those letters are not yet in evidence.

11 **MS. MAYES:** Yes, sir, Your Honor. I  
12 think we are prepared to go ahead and do it now.

13 We do have color copies that we had originally  
14 submitted to the Court, and we can substitute these.

15 **THE COURT:** All right. After you get  
16 them redacted, give them to the Court Reporter in the  
17 morning, and they will be substituted for the originals  
18 that were put in. But after y'all have taken care of  
19 that you can get with the Court Reporter in the morning.

20 **MS. MAYES:** Yes, sir, Your Honor. I  
21 believe the agreement was that we would remove the return  
22 address in the left hand corner, which is the Detention  
23 Center address, but leave the Defendant's name and the  
24 zip code. Then we would redact any portion that is  
25 located in the content of the letter, which refers to his



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1 incarceration.

2 THE COURT: All right. Well, y'all do  
3 that. Look at them, and get the redaction made. And  
4 when you are ready to substitute it, after y'all have  
5 agreed on it, we can take care of that in the morning.

6 All right. The other thing, Ms. Little, that I  
7 would like to do before we leave today --- I am not going  
8 to ask you for an answer, but I would like to go over the  
9 Fifth Amendment Rights with Mr. Gallishaw.

10 MS. LITTLE: Yes, sir, Your Honor.

11 THE COURT: Mr. Gallishaw, let me ask you  
12 to stand please.

13 Mr. Gallishaw, you may be called as a witness  
14 to testify in your own behalf.

15 I now advise you that you have the right to  
16 invoke the protections given to you by the Fifth  
17 Amendment of the Constitution of the United States, and a  
18 similar counterpart provision of the Constitution of the  
19 State of South Carolina.

20 The Fifth Amendment to the Constitution of the  
21 United States provides in part, that no person shall be  
22 compelled on any criminal case to be a witness against  
23 himself. This provision of Constitutional Law means that  
24 you cannot be compelled or required to testify in this  
25 case. This is a right and a privilege that the law

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1 extends to you. It is a personnel privilege and no one  
2 can waive this right except you.

3 You have the right not to testify, but you also  
4 have the right to testify. The Court will grant you the  
5 right to consult with your lawyer before you make a  
6 decision. If you elect not to testify, your failure to  
7 testify or your election not to testify cannot be used by  
8 the State as an inference of guilt. And your failure to  
9 testify cannot be considered by the Jury in its  
10 deliberations, and I would so instruct the Jury.

11 However, if you elect to testify, you waive, or  
12 give up the protection given to you by the Constitution  
13 of the United States, and I advise you that you would  
14 then assume the role of a witness in this case. And you  
15 would waive or give up your Constitutional protections  
16 and privileges against self incrimination.

17 This means that if you voluntarily take the  
18 stand and testify, then you subject yourself to the same  
19 rules that govern other witnesses. And you may be  
20 examined and cross examined on any relevant issue in this  
21 case. And you may be impeached to the same extent as any  
22 other witness all of which is provided --- all of which  
23 is subject to the rules of law, and the rules of  
24 evidence.

25 Now, I would further advise you that if you

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1 elect to take the witness stand and testify that this  
2 decision on your part must be made freely, voluntarily,  
3 intelligently, and with knowledge of the protections  
4 given to you by the Constitution, and with knowledge of  
5 the consequences of your election to testify.

6 Now, I am not going to require you to give me  
7 an answer today as to whether you do or do not wish to  
8 testify in this case. In fact, it would be premature to  
9 do so, because the State has not rested their case. And  
10 I, of course, will give you an opportunity to discuss the  
11 Fifth Amendment protections with your lawyer.

12 I would advise you that between now and  
13 tomorrow that you do discuss those privileges and  
14 protections with your lawyers, and make sure that you  
15 understand your Fifth Amendment Rights.

16 But, I would ask you at this time, do you  
17 understand what I have explained to you?

18 **MR. GALLISHAW:** Yes, sir.

19 **THE COURT:** Do you wish to ask me any  
20 questions about your Fifth Amendment Rights?

21 **MR. GALLISHAW:** No, sir. I will consult  
22 with my lawyers and talk with them about it.

23 **THE COURT:** All right. I will then  
24 give you until the appropriate time. But at the  
25 appropriate time I will require an answer as to whether

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1 you do or do not wish to exercise your Fifth Amendment  
2 Rights, and whether you do or do not wish to testify.  
3 But that will be after you have had a chance to talk with  
4 your lawyers.

5 Thank you, you may be seated.

6 **MR. GALLISHAW:** Yes, sir.

7 **THE COURT:** All right. From the  
8 standpoint of scheduling, counsel. I know, Ms. Mayes,  
9 that you have Mr. Watson, and the matters regarding his  
10 interviews and so forth, and maybe a video tape involved  
11 there. Tell me what else you anticipate, and how long  
12 you think it is going to take to complete the State's  
13 case?

14 **MS. MAYES:** I believe the remaining  
15 witnesses will be the witnesses that the Court has  
16 already heard from on that matter.

17 **THE COURT:** All right.

18 **MS. MAYES:** Officer August concerning  
19 the Miranda Waiver, and Captain Watson concerning the two  
20 statements. And there are video tapes with both  
21 statements. I believe they are approximately forty-five  
22 minutes each as well.

23 **THE COURT:** All right. So you think the  
24 video tapes are about an hour and a half in addition to  
25 the testimony of the two witnesses is what you are

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1 saying?

2 MS. MAYES: Yes, sir, Your Honor.

3 Actually, the second video tape is shorter. It is  
4 probably about thirty minutes.

5 THE COURT: All right. I caution you  
6 again, and all parties in this, to be very careful about  
7 any discussion, or any mention of polygraph during the  
8 course of the testimony regarding these statements.

9 All right. Ms. Mayes, anything then before we  
10 adjourn till 9:30 in the morning on behalf of the State?

11 MS. MAYES: Your Honor, the Defendant  
12 does have a prior record, so we can take that matter up  
13 as well if he does.

14 THE COURT: It would be a good time to  
15 do it, because I always think that does impact upon  
16 whether the Defendant makes the decision as to whether  
17 they do wish to testify or not. And I think it does  
18 enter into that decision.

19 Tell me about the record that you think is  
20 admissible for impeachment purposes under 608.

21 MS. MAYES: Yes, sir, Your Honor. There  
22 is a conviction which is dated September 12, 2002, that  
23 involves a crime of dishonesty. That is breach of trust  
24 with fraudulent intent. And he was convicted and  
25 sentenced to thirty days, \$1,000.00, and thirty days

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1 suspended to a \$500.00.

2 In addition, there is a conviction which is  
3 dated December 5, 2007. And that conviction is  
4 possession of cocaine, and the sentence was two years,  
5 and \$2,000.00 suspended to eighteen months probation.

6 THE COURT: All right. Ms. Little, what  
7 is your position on those?

8 MS. LITTLE: Your Honor, I believe that  
9 under the rules those would come in if the Defendant  
10 decides to testify.

11 THE COURT: All right. The Defense does  
12 not challenge the right for the State to use those for  
13 impeachment purposes, those two convictions.

14 And, I said 608, it is actually 609. And the  
15 Court will rule, without objection from the State, that  
16 those two convictions can be used for impeachment  
17 purposes under South Carolina Rules of Evidence 609.

18 All right. Anything else, Ms. Mayes?

19 MS. MAYES: Yes, sir, Your Honor. I  
20 previously indicated that we already had color copies,  
21 and we do. However, we have made some incidental  
22 markings on them so we are going to make new copies.

23 THE COURT: All right. I will let you  
24 clean that up, and have them ready for in the morning,  
25 those two. We can take care of that first thing in the

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1 morning.

2 Anything else, Ms. Mayes?

3 MS. MAYES: No, sir, Your Honor.

4 THE COURT: Ms. Little?

5 MS. LITTLE: No, sir.

6 THE COURT: All right. We will be in  
7 recess then until 9:30 tomorrow morning.

8 (Whereupon, the Court concludes its  
9 business for the day at 6:15 p.m. on Wednesday, July 21,  
10 2010.)

11 -- END OF DAY THREE OF TRIAL --

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(Whereupon, Court comes to order at 9:42  
a.m. on Thursday, July 22, 2010.)

**-- DAY FOUR OF TRIAL --**

**BAILIFF:** Everybody rise.

**THE COURT:** Thank you, please be seated.  
All right. Back on the record with regard to the matter  
of The State versus Jimmy Gallishaw, Jr. Mr. Gallishaw  
is present with his counsel. The State is present and  
represented by Ms. Mayes.

The first matter that I want to address this  
morning is the issue of Exhibits 8, and 9. Is that  
correct, Madame Court Reporter?

**MADAME COURT REPORTER:** Yes, sir.

**THE COURT:** And those were the two  
letters that was going to be redacted. It is my  
understanding, and I have met with counsel in chambers,  
that the parties have agreed upon the redaction of those  
two letters --- on copies. And the redactions have been  
accomplished by whiteout of the language. What I propose  
to do, counsel, would be to substitute those copies as  
eight and nine, for the eight and nine that are in the  
record. But, so that the record would be complete, have  
the originals marked as Court Exhibits so that they would  
also be a part of the record so that we could show in  
full what the letters showed, if it became necessary for



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1 the Appellate Court, and the redaction as shown. Any  
2 problem with doing it that way?

3 MS. MAYES: No, sir, Your Honor.

4 THE COURT: Ms. Little?

5 MS. LITTLE: No, sir.

6 THE COURT: All right. And the other  
7 thing would be that I would propose to tell the Jury that  
8 there has been introduced into evidence --- Are you going  
9 to refer to those, or do you intend to publish them? How  
10 do you plan to handle that? Or, are you just going to  
11 tell the Jury --- offer them into evidence and let me  
12 admit them as eight and nine?

13 MS. MAYES: Yes, sir, Your Honor.

14 THE COURT: Then I will tell the Jury  
15 that certain portions of them have been redacted, because  
16 of certain thing in there that were not admissible under  
17 the rules of evidence, and that the parties have agreed  
18 upon the redactions. Do you agree with that  
19 instruction?

20 MS. MAYES: Yes, sir, Your Honor.

21 MS. LITTLE: Yes, sir.

22 THE COURT: Okay. All right. That will  
23 take care of those two exhibits.

24 THE COURT: All right. Ms. Mayes, is  
25 there anything else that we need to put on the record?

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1 MS. MAYES: Yes, sir.

2 THE COURT: I believe it is, it is in  
3 connection to the transcripts of the video statements  
4 made to the --- two video statements made to the police.

5 MS. MAYES: Yes, sir, Your Honor. We  
6 had previously offered both copies of the transcript to  
7 Your Honor as Court's Exhibits. Those deal with video  
8 taped statements that were made to Captain Danny Watson  
9 on February 19, 2010. And the second interview occurring  
10 on February 20, 2010.

11 During the first interview, which is February  
12 19<sup>th</sup>, at the end of the interview there is a reference to,  
13 whether or not the Defendant would agree to take a  
14 polygraph. He then did agree to take the polygraph. We  
15 are prepared to stop the presentation of the statement  
16 before it gets to that portion, and we have removed those  
17 references from the transcript, and are now prepared to  
18 submit a redacted transcript to the Court to be part of  
19 the record.

20 THE COURT: All right. Let's talk first  
21 about --- that interview or statement is not video; is  
22 that correct?

23 MS. MAYES: It is a video tape, Your  
24 Honor. It is video taped.

25 THE COURT: All right. Let's talk just

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1 about the video tape first then, and then we will come  
2 back and talk about the transcript.

3 With regard to the video tape, what do you  
4 propose to do to avoid any reference that would not be  
5 proper? Just to stop the tape?

6 MS. MAYES: Yes, sir, Your Honor.

7 THE COURT: All right. Any problem with  
8 that?

9 MS. LITTLE: No, Your Honor.

10 THE COURT: Okay.

11 MS. LITTLE: Your Honor, let me rephrase  
12 that. I think I previously --- I don't know if I have  
13 addressed the Court.

14 I do have an objection to entering the video  
15 tape to Lyle, just a 403 objection that they are highly  
16 prejudicial. I do understand that they are probative.  
17 And we would just ask the Court to make a 403  
18 determination as to whether or not they are more  
19 prejudicial than probative.

20 THE COURT: Did I do that, or did I not  
21 do that at the time of the Jackson v Denno Hearing?

22 MS. LITTLE: Your Honor, I'm thinking  
23 that you probably did. And, I guess I just want to note  
24 my objection again for the record.

25 THE COURT: Let me make sure.

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(PAUSE.)

1  
2           **THE COURT:**     Tell me what your authority  
3 is for a statement made by the Defendant in response to  
4 questioning after Miranda Warnings. Where does the 403  
5 analysis come in? I don't understand exactly where that  
6 --- that it is something that I have to do in that  
7 situation?

8           **MS. LITTLE:**     Your Honor, I don't have  
9 any authority to present to the Court. It has always  
10 been my understanding, even though this has been  
11 determined to be non-hearsay, a statement by the  
12 Defendant. I guess I'm arguing --

13           **THE COURT:**     A statement against interest  
14 is what --

15           **MS. LITTLE:**     -- Yes, sir.

16           **THE COURT:**     -- which is --- Let me look  
17 at the rules of evidence. I don't know --- It is  
18 obviously relevant, but I have never heard an objection  
19 that the probative value of the Defendant --- I mean the  
20 prejudicial effect that the Defendant's own statement  
21 outweighs the probative value. And I don't know that I  
22 have to make a 403 analysis on that. Let me look at the  
23 rules of evidence regarding statements against --

(PAUSE.)

24  
25           **THE COURT:**     Ms. Mayes, what is your take

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1 on that issue, please? Is there any type of a relevancy  
2 403 analysis involved with the Defendant's own statement?

3 **MS. MAYES:** Not that I'm aware of, Your  
4 Honor. It is a statement against interest and an  
5 exception to hearsay.

6 **THE COURT:** All right. Your objection  
7 is noted. I am not going to make an analysis. I don't  
8 think that it is required for a Defendant's own  
9 statement.

10 All right. Now, just to make sure that we are  
11 on the same page, she is going to stop the tape before  
12 the inadmissible part is played to the Jury. That is on  
13 the video portion of the tape.

14 Now, Ms. Mayes, tell me what you wish to do  
15 with the transcripts of one or both of the tapes?

16 **MS. MAYES:** Yes, sir, Your Honor. We do  
17 have a certified transcript that has been done in  
18 accordance with the full audio on both tapes. And the  
19 State proposes to submit to aid to the trier of fact a  
20 copy of the transcript for use during the presentation of  
21 the video tape. There are some audio problems in this  
22 courtroom, I submit. It is a large courtroom, and with  
23 the sound system playing it did seem to be a lot of  
24 muddled sound yesterday. And we want to make sure that  
25 the Jury has the ability to read the statements in their

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1       entirety along with the --- watching the video tape in  
2       order to aid them.

3               And, I will make part of the record that the  
4       first statement is pretty much a self-serving statement,  
5       and isn't prejudicial to the Defendant at all, I submit.

6               **THE COURT:**     But this is the transcript  
7       of the video of both statements made to the police?

8               **MS. MAYES:**     Yes, sir, Your Honor.

9               **THE COURT:**     Ms. Little, what is your  
10      position?

11              **MS. LITTLE:**     Your Honor, the Defense  
12      would argue that by handing the Jury a written transcript  
13      of what is going on, on the screen in the courtroom,  
14      would be confusing to the Jury. Your Honor, they would  
15      be trying to watch the video, and read, and fumble  
16      through paperwork at the same time. And, Your Honor, we  
17      would just argue that it is cumulative. They can listen  
18      and watch the video. And there is no need to have a  
19      written transcript for them to look at while they are  
20      watching the video.

21              **THE COURT:**     Ms. Mayes, are you offering  
22      the transcripts in evidence or not?

23              **MS. MAYES:**     Your Honor, we are offering  
24      them as court's exhibits to be part of the record, if  
25      need be.

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1 THE COURT: Court exhibits would not go  
2 to the Jury.

3 MS. MAYES: That is correct, Your Honor.

4 THE COURT: All right. What is your  
5 position on offering the transcripts as court exhibits,  
6 Ms. Little?

7 MS. LITTLE: Your Honor, I have no  
8 problem with them being court exhibits. The problem that  
9 I have is that the Jury will be looking at them instead  
10 of --

11 THE COURT: I understand. The Court  
12 exhibits are matters that go to the Jury.

13 MS. LITTLE: Yes, sir.

14 THE COURT: All right. So you don't  
15 have any objection if they made a part of the record as  
16 court exhibits?

17 MS. LITTLE: No, Your Honor.

18 THE COURT: All right. But you are not  
19 offering them as state exhibits, is that right, Ms.  
20 Mayes? All you want to do is allow the Jury to use them  
21 during the course of playing the video tapes?

22 MS. MAYES: Yes, sir, Your Honor, as an  
23 aid to the trier of fact.

24 THE COURT: Well, the problem that I  
25 have there --- it seems like to me, it is like a video

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1 deposition in a civil case. If you play --- If a  
2 deposition is taken by video, then the video is played to  
3 the Jury. The Jury does not have the transcript, even  
4 though a transcript is prepared. Even if it is not a  
5 video deposition, if it is a regular deposition in a  
6 civil case what normally happens is, the deposition is  
7 published to the Jury, but the written deposition is not  
8 given to the Jury.

9 I feel the same way about the matters in a  
10 criminal case. In a statement, if the statement had been  
11 given to the officer in this case, and there had been no  
12 video, he would have the right to read that statement  
13 into the --- or to the Jury. But I don't know if it  
14 would be proper for the Jury to take that written  
15 statement into the Jury room with them. If they wanted  
16 to inquire as to what additional contents of that  
17 statement were, the proper procedure would be to bring  
18 them back into the courtroom, and let the Reporter read  
19 the officer's recitation of the statement. I see no  
20 difference in the video deposition --- or video  
21 statement.

22 I am not going to allow the transcripts to be  
23 used as an aid. And I am not going to admit them before  
24 the Jury. They will be admitted as court's exhibits.  
25 But, I believe the Jury --- what the Jury has a right to



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1 consider is what anybody else watching this case, and  
2 listening to this case, and would have them to consider.  
3 And that is what is played in open court.

4 So, I would respectfully deny the motion to use  
5 the transcripts as an aid, as well as admit them into  
6 evidence as State's exhibits; although they will be  
7 admitted as court's exhibits.

8 **THE COURT:** All right. Anything else  
9 before we bring the Jury in, Ms. Mayes?

10 **MS. MAYES:** Yes, sir, Your Honor. I do  
11 need a moment to get straight on the exhibits, because  
12 there are certain exhibits that we will not be  
13 referencing.

14 **THE COURT:** All right. You have some  
15 court exhibits that are also going to be used as state  
16 exhibits?

17 **MS. MAYES:** Yes, sir, Your Honor, that  
18 we need --- we need the Miranda Form in reference to the  
19 polygraph.

20 **THE COURT:** Right.

21 (PAUSE.)

22 **THE COURT:** All right. Counsel, let's  
23 go. We have got the Jury waiting. What do we have to  
24 do?

25 **MS. MAYES:** We are ready, Your Honor.

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1 MS. LITTLE: Just one matter. I don't  
2 like to object too often in front of the Jury. Is it  
3 your position that we need to object again when she  
4 offers the video's into evidence, to preserve that matter  
5 for appeal?

6 THE COURT: Objection to the videos on  
7 what grounds?

8 MS. LITTLE: On the --

9 THE COURT: -- The 403?

10 MS. LITTLE: 403, Yes, sir.

11 THE COURT: No, ma'am. You are  
12 protected on that.

13 MS. LITTLE: Thank you, Your Honor.

14 THE COURT: All right. The original  
15 letters are now in the record as court's exhibits number  
16 11 and 12, and the redacted letters are shown as eight  
17 and nine --- State's Exhibits 8 and 9.

18 WHEREUPON, COURT

19 EXHIBITS NUMBERS 11 AND 12

20 WERE MARKED AND ADMITTED

21 INTO EVIDENCE WITHOUT

22 OBJECTION.

23 All right. Let's go forward, counsel. All  
24 right. Bring the Jury in.

25 BAILIFF: All right, sir.

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1                   **THE COURT:**     Ms. Mayes, are you going to  
2 do that first thing? Go ahead and do that so that I can  
3 instruct them.

4                   **MS. MAYES:**     Okay.

5                             (Whereupon, the Jury enters the courtroom  
6 at 9:59 a.m. on Thursday, July 22, 2010.)

7                   **THE COURT:**     All right. Good morning,  
8 ladies and gentlemen. And thank you for your promptness  
9 in being back here. I apologize to you for being a  
10 little late getting started again. But again, we had  
11 some legal issues that we had to deal with, and we have  
12 now taken care of those matters, and we are ready to go  
13 forward. Ms. Mayes, you may proceed.

14                   **MS. MAYES:**     Yes, sir, Your Honor. We  
15 had previously offered as a state's exhibit two letters  
16 written by the Defendant, and these are State Exhibits 8  
17 and 9. And the State does offer both as evidence at this  
18 time.

19                   **THE COURT:**     All right. And my  
20 understanding of this matter, from pretrial conferences,  
21 was that after the parties reviewed these letters that  
22 they agreed that certain parts of them were not  
23 admissible under the rules of evidence, and the language  
24 that the parties feel are not admissible have been  
25 redacted from the letters; is that correct?

## THE STATE VERSUS JIMMY GALLISHAW, JR.

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1 MS. MAYES: Yes, sir, Your Honor.

2 THE COURT: Ms. Little, do you agree  
3 with that?

4 MS. LITTLE: Yes, sir.

5 THE COURT: All right. Ladies and  
6 gentlemen, let me tell you, you are going to have these  
7 letters and be able to take them into the jury room with  
8 you. You will notice in there that there are some areas  
9 that have been taken out, or redacted by whiteout.

10 The parties have agreed that these parts are not  
11 admissible under the rules of evidence. And have agreed  
12 to those parts that have been taken out of the letter.  
13 So you should not pay any attention to those parts, or  
14 make any inferences on the parts of the letters that have  
15 been redacted. The parties have agreed that those parts  
16 are not admissible under the rules of evidence, and  
17 should not be before you. But, otherwise you can give  
18 those letters such weight as you deem appropriate.

19 All right. Ms. Mayes, you may call your next  
20 witness.

21 MS. MAYES: Yes, sir, Your Honor, beg  
22 the Court's indulgence. The State calls Michael August.

23 THE COURT: All right. Come around  
24 please.

25 WHEREUPON, MICHAEL AUGUST

## MICHAEL AUGUST - DIRECT EXAMINATION

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FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

DIRECT EXAMINATION BY MS. MAYES

Q. Good morning. Could you please state your full name?

A. Michael August.

Q. All right. And what is your current occupation?

A. I am an investigator with the City of Darlington Police Department.

Q. All right. And how long have you been with the Darlington Police Department?

A. Sixteen and a half years.

Q. All right. And as an investigator, do you have the occasion sometimes to assist in criminal investigations that involve child abuse or sexual assault?

A. Yes, I do.

Q. And can you tell us whether or not you were involved in the investigation concerning the Defendant in this case, Jimmy Gallishaw?

A. Yes, I was.

Q. Can you tell us whether or not you were involved in this case on or about February 20, 2009?

A. Yes, I was.

Q. Now, when someone is in custody, and there is the possibility that they may want to be interviewed

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 about a statement, what is the procedure in advising  
2 them of their Miranda Rights or Miranda Warning?

3 A. We read from a form their Miranda. We advise them  
4 of what their constitutional rights are. That they  
5 can come in and talk to us, or they have the right  
6 to refuse to talk to us.

7 Q. All right. And can you tell us whether or not on  
8 February 20, 2009, you had the opportunity to advise  
9 Jimmy Gallishaw of his Miranda Rights?

10 A. Yes, I did.

11 Q. Let me show this document, and ask you whether or  
12 not you recognize it?

13 A. Yes, I did.

14 Q. And how is it you recognize the document?

15 A. It is the Miranda Warning that I read to Mr.  
16 Gallishaw that day.

17 Q. And can you show us exactly what was read to Mr.  
18 Gallishaw in the same manner that you would have  
19 advised him on that day?

20 A. Okay. My procedure is, I advise him why we are  
21 there. Before I ask him any questions, I say we are  
22 at the Darlington Police Department, today's date  
23 and time which was February 20, 2009, around 10:50  
24 a.m in the morning. I say before I ask you any  
25 questions you must understand your rights, and I go

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 down each one. You have the right to remain silent,  
2 anything you say can be used in court as evidence  
3 against you. You are entitled to talk to a lawyer  
4 now and have him present now, or at anytime during  
5 any questioning. If you cannot afford an attorney  
6 one will be appointed to represent you without cost.  
7 If you decide to answer questions now without a  
8 lawyer present, you still have the right to stop  
9 answering questions at any time. You also have the  
10 right to stop answering at any time until you talk  
11 to a lawyer. Then I ask them, do they understand  
12 those rights, and they either indicate to me yes or  
13 no. He indicated yes. Do you wish to talk to us at  
14 this time? He indicated yes. After I read to him,  
15 I actually have them read back to me. That way I  
16 can understand that they are able to read, read the  
17 English language. And they read back to me, I have  
18 read this statement of my rights, and I understand  
19 what my rights are. I am willing now to talk  
20 without a lawyer present. I understand and know  
21 what I am doing, no promises or threats have been  
22 made to me, no pressure or coercion of any kind has  
23 been used against me. And they physically read that  
24 to me. I make them --- after I read them the first  
25 part of it, they read that to me. I'm sorry. They

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 read that to themselves, and they put their initials  
2 by each one of those, which he indicated with his  
3 initials, JMG beside each one. And where it says,  
4 do you understand your rights, there is a line  
5 beside that. And he indicated with the word "yes"  
6 beside that in his handwriting. And do you wish to  
7 talk to us at this time? He actually indicated  
8 "yes" in his handwriting. And at the bottom it  
9 says, sign after the Waiver of Rights, he actually  
10 signs --- physically signs his name. And he signed  
11 that Jimmy M. Gallishaw, Junior, and I witnessed his  
12 signature.

13 Q. All right. Your Honor, at this time the State would  
14 offer into evidence Court's Exhibit 3, which will be  
15 State's Exhibit 15.

16 THE COURT: All right. They have  
17 offered into evidence the Miranda Form as a State's  
18 Exhibit. Any objection, Ms. Little?

19 MS. LITTLE: No, sir.

20 THE COURT: It is admitted into evidence  
21 as State's Number 15, without objection.

22 WHEREUPON, STATE'S

23 EXHIBIT NUMBER 15 IS MARKED

24 AND ADMITTED INTO EVIDENCE

25 WITHOUT OBJECTION.



## MICHAEL AUGUST - DIRECT EXAMINATION

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1 MS. MAYES: May I publish to the Jury,  
2 Your Honor?

3 (Whereupon, State's Exhibit 15 was  
4 published to the jury.)

5 THE COURT: Yes, ma'am. You will  
6 recall, ladies and gentlemen, that I have told you  
7 earlier that from time to time exhibits are introduced  
8 into evidence. The lawyers may ask for permission to  
9 them to the Jury. That simply means, show them to you  
10 while you are sitting there in the jury box. Do not be  
11 concerned if you do not have it as long to look at the  
12 exhibit as you would like to. Anything that is  
13 introduced into evidence will go with you to the jury  
14 room when you retire to deliberate your verdict.

15 Q. Investigator August, let me ask you, during the  
16 course of the presentation of the Miranda Rights,  
17 did Mr. Gallishaw appear to understand the rights as  
18 they were read to him?

19 A. Yes, he did.

20 Q. Was he able to read them back to you?

21 A. Yes, he was.

22 Q. Was his speech coherent?

23 A. Yes, I was.

24 Q. Did he stop questioning at any time to request an  
25 attorney?

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 A. No, ma'am, he did not.

2 Q. Were any threats made in order to obtain any type of  
3 statement from Mr. Gallishaw?

4 A. No, there was not.

5 Q. Were any promises of reward given to Mr. Gallishaw?

6 A. No.

7 Q. And, did he appear to waive those rights freely and  
8 voluntarily?

9 A. Yes, he did.

10 Q. Were any other officers present or observing during  
11 the course of your advising Mr. Gallishaw of his  
12 Miranda Rights?

13 A. Yes, Agent Rick Charles with SLED was there  
14 assisting.

15 Q. All right. Following the waiver of his Miranda  
16 Rights, did you have the opportunity to start  
17 general questioning of the Defendant?

18 A. Yes, I did.

19 Q. And can you tell us whether or not he made any  
20 admission concerning the allegations in this  
21 particular case that involved sexual assault?

22 A. Yes. He began to tell me that Victim #1 [REDACTED] --- that  
23 he had had sexual relations with her.

24 THE COURT: Excuse me just a minute, Ms.  
25 Mayes and Mr. Witness.

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 Ladies and gentlemen of the Jury, let me just  
2 mention one thing to you from a legal standpoint. There  
3 has been admitted into the record of this case a  
4 statement or statements alleged to have been made by the  
5 Defendant to this witness. Before you may consider this  
6 statement as evidence for any purpose, you must determine  
7 several questions.

8 First of all, did the Defendant make the  
9 statement? Secondly, was the Defendant warned of his  
10 constitutional rights? Third, did the Defendant  
11 knowingly and intelligently waive his constitutional  
12 rights. And fourth, was the statement given voluntarily?

13 The fact that the Court has admitted a  
14 statement into evidence should not be considered by you  
15 as any evidence whatsoever that the Defendant made such a  
16 statement, or that the required constitutional safeguards  
17 were, in fact, provided and waived by the Defendant, or  
18 that the statement was voluntarily given, because these  
19 are issues for you the Jury to determine. The State  
20 must prove, beyond a reasonable doubt, each of the four  
21 requirements that I have stated to you before you may  
22 consider the statement as evidence for any purpose  
23 whatsoever.

24 Now, as to the first requirement, did the  
25 Defendant make the statement? If you conclude the

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 Defendant did not make the statement, then you must then  
2 completely and totally disregard the statement.

3 Secondly, was the Defendant warned of his  
4 constitutional rights? When an individual is taken into  
5 custody, or otherwise deprived of his freedom of action  
6 in any significant way by police, or law enforcement  
7 officer, he must be warned of his Constitutional rights  
8 prior to and before any custodial interrogation or  
9 custodial questioning.

10 These rights are: that he has the right to  
11 remain silent; that any statement that he does make can  
12 and will be used against him in a court of law; that he  
13 has a right to select a lawyer of his choice. But if he  
14 does not have the money or resources to employ a lawyer,  
15 the Court will appoint and provide a lawyer to represent  
16 him without cost or expense to him, if he so desires.  
17 That he has the right to consult a lawyer before  
18 answering any questions or making any statement. And he  
19 has the right to have his lawyer present with him at all  
20 times, during all interviews, and all interrogations.

21 If you determine that these Constitutional  
22 warnings were not given to the Defendant prior to the  
23 interrogation, and the taking of the statement, or that  
24 the Defendant was not afforded the opportunity to  
25 exercise these rights, you must completely disregard the

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 statement. And in that event, you cannot consider the  
2 statement as evidence.

3 Did the defendant knowingly and intelligently  
4 waive his Constitutional rights? Before you can consider  
5 the statement as evidence in this case, the State must  
6 prove, beyond a reasonable doubt, that after being given  
7 his Constitutional rights the Defendant knowingly and  
8 intelligently waived his Constitutional rights.

9 And finally, was the statement given  
10 voluntarily. The word voluntary means, the statement was  
11 the expression of the Defendant's own free will, and was  
12 not induced by any pressure, force, or fear, or the  
13 influence, or hope, or promise of reward, or extracted by  
14 the threats, coercion, or intimidation. A statement is  
15 not voluntary and may not be used against a Defendant  
16 unless it is the produce of essentially a free and  
17 unconstrained choice by its maker. If the statement is  
18 voluntary, if the Defendant has wilfully made the  
19 statement, it may be used against him.

20 So the ultimate question to be resolved by you,  
21 with respect to the alleged statement of the Defendant,  
22 in addition to the questions of whether or not this  
23 Defendant, in fact, made the statement, and whether or  
24 not his Constitutional rights were observed and knowingly  
25 and intelligently waived by him is this.

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 Was the statement the expression of the  
2 Defendant's own free will, made without compulsion or  
3 inducement, but representing an essentially free and  
4 unconstrained choice by the Defendant, or was it the  
5 produce of the over-worn will of the Defendant?

6 With regard to the alleged statement of the  
7 Defendant, the State must prove by evidence each and  
8 every requirement which I have instructed you on, beyond  
9 a reasonable doubt, before you may consider the alleged  
10 statement as evidence in this case.

11 All right. Ms. Mayes, you may proceed with the  
12 statement that he made to the officer.

13 MS. MAYES: Yes, sir, Your Honor.

14 THE COURT: Or allegedly made to the  
15 officer.

16 Q. We are talking about February 20, 2009. And one  
17 thing that I would like to ask you to clarify before  
18 we get back into the statement is: you are a city  
19 officer, is that correct?

20 A. Yes, ma'am. I work for the City of Darlington.

21 Q. In this particular case, was there one victim that  
22 had been involved with a city investigation, and one  
23 victim in the county investigation, because of the  
24 locations of the incident?

25 A. Yes, I found out at a later time that there was

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 another victim, yes.

2 Q. And that would be [Victim #2] [REDACTED]?

3 A. Yes, ma'am.

4 Q. And I believe the incident with her --- or she was  
5 residing in the county jurisdiction?

6 A. Yes, ma'am.

7 Q. Okay. And how did the City become involved, or have  
8 jurisdiction involving the investigation of [Victim #1]  
[REDACTED]?

10 A. The [Victim #1] [REDACTED] incident occurred in the City of  
11 Darlington.

12 MS. MAYES: All right. Beg the Court's  
13 indulgence.

14 (PAUSE.)

15 Q. And would you be referring to the apartment that is  
16 shown in State's Exhibit 5?

17 A. Yes, ma'am.

18 Q. So your investigation was primarily on [Victim #1] [REDACTED];  
19 is that correct?

20 A. That's correct.

21 Q. And on February 20, 2009, did you have the  
22 opportunity to speak with Mr. Gallishaw after he  
23 waived his Miranda Rights, specifically about the  
24 allegations concerning [Victim #1] [REDACTED]?

25 A. Yes, I did.

## MICHAEL AUGUST - DIRECT EXAMINATION

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1 Q. And can you share with the Jury what was related to  
2 you?

3 A. I began to talk to him, and at some point he began  
4 to start crying, and admitted to me that he had had  
5 sex with Victim #1 [REDACTED]. He began to talk to me about  
6 it. I asked him --- held his hand and listened to  
7 him. He was actually, you know, crying, said that  
8 he did it, that there was, you know, drugs were  
9 involved, that he was using drugs at the time, and  
10 you know, he didn't mean to hurt her.

11 Agent Charles was on the other side  
12 of the room at that point. I motioned for him  
13 to go get Captain Watson, since he was the lead  
14 investigator on it. I told him that we needed  
15 to get this statement on tape, so he could get  
16 it off of his chest. At that point Agent  
17 Charles stepped to the door, motioned for  
18 Captain Watson to come down and take a video  
19 statement form him.

20 Q. All right. And do you know whether or not prior to  
21 this date, February 20, 2009, Captain Watson had  
22 previously interviewed this subject?

23 A. Yes, he interviewed him the day before, and he asked  
24 me to interview him on the twentieth. Sometimes  
25 another officer, you know, you can get rapport with



**MICHAEL AUGUST - CROSS EXAMINATION**

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1           somebody, and he asked me to interview him. And I  
2           asked him to come in and talk to me that day.

3       Q.   All right. And after that admission was made, was  
4           there some type of follow-through in order to have  
5           Captain Watson re-interview Mr. Gallishaw?

6       A.   Yes, Captain Watson actually came into the room, and  
7           did a video statement from him.

8       Q.   All right. So there would be statements then to  
9           Captain Watson on both the nineteenth and the  
10          twentieth?

11      A.   Yes.

12                   **MS. MAYES:**     Nothing further, Your Honor.

13                   **THE COURT:**    Cross examination, Ms.

14           Little?

15                   **MS. LITTLE:**    Thank you, Your Honor.

16       **CROSS EXAMINATION BY MS. LITTLE**

17      Q.   Good morning, Sergeant August.

18      A.   How are you.

19      Q.   At the time of this alleged statement was made by  
20           Mr. Gallishaw, where were you at that time, where  
21           were you?

22      A.   We were in my office in the interview room.

23      Q.   And this was just entirely verbal --- You are saying  
24           this is a verbal communication between you and Mr.  
25           Gallishaw?

## MICHAEL AUGUST - CROSS EXAMINATION

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1 A. Between me and Mr. Gallishaw, and it was witnessed  
2 by Agent Charles.

3 Q. And did you video tape this alleged statement that  
4 he made?

5 A. No, ma'am.

6 Q. Don't you have equipment available at the Police  
7 Department to video tape anything that there?

8 A. Yes.

9 Q. But in this case you decided not to use it?

10 A. Did not.

11 MS. MAYES: Your Honor, may we approach?

12 THE COURT: Yes.

13 (Whereupon, a bench conference was held in  
14 the presence of the Jury, but out of the hearing of the  
15 Jury.)

16 THE COURT: All right. Ladies and  
17 gentlemen of the Jury, I am going to have to ask you to  
18 step out while I take up this matter with the lawyers.

19 (Whereupon, the Jury exits the courtroom  
20 at 10:21 a.m..)

21 THE COURT: All right. I take it, Ms.  
22 Mayes, you object to this line of questioning?

23 MS. MAYES: Yes, sir, Your Honor.

24 THE COURT: On what grounds?

25 MS. MAYES: I object because I have

## MICHAEL AUGUST - CROSS EXAMINATION

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1 given this witness a very complete instruction that he  
2 cannot in any way address the fact that a polygraph was  
3 given. That they were in the room where the polygraph  
4 was given. And that he confronted him with the results  
5 of the polygraph immediately preceding this statement.  
6 So he is operating under that specific limitation. Now,  
7 he is being asked why he did not videotape the statement  
8 that was made when he was confronted with the results of  
9 the polygraph. The polygraph results would be part and  
10 parcel of the conversation in which the statement would  
11 be elicited, and that is the reason we don't have the  
12 videotape to offer.

13 And for counsel to imply that it wasn't  
14 videotaped because there was something else going on is a  
15 misrepresentation to the Jury. And we --- The State's  
16 position is that this line of questioning is opening the  
17 door to a valid response which is, it was not videotaped  
18 because they were addressing the polygraph results.

19 THE COURT: All right. Ms. Little, I  
20 will hear from you.

21 MS. LITTLE: Thank you, Your Honor.  
22 Your Honor, based on what she just told the Court, we are  
23 talking about after the polygraph was given.

24 THE COURT: Well, it is all a part and  
25 parcel of the polygraph examination.

## MICHAEL AUGUST - CROSS EXAMINATION

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1 MS. LITTLE: Your Honor, she is talking  
2 about the result, he is talking about the result.

3 THE COURT: I understand. But if you  
4 have you ever attended a polygraph examination, that's  
5 the way it works. They give them their rights before  
6 hand. They give them the polygraph exam. And then they  
7 advise them of the results of it, and ask them if there  
8 is anything they want to say as a result of having taken  
9 the polygraph. And I think what you are implying ---  
10 that implication is there, that he could have at that  
11 point videotaped --- when he could have been videotaping  
12 the whole thing. And I do think it is conveying the  
13 wrong impression to the Jury.

14 MS. LITTLE: Your Honor, can we ask, was  
15 there not a period of time after the polygraph was done,  
16 before he was interviewed again by --- I mean, my  
17 understanding from all of his testimony yesterday is, a  
18 polygraph was done. After the polygraph he interviewed  
19 my client and he gave an incriminating statement.

20 THE COURT: Correct.

21 MS. LITTLE: After the polygraph was  
22 over.

23 THE COURT: Correct.

24 MS. LITTLE: So, how can --

25 THE COURT: They are part and parcel of

## MICHAEL AUGUST - CROSS EXAMINATION

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1 the polygraph --- He wouldn't have been there at all if  
2 it had not been for the polygraph exam.

3 MS. LITTLE: Well, he has already  
4 testified that he was asked by Captain Watson to  
5 interview the Defendant.

6 THE COURT: No, he testified to that,  
7 because you object to him saying how he got into the  
8 interview, that being he was asked by Captain Watson to  
9 give a polygraph exam. And that is what your objection  
10 was. So, I cautioned them that they couldn't say that  
11 was the reason for the interview.

12 MS. LITTLE: Well, Your Honor, on  
13 recross can't she just ask him --- Can't she just ask him  
14 why --- isn't it true that the reason he didn't videotape  
15 it was because Captain Watson was going to come in there  
16 and take a videotaped statement? How does this open the  
17 door to the polygraph?

18 THE COURT: Well, I don't know that it  
19 opens the door to the polygraph. What I am saying is, it  
20 conveys an improper impression that he had videotape  
21 ability and didn't do it.

22 MS. LITTLE: Okay.

23 THE COURT: That's what I think it is.  
24 And I am not going to say that it opens the door to the  
25 polygraph, and I am not going to rule that. But what I

## MICHAEL AUGUST - CROSS EXAMINATION

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1 do think is that it creates an improper impression, or  
2 the capability of videotaping the interview was there,  
3 and they didn't do it. And, of course, if that comes  
4 into evidence that then gives you the opportunities to  
5 argue to the Jury, why didn't they tape Captain August  
6 interview with the Defendant. And that is a false  
7 impression.

8 So, what I am going to do is, I am going to  
9 sustain the objection with regard to the questions about  
10 having the video capability, and not using it. I am  
11 going to ask the jury to disregard that testimony  
12 altogether. And will allow you to go forward with the  
13 cross examination.

14 But I don't think that you have a right to ask  
15 him about the capability of videotaping, and not  
16 videotaping. And I don't think that ought to be in the  
17 record, because I think it does convey a false impression  
18 to the Jury.

19 MS. LITTLE: Thank you, Your Honor.

20 THE COURT: Okay. Bring the jury in.

21 (Whereupon, the Jury enters the courtroom  
22 at 10:27 a.m..)

23 THE COURT: All right. Ladies and  
24 gentlemen, thank you very much. We did have a legal  
25 issue that we had to deal with.

## MICHAEL AUGUST - CROSS EXAMINATION

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1 And I will tell you that I have sustained the  
2 objection of the State in this case. And you are to  
3 disregard any testimony, and any questions in testimony,  
4 and disabuse from your mind any questions and testimony  
5 regarding the ability, or capability of the law  
6 enforcement agency to video any conversation which this  
7 witness had with the Defendant.

8 That testimony is stricken, and you are to  
9 disregard that, disabuse it from your mind. That is, any  
10 testimony about the capability, or ability of the law  
11 enforcement agency to videotape, or not videotape the  
12 alleged statement in this case.

13 Thank you. You may proceed.

14 MS. LITTLE: Thank you, Your Honor.

15 Q. Sergeant August, you stated that the statement made  
16 to you by Mr. Gallishaw was voluntary, did you not?

17 A. I did.

18 Q. And is it your testimony today that no threats were  
19 issued to the Defendant?

20 A. No, ma'am.

21 Q. You did not threaten that his wife would lose her  
22 children?

23 A. No, I did not.

24 Q. Did you threaten that his children would be  
25 subjected to multiple examinations and continued

## RICH CHARLES - DIRECT EXAMINATION

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1 questioning?

2 A. No, I did not.

3 Q. Didn't you tell Mr. Gallishaw that this would all be  
4 better if he would just say he did it?

5 A. No, I did not.

6 MS. LITTLE: Thank you, Sergeant August.

7 THE COURT: Redirect, Ms. Mayes.

8 MS. MAYES: No, Your Honor.

9 THE COURT: All right. Thank you,  
10 Sergeant August, you may step down.

11 MS. MAYES: The State calls Agent Rick  
12 Charles.

13 THE COURT: All right. Come around  
14 please.

15 WHEREUPON, RICH CHARLES

16 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

17 DIRECT EXAMINATION BY MS. MAYES

18 Q. Agent Charles, where are you employed?

19 A. South Carolina Law Enforcement Division.

20 Q. All right. And SLED is located where?

21 A. In Columbia.

22 Q. All right. And do you also have the ability at SLED  
23 to assist in local county and city investigations as  
24 well?

25 A. Yes, ma'am, that is what SLED's mission is.



## RICH CHARLES - DIRECT EXAMINATION

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1 Q. All right. And did you have the opportunity to  
2 assist in the investigation of The State versus  
3 Jimmy Gallishaw on or about February 20, 2009?

4 A. Yes, I did.

5 Q. All right. Did you have the opportunity to observe  
6 the initial interview that was done between Sergeant  
7 August who just testified and the Defendant Jimmy  
8 Gallishaw?

9 A. Yes, I did.

10 Q. Did you have the opportunity to observe, during the  
11 course of the Miranda Rights or Warnings, that Mr.  
12 Gallishaw was advised of by Investigator August?

13 A. Yes, ma'am, I did.

14 Q. And having observed the reading of those rights of  
15 Mr. Gallishaw, did he appear to understand them?

16 A. Yes, he did.

17 Q. Did his waiver of those rights appear to free and  
18 voluntary?

19 A. Yes, ma'am, they did.

20 Q. And were you able to observe during the course of  
21 the interview which Mr. Gallishaw made an admission  
22 to Investigator August concerning Victim #1 [REDACTED]?

23 A. Yes, ma'am, I observed them.

24 Q. And did that statement appear to be freely and  
25 voluntarily made?

## RICH CHARLES - CROSS EXAMINATION

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1 A. Yes, it was.

2 Q. Did Mr. Gallishaw's speech appear to be coherent?

3 A. Yes, ma'am, it was.

4 Q. Did he appear to be aware of his surroundings?

5 A. Yes, ma'am, he did.

6 Q. Were any threats made by yourself, or any other  
7 person, in order to obtain a conversation,  
8 interview, or statement with Mr. Gallishaw?

9 A. Absolutely not.

10 Q. Were any promises made to Mr. Gallishaw?

11 A. Absolutely not.

12 Q. And did the full context of the statement appear to  
13 be freely and voluntarily given?

14 A. It did.

15 Q. And following that observation, do you know if any  
16 other offers were involved in follow up interview  
17 with Mr. Gallishaw?

18 A. Yes, at the time he started making admissions to  
19 Sergeant August, I stepped out and motioned for  
20 Captain Watson to come in to listen to the  
21 admissions, and check out the rest of the interview.

22 MS. MAYES: Thank you, nothing further.

23 THE COURT: Ms. Little, Mr. Swilley.

24 CROSS EXAMINATION BY MR. SWILLEY

25 Q. Good morning, Mr. Charles. Mr. Charles, you ---

## RICH CHARLES - CROSS EXAMINATION

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1 While Mr. Gallishaw was speaking with Officer August  
2 you said you were not present in the room, right?

3 A. Right, the initial interview took place in the  
4 interview room at the Darlington City Police  
5 Department.

6 Q. Were you standing or sitting?

7 A. I was sitting in front of the video monitor watching  
8 the interview that was taking place in the interview  
9 room. After he started to make admissions, Sergeant  
10 August brought him out of the interview room and let  
11 him sit in the outer area of the investigator's  
12 area. At that point in time, he started to weep,  
13 and he started to make further admissions. I  
14 stepped to the door --- I headed out of the door,  
15 motioned for captain Watson to come in. And that is  
16 when Captain Watson came into the room.

17 Q. Did you ever say anything to Mr. Gallishaw?

18 A. I asked him --- it was lunch time. I asked him was  
19 he hungry, would he like something to eat. He  
20 agreed that he would. And after Captain Watson came  
21 in and started to interview Mr. Gallishaw, I went to  
22 Burger King and got him something to eat.

23 Q. Okay. Mr. Charles, did you say anything else to him  
24 besides about whether he was hungry or not?

25 A. When he started to weep, you could tell that he was

## RICH CHARLES - CROSS EXAMINATION

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1 very distressed. He did look like he was very  
2 remorseful about what he was doing. I told him he  
3 would probably feel better if he just got it out.

4 Q. I see. So you say he seemed very distressed like he  
5 didn't want to be there?

6 A. Not that he didn't want to be here, but he had a  
7 burden on him.

8 Q. I see. Can you tell me what he said verbatim --

9 A. -- I just told you what I said verbatim.

10 Q. Okay. Thank you. And did you have any other  
11 conversation with Mr. Gallishaw at this time?

12 A. No, I don't recall any other conversations other  
13 than to ask him --- you know, it was the lunch hour.  
14 And I knew he was missing a meal. And I asked him  
15 was he hungry, would he like for me to go get him  
16 something to eat. He indicated yes, so I left.  
17 Sergeant August was still there. Captain Watson was  
18 still there. I went to Burger King and got him  
19 something to eat.

20 Q. Do you remember what you got him?

21 A. I got him a Whopper Meal.

22 Q. I see. And is it your understanding that --- Mr.  
23 Gallishaw's understanding that this wasn't a *quid*  
24 *pro quo* exchange, right. This wasn't like that?

25 A. No.

**DANIEL WATSON - DIRECT EXAMINATION**

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1 Q. Okay. Did you play any other role in the interview?

2 A. Only an observer.

3 Q. I see.

4 MS. MAYES: Thank you, Mr. Charles.

5 THE COURT: Redirect, Ms. Mayes?

6 MS. MAYES: No, sir, Your Honor.

7 THE COURT: All right. Thank you, sir.

8 You may step down.

9 MS. MAYES: The State calls Captain  
10 Danny Watson.

11 THE COURT: All right. Captain Watson.

12 WHEREUPON, DANIEL WATSON

13 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

14 DIRECT EXAMINATION BY MS. MAYES

15 Q. Good morning, Captain Watson. Could you state your  
16 full name and where you are employed?

17 A. Daniel Watson. I work for the Darlington City  
18 Police Department.

19 Q. And how long have you been with the City Police  
20 Department?

21 A. For about fifteen and a half years.

22 Q. And how long have you been in the role of Captain?

23 A. For about a year and a half.

24 Q. All right. Can you give us some information about  
25 how the city became involved in this investigation

## DANIEL WATSON - DIRECT EXAMINATION

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1 concerning Jimmy Gallishaw?

2 A. Yes, ma'am. I actually -- the mother and child had  
3 actually come to the Police Department in reference  
4 to filing a report about some alleged sexual abuse.

5 Q. All right. And just to clarify, before the mother  
6 and child came to law enforcement, had the CARE  
7 House of the Pee Dee been involved in this  
8 investigation?

9 A. Yes, ma'am.

10 Q. Just take your time.

11 A. Yes, ma'am. They had also --- I had been in contact  
12 with an investigator with the Darlington County  
13 Sheriff's Office. He was investigating an assault  
14 that had taken place in the count.

15 Q. All right. And just to clarify, who was that  
16 investigator?

17 A. Patricia White.

18 Q. Does she also go by Patricia Ray?

19 A. Yes, ma'am.

20 Q. And is she present in the courtroom?

21 A. Yes, ma'am, she is.

22 Q. All right. So the initial investigation was ---  
23 involved the county?

24 A. Yes, ma'am.

25 Q. And the city became involved once it was determined

## DANIEL WATSON - DIRECT EXAMINATION

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1 that [Victim #1] [REDACTED] --- the [Victim #1] [REDACTED] incident had  
2 occurred within the jurisdiction of the city?

3 A. Yes, ma'am.

4 Q. Was it a joint county and city investigation?

5 A. Yes, ma'am, it was.

6 Q. And you mentioned that a mother and child came. Who  
7 are you referring to?

8 A. I am referring to the mother, Ms. Adrienne, and her  
9 daughter, [Victim #1].

10 Q. Are you referring to Robin Adkin's wife?

11 A. I'm sorry, actually there were offenses against both  
12 children in the city, so actually I spoke to all of  
13 them. So there was an offense here in the county  
14 with one child and there were offenses in the city  
15 involving both children. So I spoke to both parents  
16 and both children. And when I say I spoke to the  
17 children, it was only in a peripheral sense, because  
18 I don't interview children. I don't feel  
19 comfortable doing that. That is what we have the  
20 CARE House for.

21 Q. All right. I want to ask you a little bit more  
22 about that. What is the protocol for both the  
23 county and the city when there are child sexual  
24 abuse allegations?

25 A. It is kind of like post traumatic disorder. To re-

## DANIEL WATSON - DIRECT EXAMINATION

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1 interview a child repeatedly, is like making that  
2 child re-experience that again, and again, and  
3 again. So what our philosophy is, is that we turn  
4 these types of interviews over to people that do  
5 that for a living, that are professionals, that are  
6 trained specifically for this. And if I go and ask  
7 them to tell me what happened, and then send them to  
8 the CARE House that means I have to go through it  
9 twice. And I don't want to injure any child more  
10 than they are already injured. So our protocol is  
11 basically, once we are made aware of that we contact  
12 the CARE House, and let them know that we have a  
13 potential child victim, and we set up an appointment  
14 for them to be examined.

15 Q. All right. And when you refer to a child advocacy  
16 center like the CARE House, what components of the  
17 investigation do they assist with in terms of  
18 interviewing children?

19 A. They do a forensic interview of the child, and they  
20 will also do a medical examination of the child.

21 Q. All right. So the child's forensic interview, which  
22 you referred to on both children were done on site  
23 of the CARE House and not at the police station; is  
24 that correct?

25 A. Yes, yes, ma'am.



## DANIEL WATSON - DIRECT EXAMINATION

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1 Q. And then on the child's medical examination, and who  
2 are the people who performed the medical examination  
3 of both children in this case?

4 A. That would be the CARE House.

5 Q. And that would be Doctor Kathy Saunders that we  
6 heard from yesterday?

7 A. Yes, ma'am.

8 Q. And then does the CARE House also keep law  
9 enforcement apprised of the results of an interview  
10 or a medical examination?

11 A. Yes, ma'am, they do. And sometimes they will even  
12 contact us during the interview --- if they want to  
13 know if there are specific questions that we want  
14 asked so we can clarify any details or points we  
15 need to do. They also keep a video of it, and  
16 provide that to us for court purposes.

17 Q. Now, once it was determined after the children  
18 received interviews --- that incident date involving  
19 the city, what, if anything, was done then?

20 A. Once I found out that the incident took place in the  
21 city, I made it my business to find out where Mr.  
22 Gallishaw was so that I could bring him into the  
23 Police Department for the purposes of interviewing  
24 him about any potential offenses that would have  
25 occurred in the city.

## DANIEL WATSON - DIRECT EXAMINATION

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1 Q. All right. And can you tell us whether or not  
2 interviewing potential suspects in any kind of case,  
3 whether it is a child abuse case, or a murder case,  
4 that interviewing suspects is normal procedure?

5 A. Yes, ma'am, it is.

6 Q. And do you have any records to reflect the date of  
7 your first contact with Mr. Gallishaw?

8 A. Yes, ma'am. I interviewed him originally on  
9 February 19, 2009, at approximately 4:07 in the  
10 afternoon.

11 Q. All right. And during the course of that first  
12 contact with Mr. Gallishaw, can you tell us whether  
13 or not he was advised of his Miranda Rights?

14 A. Yes, ma'am, he was.

15 Q. I am going to show you this document and ask you  
16 whether or not you recognize it?

17 A. Yes, ma'am, I do.

18 Q. And how do you recognize it?

19 A. It is the voluntary statement that I presented Mr.  
20 Gallishaw with, that I read the rights from, and  
21 identify the person who is being interviewed.

22 Q. All right. And does the document contain your  
23 signature at any location?

24 A. Yes, it does. It is affixed to the bottom left hand  
25 corner.

## DANIEL WATSON - DIRECT EXAMINATION

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1 Q. All right. And on February 19, 2009, can you show  
2 us exactly what Mr. Gallishaw was advised of by you?

3 A. Yes, ma'am. Once I got the information, name, date  
4 of birth, and his address, and age, affixed the time  
5 and date, and where the interview took place, I  
6 identified myself as a law enforcement officer, and  
7 it is not like he didn't know that, but we do it  
8 anyway. Then I advised him of his rights. And I  
9 read the form to him out loud. Which are: One, you  
10 have the right to remain silent. Two, anything you  
11 say can and will be used against you in a court of  
12 law. Three, you have the right to talk to a lawyer,  
13 and have them with you when you are being  
14 questioned. If you cannot afford to hire a lawyer  
15 one will be appointed to represent you before any  
16 questioning, if you wish. You can decide at anytime  
17 to exercise these rights, and not answer any  
18 questions, or make any statements. Once I am done  
19 with that part I will ask him if he wants to talk  
20 with me. And then I do what is called a Waiver of  
21 Rights. And I explain to him that this means that  
22 you don't waive your rights, that you always have  
23 your rights. It just means that you wish to talk to  
24 us at this particular time without an attorney  
25 present. That anytime during that period if you

## DANIEL WATSON - DIRECT EXAMINATION

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1 don't answer any more questions, or if you don't  
2 want to answer a specific question you don't have  
3 to. And then I read it to him. Which is: I do not  
4 wish to talk to a lawyer. I hereby knowingly and  
5 purposely waive my right to remain silent. And my  
6 right to have a lawyer present while I make the  
7 following statement to the aforesaid person.  
8 Knowing that I have the right and privilege to  
9 terminate any interview at anytime hereafter, and  
10 have a lawyer present with me before answering any  
11 more questions or make anymore statements if I  
12 choose to do so. I declare the following voluntary  
13 statement is submitted by my own free will, without  
14 promise, or hope of reward without fear or threat of  
15 physical harm, without coercion, favor, or offer of  
16 favor, without leniency, or offer of lenience by any  
17 persons whomsoever. Once I do that, I have him read  
18 it after I have read it to him, and affix his  
19 initials to each one of the lines. The way I do  
20 things, I always ask them if they can read or write,  
21 and they have waived their rights.

22 Q. All right. And did Mr. Gallishaw appear to have  
23 understood those rights?

24 A. Yes, ma'am, he did.

25 Q. Did he acknowledge the rights with the initials at

**DANIEL WATSON - DIRECT EXAMINATION**

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1 any location?

2 A. Yes, ma'am, he acknowledged it with the initials  
3 JHG, at the end of each one of the sentences one  
4 through five, as well as the waiver of rights.

5 Q. With his signature?

6 A. With his initials at the top, and he affixed his  
7 signature at the bottom where it says, signature of  
8 person giving voluntary statement.

9 MS. MAYES: Your Honor, this would be  
10 State's Exhibit 16.

11 THE COURT: All right. Any objection  
12 Mr. Swilley?

13 MR. SWILLEY: No, Your Honor.

14 THE COURT: All right. Admitted into  
15 evidence as State's Exhibit Number 16 without objection.

16 WHEREUPON, STATE'S  
17 EXHIBIT NUMBER 16 IS MARKED  
18 AND ADMITTED INTO EVIDENCE  
19 WITHOUT OBJECTION.

20 MS. MAYES: May I publish, Your Honor?

21 THE COURT: Yes, ma'am.

22 (Whereupon, State's Exhibit Number 16 was  
23 published to the Jury.)

24 Q. So this was your first contact with Mr. Gallishaw.  
25 After he waived his Miranda Rights, did he agree to

## DANIEL WATSON - DIRECT EXAMINATION

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1 participate in an interview?

2 A. Yes ma'am, he did.

3 Q. And during the course of this interview on February  
4 19, did he make any admissions concerning actually  
5 having sexual relations with either child, **Victim #2**

6 **██████████** or **Victim #1** **██████████**?

7 A. No ma'am, he didn't.

8 **THE COURT:** Just a minute. Ladies and  
9 gentlemen, as you will recall a minute ago before Mr.  
10 August testified, I advised you about the requirements  
11 before a statement is admitted.

12 As I told you then, there has been admitted  
13 into the record a statement in this case with this  
14 witness. And those same admonitions and same  
15 instructions that I gave you regarding the statement made  
16 to Mr. August apply to the statement made to this  
17 witness. That is, you have got to make four findings.  
18 That is, did the Defendant make the statement, was the  
19 Defendant warned of his constitutional rights, did the  
20 Defendant knowingly and intelligently waive his  
21 constitutional rights, and was the statement given  
22 voluntarily?

23 So the ultimate question to be resolved by you  
24 with regard to the alleged statement of the Defendant, in  
25 addition to the questions of whether or not the

**DANIEL WATSON - DIRECT EXAMINATION**

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1 Defendant, in fact, made the statement is whether or not  
2 his constitutional rights were observed, and knowingly  
3 and intelligently waived by him in this.

4 Was the statement the expression of the  
5 Defendant's own free will, made without compulsion or  
6 inducement, but representing essentially a free and  
7 unconstrained choice by the Defendant, or, was it the  
8 product of an over-born will of the Defendant?

9 With regard to the statement in this case, the  
10 State must prove by evidence each and every requirement  
11 which I have instructed you, beyond a reasonable doubt,  
12 before you may consider the alleged statement as evidence  
13 in this case.

14 All right, Ms. Mayes.

15 **MS. MAYES:** Yes, sir, Your Honor.

16 Q. On this particular date, following the waiver of his  
17 Miranda Rights, did Mr. Gallishaw acknowledge any  
18 type of sexual relations with either **Victim #1** or  
19 **Victim #2** ?

20 A. No ma'am, not in that first interview.

21 Q. All right. And did you have the opportunity to  
22 interview him again?

23 A. Yes, ma'am, I did.

24 Q. All right. And what happened on the second  
25 interview?

## DANIEL WATSON - DIRECT EXAMINATION

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- 1       A.    During the second interview, I was called into the  
2            office by Agent Charles.  He stated that Mr.  
3            Gallishaw wanted to speak with me.  So I did it the  
4            same way I did the first interview.  I took him into  
5            the interview room, I sat down with him, and I  
6            explained to him again --- Jimmy, okay, basically,  
7            okay, I talked to you yesterday and today.  We have  
8            advised you of your rights.  Do you understand what  
9            your rights are?  He indicated to me that he did.  I  
10          asked him if he was still willing to talk to me and  
11          he indicated that he was.  I basically just went  
12          into --- I just want talk a little bit about what  
13          happened yesterday and what happened today.  And  
14          during that time he was --- he was still crying.  He  
15          was upset.  He was --- it was clear to me, at least,  
16          my belief at that time that he was very remorseful  
17          about what he had done.  I think if he could have  
18          taken it back at that point I think he would have.  
19          What I tried to explain to him was that the best  
20          thing to do if he had done something wrong was to  
21          deal with it.  Put your best foot forward, man up,  
22          whatever you want to call it, ask for forgiveness,  
23          and, you know, take your lumps and move on, for the  
24          lack of a better way of putting it.
- 25        Q.   Now are you referring to the interview on February



## DANIEL WATSON - DIRECT EXAMINATION

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- 1           20<sup>th</sup>?
- 2           A.    Yes, ma'am.
- 3           Q.    And that was immediately following the initial
- 4           interview by Investigator August, and that was done
- 5           in the presence of Agent Charles?
- 6           A.    Yes, ma'am.
- 7           Q.    And, did he make any admissions during the course of
- 8           the second interview about having sexual relations
- 9           with [Victim #2] [REDACTED] or [Victim #1] [REDACTED]?
- 10          A.    Yes, ma'am, he did.
- 11          Q.    And did he indicate whether or not the girls were
- 12          separate or together when this occurred?
- 13          A.    He indicated to me that they were both in the same
- 14          room when it happened. That they were all together.
- 15          Q.    Did he indicate whether it had occurred one time or
- 16          more than one time?
- 17          A.    It had occurred numerous times.
- 18          Q.    All right. And did Mr. Gallishaw also agree for
- 19          that entire video to be videotaped?
- 20          A.    Yes, ma'am.
- 21          Q.    And was it in fact videotaped?
- 22          A.    Yes, ma'am.
- 23          Q.    And the initial interview with him the day before on
- 24          the nineteenth, was that statement videotaped?
- 25          A.    Yes, ma'am, it was.

**DANIEL WATSON - DIRECT EXAMINATION**

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1 Q. I am going to show you what is not marked, these are  
2 dated February 19, 2009, and February 20, 2009. Do  
3 you know if copies of the videotaped interview with  
4 Mr. Gallishaw were provided to members of the Court  
5 as well?

6 A. Yes, ma'am.

7 MS. MAYES: Your Honor, at this time the  
8 State offers 17 and 18 as evidence to be published.

9 THE COURT: Ms. Little.

10 MS. LITTLE: Over our previous  
11 objection, Your Honor.

12 THE COURT: All right. Your previous  
13 objection is noted. They will be admitted as State's  
14 Number 17 and 18.

15 WHEREUPON, STATE'S

16 EXHIBIT NUMBER 17 & 18 ARE

17 MARKED AND ADMITTED INTO

18 EVIDENCE OVER OBJECTION.

19 Q. And Captain Watson, the first interview that we are  
20 going to watch was dated February 19, 2009. Can you  
21 tell us where that interview took place?

22 A. At the Darlington City Police Department in our  
23 interview room. It is just basically a table and a  
24 couple of chairs and a video camera that is up on  
25 the wall with a video.

**DANIEL WATSON - DIRECT EXAMINATION**

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1 Q. All right. And is this the same interview that you  
2 previously referred to that followed the waiver of  
3 his Miranda Rights on the nineteenth?

4 A. Yes, ma'am, it is.

5 Q. And did he make any admissions in this first initial  
6 interview?

7 A. No, ma'am.

8 MS. MAYES: Your Honor, we are prepared  
9 to publish.

10 THE COURT: All right. You may publish  
11 it.

12 (Whereupon, State's Exhibit Number 17 is  
13 published to the Jury.)

14 THE COURT: Counsel, approach please.

15 (Whereupon, a bench conference was held in  
16 the presence of the Jury, but out of the hearing of the  
17 Jury.)

18 THE COURT: All right. Turn the lights  
19 on please. Ladies and gentlemen of the Jury, you have  
20 been in the courtroom now for about an hour and thirty  
21 minutes or so. And we have been in for longer than that,  
22 because we had some matters to tend to.

23 We are going to take our morning break at this  
24 time for about ten minutes. We will be ready to start  
25 back in just about ten minutes.

**DANIEL WATSON - DIRECT EXAMINATION**

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1 Please do not discuss the case among yourselves  
2 while you are in the jury room. Just relax for about the  
3 next ten minutes or so and take a break, and we will send  
4 of you very shortly.

5 Thank you, you may go with the bailiff.

6 (Whereupon, the Jury exits the courtroom  
7 at 11:41 a.m..)

8 **THE COURT:** All right. Counsel, let's  
9 take a break and be ready to start back at ten minutes to  
10 twelve.

11 **MS. MAYES:** Yes, sir, Your Honor..

12 (Whereupon, a recess was taken from 11:41  
13 a.m. until 11:55 a.m..)

14 **THE COURT:** All right. Back on the  
15 record with regards to the State versus Gallishaw. Mr.  
16 Gallishaw is present with his counsel. The State is  
17 present and represented by Ms. Mayes.

18 Is there anything before we bring the Jury back  
19 in, Ms. Mayes?

20 **MS. MAYES:** No, sir, Your Honor.

21 **THE COURT:** Ms. Little?

22 **MS. LITTLE:** No, sir.

23 **THE COURT:** All right. Bring the Jury  
24 in please.

25 (Whereupon, the Jury enters the courtroom

## DANIEL WATSON - DIRECT EXAMINATION

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1 at 11:55 a.m..)

2 THE COURT: All right, ladies and  
3 gentlemen, thank you very much. And we are now ready to  
4 resume.

5 MS. MAYES: Yes, sir, Your Honor.

6 Q. Captain Watson, that concluded the interview that  
7 took place on February 19, 2009. When was your next  
8 contact with the Defendant, Jimmy Gallishaw?

9 A. That would have been the next day when he came in.

10 Q. All right. And the next day on the twentieth,  
11 following the waiver of his Miranda Rights that we  
12 have previously heard about that he was advised  
13 about from Investigator August?

14 A. Yes, ma'am.

15 Q. All right. And where did the second interview take  
16 place on the twentieth?

17 A. In the same place the first one did at the  
18 Darlington Police Department in the interview room.

19 Q. All right. So it was the same room that you were in  
20 the day before?

21 A. Yes, ma'am, it was.

22 MS. MAYES: Your Honor, at this time we  
23 would offer State's Exhibit 18 to be published.

24 THE COURT: All right. We will allow  
25 you to publish that to the Jury. It has already been

## DANIEL WATSON - DIRECT EXAMINATION

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1 admitted into evidence.

2 (Whereupon, State's Exhibit Number 18 was  
3 published to the Jury.)

4 THE COURT: Would someone get the lights  
5 please? All right, Ms. Mayes.

6 MS. MAYES: Yes, sir, Your Honor.

7 Q. Captain Watson, the second video --- video tape  
8 there. Can you tell us who is the person in the  
9 room with you?

10 A. Jimmy Gallishaw.

11 Q. All right. And your videotape system, is it --- how  
12 does it operate?

13 A. Basically what it is, the video system is copied to  
14 a computer system. And what it is, is when you make  
15 a copy of the DVD --- or actually it is a file  
16 inside of the computer, it water stamps it so that  
17 it can't be modified or changed in any way. It is  
18 computer generated on a CD.

19 Q. All right. And what about the three second delay  
20 that is involved in the computerized video system?

21 A. Basically what it is, is there is so much  
22 information on that computerized disc, it is not  
23 like a DVD, because a DVD will play in real time.  
24 The longer the interview takes, it kind of has a lag  
25 time in it where it has to catch up with the video

## DANIEL WATSON - DIRECT EXAMINATION

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1 and audio.

2 Q. Now based upon your observation of that interview on  
3 February 20, 2009, what, if anything, is different  
4 about the demeanor of Mr. Gallishaw in this  
5 interview?

6 A. In this particular interview I think he let go of  
7 it. I think he was trying to deal with it, you  
8 know, he was very remorseful. I think that he was  
9 trying to be as truthful as he could be. In my  
10 experience, no one tells you everything. They are  
11 always holding something back. But I think he told  
12 me about everything that he possibly could. And I  
13 think he was trying to get better and move on.

14 Q. All right. Now there was a document that was  
15 prepared toward the end of the video tape. What is  
16 that document?

17 A. It is --- What I asked him is, if he wanted to write  
18 a letter of apology to his children to explain to  
19 them, you know, how bad he felt about this. And  
20 that is what that is. He wrote it in his own  
21 handwriting, and I read it --- I just read it right  
22 off the paper.

23 Q. And do you have that document with you today?

24 A. Yes ma'am, I do.

25 Q. Again, is this the paper that you provided to Mr.

**DANIEL WATSON - DIRECT EXAMINATION**

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1 Gallishaw at the close of the interview?

2 A. Yes, ma'am, it is.

3 Q. And is the entire letter in his handwriting?

4 A. In his handwriting.

5 Q. And do you recognize this document from that  
6 particular date?

7 A. Yes, ma'am, I do.

8 **MS. MAYES:** Your Honor, at this time  
9 this would be State's Exhibit 19, for the record.

10 **THE COURT:** State's Number 19, offered  
11 into evidence. Any objection?

12 **MR. SWILLEY:** No objection to the  
13 document being admitted into evidence, Your Honor.

14 **THE COURT:** All right. It will be  
15 admitted into evidence as State's Number 19, without  
16 objection.

17 **WHEREUPON, STATE'S**  
18 **EXHIBIT NUMBER 19 IS MARKED**  
19 **AND ADMITTED INTO EVIDENCE**  
20 **WITHOUT OBJECTION.**

21 Q. Now just a few more questions Captain Watson that  
22 deal with this specific charges. You had mentioned  
23 that a particular incident occurred within the city.  
24 What is that address?

25 A. It is on Pine Street, Southern Pine Street, ■ let



**DANIEL WATSON - DIRECT EXAMINATION**

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1 me make sure. [REDACTED] Southern Pine Street, in the  
2 jurisdictional city limits of Darlington, which is  
3 in Darlington County.

4 Q. And there has been additional testimony about this  
5 particular address which was in Lydia. Can you tell  
6 us whether or not that is within the confines of  
7 Darlington County?

8 A. Yes, ma'am, it is within the county limits.

9 Q. Now what is the date of birth of Mr. Gallishaw?

10 A. Mr. Gallishaw's date of birth is November 16, 1977.

11 Q. Can you tell us, based upon your investigation,  
12 whether or not [REDACTED] Victim #1 [REDACTED] was under the age of  
13 eleven in 2007?

14 A. Yes, ma'am, she would have been.

15 Q. And can you tell us whether or not [REDACTED] Victim #2 [REDACTED]  
16 was under the age of eleven in 2007?

17 A. Yes, ma'am, she would have been.

18 MS. MAYES: Your Honor, at this time the  
19 State would ask to publish Exhibit 19 to the Jury.

20 THE COURT: All right. Permission  
21 granted.

22 (Whereupon, State's Exhibit 19 was  
23 published to the jury.)

24 MS. MAYES: Nothing further from the  
25 witness at this time, Your Honor.

## DANIEL WATSON - CROSS EXAMINATION

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THE COURT: Cross examination.

CROSS EXAMINATION BY MR. SWILLEY

Q. Captain Watson, on the twentieth, the day of the second statement was that --- when you walked in the room on the video, is that the first time you had seen Mr. Gallishaw that day?

A. I don't think so. I think I was actually the one that brought him up from the Detention Center, I believe.

Q. Okay. All right. You didn't witness him speaking with Mr. August, did you?

A. No, sir. Other than when I came in the room and we were all in there together. I came in there for the purposes of speaking to him.

Q. From about the time you brought him up to the end of your interview with him, about how long was that period of time?

A. A couple of hours maybe.

Q. All right. Do you have any more like two or three?

A. I don't want to tell you something that I don't know for a specific fact.

Q. Okay. Captain Watson on the video, were you heard to say that different people react different --- or react different ways to different situations?

A. Yes, sir.

## DANIEL WATSON - CROSS EXAMINATION

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1 Q. Okay. And just to clarify, you are the Captain in  
2 the Darlington City Police Department, right?

3 A. Yes, sir.

4 Q. And that is second in command to the Chief, right?

5 A. Yes, sir.

6 Q. So you are the number two man in the City of  
7 Darlington?

8 A. Yes, sir.

9 Q. Okay. So only one person is higher than you. Did  
10 Mr. Gallishaw know that?

11 A. I don't know if he did or not.

12 Q. Okay. Going back to the nineteenth of the first  
13 video, do you recall Mr. Gallishaw attempting to  
14 inform you about his testicular dysfunctions?

15 A. Yes, sir.

16 Q. Do you think that that might be relevant to the  
17 investigation?

18 A. In what manner?

19 Q. Well, the allegations were that he had had had sex  
20 with the victim, the alleged victims. Do you think  
21 that what he was alleging, as far as the mechanical  
22 problems of his genitalia, might have prevented him  
23 from committing those particular acts, particularly  
24 the, I guess lack of size, and the lack of ability  
25 to perform of Mr. Gallishaw?

DANIEL WATSON - REDIRECT EXAMINATION

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1 A. Was my assumption based upon the fact that he had a  
2 very small size still worked?

3 MR. SWILLEY: Thank you Captain Watson,  
4 I have no further questions.

5 THE COURT: Redirect.

6 MS. MAYES: Yes, sir, Your Honor.

7 REDIRECT EXAMINATION BY MS. MAYES

8 Q. Do you know who is the biological father of Victim #1  
9 [REDACTED]?

10 A. Yes, ma'am.

11 Q. And the father of the --- Is it your understanding  
12 that he is the father of the child born in 2007?

13 A. Yes, ma'am.

14 Q. And the second interview that we are referring to on  
15 February 20<sup>th</sup>, was that interview done by the  
16 agreement of Mr. Gallishaw?

17 A. Yes, ma'am.

18 MS. MAYES: Nothing further.

19 THE COURT: Re-cross?

20 MR. SWILLEY: No, Your Honor.

21 THE COURT: All right. Thank you, sir.  
22 You may step down.

23 CAPTAIN WATSON: Thank you, Your Honor.

24 MS. MAYES: State rests, Your Honor.

25 THE COURT: All right. All right,

**THE STATE VERSUS JIMMY GALLISHAW**

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1 ladies and gentlemen, you have heard the State announce  
2 that they have rested their case. That means that you  
3 have heard all of the testimony that you will hear from  
4 the State at this time. And there are now matters of law  
5 which I now need to take up with the attorneys that are  
6 involved. And I have to do that on the record and  
7 outside of your presence. It is about ten minutes to  
8 one. I think this is a good time for us to break for  
9 lunch. So, I am going to recess for lunch at this time  
10 until 2:00. I would ask that you be back in your jury  
11 room please at 2:00.

12 In the mean time, please do not discuss the  
13 case among yourselves. It is still inappropriate when  
14 you are reassembling in the jury room. You still have  
15 not heard everything that you will hear in connection  
16 with this. And do not allow anyone to discuss it with  
17 you, and do not discuss it with anyone while you away  
18 from the courthouse. But, if you would be back in your  
19 jury room at 2:00-o'clock and we will be ready to resume.  
20 I'll see you at that time. Thank you.

21 (Whereupon, the Jury exits the courtroom  
22 at 12:51 p.m..)

**MOTION FOR A DIRECTED VERDICT**

23  
24 **THE COURT:** Now, Ms. Little or Mr.  
25 Swilley, motions on behalf of the Defendant.

## THE STATE VERSUS JIMMY GALLISHAW

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1 MS. LITTLE: Thank you, Your Honor. At  
2 this time the Defense moves for a directed verdict.

3 The Defense contends that there is a lack of  
4 competent evidence tending to prove the Defendant's guilt  
5 of these crimes.

6 THE COURT: All right. Rule 19 of the  
7 South Carolina Rules of Criminal Procedure does provide  
8 that at the end of the State's case, a Defendant may move  
9 for a directed verdict on any offense charged in the  
10 Indictment, if there is a failure of competent evidence  
11 tending to prove the charge in the Indictment. The term  
12 competent is an unfortunate use of that word, because it  
13 implies weighing the evidence, or deciding which evidence  
14 is the most credible.

15 As used in the rule however, it is my view that  
16 the word competent is used in Rule 19 means, admissible  
17 evidence, or evidence in the record. And, in fact, that  
18 the test is, that I have headed the recommendation of  
19 changes to the criminal rules. We have changed that  
20 language from competent to evidence in the record,  
21 because the --- as the rule goes on to say, in ruling on  
22 the motion the trial judge can consider only the  
23 existence or nonexistence of the evidence and not its  
24 weight.

25 So, it is not my job to weigh the evidence, or

## THE STATE VERSUS JIMMY GALLISHAW

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1 determine the believability or credibility of the,  
2 evidence, but only whether there is evidence in the  
3 record tending to prove the charges in the Indictment.

4 And in this case there is ample evidence in the  
5 record, if believed by the Jury, to prove all three of  
6 the charges of criminal sexual conduct with a minor,  
7 incest, and lewd act upon a minor.

8 So, I will respectfully deny the Motion for a  
9 directed verdict.

10 All right. Let me address again Mr. Gallishaw.  
11 Mr. Gallishaw would you stand.

12 Mr. Gallishaw, yesterday afternoon I addressed  
13 with you, and gave you your Fifth Amendment Rights, and  
14 told you what your rights were with regard to your right  
15 not to have to provide testimony or evidence against  
16 yourself. Have you had a chance to talk with your  
17 attorneys regarding your Fifth Amendment Rights?

COURT INQUIRY REGARDING FIFTH AMENDMENT RIGHTS

18  
19 MR. GALLISHAW: Yes, I have.

20 THE COURT: Have you understood your  
21 rights with them?

22 MR. GALLISHAW: Yes.

23 THE COURT: Have you understood what I  
24 have told you about your Fifth Amendment Right?

25 MR. GALLISHAW: Yes.

## THE STATE VERSUS JIMMY GALLISHAW

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1 THE COURT: Do you have any questions  
2 that you want to ask either me or them with regard to  
3 your Fifth Amendment Rights?

4 MR. GALLISHAW: Not at this point.

5 THE COURT: And, do you understand that  
6 you have a right to testify or not to testify; is that  
7 correct?

8 MR. GALLISHAW: Yes, I do.

9 THE COURT: Have you made a decision as  
10 to whether you do or do not wish to testify in this case?

11 MR. GALLISHAW: Yes, I will.

12 THE COURT: And what is that decision?

13 MR. GALLISHAW: I will testify.

14 THE COURT: You do wish to testify?

15 MR. GALLISHAW: Yes, sir.

16 THE COURT: Is that decision on your  
17 part freely and voluntarily made?

18 MR. GALLISHAW: Yes, it is.

19 THE COURT: All right. All right, thank  
20 you, sir. All right. For the record, the Court would  
21 advise that the Defendant, after having been advised of  
22 his Fifth Amendment Rights, and privilege against self-  
23 incrimination by both the Court and his attorney has made  
24 a free, voluntary, knowingly, and intelligent decision to  
25 waive that constitutional privilege against self-



**THE STATE VERSUS JIMMY GALLISHAW**

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1 incrimination, and to testify in this case. And the  
2 Court will, of course, respect that decision.

3 All right. Counsel, Ms. Little, in addition to  
4 the Defendant testifying, how many other witnesses do you  
5 anticipate?

6 **MS. LITTLE:** Just one, Your Honor.

7 **THE COURT:** Other than him?

8 **MS. LITTLE:** Other than him, one brief  
9 witness.

10 **THE COURT:** All right. Then let's  
11 recess for lunch and be prepared to start back at 2:00-o-  
12 clock.

13 **MS. LITTLE:** Your Honor, may Ms. Mayes  
14 and I speak to you in chambers just before lunch?

15 **THE COURT:** Yes. All right. Come on  
16 in. We will be in recess until 2:00-o'clock.

17 (Whereupon, The Court stands down for  
18 lunch at 12:55 p.m. and reconvenes at 2:05 a.m..)

**PRESENTATION OF THE DEFENDANT'S CASE**

19  
20 **THE COURT:** All right. Back on the  
21 record with regard to the matter of the State versus  
22 Jimmy Gallishaw, Junior. Mr. Gallishaw is present with  
23 his counsel. And the State is present and is represented  
24 by Ms. Mayes.

25 During the lunch recess, I was advised that the

## THE STATE VERSUS JIMMY GALLISHAW

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1 State wished to make a proffer of certain evidence that  
2 needs to be considered in the absence of the Jury. Ms.  
3 Little.

4 MS. LITTLE: Thank you, Your Honor.  
5 Your Honor, I have Defendant's Exhibits 2 and 3 for  
6 identification purposes. Your Honor may recall during  
7 the medical testimony of Doctor Saunders that there was  
8 an indication that something to break a hymen or tear  
9 hymenal tissue would have to be something bigger than a  
10 tampon. And Your Honor, part of my client's defense is  
11 that he suffers from impotency, and that --- and a very  
12 very small penis. That is going to be one of the main  
13 things that we are going to try to bring out when Defense  
14 testifies. It is going to be his testimony that he is  
15 impotent, and that he does not have a penis large enough  
16 to penetrate a hymen. And for that reason we have  
17 photographs of Defendant's genitals that we would like to  
18 offer into evidence.

19 THE COURT: When was the photograph  
20 taken?

21 MS. LITTLE: They were taken today, Your  
22 Honor.

23 THE COURT: All right. Over the lunch  
24 recess?

25 MS. LITTLE: Yes, sir.

## THE STATE VERSUS JIMMY GALLISHAW

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THE COURT: All right.

MS. LITTLE: And --- I'm sorry.

THE COURT: Go ahead.

MS. LITTLE: And what we also plan to bring out in testimony, through the Defendant, is that this is also the way his penis looked in 2000 --- during the time period of these allegations, during the time period of the allegations in the Indictment.

THE COURT: All right. Ms. Mayes, have you seen the --

MS. MAYES: I have not, Your Honor.

THE COURT: All right.

(PAUSE.)

THE COURT: All right. Let me have them Ms. --- Go ahead.

(PAUSE.)

BAILIFF: All the Jurors are in.

THE COURT: All right. Thank you. Tell them that we are tending to some legal matters.

BAILIFF: All right, sir.

THE COURT: All right. May I see them. She has had a chance to review them. I'll call on Ms. Mayes in just a moment to give me her position.

(PAUSE.)

THE COURT: All right. Ms. Mayes, I

## THE STATE VERSUS JIMMY GALLISHAW

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1 will be glad to hear from you.

2 MS. MAYES: Yes, sir, Your Honor. The  
3 State would object on the grounds of relevance. The  
4 photographs that were taken today do not depict the  
5 Defendant in an erect state, which is what would be  
6 required for the act of sexual intercourse. And the  
7 State's position is, therefore photographs taken today  
8 would not be relevant.

9 (PAUSE.)

10 THE COURT: All right. Response to that  
11 Ms. Little?

12 MS. LITTLE: Your Honor, we expect Mr.  
13 Gallishaw to testify that since the end of 2006 he has  
14 been unable to achieve or maintain an erection ---  
15 achieve an erection.

16 THE COURT: Since when?

17 MS. LITTLE: Since late 2006.

18 THE COURT: When was his last child  
19 born?

20 MS. LITTLE: In July of 2007.

21 (PAUSE.)

22 MS. LITTLE: And, Your Honor, the State  
23 would have the opportunity to cross examine him on that  
24 issue, and present reply testimony if necessary.

25 THE COURT: Say that again?

## THE STATE VERSUS JIMMY GALLISHAW

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1 MS. LITTLE: The State would have the  
2 opportunity to cross examine Mr. Gallishaw on that issue,  
3 and also to present reply testimony if necessary.

4 (PAUSE.)

5 THE COURT: All right.

6 MS. LITTLE: And just to remind Your  
7 Honor that the evidence that the State put in, the  
8 interview with Captain Watson, during that tape the  
9 Defendant appeared to try to bring that to Captain  
10 Watson's attention, which would have been closer to the  
11 time frame that we are discussing here.

12 THE COURT: I'll tell you what bother me  
13 about this Ms. Little, and tell me why this hasn't been  
14 done before now. He was aware of what the charges were  
15 and when they were to have occurred. He, of course, meet  
16 with Captain Watson, and maybe was attempting to bring  
17 out that point when he was with Captain Watson. And all  
18 along he has known the dates and what these allegations  
19 have been. He knew what the interviews with the forensic  
20 interviewers revealed. And what the young ladies said at  
21 that time, and what the interviews has said, and what Dr.  
22 Saunders said as well. And there are other ways to prove  
23 this by medical testimony, and he has had ample  
24 opportunity to obtain medical testimony that is not  
25 inflammatory to this point. Do you have any medical

## THE STATE VERSUS JIMMY GALLISHAW

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1 testimony at this point?

2 MS. LITTLE: No, sir. And, Your Honor,  
3 even as soon as I began representing Mr. Gallishaw, if we  
4 had had the photograph taken, we would still be in the  
5 same position that the photograph was not taken at the  
6 exact time that these assaults took place.

7 THE COURT: She didn't object to that.  
8 She didn't object to the fact that it was not indicative,  
9 as the saying goes, with regard to photographs as this  
10 would be the time. That hasn't been the objection. The  
11 objection has been on relevance that it is not relevant  
12 to the issue of whether at the time he was able to have  
13 an erection or whether he was impotent at the time.

14 MS. LITTLE: Your Honor, we believe that  
15 it would be relevant because of the testimony of Dr.  
16 Saunders that it would require a large object to break  
17 the hymen, and coupled with the Defendant's testimony  
18 that that has been the State of his genitals for the last  
19 couple of years, at least. I don't know exactly what he  
20 is going to say as to how long it has been that way.

21 But, Your Honor, there is medical testimony  
22 that it takes a large object to do this damage, and we  
23 just feel that it is relevant and even crucial to his  
24 defense. The main part of his defense is going to be, he  
25 is going to testify that he is impotent, and that it he

## THE STATE VERSUS JIMMY GALLISHAW

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1 has a very small penis.

2 THE COURT: Well, Ms. Little, that is  
3 well and good, and I understand what you are saying. It  
4 is a crucial point of his defense.

5 But he was indicted on these charges --- I  
6 don't have the Indictment right here on the desk right  
7 now.

8 MS. LITTLE: They were true billed on  
9 October 22, 2009, Your Honor.

10 MS. MAYES: The original Indictments  
11 were 2006, I believe.

12 THE COURT: Original Indictment 2006  
13 charges were made, and he has know that all alone.

14 MS. MAYES: That is incorrect.

15 THE COURT: He has know all along that  
16 this was going to be his defense. And to me, to come up  
17 with this at lunch time, after the State has presented  
18 their case, and wants to proffer this evidence, when  
19 there are other ways to prove the same thing, and he has  
20 had ample opportunity to do that is almost a situation of  
21 ambush. You know, I really think that --- well, leave  
22 that as it may, it is not ambush.

23 But here is the Court's ruling. Under Rule  
24 401, in my view, the photographs taken today during the  
25 lunch recess in a nonsexual situation is not relevant to

## THE STATE VERSUS JIMMY GALLISHAW

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1 prove anything with regard to his impotence or lack of  
2 ability to perform on the dates in question.

3 I don't think first of all that they are  
4 relevant under 401. But even if relevant, it is my view  
5 that the prejudicial effect outweighs the probative  
6 value. Again, for that same reason that a staged  
7 photograph taken today is not indicative of ability to  
8 have an erection on the date in question.

9 A flaccid penis in the photo taken in a non-  
10 arousal situation is not capable of impotence at the  
11 time.

12 Furthermore, proof of the erectile dysfunction  
13 can be proven by medical testimony. And he has had ample  
14 opportunity this was going to be his primary defense to  
15 obtain that medical testimony, and present it to the  
16 Court.

17 Third, the photograph is explicit and could be  
18 offensive to the Jurors. And fourth, there is evidence  
19 in the record that he fathered a child during this same  
20 period of time.

21 So, using the balancing test, under 403, it is  
22 my view that the prejudicial effects substantially  
23 outweighs the probative value. Admission of the pictures  
24 are denied.

25 MS. MAYES: Your Honor, may it please



**THE STATE VERSUS JIMMY GALLISHAW**

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1 the Court? I did mis-speak, and all the Indictments were  
2 in 2009.

3 **THE COURT:** Okay. They will be  
4 included in the record as two and three for I.D..

**WHEREUPON, DEFENDANT'S****EXHIBITS NUMBERS 2 AND 3****ARE MARKED FOR****IDENTIFICATION PURPOSES.**

9 **THE COURT:** All right. Are you ready to  
10 go forward Ms. Little?

11 **MS. LITTLE:** Yes, sir.

12 **THE COURT:** All right. Bring the Jury  
13 in please.

14 (Whereupon, the Jury enters the courtroom  
15 at 2:16 p.m..)

16 **THE COURT:** All right. Good afternoon  
17 ladies and gentlemen. We are now ready to proceed. You  
18 have heard the State announce that they have concluded  
19 their testimony. And now the Defense will have the right  
20 to present any testimony or evidence to you that he  
21 wishes to present. Ms. Little.

22 **MS. LITTLE:** Thank you, Your Honor. The  
23 defense calls Ms. Adrienne Gallishaw.

24 **THE COURT:** Ms. Gallishaw, come around  
25 please.

## ADRIANNA GALLISHAW - DIRECT EXAMINATION

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WHEREUPON, ADRIANNA GALLISHAW

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. GALLISHAW: Yes.

DIRECT EXAMINATION BY MS. LITTLE

Q. Good afternoon, Ms. Gallishaw.

A. Yes, ma'am.

Q. Ms. Gallishaw, I am going to bring you back to the time when Mr. Gallishaw was living with you at Southern Pine's Apartment Complex.

A. Okay.

Q. At some point while Jimmy was living there, were you made aware that he was no longer to stay at Southern Pine's Apartments?

A. Yes, I was.

Q. And can you recall what year that was? Thinking back from now, you know, last year when all these charges would have come about that would have been 2009. Can you remember what year Mr. Gallishaw was told he was no longer welcomed at Southern Pine's Apartments?

A. I can't remember the exact date, because it was more than once, because he has been in jail prior to the last time he went.

Q. So on, at least, two occasions was he allowed to come back and then leave again?

## ADRIANNA GALLISHAW - DIRECT EXAMINATION

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1 A. Well, when he left we tried to put him back, to get  
2 him on the lease, because you have to have every  
3 adult member over the age of fifteen. And in trying  
4 to do that they said he could not stay there,  
5 because of the conviction.

6 Q. Okay. And after the time that he was told that he  
7 could no longer stay at the apartment, did he ever  
8 spend the night at the apartment after that time?

9 A. I don't remember. This was so long ago, I don't  
10 remember.

11 Q. Okay. But you don't remember if it was last year or  
12 the year before?

13 A. No, I don't remember.

14 Q. You can't remember the last time he was actually  
15 living there?

16 A. (No response.)

17 Q. And if you don't know just say you don't know.

18 A. I don't remember.

19 Q. To the best of your knowledge and recollection,  
20 after you were told that Jimmy could no longer stay  
21 at the apartment complex, did he continue living  
22 there?

23 A. No, he did not.

24 MS. LITTLE: All right. Thank you, Ms.  
25 Gallishaw.

## ADRIANNA GALLISHAW - CROSS EXAMINATION

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1 THE COURT: Cross examination.

2 MS. MAYES: Yes, sir, Your Honor.

3 CROSS EXAMINATION BY MS. MAYES

4 Q. And just to clarify, Ms. Gallishaw, what we are  
5 referring to. We are referring to the complex that  
6 is shown in this photograph, right?

7 A. Yes.

8 Q. And this is your mother's apartment; is that  
9 correct?

10 A. Yes, it is.

11 Q. And is this particular apartment maintained by  
12 housing authority?

13 A. Yes, it is.

14 Q. Because of it being the housing authority, are there  
15 certain rules and regulations about who can live  
16 there?

17 A. Yes, it is.

18 Q. And because the Defendant, Mr. Gallishaw, with a  
19 conviction not in relation to this case, but in a  
20 prior conviction, it meant that he could not live  
21 there anymore?

22 A. Yes, it did.

23 Q. And I believe you testified previously about your  
24 daughter, your youngest daughter. I just want to  
25 get some clarification about how old she is. Her

## ADRIANNA GALLISHAW - CROSS EXAMINATION

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1 date of birth is what?

2 A. [REDACTED]/07.

3 Q. All right. [REDACTED]/07, and that is O[REDACTED]?

4 A. Yes.

5 Q. Can you spell her name please?

6 A. O-[REDACTED].

7 Q. All right. That was when O[REDACTED] was born?

8 A. Yes.

9 Q. Now, when you were pregnant with O[REDACTED], where were  
10 you staying?

11 A. At my mother's.

12 Q. Okay. And that would be this apartment right here?

13 A. Yes.

14 Q. And when you reached the hospital and had O[REDACTED],  
15 was the Defendant, Jimmy Gallishaw, living here with  
16 your mom?

17 A. (No response.)

18 Q. Let me ask you this. Where did you bring O[REDACTED]  
19 home to?

20 A. I bring her to my mother's home.

21 Q. All right. And were there occasions where after  
22 O[REDACTED] was born, he was in this home with you and  
23 O[REDACTED] and the children?

24 A. Yes, it was.

25 Q. All right. So there were times when he was in this

## ADRIANNA GALLISHAW - CROSS EXAMINATION

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- 1 home after O[REDACTED] was home?
- 2 A. Yes, it was.
- 3 Q. And what, if anything, happened that caused him not
- 4 to be able to be in this home with you and O[REDACTED]
- 5 and the children anymore?
- 6 A. He decided to move out.
- 7 Q. All right. Do you remember approximately when that
- 8 was?
- 9 A. No, I don't.
- 10 Q. All right. When you say he decided to move out, was
- 11 that before or after they arrested him that he
- 12 couldn't live here anymore?
- 13 A. It was before the last arrest that he got --- before
- 14 this situation.
- 15 Q. All right. And then he was arrested. And when he
- 16 got out on that charge, where did he go?
- 17 A. He --- If I am not mistaken, he went to his mothers,
- 18 if I am not mistaken. I can't quite remember.
- 19 Q. All right. That would be the home shown here?
- 20 A. Yes.
- 21 Q. Which is State's Exhibit 6, his mother's residence.
- 22 A. Yes.
- 23 Q. And is this the same residence that you would take
- 24 your daughter [REDACTED] Victim #2 and your other children on
- 25 weekends over there to visit him?

**JIMMY GALLISHAW, JR. - DIRECT EXAMINATION** 582

1 A. Yes.

2 Q. And there is no doubt in your mind that he did stay  
3 at this apartment after O[REDACTED] was born, correct?

4 A. Yes.

5 Q. And the crib that has been described in this case,  
6 that was placed there in the back bedroom, was  
7 O[REDACTED]'s crib?

8 A. Yes.

9 MS. MAYES: Nothing further.

10 THE COURT: Redirect?

11 MS. LITTLE: No, Your Honor.

12 THE COURT: All right. Thank you,  
13 ma'am. You may step down.

14 Yes, ma'am, you may call your next witness.

15 MR. SWILLEY: Your Honor, the Defense  
16 calls the Defendant, Mr. Jimmy Gallishaw, to the stand.

17 THE COURT: All right. Mr. Gallishaw,  
18 come around please.

19 WHEREUPON, JIMMY GALLISHAW, JR.

20 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

21 DIRECT EXAMINATION BY MR. SWILLEY

22 Q. Jimmy, let me start out by asking you where you were  
23 born?

24 A. Darlington.

25 Q. In the City of Darlington?

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 A. Yes.

2 Q. Okay. You grew up in the Lamar area; is that  
3 correct?

4 A. Uh, I was born in Darlington, but I moved to  
5 Timmons ville, basically in the Lamar area.

6 THE COURT: Go ahead.

7 Q. You went to Lamar High?

8 A. Yes.

9 Q. You graduated?

10 A. Yes.

11 Q. Tell me, when did you meet Victim #1's mother?

12 A. Uh, in junior high.

13 Q. Okay. And did y'all date throughout junior high and  
14 high school?

15 A. Uh, yes, sir.

16 Q. Okay. All right. And you do acknowledge that she  
17 is your child?

18 A. Yes.

19 Q. Okay. And Jimmy let me ask you, when did you meet  
20 who is now Ms. Adrienne Gallishaw?

21 A. 2001.

22 Q. 2001. Can you give me kind of your own little  
23 description about how y'all met, and how you came to  
24 be married?

25 A. Okay. Ah, I was staying in --- I was staying in



## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 Lamar, I believe. Mamma got a video tape of us.

2 She came home because she left something and

3 **Victim #2** was on the bus. And she said to me and

4 told me to go outside and speak to the girl in the

5 van. So I went out and talked with her. We spoke

6 and I made her laugh a little bit. So I talked to

7 my mom, told my mom she didn't have anybody tying

8 her down either like that to give me a call. So she

9 did, and conversated over the phone for a little

10 while. We ended out going out. The first date we

11 went to the movies, and saw Save The Last Dance.

12 Afterwards we went to McDonalds. A couple of months

13 later we end up -- we end up being together and

14 that's when my son was conceived.

15 Q. Okay. And when --- How long --- How long did it

16 take until y'all --- did you propose, or you asked

17 her to get married?

18 A. Until it --- In a couple of years. It was a couple

19 of years. I think we got married in 2004, 2005, one

20 of those years. I can't --- Pardon me, I think it

21 is 2004, 2004, October 17<sup>th</sup>.

22 Q. Okay. Is that when y'all moved in together?

23 A. Actually we was --- we was living together before we

24 got married.

25 Q. Okay. From --- So when approximately did you move

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 in with her?

2 A. Maybe --

3 Q. It's okay.

4 A. I don't want to give a date, because I don't want to  
5 lie.

6 Q. Okay. When y'all lived in together, was **Victim #2**  
7 did she live with you the whole time?

8 A. Yes, she has always been there.

9 Q. Okay. And let me ask you. Did you --- did you get  
10 along well with Adrienne's family?

11 A. Uh, yeah, pretty decent. They liked me pretty much.  
12 Yeah, everybody was pretty decent.

13 Q. And what about her children, did you get along very  
14 well with them?

15 A. With **Victim #2** in the beginning **Victim #2** was  
16 something else. **Victim #2** use to spit and bite, and  
17 fight, you know, just being --- I guess just being a  
18 typical little girl, you know. Seeing her --- I  
19 guess seeing her mom dating a new guy, I guess.  
20 But, I mean I continued to --- do you know what I'm  
21 saying --- being around. To reassure her that  
22 everything was --- everything was alright, you know?  
23 Her dad wasn't there. Her dad wasn't there, and I  
24 filled the void --- filled the void -- you know --  
25 and I always accepted her as my own flesh and blood.

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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- 1 Q. How old was --- How old was [Victim #2] when you first  
2 met her?
- 3 A. She was two years old.
- 4 Q. Two years old?
- 5 A. Yes, she was.
- 6 Q. Let me ask you in general, how was family life when  
7 you --- when you, Adrienne, and [Victim #2], and  
8 J[REDACTED], and everyone, how would you describe family  
9 life in general? Would you describe it as happy?
- 10 A. Um, we --- we had our times, you know. I guess  
11 basically like a typical family, you know. We had  
12 some good times and we had some bad times, you know,  
13 just like a typical family, I guess.
- 14 Q. And let me ask. How well or not so well did the  
15 children get along with each other?
- 16 A. Ah, I mean they fought, they went back and forth,  
17 you know, about like anybody else kids, you know.  
18 They fought, argued, you know.
- 19 Q. Did they often times get jealous with each other?
- 20 A. Yes.
- 21 Q. And in particular --- in particular who got jealous  
22 of whom?
- 23 A. Um, [Victim #2] my stepdaughter. She --- she --- she  
24 was very much jealous of my biological daughter.  
25 She wasn't around in the beginning, so [Victim #2] had

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 587

1 full attention. [Victim #2] had all the attention.

2 She wasn't around. So once she became --- once she  
3 came around, and some of the attention was focused -  
4 -- do you know what I'm saying --- and my biological  
5 daughter, she didn't really --- she didn't really  
6 accept it too well.

7 Q. What about --- what about your biological daughter  
8 [Victim #1], did she --- did she get jealous of [Victim #2]?

9 A. Nah.

10 Q. No. Okay. Jimmy, I understand that when this ---  
11 there was a collateral incident that happened with  
12 [Victim #2] and her half-brother, actually where she  
13 wasn't able to come spend time with your family  
14 anymore. Did [Victim #2] understand why?

15 A. Could you say that again, because I'm thinking you  
16 are using the wrong name.

17 Q. I'm sorry. Okay. I'll just go to this. When all  
18 of this --- Let me ask you. There has been a lot of  
19 allegations thrown at you throughout the course of  
20 this trial --

21 A. -- Yes, there has.

22 Q. And nobody knows what goes on in your home except  
23 for you and your family.

24 A. Yes.

25 Q. What --- Why do you think from what you have seen

JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 588

1 that goes on within the home that you have observed,  
2 what do you --- what are the reasons for which these  
3 lies have been told about you?

4 MS. MAYES: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. Okay. You were the disciplinarian in your family,  
7 were you not?

8 A. At some points and in some incidents I was.

9 Q. And you were the disciplinarian with Victim #1 and  
10 Victim #2, right?

11 A. Yes.

12 Q. Okay. What in particular --- Once the time all of  
13 these allegations surfaced, what was some of the  
14 things you disciplined them for?

15 A. Ah, bad school behavior --- um --- um --- talking  
16 back to -- ah -- their mom, around the house, and  
17 things like that I didn't like. I really didn't  
18 appreciate that type of stuff. Victim #1 --- Victim #1  
19 wasn't there like that. Do you know what I'm  
20 saying? I really got to --- got to --- got the time  
21 to --- do you know what I'm saying --- to really to  
22 interact with Victim #2 --- those kinds of  
23 disciplinary actions.

24 Q. So you were the main disciplinarian man for  
25 Victim #2 ?

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 A. Yes.

2 Q. Okay. What --- Wasn't there a particular school  
3 function which you would not let **Victim #2** attend  
4 because of her bad behavior?

5 A. Yes.

6 Q. And what was that?

7 A. Ah, it was a Valentine dance that was suppose to  
8 come up in 2009.

9 Q. I see. Would you explain the situation with that,  
10 if you don't mind, please?

11 A. Okay. Well, we find out about the dancing --- we  
12 find out about the dance in January. We talked with  
13 her and let her know that in order to go to the  
14 dance she could not get into any trouble at school,  
15 and could not get into any trouble at home. But,  
16 she ended up talking back and acting out with the  
17 teacher. So she ended up --- she ended up getting  
18 detention. So that caused her mom to --- that  
19 caused her mom to say that she could not go to the  
20 dance. And I had to reinforce --- I had to  
21 reinforce the rules to let her know that she can't  
22 go. She asked me --- do you know what I'm saying to  
23 try to talk her mom into it. But I told her we had  
24 gave the rule. And I'm saying the ultimatum that  
25 you could not, that you could not act up at school

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 or at home.

2 Q. I see. Now, Jimmy, of all these allegations that  
3 have been against you throughout the course of this  
4 trial, did you do any of this?

5 A. No, sir.

6 Q. Nothing?

7 A. No, sir.

8 Q. Okay. Let me --- Let me go to the time that we saw  
9 today that you were speaking with police, Officer  
10 August and Captain Watson. Can you give me a story  
11 of what happened on that day from the point that you  
12 were taken to the police station to the end of that  
13 last video. Can you give me your own personal  
14 narrative of that?

15 A. The end of the last video?

16 Q. Can you just give me a synopsis of the interaction  
17 that you had with law enforcement in relation to  
18 this matter?

19 THE COURT: Counsel, excuse me just a  
20 minute. How about coming to the sidebar.

21 (Whereupon, a bench conference was held in  
22 the presence of the Jury, but out of the hearing of the  
23 Jury.)

24 THE COURT: All right, proceed, Mr.  
25 Swilley.

## JIMMY GALLISAW, JR. - DIRECT EXAMINATION 591

1 MR. SWILLEY: Thank you, Your Honor.

2 Strike that last question.

3 THE COURT: All right. Question  
4 withdrawn.

5 Q. Jimmy, let me ask you about the conversation with  
6 Captain Watson and the video. Tell me, what --- did  
7 you feel that you were --- you were threatened and  
8 coerced into giving a statement that wasn't true?

9 A. Well, I was --- I was told some things, but, you  
10 know.

11 Q. Okay. What --- Let me ask you. What was your  
12 reason did you told him --- that you told Captain  
13 Watson --- Well, let me ask you. Do you feel that  
14 your family wasn't going to be left alone if you  
15 didn't tell Captain Watson?

16 MS. MAYES: Objection. Leading, Your  
17 Honor,

18 THE COURT: All right. Don't lead him,  
19 Mr. Swilley. He is your witness.

20 The objection is sustained.

21 Q. When you were speaking with the police, were you  
22 scared?

23 A. Yes, totally.

24 Q. Why were you scared?

25 A. I was scared for a number of reasons. One, because



## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 I didn't have too much --- I didn't have --- I  
2 didn't have too much access with the law, besides a  
3 couple of previous encounters with them. It wasn't  
4 nothing this drastic. Never been questioned like I  
5 been -- like I was questioned like this. And being  
6 reassured that things just wasn't --- things just  
7 wasn't going to be knowing that --- knowing that  
8 things were things were being said about my kids,  
9 things were being done to my kids. Knowing that  
10 they wanted to --- Knowing that they wanted to  
11 charge me like that you know I just can't --- I  
12 really couldn't have that. And when you are a  
13 family man, and you love your family, you would  
14 basically do whatever you have to do to protect ---  
15 to protect --- to protect your family. And I have  
16 always been that type of --- that type of guy. Not  
17 just to my family, but to others as well. And that  
18 is my character.

19 Q. And by others you mean [Victim #2] as well?

20 A. Not just [Victim #2]. Actually, Ms. [REDACTED]'s children -  
21 -- do you know what I'm saying --- as well as  
22 [Victim #1]'s younger siblings, which are not mine. I  
23 also took care of them. Not just them. It is any,  
24 any, any, any, any children. All of the kids in the  
25 church. You know, it's anybody. If --- I tried to

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 593

1 make sure that --- that the kids wouldn't be getting  
2 into any trouble. So what I would try to do is I  
3 would try to keep them together. I would get the  
4 kids and I would take them swimming. If I had all  
5 the kids and things like that you would know that  
6 they were not getting into trouble. And we use to  
7 go bowling. I use to do cookouts. Just --- that's  
8 just the type of guy I was, you know? Not and I  
9 actually did a couple of cookouts in our apartments.  
10 And anybody around --- anybody arounds come. You  
11 know, that is just the type of fellow I was. I just  
12 as --- I mean the type of monster somebody is trying  
13 to make me out to be. That is just not me.

14 Q. And you mentioned that you had been in trouble with  
15 the law before. Would you go ahead and tell me what  
16 happened with those occasions?

17 A. Yes. Back in 2000 --- back in 2002 I was a security  
18 guard. They called me in --- they called me into  
19 work one night. I had to work the club. As a  
20 matter of fact, The Hideaway Club right here going  
21 out of --- going out of Darlington. And I was an  
22 armed security guard. So they had a shootout that  
23 night. And I was --- I was ducking behind a car and  
24 I got down --- I ducked down behind the car. I  
25 don't know if my gun fell out when I was ducking

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1 behind the car, or did it fall into the back of the  
2 car when I got into the car. So where the gun was I  
3 don't know. So when I went to find it I couldn't  
4 find it. So when I went back to work and let me ---  
5 when I went back to work I let my supervisor know  
6 that I had lost the gun. Then he let me know that I  
7 needed to try to find it, or I needed to pay for it,  
8 which was like four hundred and something dollars.  
9 I didn't have that type of money. So by not having  
10 that money a charge was brought to me, because you  
11 know a breach of trust --- I guess that is what you  
12 call it. A breach of trust. And I wasn't ever  
13 served with a Warrant or anything. I didn't get ---  
14 I didn't really get served with that Warrant until  
15 2007. And the 2007 incident came in when I had ---  
16 I had a cocaine --- a cocaine charge. I was --- I  
17 was a substance abuser. And close to the end of  
18 2007, October 17<sup>th</sup>, that's --- I think that is the  
19 date the 17<sup>th</sup> and 19<sup>th</sup> that is the day that I got ---  
20 that is the day that I got locked up for that. Upon  
21 going to Darlington County, that's when I got served  
22 the Warrant from 2003 about the breach of trust.  
23 And as far as anything else, child support, driving  
24 under suspension, that is the only record I've ever  
25 had.

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 595

1 Q. Okay. You mentioned a substance abuse problem. Did  
2 this addiction that you had, did this complicate  
3 your ability to perform amorously with your wife?

4 A. Yes, it did.

5 Q. Okay. Now, when about did you start having trouble  
6 performing sexually?

7 A. Right around --- probably --- things started  
8 happening maybe around 2000 --- about 2005, but it  
9 wasn't --- it wasn't um to the circumstance where it  
10 couldn't --- that I couldn't work at all. You know,  
11 but it was getting that way because of my weight and  
12 diabetes, and because of stress, and cocaine that  
13 really didn't make it any better.

14 Q. And you struggled with these issues during the times  
15 of the allegations which have been --- which you  
16 have been charged with here in this matter?

17 A. Yes, sir, very much so.

18 Q. Okay. Was that the reason for which Adrienne  
19 mentioned in her previous testimony --- why you had  
20 to use a certain device to perhaps try to placate  
21 her?

22 A. Yes, sir. One device was a penis pump, and when you  
23 read the directions on a penis pump it is not just  
24 to make your penis larger. It's to, --- it's  
25 actually to try to help you pump an erection as

## JIMMY GALLISEAW, JR. - DIRECT EXAMINATION

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1 well. So those I would try. I would try to use  
2 that. But once it got to the point --- once it got  
3 to the point where you really couldn't --- where I  
4 really couldn't function the way I wanted to, I  
5 mean, maybe --- I sometimes --- sometimes when it --  
6 - sometimes it would rise for like two minutes or  
7 whatever like that, and I used the pump, or whatever  
8 like that. When I used the pump once the pressure  
9 is released --- once the pressure is released off  
10 the pump it will go right --- it goes right back  
11 down. And that's --- that what drew --- that what  
12 drew me to the point of buying the artificial --- do  
13 you know what I'm saying --- male sex --- male sex  
14 part. And just to know --- I guess, not I guess I  
15 know --- I love --- I love my wife. And I didn't  
16 want her to you know to go out elsewhere. I didn't  
17 want her to go out elsewhere. So I figured if it  
18 was going to be something I mean at least let the --  
19 - let the person be me, but a different --- you know  
20 --- maybe just a different sex --- sex object.  
21 That's it.

22 Q. Um, Jimmy, when was --- when were you forced to  
23 leave the home with Adrienne?

24 A. Um, well after --- after I got out of --- after I  
25 got out of jail in 2008, because when I went in 2007

**JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 597**

1 I went to Darlington County. But my breach of trust  
2 was from Florence County. So --- So I had to end up  
3 going to Effingham. So after I think January 11<sup>th</sup> if  
4 I'm not mistaken that's when I was released and my  
5 wife --- my wife, her brother, and [REDACTED] Victim #2 and the  
6 baby as a matter of fact came and picked me up and I  
7 went back to [REDACTED] Southern Pine until March. Then  
8 that's when they --- that's when the Housing  
9 Authority --- when they went and tried to put me  
10 back on the lease that's when the Housing Authority  
11 let me know that because of my charge I couldn't  
12 stay there and they gave me that day to get out. It  
13 be like not giving you a notice or whatever like  
14 that. They gave me that day to get out. So because  
15 I didn't want to leave my family, and because I  
16 didn't want to leave I end up --- I slept in the  
17 van. I mean I slept in the van right outside nights  
18 in and nights out. Actually, my wife even came out  
19 and slept in the van with me some nights, you know,  
20 just because I didn't want to leave my family. But  
21 once I --- once I uh --- once I got the job doing  
22 the barber, then I was able to make a little bit of  
23 money. So I would stay in a hotel a couple of  
24 nights like Thursday, Friday, and Saturday night,  
25 and I would stay in a motel Sunday night. Then

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 598

1 Monday, Tuesday and Wednesday I was back in the van.  
2 I sleep outside in the van. But on the weekends I  
3 make sure that I had my --- I make sure I had my  
4 family with me, and I didn't want to be without them  
5 during the week. So I would sleep outside in the  
6 van.

7 Q. So, you had never been inside of the home in June of  
8 '08, subsequent to March of '08?

9 A. No, sir. During that point in time I was staying in  
10 --

11 Q. Now I know that after --- after all of these  
12 allegations surfaced, you sent some letters of you -  
13 -- or from you to your family. You gave some  
14 general apologies. What --- Can you explain those?

15 A. Um, there was one --- there was a lot of things that  
16 I --- that I --- that I did right. I know a lot of  
17 things I did right. I talked to my --- I talked to  
18 my wife, and I spoke to my kids through the letters.  
19 Do you know what I'm saying? Hello, I love y'all, I  
20 miss y'all. As far as apologizing, I apologized you  
21 know not --- not being there --- um --- um --- um ---  
22 - I'm sorry that --- that we're going through ---  
23 that we're going through this thing right here.  
24 Just let the know just --- just --- I would let my  
25 wife know to just continue getting the kids.

**JIMMY GALLISHAW, JR. - DIRECT EXAMINATION** 599

1 Continue keeping them in church. Continue to pray.  
2 Do you know what I'm saying? Maybe this thing will  
3 be over soon --- sooner or later -- you know.  
4 Continue to get the kids --- continue to pray with  
5 them. And maybe --- and maybe this thing will be  
6 alright.

7 Q. I see. Jimmy, the episodes that Adrienne described,  
8 in which she claims that she walked in on you. Not  
9 the documents, but she claimed there was another  
10 incident where she walked in on you and **Victim #2** had  
11 her pants down; is that true?

12 A. **Victim #2** ?

13 **MS. MAYES:** Objection, Your Honor.  
14 Pitting a witness.

15 **THE COURT:** Sustained. You cannot pit  
16 one witness against another.

17 **MR. SWILLEY:** I see.

18 Q. Was the incident that your wife described --- she  
19 said there was an incident where she walked in where  
20 she maybe thought that she --- she maybe thought  
21 that she had --- she claimed that she may have  
22 thought you were engaged in wrong doing. Is that  
23 incident --- is that accurate?

24 A. No, sir, it wasn't.

25 Q. It was not?



## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 A. No, sir.

2 Q. The alleged bathroom incident in which Victim #2  
3 walked into the bathroom, can you explain fully what  
4 happened in that situation?

5 A. Yes, sir, I can. The night --- the night prior to  
6 that --- well, a couple of days prior to that it ---  
7 it it was icy outside. I walked outside on the  
8 porch. I slipped and hurt my leg --- hurt my ---  
9 like my leg and my side. Um, a little while before  
10 that my wife she she just had --- she just had a  
11 couple of teeth pulled. So she had some --- she had  
12 like three kinds of medicine, Percocets, some other  
13 kind of medicine. And actually I took a couple ---  
14 I took a couple of them for my side. And I sleep  
15 with a mask on, because I have sleep apnea. I use  
16 to snore --- snore real bad. So I was diagnosed  
17 with sleep apnea. With the machine --- with the  
18 machine whatever I really don't have to get up  
19 during the night. So it make me sleep --- I slept  
20 real good. The medicine really worked pretty good.  
21 So that morning I got up. Victim #2 got me up. I had  
22 to go to work. Maybe about 6:00, 6:30, somewhere up  
23 in there. Um, so I went in the bathroom to wash up.  
24 I took my pants and went in the bathroom. Right  
25 where the curtain is I took my pants and threw them

JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 601

1 over the curtain. As I was in there I used the  
2 bathroom first and stood at the sink and washed up.  
3 During that time Adrienne was getting the kids up to  
4 go to work --- I mean to get them in the bed so she  
5 could take me to work. [Victim #2] came, she knocked  
6 on the door, she said she had to use the bathroom.  
7 So I opened the door and [Victim #2] came in and used  
8 the bathroom. When she was getting --- when she was  
9 getting up off --- when she was getting up off the  
10 toilet turning around to flush the toilet that's  
11 when I guess Adrienne came in and she opened the  
12 door. The door hit me. I mean I've heard her say  
13 that I was behind --- that I was behind the door or  
14 whatever like that then. And the door is right  
15 there, but you can show the picture of the bathroom.  
16 I mean, I was standing --- I was standing right  
17 beside the sink. And the bathroom is small. So we  
18 open the door and it swings past the sink, probably  
19 maybe about this far from the toilet. So when she  
20 opened the door the door hit me. When she opened  
21 the door the door hit me so I turned around. And I  
22 looked like that and she was like you know what is  
23 she doing in here? She is using the bathroom. You  
24 know. She was like is there like anything going on?  
25 No, nothing going on. I mean, that's --- that's ---

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

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1 that was --- maybe it shouldn't have been but it was  
2 common for us if do you know what I'm saying if okay  
3 if my wife is in the bathroom and my little son had  
4 to use the bathroom, she --- he would go in and use  
5 the bathroom and come out. You know? I mean there  
6 wasn't nothing --- I mean, there was nothing wrong  
7 with that.

8 Q. There was only one bathroom available for your  
9 family to use, right?

10 A. Yes, on this end of the home.

11 Q. Okay. The other bathroom belongs to who?

12 A. My mother and my father.

13 MR. SWILLEY: Beg the Court's  
14 indulgence.

15 THE COURT: All right.

16 (PAUSE.)

17 Q. Jimmy, the problems with your arousal, did you use  
18 any other --- did you have to use any other aids in  
19 order to become erect?

20 A. Um, yes. I ordered some ah --- I ordered some stuff  
21 off -- some stuff of the tv. Um, that really didn't  
22 --- that didn't work. It was some kind of drop that  
23 you drop it on --- you drop it on your tongue. But  
24 it didn't work. I ordered it --- I ordered it like  
25 twice on my credit card, but it didn't work.

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 603

1 Q. The devices that you used, the penis pump and the  
2 artificial penis, did you ever let your --- did you  
3 ever let any of your children see any of this stuff?

4 A. Um, I can recall one occasion after --- after um ---  
5 it was early one morning. After me --- after me and  
6 my wife --- do you know what I'm saying --- after I  
7 finished and I took it off. I left --- there is a  
8 basket right at the door in the room, and when I  
9 took it off I put it in the basket to go to the  
10 bathroom. And I mean I had no idea that Victim #2  
11 was up, but I mean she cut the light on, and I guess  
12 she saw it. I think she told her mom that she saw  
13 it and her grandmother. It was one of them. But  
14 after that, do you know what I mean, discrete  
15 disclosure if you know what I'm saying, making sure  
16 it was hid at all times.

17 Q. And how long has it been since you have been able to  
18 achieve working erection?

19 A. Oh, man. I would say when --- it did one time that  
20 my --- that when my little daughter was born. I had  
21 problems --- I really didn't have problems then, but  
22 after --- after that really --- see --- see --- see  
23 after January 17, 2007, my home burned down due to -  
24 -- I guess due to --- from what the doctor said due  
25 to --- due to stress and due to stress and

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

604

1           overweight, and diabetes. He said that was  
2           basically the cause for not being able to have ---  
3           to achieve an erection.

4           Q. Jimmy, would there be anything else about these  
5           allegations --- is there anything else that deals  
6           with --- that is important concerning these  
7           allegations that you might need to explain?

8           A. Um, I know they have --- they have some letters  
9           that's been introduced. But they only picked one or  
10          two that --- maybe if they would have got all the  
11          letters and actually read to see what I'm talking  
12          about --- what I'm talking to my family about. I  
13          mean, the thing is, they say that --- I mean --- who  
14          they try to make me to be, and that's, that's,  
15          that's not the person that is sitting right here in  
16          front of you today. You know, so as far as --- I  
17          even --- I even wrote a letter and let my wife know  
18          about --- about the statement --- about the  
19          statement that I gave to Officer Danny Watson. I  
20          let her know that --- you know --- I let them know  
21          that I did this. Do you know what I'm saying? That  
22          when I saw you in the --- when I saw you in the  
23          courthouse when they first locked me up and I had to  
24          go up to the child support place, when I saw you at  
25          the courthouse your eyes were red. You had --- you

**JIMMY GALLISHAW, JR. - DIRECT EXAMINATION 605**

1 had --- you had bags under your eyes. I mean, that  
2 let me know that you have been crying. Do you know  
3 what I'm saying for days on end. And that was  
4 tearing me up. That was tearing me up. Besides  
5 some of the things that --- besides some of the  
6 things that I said also, I let her know the only  
7 thing that I was guilty --- the only thing that I  
8 was guilty for is --- is making that --- is making  
9 that statement, you know, to an officer. And since  
10 then, you know, and they been trying to hang me out  
11 to dry. And that's basically how I was put here.  
12 Do you know what I'm saying into the letter.

13 Q. Do you feel as though you were forced to sign the  
14 Miranda?

15 MS. MAYES: Objection to leading, Your  
16 Honor.

17 THE COURT: Overruled. That's not a  
18 leading question.

19 Q. Do you feel as though you were forced to sign this  
20 Miranda Form? Do you feel that you had a choice?

21 A. Actually, no sir, I didn't feel that I really had a  
22 choice.

23 Q. Did you think that the interrogation was ever going  
24 to stop until you told them what they wanted to  
25 hear?

## JIMMY GALLISHAW, JR. - DIRECT EXAMINATION

606

1 A. I knew it wasn't going to stop until --- until I  
2 told them. Because they reassured me that it wasn't  
3 going to stop.

4 Q. I see. Jimmy, do you feel as though you had any  
5 other option but to say what you said?

6 A. Not to protect my family I didn't.

7 Q. Do you feel as though that while you were --- while  
8 you were --- in general do you think that Adrienne  
9 and Robin are good mothers? Are they good mothers?

10 A. Yeah. I mean, Adrienne --- Adrienne, she was a  
11 great mom. And as far as I know Robin and her kids  
12 --- Robin was a good mom as well.

13 Q. Have you ever seen them put their children in  
14 danger?

15 A. Ah, nah not really, no. Basically only one incident  
16 that I can remember, and that is when --- while she  
17 was upset with me then though. But my stepdaughter,  
18 she was in the van. And my wife, she was driving.  
19 Really she was just driving crazy. You know. So  
20 like I swung the door open and I actually tried to  
21 jump out and she slammed on brakes then. The slide  
22 door --- the slide door hit my --- hit my leg and  
23 put a --- put a hole in my leg. I ran behind some  
24 people house and end up getting to --- getting  
25 somebody to call the police. And actually the

**JIMMY GALLISHAW, JR. - CROSS EXAMINATION**

607

1 police came and took me --- took me to my mom.

2 They took me to my mom house. But I guess as far as

3 --- as far as putting their --- putting their

4 children in any danger or anything like that, no,

5 They are you know pretty decent parents.

6 **MR. SWILLEY:** Beg the Court's  
7 indulgence.

8 **THE COURT:** All right.

9 (PAUSE.)

10 **MR. SWILLEY:** Nothing further, Your  
11 Honor.

12 **THE COURT:** Cross examination, Ms.  
13 Mayes?

14 **MS. MAYES:** Yes, sir, Your Honor.

15 **CROSS EXAMINATION BY MS. MAYES**

16 Q. Now just to clarify, Mr. Gallishaw, your record  
17 simply is from 2002 breach of trust with fraudulent  
18 intent. And the Court date on that was August 2002,  
19 but you say that you were not served with that  
20 actual warrant until 2007?

21 A. Yes.

22 Q. And while being served with that warrant and the  
23 conviction for that would have been you being in  
24 Florence, correct?

25 A. Yes.



## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

608

1 Q. And you were transferred to Florence from Darlington  
2 County?

3 A. Yes, on December 17<sup>th</sup>.

4 Q. And you were in Darlington County because of a  
5 conviction for possession of cocaine?

6 A. Yes.

7 Q. And that conviction date was December 5, 2007?

8 A. Was that conviction date? Is that what you're  
9 saying?

10 Q. Uh-hum. What do you recall the conviction date  
11 being?

12 A. Um, I recall being apprehended on October 17<sup>th</sup>.

13 Q. All right.

14 A. But I got released --- let me see. What happened  
15 was I ended up doing --- I had to end up doing two  
16 months for child support. So I went to jail in  
17 October the seventeenth or either the nineteenth,  
18 one of those days --- seventeenth or nineteenth.  
19 During that time I got served with a child support  
20 warrant. So I had to go up for child support, and I  
21 had to end up doing two months for child support.  
22 So from October 17 till December 17, that's when I  
23 was released. I was released and that's when  
24 Florence County picked me up, and that's when I went  
25 to Florence for the breach of trust.

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

609

1 Q. On the gun?

2 A. Yes.

3 Q. So we are talking about approximately two months  
4 then towards the end of 2007 when you were  
5 incarcerated?

6 A. Uh-huh.

7 Q. And when you were released you weren't allowed back  
8 into this home anymore, because of the Housing  
9 Authority, correct?

10 A. Yes.

11 Q. It is because of the Housing Authority rule that a  
12 convicted felon can't live there, correct?

13 A. Yes. But, when I got out I did go --- I did go  
14 there because I didn't know --- I didn't have any  
15 recollection of I couldn't stay there.

16 Q. Okay. I just wanted to clarify. You were actually  
17 staying here up until your incarceration then you  
18 were incarcerated. When you got out you came back  
19 and you were notified you couldn't stay there  
20 anymore?

21 A. Uh-huh.

22 Q. All right. That would have been early 2008 when you  
23 found out that you couldn't stay there anymore. And  
24 after that point in time you stayed primarily with  
25 your mom?

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

610

- 1 A. Yes.
- 2 Q. Here at the house in Lydia?
- 3 A. It was between --- between --- between the motel and
- 4 my mom house.
- 5 Q. All right. And this is where Adrienne and the
- 6 children would come visit you usually on weekends or
- 7 Friday, correct?
- 8 A. Yes.
- 9 Q. Now, the testimony on direct examination was that
- 10 you had been using cocaine, and you feel like that
- 11 affected your sexual function?
- 12 A. Yes.
- 13 Q. And that was when?
- 14 A. Uh -- .
- 15 Q. 2007, you had the cocaine conviction?
- 16 A. Yes.
- 17 Q. Do you believe it was during that time frame?
- 18 A. Yes.
- 19 Q. All right. And what drugs were you using in
- 20 addition to cocaine?
- 21 A. That --- that was it.
- 22 Q. And I believe --- of course, you said that one of
- 23 the statements to law enforcement is that you stayed
- 24 high most of the time, do you agree with that?
- 25 A. Yeah, I guess, yeah.

## JIMMY GALLISAW, JR. - CROSS EXAMINATION

611

- 1 Q. Now your little girl, your youngest daughter,  
2 O[REDACTED], was born in 2007. And let me just back up  
3 and clarify a few other things. There has been talk  
4 of S[REDACTED] G[REDACTED], he is your son as well?
- 5 A. Yes, he is.
- 6 Q. Who is his mother?
- 7 A. His mom is S[REDACTED] G[REDACTED]. (Phonetic)
- 8 Q. All right. But he is your oldest child?
- 9 A. Yes, he is.
- 10 Q. And then after S[REDACTED] you were also the biological  
11 father of [REDACTED] Victim #1 [REDACTED], correct?
- 12 A. Yes.
- 13 Q. And then the oldest child that you have with  
14 Adrienne is J[REDACTED], correct?
- 15 A. Yes.
- 16 Q. And J[REDACTED] is eight now?
- 17 A. Yes, he is.
- 18 Q. So he would have been conceived around 2002, 2001,  
19 or in 2002; is that not correct?
- 20 A. Yes.
- 21 Q. And then, of course, your oldest daughter was born  
22 in 2007. There is no question that you can engage  
23 in sexual intercourse, correct?
- 24 A. There was no question that I could engage in sexual  
25 intercourse.

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

612

1 Q. And in your testimony is that after O [REDACTED] was born  
2 2007, you developed this situation where all of a  
3 sudden you couldn't have intercourse with anyone?

4 A. Yes. Not --- not --- not --- not to maintain an  
5 erection, yes.

6 Q. All right. And your testimony is that you would  
7 still have sex with Adrienne by using a penis pump,  
8 correct?

9 A. No. It wouldn't ever get --- it wouldn't get to  
10 that point. That was the cause of the artificial  
11 penis.

12 Q. And you deny that you continued to have sex with  
13 Adrienne even after Adrienne(sic) was born?

14 A. Yes, with the penis.

15 Q. You are saying that you never had sex with her after  
16 O [REDACTED] was born?

17 A. We would --- we would try, but I couldn't succeed.

18 Q. You would try?

19 A. Yes, we would try.

20 Q. And, Mr. Gallishaw, isn't it a fact that in some of  
21 the letters that you wrote to Adrienne from jail,  
22 you saying that you can't wait to come home, because  
23 you want to have sex with her again?

24 A. No, I told her I missed --- I missed being with her.  
25 I mean, I just miss --- I miss holding her. I miss

**JIMMY GALLISHAW, JR. - CROSS EXAMINATION** 613

1 hugging her. And the most thing I missed about her  
2 was just laying there in my arms, not the sexual  
3 stuff. Even though I did miss that. But the most  
4 important thing that I missed was just her laying  
5 with me.

6 Q. All right. So there is no question that what you  
7 have wanted was to come back home to Adrienne, you  
8 want to reunite with Adrienne, correct?

9 A. Yeah, that's my wife.

10 Q. And that also includes the children?

11 A. Yeah.

12 Q. **Victim #2** as well?

13 A. Yes.

14 Q. And you understand, Mr. Gallishaw, that because of  
15 the arrest in this case, because of the evidence  
16 that has been obtained in this case that you can't  
17 have contact with Adrienne?

18 A. Yes.

19 **MR. SWILLEY:** Objection.

20 **THE COURT:** What is the objection?

21 **MR. SWILLEY:** Relevance.

22 **THE COURT:** Overruled.

23 A. Yes, I understand.

24 Q. And you were aware of that even when you were  
25 writing letters from the jail --- I'm sorry, even

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

614

1 when you were --

2 MR. SWILLEY: Objection, Your Honor.

3 May we approach?

4 THE COURT: Objection sustained.

5 Disregard the question, and ask the next question.

6 Q. You knew that you couldn't have contact with

7 [REDACTED] Victim #2, and yet you continued to attempt contact  
8 with her?

9 A. No, I continued to contact her mother.

10 Q. And where was that?

11 A. At [REDACTED] Southern Pine.

12 Q. And where are you referring to that you saw her and  
13 her eyes were red?

14 A. At the courthouse.

15 Q. And you were at the courthouse for what reason?

16 A. I was coming up for child support.

17 Q. And that was during the time that you were --- that  
18 you failed --- you were coming up on a child  
19 support?

20 A. Yes.

21 Q. All right. So, was that before or after you made  
22 the phone call to her?

23 A. That was --- When I went up for the child support,  
24 that was probably like --- almost --- if not the  
25 same week that I came in here, maybe the next week.

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

615

1 I hadn't made the phone call to her.

2 Q. You don't deny that you called the house knowing  
3 that [Victim #2] lived there as well, correct?

4 A. Yes.

5 Q. You don't deny that you wrote letters knowing  
6 [Victim #2] lived there?

7 A. No, I don't.

8 Q. ( Now let's talk about the bathroom incident that was  
9 referred to. I believe your testimony is that you  
10 had taken some medication because you had hurt your  
11 leg?

12 A. Uh-huh. My leg --- my hip --- my leg hip area.

13 Q. And, in fact, that medication belonged to Adrienne,  
14 correct?

15 A. Yes, it did.

16 Q. And it was Percocet?

17 A. Yes. If I am not mistaken that is what it was.

18 Q. It was a narcotic --

19 A. -- Yes --

20 Q. -- that she had been prescribed for some dental  
21 work?

22 A. Yes. Had --- when I went to treatment I used her  
23 ID, so, yes.

24 Q. So you take a Percocet, did you take them that  
25 morning or the day before?



## JIMMY GALLISHAW, JR. - CROSS EXAMINATION 616

- 1 A. No. I took one ah let me see --- it had to be about  
2 --- maybe about 2:00 2:30 that morning. That's when  
3 --- that's when I took --- actually I think Adrienne  
4 she took one, and we were still up --- we stayed up  
5 kind of late that night. She took one and I took a  
6 couple.
- 7 Q. All right. And what exactly is the time frame that  
8 you took the Percocet, and the bathroom incident  
9 with Victim #2 ?
- 10 A. Ah, I guess maybe --- maybe three, four hours time  
11 frame in between, I guess that's what you are trying  
12 to say.
- 13 Q. Okay. Three or four hours?
- 14 A. I mean, what is the question so I can be sure I  
15 answer it correctly?
- 16 Q. What is the time frame between when you took the  
17 Percocet and the bathroom incident observed by  
18 Adrienne?
- 19 A. Okay. From the time of the Percocet until the  
20 bathroom incident maybe okay I'm figure between  
21 about four hours --- three to four hours.
- 22 Q. Okay. Three to four hours.
- 23 A. Yes.
- 24 Q. And, in fact, on that particular morning Adrienne  
25 was going to take you to work?

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

617

- 1 A. Yes, she was.
- 2 Q. Okay. And what time was this according to your  
3 testimony?
- 4 A. Ah, I think we got up about maybe --- maybe 6:00,  
5 6:30.
- 6 Q. 6:30 a.m.?
- 7 A. Yes.
- 8 Q. So you would have taken the Percocets approximately  
9 3:30 a.m.?
- 10 A. No. I told you I take them maybe about 2:00 or  
11 2:30.
- 12 Q. All right. Several hours before?
- 13 A. Yes.
- 14 Q. All right. So you take a Percocet, and you are up  
15 at 6:00, 6:30 in order to get ready for work. And  
16 what was your testimony about your pants?
- 17 A. What was my testimony about your pants? That I  
18 threw 'um across the where the curtain was.
- 19 Q. All right. And why were you wearing pants?
- 20 A. I wasn't wearing pants. They were over the drapes.
- 21 Q. Why did you --
- 22 A. -- I had on a pair of -- I had on a pair of shorts.
- 23 Q. So your testimony is that you had on a pair of pants  
24 and shorts?
- 25 A. No. My testimony is that I had on a pair of shorts.

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION 618

1 My pants was thrown across the curtain.

2 Q. That's what I'm asking. Prior to going into the  
3 bathroom and removing your pants, your testimony is  
4 that you had on a pair of pants and shorts?

5 A. No. My testimony was that I had on a pair of  
6 shorts. I took my pants into the bathroom. I  
7 didn't have on any pants.

8 Q. All right. Your testimony is that you had on  
9 shorts, and this was at 6:30 in the morning?

10 A. Yes.

11 Q. And according to your testimony, Adrienne walked in  
12 and just suddenly believed that something had gone  
13 wrong?

14 A. She asked if --- what was going on? Why is **Victim #2**  
15 in here, yes.

16 Q. And, Mr. Gallishaw, I believe your testimony on  
17 direct examination was that the police wouldn't  
18 leave you alone. Now, isn't it a fact that the  
19 reason the police ever became involved in the first  
20 place is because your wife saw what she saw and took  
21 your daughter to the doctor?

22 A. Ah, I guess that's --- I guess that is why I was  
23 arrested here.

24 Q. All right. And the police were involved at that  
25 point. In fact Adrienne didn't even call the police

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

619

1 on you that day did she?

2 A. No.

3 Q. She was concerned about [Victim #2], she took [Victim #2]  
4 to the doctor, and to the CARE House, and the CARE  
5 House notified the police, correct?

6 A. Yes, to my knowledge.

7 Q. That is because, up until that point in time  
8 Adrienne --- Adrienne didn't know what to do about  
9 the situation, Adrienne --

10 MR. SWILLEY: Objection, Your Honor.

11 THE COURT: What is your objection?

12 MR. SWILLEY: I mean it calls for  
13 speculation. He doesn't know what she knew.

14 THE COURT: All right. Wait just a  
15 minute. Ask the question again.

16 MS. MAYES: I am going to rephrase it,  
17 Your Honor.

18 THE COURT: Okay. Rephrase it.

19 Q. Because up until that point in time when Adrienne  
20 actually took [Victim #2] to the CARE House, y'all had  
21 been talking about it as a family, and you had been  
22 telling her that the entire bathroom incident you  
23 weren't responsible for, because of the Percocet.  
24 Percocet was the reason she saw what she saw in the  
25 bathroom?

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

620

1 A. I didn't hear you.

2 Q. I am asking you, did you have that conversation with  
3 your wife?

4 A. No.

5 Q. All right. So you deny telling her that the reason  
6 that you were in the bathroom without any pants and  
7 without any shorts, standing behind **Victim #2** with  
8 her up on the toilet seat was because you had taken  
9 the Percocet and you didn't know what you were  
10 doing?

11 A. No, I didn't ever tell you that I didn't have any  
12 shorts on, that is what you just said. I told you  
13 that I had shorts on.

14 Q. I am asking you about the conversation with  
15 Adrienne.

16 A. I just told you no that I didn't have a conversation  
17 with Adrienne about that.

18 Q. All right. So Adrienne just on her own took  
19 **Victim #2** to the CARE House because of what she had  
20 observed, and the CARE House notified the police.  
21 You agree with that, correct?

22 A. Speaking that one more time.

23 Q. Your wife Adrienne ---

24 A. -- Uh-huh --

25 Q. -- On her own --

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

621

1 A. -- Uh-huh --

2 Q. -- Took [Victim #2] to the CARE House because of what  
3 she had observed in the bathroom?

4 A. Not --- not that she didn't take her on her own.  
5 But if I am not mistaken she had --- she had one of  
6 the family friends take her and go with her, Ms.  
7 Veronica.

8 Q. Ms. Veronica is actually your aunt isn't she?

9 A. Yeah, well --- she is a real close family friend,  
10 mamma is like a sister. Yes, she is.

11 Q. All right. Okay. Well, they were aware of what had  
12 been observed in the bathroom. [Victim #2] was taken  
13 to the CARE House. And then after that the police  
14 got involved. Would you agree with that, right?

15 A. Yes.

16 Q. Now I believe your testimony on direct Examination  
17 was that you are or were the disciplinarian with the  
18 kids?

19 A. Yes, basically.

20 Q. And you were also the primary provider financially?

21 A. My wife, she also --- she also works too. I mean --  
22 We took care of things together.

23 Q. You would agree that Adrienne was dependent on you,  
24 wouldn't you?

25 A. She is her own person. She had her own job. Do you

**JIMMY GALLISHAW, JR. - CROSS EXAMINATION**

622

1 know what I'm saying? We ah -- I worked and also  
2 she worked. So she had money and I also had money.  
3 But I made the bulk, I guess we would call it, I  
4 made the bulk of the money. So, you know, that is  
5 how that was. So we --- we would do things  
6 together.

7 Q. And I believe your testimony was that as the  
8 disciplinarian for the kids, you would address  
9 school issues if they had problems at school,  
10 correct?

11 A. Yes. School issues, home issues, I mean, it doesn't  
12 matter what kind of issue it is, it would be  
13 address.

14 Q. Then you are aware then in that role that **Victim #1** was  
15 an A/B Honor Roll student, correct?

16 A. Yes.

17 Q. And both girls active in church, correct?

18 A. Yes.

19 Q. And your testimony was that you had been involved in  
20 cocaine up until your incarceration in late 2007,  
21 and then you were released in 2008. But then in  
22 2009 you were taking the Percocet, correct?

23 A. Yes, in 2009 I took the Percocet, yes.

24 **MS. MAYES:** Beg the Court's indulgence.

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

## JIMMY GALLISHAW, JR. - CROSS EXAMINATION

623

(PAUSE.)

1

2

Q. And finally, Mr. Gallishaw, I just want to clarify.

3

The bathroom incident occurred in this home that

4

belongs to your mother?

5

A. Yes.

6

Q. And that is the home you were last living with ---

7

well not with Adrienne and the children, but the

8

last time Adrienne came and visited you at?

9

A. Yes.

10

Q. And that included overnight visits as well, correct?

11

A. Yes.

12

Q. And when you would have overnight visits, you

13

usually stayed in one room?

14

A. Yes.

15

Q. Okay. And this is the home that we referred to

16

previously, which was the Housing Authority

17

maintained home that you were living at up until

18

your release in 2008, and a brief return in 2008,

19

until you were told that you couldn't stay there

20

anymore, correct?

21

A. Yes.

22

Q. And while staying at this home Adrienne's mom had a

23

bedroom?

24

A. Uh-huh.

25

Q. And another bedroom belonged to another family.



**JIMMY GALLISHAW, JR. - REDIRECT AND RE-CROSS EXAMINATION**

1 member of Adrienne's mom?

2 A. Yes.

3 Q. And you and Adrienne and the kids all shared one  
4 bedroom as well, correct?

5 A. Yes.

6 Q. And **Victim #1** would come and visit you at this home as  
7 well, correct?

8 A. Yes, every once and a while, yes.

9 Q. All right. And when **Victim #1** would come visit that  
10 included times after O[REDACTED] was born, correct?

11 A. Yes.

12 **MS. MAYES:** Nothing further, Your Honor.

13 **THE COURT:** Redirect?

14 **MR. SWILLEY:** Yes, Your Honor.

15 **THE COURT:** All right.

16 **REDIRECT EXAMINATION BY MR. SWILLEY**

17 Q. Jimmy, how did the Percocet --- was this for pain?

18 A. Yes, it was.

19 Q. This wasn't for recreation?

20 A. No, not at all. Since --- since the incident in  
21 2007 with the cocaine, I have never done any other  
22 type of drug beside nicotine. I smoke cigarette.

23 Q. Was it the policy of the apartment complex that they  
24 didn't stay there who had ever been charged with a  
25 crime?

**JIMMY GALLISHAW, JR. - REDIRECT AND RE-CROSS EXAMINATION**

1 A. Me, I don't know. I think maybe it had to be a  
2 certain --- maybe a certain crime. Maybe a drug  
3 conviction. Maybe um --- I don't know, maybe some  
4 kind of felony charge or something, I guess. I  
5 mean, I don't know.

6 Q. But you are not a convicted felon, are you aware of  
7 that?

8 A. Yes.

9 MR. SWILLEY: Okay. Thank you, Your  
10 Honor.

11 THE COURT: Re-cross?

12 MS. MAYES: Beg the Court's indulgence.

13 (PAUSE.)

**RE-CROSS EXAMINATION BY MS. MAYES**

14  
15 Q. And there is no question that you were not allowed  
16 to stay there because of the convictions that you  
17 had, correct?

18 A. Yes, ma'am. I wasn't allowed.

19 MS. MAYES: Okay. Nothing further.

20 THE COURT: All right. Thank you, sir.  
21 You may step down.

22 MR. GALLISHAW: Yes, sir.

23 MR. SWILLEY: Defense rest, Your Honor.

24 THE COURT: All right. The Defense  
25 rests. Ms. Mayes, anything in reply?

## THE STATE VERSUS JIMMY GALLISHAW, JR. 626

1 MS. MAYES: Beg the Court's indulgence?

2 THE COURT: Yes, ma'am.

3 MS. MAYES: Nothing from the State, Your  
4 Honor.

5 THE COURT: All right. All right.

6 Ladies and gentlemen, you have now heard all the  
7 testimony and evidence in this case. And there are only  
8 two things that remain to be done. Those are the  
9 arguments of counsel, and the instructions on the law by  
10 the Court.

11 However, before we go forward with those  
12 matters, there are certain matters of law that I now need  
13 to take up with the attorneys in this case. And I want  
14 to do that now. It is also probably a good time for us  
15 to take a recess anyhow. So I am going to ask you to  
16 please go to your jury room.

17 Please do not begin discussion of this case  
18 among yourselves. It is still premature for you to begin  
19 any discussion in the case. And we will send for you  
20 very shortly.

21 Thank you, you may go with the bailiff.

22 (Whereupon, the Jury exits the courtroom  
23 at 3:25 p.m..)

24 MOTION FOR A DIRECTED VERDICT

25 THE COURT: All right. Ms. Little or

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1 Mr. Swilley, Motions on behalf of the Defendant?

2 MS. LITTLE: Your Honor, at this time  
3 the Defense renews our Motion for a Directed Verdict,  
4 based on the same grounds stated earlier.

5 THE COURT: All right. Again, with  
6 regard to the Motion for a Directed Verdict, under Rule  
7 19 of South Carolina Rules of Criminal Procedure, the law  
8 is that this Court must deny motion for directed verdict  
9 if there is evidence in the record indicating --- tending  
10 to prove the charges.

11 I cannot substitute my judgment for that of the  
12 Jury in determining the weight to be given to the  
13 testimony.

14 In ruling on a Motion for a Directed Verdict, I  
15 can only consider the existence or the non-existence of  
16 the record and not its weight.

17 There is evidence in the record by which the  
18 Jury could conclude the charges in this case. But the  
19 various charges in this case have been proven, and it  
20 would be up to the Jury to decide how much weight to give  
21 that testimony.

22 Credibility is a matter for the Jury and not a  
23 matter for the Court. Therefore, the Court will  
24 respectfully deny the Motion.

25 All right. Counsel, what I would like to do is

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1 let's take a little brief recess for the Court personnel,  
2 and then in about five to seven minutes if Defense  
3 counsel and the Prosecutor will come down to chambers, we  
4 will discuss charges, scheduling, and things about where  
5 we are going from there.

6 Let's take about six or seven minutes and then  
7 meet me in chambers.

8 (Whereupon, a recess was taken from 3:29  
9 p.m. until 3:47 p.m..)

10 **THE COURT:** All right. Back on the  
11 record with regard to the matter of the State versus  
12 Jimmy Gallishaw. Mr. Gallishaw is present in the  
13 courtroom with his attorneys. The State is represented  
14 by Ms. Mayes.

15 We have now colluded all of the testimony, and  
16 after a in chambers conference regarding charges as well  
17 as verdict form, and the time required for arguments in  
18 this matter, I have concluded that it is now ten minutes  
19 till four, and that would require arguments this  
20 afternoon, but I would not have time to charge and send  
21 it to the Jury. The attorneys have expressed a  
22 preference to argue and charge at the same time, or have  
23 the charge immediately follow the argument. So, what I  
24 have decided to do is adjourn this case for the rest of  
25 the afternoon. Come back at 9:00 in the morning, at

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1 which time counsel will make their closing arguments and  
2 I will give the instructions to the Jury.

3 The Defendant will make the first argument, and  
4 the State has waived opening, and the Defendant will make  
5 the first argument, and then the State will be allowed to  
6 close.

7 With that the other matter that we discussed  
8 that we will put on the record is that, with regard to  
9 the two counts of --- The two Indictments with CSC with a  
10 minor first, I believe that assault and batter of a high  
11 and aggravated nature is a lesser included offence of  
12 that charge, and the State has --- I mean, the Defense  
13 has requested that that option be given to the Jury. So  
14 the verdict form on each of the CSC with a minor will be  
15 guilty of CSC with a minor first, or guilty of assault  
16 and battery of a high and aggravated nature or not  
17 guilty.

18 All of the other Indictments will be either  
19 guilty or not guilty of that particular charge, since  
20 there are no lesser included offenses. And the verdict  
21 forms will reflect that.

22 Other than those matters, Ms. Mayes, is there  
23 anything else that the State wishes to put on the record  
24 at this time before we adjourn this case for the  
25 afternoon?

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1 MS. MAYES: Nothing from the State, Your  
2 Honor.

3 THE COURT: From the Defense, Ms.  
4 Little?

5 MS. LITTLE: No, Your Honor.

6 THE COURT: All right. Bring the Jury  
7 in please.

8 (Whereupon, the Jury enters the courtroom  
9 at 3:51 p.m..)

10 THE COURT: All right. Ladies and  
11 gentlemen of the Jury, thank you for your patience. We  
12 have resolved the legal issues that we need to resolve.

13 And as I told you before we took the recess,  
14 there are only two things that remain to be done in this  
15 case. And those are the arguments or closing statements  
16 by the attorneys to you. After which, I will instruct  
17 you on the law in South Carolina, as it applies to the  
18 facts of this case, as you may find those facts to be.

19 However, these two matters would run us late in  
20 the afternoon, probably 5:00 or 5:30 before you would  
21 even get the case to consider to begin your  
22 deliberations. And I want you to feel free to have as  
23 much time to deliberate the matters as you need to  
24 without time constraints. I have decided that the better  
25 thing to do is to adjourn for the afternoon and to take

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1 up those two matters in the morning, which we are going  
2 to do beginning at 9:00.

3 So, if you would be back in your jury room  
4 tomorrow morning at 9:00, we will begin arguments and  
5 charge in this matter.

6 And over the evening recess please do not  
7 discuss the case among yourselves. Do not allow anyone  
8 to discuss it with you. And do not discuss it among  
9 yourselves when you first get to the jury room in the  
10 morning. But if you will be there promptly at 9:00, we  
11 will try to start promptly at that time so that you will  
12 have plenty of time to deliberate the matters during  
13 tomorrow morning.

14 Okay. You are free to go. I will see you  
15 tomorrow. Thank you.

16 (Whereupon, the Jury exits the courtroom  
17 at 3:53 p.m..)

18 **THE COURT:** All right. We will be in  
19 recess in this matter until 9:00 tomorrow morning.

20 I am going to step out and allow the parties to  
21 kind of clear their tables, and let the Prosecutor and  
22 Defense counsel get up, and we will take up the matters  
23 of guilty pleas for the rest of the afternoon.

24 Thank you, we will be in recess for a few  
25 minutes.



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1 (Whereupon, this case stands down for the  
2 day at 3:53 p.m..)

3 -- END OF DAY FOUR OF TRIAL --

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(Whereupon, Court comes to order at 9:07 a.m. on Friday, July 23, 2010.)

**-- DAY FIVE OF TRIAL --**

**THE COURT:** All right. We are back on the record with regard to the matter of the State versus Jimmy Gallishaw, Jr. The Defendant is present with his counsel. The State is also present with Ms. Mayes. Counsel, anything before we bring the Jury in and begin closing arguments, on behalf of the State?

**MS. MAYES:** Yes, sir, Your Honor. Briefly, if I could take a look at Your Honor's Charge on Criminal Sexual Conduct with a Minor.

**THE COURT:** Anderson, Section 34 on page 260 of Judge Anderson South Carolina Request for Criminal Charges.

**MS. MAYES:** Okay. I was wondering if it had a portion in it about consent by the minor is not a defense.

**THE COURT:** Let's see. No, it does not actually say anything about --- It just says if the child is less than eleven years of age at the time that is all that matters.

I won't use the second part, because that doesn't come in. It is just the under age eleven that is the only one that matters.

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1                   **MS. MAYES:**     Okay. And, Your Honor, I do  
2 intend to     --- When I am addressing the Jurors, I will  
3 address the fact that consent by the minor is not a  
4 defense.

5                   **THE COURT:**     Okay. That's not a problem.

6                   **MS. MAYES:**     And the incest charges from  
7 the Statute?

8                   **THE COURT:**     Pardon me?

9                   **MS. MAYES:**     The incest charges from the  
10 Statute?

11                   **THE COURT:**     The incest charges are also  
12 from Anderson, and it is --- it includes the Statute, and  
13 I will only include Subsection I, regarding a man with  
14 rather than a woman with and not that part, and then go  
15 on to elaborate a little bit as to what Judge Anderson  
16 has in his book.

17                   (Whereupon, a bench conference was held.)

18                   **THE COURT:**     All right. Anything else?

19                   **MS. MAYES:**     No, sir, Your Honor.

20                   **THE COURT:**     Ms. Little, anything before  
21 we bring the Jury in?

22                   **MS. LITTLE:**     We are ready, Your Honor.

23                   **THE COURT:**     All right. Bring the jury  
24 in please.

25                   (Whereupon, the Jury enters the courtroom

## THE STATE VERSUS JIMMY GALLISHAW, JR.

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1 at 9:11 a.m..)

2 THE COURT: All right. Good morning,  
3 ladies and gentlemen, and thank you for your promptness  
4 in being back here. As I told you yesterday afternoon  
5 before I excused you, you have now heard all of the  
6 testimony in this matter, and have all of the evidence  
7 in. And there are only two things that remain to be  
8 done. The arguments of counsel, and the instructions on  
9 the law by the Court.

10 I will tell you now, as I did at the first of  
11 this case, that the arguments of counsel are not  
12 evidence. They are simply the lawyer's views of what  
13 they think the evidence shows. You should decide this  
14 case based upon the evidence that you have heard from  
15 this witness stand, and from any exhibits that have been  
16 introduced into evidence, which you will be allowed to  
17 take to the jury room with you.

18 But the arguments of counsel are not evidence.  
19 But the lawyers do have the right to address you now, and  
20 to give you their views of what they think the evidence  
21 shows. When they have concluded their arguments, or  
22 their closing statements to you, I will then instruct you  
23 on the law of South Carolina, as it pertains to the facts  
24 in this case, as you may find those facts to be. And  
25 then you will be allowed to retire to your jury room to

**CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 636**

1 deliberate and reach a verdict.

2 You will hear first from Mr. Swilley on behalf  
3 of the Defense, and then from Ms. Mayes on behalf of the  
4 State.

5 Mr. Swilley.

6 **MR. SWILLEY:** Thank you, Your Honor, if  
7 it please the Court?

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

9 **CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT**

10 **MR. SWILLEY:** Ladies and gentlemen, we  
11 have seen from the State this week --- We have seen  
12 submitted from the State all the testimony, and all of  
13 the evidence, does not prove Jimmy Gallishaw guilty of  
14 the crimes for which he has been charged.

15 Just briefly, I am going to go over some of  
16 this stuff. I would like to highlight some of the  
17 important things that you have seen that does not prove  
18 Mr. Gallishaw guilty of what happened. I am not going to  
19 get up here and talk for a long time like I said. I know  
20 you don't want to hear it. And besides, like Judge King  
21 said, what I say is not evidence. What is said right now  
22 is just supposed to be like a light --- the highlights of  
23 some of the important points in the case.

24 What is important is what is between opening  
25 and closing statements, and what you saw. And what you

**CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 637**

1 saw are a lot of inconsistent statements. Okay? You saw  
2 a lot of stuff that doesn't add up. It doesn't make a  
3 whole lot of sense when you look at it, and used what I  
4 called in the beginning, your collective common sense.  
5 Something that I know you all have, because you all are  
6 from Darlington County, and I know you all have good  
7 sense.

8 Now, you heard from two children, and you heard  
9 from Ms. [REDACTED], Victim #1's mother; and you heard from  
10 Adrienne Gallishaw, Victim #2's Mother. And when Victim #1  
11 came up, she contradicted herself on the witness stand.  
12 She contradicted herself on video. What she said first  
13 didn't happen first, did happen. She said it didn't  
14 happen, and then six days later on video she said it did  
15 happen. Six days for somebody, anybody could have gotten  
16 to her, could have told her what to say, could have  
17 changed her mind. Six whole days.

18 You have Victim #2, who we know is jealous of Victim #1,  
19 who unfortunately knew that Victim #1 had suffered from ---  
20 had been through a different incident with another family  
21 member, which she gained substantial attention, which was  
22 a huge deal for her. Enough motivation for her to  
23 conjure up, or fabricate anything that might --- she may  
24 feel would get her attention.

25 Another point to remember is these are young

**CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 638**

1 girls. They don't look as young as they really are, but  
2 they are children. They don't understand --- They really  
3 can't understand the magnitude of what they have alleged.  
4 You know, they are twelve years old. Twelve years old is  
5 young. Okay? It is not --- They don't --- they don't  
6 want --- they don't understand the situation for which  
7 they are in.

8 Now some things that I would like for you to  
9 use your collective common sense on is --- And like when  
10 you have horrible things happen to you, and nobody has  
11 had probably anything horrible as what has been alleged.  
12 You remember that like a movie in your brain. You know  
13 if something were to happen and you were in a bad car  
14 wreck, or if you had been the victim of a beating, that  
15 is like a movie that plays over in your head and you are  
16 always going to remember. You are not going to get  
17 details wrong. You are not going to get any significant  
18 details wrong. You are surely not going to get big  
19 details wrong --- the important details wrong. It is  
20 just not going to happen if something bad really happened  
21 to you like that. That is something that you use your  
22 collective common sense on.

23 Now if something really like this happened in  
24 the near past, there wouldn't be these absence of details  
25 that you have witnesses throughout the course of this

## CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 639

1 trial, throughout this whole week.

2 Second of all, you know, I don't have any  
3 children. I am not married. But it is common sense also  
4 that if you have children, and there is ever an inkling  
5 in your brain that something bad has happened to them,  
6 that something that has been alleged, you are going to  
7 take care of it lickety-split right then. Okay? And  
8 these mothers they are not --- they may not be the most  
9 vigilant people in the world, but they would know like  
10 any mother would know if something like this is going on  
11 they would take care of it right then. It wouldn't be,  
12 oh, well, this kind of seems weird. Maybe I'll just, you  
13 know, push it out of my mind. You know?

14 You know, if something like this was really  
15 happening, if there was any inkling, they would call the  
16 police or taken care of it lickety-split right then.  
17 Okay?

18 Now, you saw when Adrienne's testimony she said  
19 she never believed any of this stuff to be true until the  
20 time came around where maybe it was time for her to get  
21 in trouble about something, and the story kind of  
22 changed. She told the police that she saw Mr. Gallishaw  
23 in the bathroom with no pants on. She tells Ms. Debbie  
24 Elliott she saw him in the bathroom with his pants down.  
25 She told the police that he just had his pants down, and



**CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT** 640

1 was in the bathroom. Then later on she told people at  
2 the CARE House he had an erection when using the  
3 bathroom. Those kind of details are too important to  
4 leave out in certain places. That is something that is  
5 going to stay the same. If it really happened this  
6 entire time you would have told everybody the exact same  
7 way. That is collected common sense.

8 Now, this episode when Adrienne saw Jimmy in  
9 the bed, or something like that with his pants down with  
10 **Victim #2**, that just came out during the course of this  
11 trial. If something like that had happened it would have  
12 been relayed to some kind of authority figure. That is  
13 just common --- something that big would have been told  
14 to somebody before this week. Okay?

15 Now, like I told you, the fact of the matter in  
16 real life, when awful traumatic things happen, you don't  
17 get details wrong. That is just common sense. You don't  
18 get stuff like that wrong. You don't leave out important  
19 things like that. Okay?

20 And you saw the girls testify, and then you saw  
21 Ms. Debbie Elliott get up here as an expert, who is  
22 really not an expert in child assessment --- child abuse  
23 assessment, who hadn't assessed these girls anymore than  
24 y'all have assessed them. You know, as you will remember  
25 I asked her, I said, are you an expert in child abuse

## CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 641

1 assessment? Well, the only thing that she has witnessed  
2 that would indicate child abuse, child abuse that she is  
3 an expert is what they told her. You have just as much  
4 interaction, and have heard just as much adjures in these  
5 children as she has. And somehow that is supposed to ---  
6 she is supposed to have more clairvoyance than y'all have  
7 to assess whether these children have been abused or not.  
8 You know that --- we don't need that. That is your job  
9 to find out the truth. You don't need anybody else to  
10 tell you how to do your job. Y'all are all good people  
11 with good common sense, intelligent enough to serve on a  
12 Jury.

13 Y'all know what is truth and what is not. You don't  
14 need anybody else to tell you what the truth is. I mean  
15 the fact of the matter is, Ms. Elliott, she doesn't know.  
16 She doesn't know or haven't seen anything that y'all  
17 haven't seen. Okay?

18 It has also been submitted by the State are  
19 letters of Mr. Gallishaw to his family. Okay? In these  
20 letters that were supposed to be private --- nothing came  
21 out about any of this. He apologized for not being  
22 around, for not being a father. He apologizes for not  
23 being in the house and being able to take care of his  
24 kids. None of this is mentioned. It doesn't say --- He  
25 didn't come out and say any of this stuff. It is just

## CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 642

1 not there.

2 Also, something I would like for y'all to take  
3 into consideration is, Mr. Gallishaw got up here,  
4 testified, told his side of the story, the whole story,  
5 and allowed him to be cross examined by somebody with  
6 superior wit, superior intellect, superior  
7 sophistication, and didn't back down. He told the story  
8 the entire time the way it is. He has nothing to hide.  
9 He would have sat up there for however long it took to  
10 make sure the story got out, the right story got out to  
11 y'all. Okay? He didn't hide a thing. He didn't  
12 hesitate to tell y'all about the embarrassing and  
13 humiliating details of his life. He put it all out so  
14 you could see everything as a whole, and make sure you  
15 could assess your collective common sense.

16 Another thing that needs to be addressed to  
17 that I talked about during my opening, and y'all saw  
18 yesterday is this statement to the police. Okay? You  
19 saw Jimmy, you saw him talking to Captain Watson.  
20 Basically what Jimmy talked about up here also is they  
21 weren't going to take no for an answer; okay? He had  
22 the second most important --- pretty much the most  
23 important policeman in Darlington drill him. Told him I  
24 know what I want to hear. I know what happened. I know  
25 what happened, and you are going to tell me. After the

**CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 643**

1 second interview, after hours and hours he figured this  
2 guy is not going to take no for an answer. I've got to  
3 tell him what he wants to hear, or else I am not going to  
4 be left alone. And that is the fact of the matter. He  
5 was scared. He was petrified. And not only was he going  
6 to be subjected to this kind of torment, but also his  
7 family, and he just had to tell the man what he wanted to  
8 hear.

9 Now, you probably remember too something that I  
10 like to be cognitive of is there is three things in  
11 American Criminal Law that is pretty much the bedrock of  
12 our Criminal Justice System.

13 Number one, the State has the burden of proof.  
14 That is why they sit here. That is why they get to argue  
15 last. They have the burden of proof. They have to prove  
16 this, and that is something they haven't done. The  
17 burden never falls upon the Defendant, it is always on  
18 the State. We don't have to prove anything.

19 Number three, that everything has to be proven  
20 beyond a reasonable doubt, and that is a feat that has  
21 not been accomplished this week. There are too many  
22 holes, and there is too much that doesn't add up. There  
23 is just not enough, and that is the way it is. That is  
24 the way you have seen it.

25 Beyond a reasonable doubt, as the Judge

**CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 644**

1 informed you, is beyond a doubt that would make a  
2 reasonable person hesitate, is, I believe what he said.  
3 Hesitate --- wait, that's not right. Or wait, that  
4 doesn't add up. Or wait, I'm not firmly convinced.

5 And the kind of testimony you have heard, and the  
6 kind of things that has been submitted by the State are  
7 the type of things that would make a reasonable person  
8 hesitate. Wait, I just don't --- that just doesn't add  
9 up. I don't believe that. Or I can't completely be  
10 firmly convinced for what they are telling me.

11 And you know we always try to bring up here in  
12 closing that the government believes that Mr. Gallishaw  
13 did this. Okay? That doesn't have anything to do with  
14 what you should take into consideration. Because, as we  
15 all know if you watch tv, or the news, the government  
16 gets things wrong a lot. The government screwed up.  
17 They make mistakes. Looking on Fox or CNN, you can see  
18 that anytime of the day probably.

19 The government in this incident has made a mistake.  
20 They believe the wrong thing. They focused their efforts  
21 in the wrong direction, as has happened on the Federal  
22 level in Washington DC, and it happens in Columbia, South  
23 Carolina, and it happens in the City of Darlington. It  
24 is probably happening in Columbia right now. Somebody in  
25 the government is getting something wrong. I don't want

**CLOSING ARGUMENTS ON BEHALF OF THE DEFENDANT 645**

1 you to think that because the government has decided  
2 something, and has decided to do something, that is the  
3 way you should decide, because as we know the government  
4 gets thing wrong. Okay?

5 Now, finally I have seen y'all paying attention  
6 during this week, and you have had a lot of attention,  
7 and there are a lot of things that have been said that  
8 aren't --- it is just like dirty, salacious allegations.  
9 It is not something that you want to hear, you know?  
10 There are a lot of kind of bolder things that have been  
11 said.

12 And if there is anything that has been said by  
13 myself or by Ms. Little that has offended you, let me  
14 apologize right now. Please don't take that out on our  
15 client, Mr. Gallishaw. And please don't let that decide  
16 the facts of this case, or the merits --- or this case on  
17 the merits. If there has been anything that I have said  
18 or she has said right now that has offended you, I  
19 apologize. Let me apologize for her and on my behalf. I  
20 just want to make that clear as well.

21 I think that pretty much covers the whole  
22 trial. I know we have been here for a whole week, and  
23 y'all have had to pay attention. There has been some  
24 things that you hadn't wanted to hear, but you have  
25 anyway. You have done your job as a Juror, and you have

**CLOSING ARGUMENTS ON BEHALF OF THE STATE** 646

1 done a good. Everybody has paid vigilant attention.  
2 Everybody has seen things, seen the things that needs to  
3 be seen.

4 And I would just like to thank you for being  
5 here. Thank you for paying attention. And I would like  
6 to thank you for listening to me, because I know that is  
7 probably something that you don't want to do.

8 And before I turn things over to Ms. Mayes, I  
9 would just like to ask you, one last time today, please  
10 take everything that you have seen into consideration,  
11 and try to assess it for what it is worth.

12 And when you do that, you are going to come to the  
13 conclusion that the State hasn't proved, beyond a  
14 reasonable doubt, that Mr. Gallishaw has done anything  
15 wrong with any of these allegations for which he has been  
16 charged with.

17 Thank you.

18 **THE COURT:** Ms. Mayes.

19 **MS. MAYES:** Yes, sir, Your Honor, may it  
20 please the Court?

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

**CLOSING ARGUMENTS ON BEHALF OF THE STATE**

22  
23 **MS. MAYES:** Ladies and gentlemen, I listened  
24 carefully Mr. Swilley's argument. What I took from it  
25 was one central theme. That the voice of a child means

**CLOSING ARGUMENTS ON BEHALF OF THE STATE 647**

1 nothing, or, at least, that is what he would have you  
2 believe. But, that is not the law of the State of South  
3 Carolina, nor will it ever be, because the voice of a  
4 child matters. It rings strong and true, never meaning  
5 more than when it comes from here.

6 These girls took the witness stand and told you  
7 exactly what they had been through these past few years  
8 in the home of the Defendant, Jimmy Gallishaw. They have  
9 absolutely no motive to lie. No motive to make anything  
10 up on dad. They are here because it's true.

11 The evidence in this case is overwhelming, because  
12 in so many cases like this there might only be a child's  
13 word that we have of what happened.

14 Sexual abuse crimes, as I mentioned in the  
15 beginning, are often secret crimes. They are not crimes  
16 that happen in front of people. Like if someone were to  
17 go into a convenient store, a 7-11 and commit a robbery,  
18 there may be a video tape playing to capture the crime.  
19 These crimes happen behind closed doors.

20 In this case, these acts have become so escalated,  
21 and his behavior so out of control that the evidence  
22 became overwhelming, because these were repetitive acts  
23 that left behind medical evidence --- scaring, as well as  
24 eye witness accounts. People walked in and saw him. The  
25 girls saw what happened to one another. And ultimately,



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1 by the Defendant's own statement, an admission about what  
2 he had done. And in cases like this there is so much  
3 manipulation and control by a perpetrator, especially  
4 when it is an adult, and they are little girls. And for  
5 so long he was able to get away with it by using constant  
6 manipulation.

7 And we know, the evidence that we have heard, and by  
8 Adrienne Gallishaw's own admission she was clearly in  
9 denial. She was not strong enough to be a report victim  
10 for a child. She was not someone who was strong enough  
11 to be a report victim for a child. She was holding on to  
12 that marriage with dear life, regardless of the things  
13 that were occurring right underneath her eyes.

14 And in that situation, **Victim #2** was battling a  
15 battle against all odds. Until finally, that morning  
16 February 2009, when her mom walked in and finally saw it  
17 herself. And what she saw was undeniable. From that  
18 point on **Victim #2** was wasn't going back down. Because  
19 there is no need to back down anymore in front of her  
20 mom. You heard the testimony. You heard the testimony  
21 about how her mom fell on the floor and started crying.  
22 Why? Why did she have that reaction? Because, he was  
23 standing in the bathroom with no pants on? Absolutely  
24 not.

25 She took her little girl to the doctor. Maybe her

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1 idea was that she could still keep it a secret. Maybe  
2 her idea was that she could still hold her family  
3 together. And the doctor said, uh-huh, it doesn't work  
4 that way. Is it a family member? Yes it is. Who? My  
5 husband. Whether that is child abuse, and you have got  
6 to do something about it. Then she goes to the CARE  
7 House, and from that point on there is holding back  
8 anymore.

9 When [Victim #2] was interviewed she was finally able  
10 to tell finally because somebody was going to listen.  
11 And she knew that she was going to be safe, and she was  
12 going to be protected. And in that interview she told  
13 about everything. Finally, there were multiple incidents  
14 that occurred there in the city apartments. There were  
15 incidents that occurred even when they moved on to the  
16 other grandmother's house in the county in the spring of  
17 2009.

18 But look what happened that morning in the bathroom  
19 until mamma walked in. And the interviewer said, had he  
20 done that before? Yes, he has. What had he done before?  
21 He would get onto me, and get behind me. A ten year old,  
22 ladies and gentlemen. A ten year old who when she was  
23 examined, the medical evidence consistent with past  
24 penetration, and this is repetitive. This evidence on  
25 [Victim #2] confirms everything that she was able to tell

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1 for the first time.

2 Then mom is confronted with something that is  
3 going to change everybody's life. And this isn't  
4 something that everybody wanted. This is her dad, and  
5 she said this is the only dad she has ever known. She  
6 didn't want to have to tell. But you know what, all she  
7 said was she wanted it to stop. I just wanted it to  
8 stop. She has a baby sister in the home. She did the  
9 right thing.

10 And they asked her had it happened to anyone else?  
11 Yeah. Yeah. My sister **Victim #1**. And **Victim #1** all the time  
12 was there. Ten years old. The incident with the  
13 thirteen year old brother in the Defendant's home. What  
14 is going on in that home, back in 2008, where a ten year  
15 old and the thirteen year old siblings were acting out  
16 like this. Something is going on. She wasn't ready to  
17 tell. When she came into that first interview she still  
18 wasn't able to tell. Finally she goes into that medical  
19 exam. The evidence was there in 2008 and in 2009.  
20 Repetitive for consistent past penetration. Right after  
21 she finishes the interview she goes into that medical  
22 exam and tells the doctor on the table it's daddy. Daddy  
23 has been messing with me since I go to see my sister.  
24 And one time when her mamma walked in and saw me, and  
25 told me to get back in my bed. And she tells the doctor

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1 right there in the office, and she is eleven. She comes  
2 back from that interview, tells it all about dad. So how  
3 is your relationship? We were close. We were close.  
4 She had every reason to keep the secret. She just  
5 couldn't keep it anymore. When she said to you from the  
6 witness stand, I knew it was going to come out one way or  
7 the other. Deep down she knew it was wrong.

8 When we talk about the evidence in this case it  
9 goes beyond just the medical evidence. It goes beyond  
10 what the girls saw. In Adrienne Gallishaw's testimony  
11 she walked in, she saw **Victim #1** in his bed without any  
12 underwear on. And **Victim #1** said I took them off because I  
13 was hot. Get back in your bed **Victim #1**.

14 You know there would be evident when mom walked  
15 in the bathroom, and it all came out. Adrienne Gallishaw  
16 has no reason to say these things, except she saw them  
17 herself. In fact, she had every reason to want to  
18 protect him. This is a woman who is still married to  
19 him. She has not filed for a divorce, because as she  
20 said, she held on to that marriage and believed that  
21 marriage is forever. She was willing to stand by him,  
22 and give him the benefit of the doubt. Every time  
23 **Victim #2** tried to tell her, she still gave him the  
24 benefit of the doubt, because in front of **Victim #2**, he  
25 would say it is not true. And that little girl would

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1 back down. Okay, mommie, it's not true. It's not true.

2 He continued that manipulation, I submit. And  
3 when you go back into your jury room you are going to  
4 have the evidence of that before you. The letters that  
5 he wrote to the family after his arrest. He knew he  
6 wasn't supposed to be having any contact. Yet he still  
7 wrote these letters trying to convince [Victim #2] s mommie,  
8 and Adrienne that the statement he made is not true.

9 He said in these letters do you think my  
10 daughters have forgiven me? Think about that. Do you  
11 think my daughters have forgiven me? I am ashamed. I am  
12 very ashamed. And I am sorry for putting you all through  
13 this mental Hell. I never meant to hurt you in any way.  
14 I could apologize for the rest of my life, but it still  
15 wouldn't be enough. Just I need for you to ask [Victim #2]  
16 will she forgive me for all of these things? Would she  
17 still like for me to be her father, and be there like a  
18 daddy should. If she still wants me as a daddy, still  
19 loves me, that is the first step.

20 The second step is this, didn't you tell me  
21 that these people are threatening you saying if you came  
22 to see me they would take the kids from you. That is  
23 against the law for them to do that, and that could be  
24 help in this case thrown out. Also, if you can get  
25 [Victim #2] to write a statement saying she was upset with

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1 me because I told her in January that she could not go to  
2 the Valentine's dance because she got in trouble at  
3 school and that was her punishment. Also, if she would  
4 say she was mad at the way I used to treat you, and was  
5 tired of making us cry, which would all be true if you  
6 think about. Continued manipulation, ladies and  
7 gentlemen. Knowing that he had done this, and still  
8 attempting to manipulate even when he was no longer to  
9 see his child. He considers it a threat that they can't  
10 have contact with him. Ladies and gentlemen, that is the  
11 basics. That is what is called a Safety Plan that you  
12 have heard about. That is what prevents perpetrators  
13 from having continued contact with children, and keeps  
14 them protected after abuse has been disclosed.

15 I want to talk briefly about the Defendant's  
16 own statement. The statement that he made to law  
17 enforcement, after the waiver of his Miranda Rights. You  
18 have the right to remain silent. The first thing he was  
19 advised of, and acknowledges, anything that you say can  
20 be used in court as evidence against you. He knew this  
21 and still made a statement. Why? Why did he keep  
22 agreeing to do interviews? I submit that it is because  
23 he thought he could talk his way out of it. He was  
24 wanting to talk his way out of it, just like he was  
25 wanting to talk Adrianna and Adrienne into believing what

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1 happened in the bathroom was a result of all the  
2 Percocets that he took. Just like he tried to tell law  
3 enforcement that whatever happened in 2007, was the  
4 result of the drugs he was taking at the time.

5 Ladies and gentlemen, the Judge is going to charge  
6 you at the close of the case that taking drugs  
7 voluntarily; called voluntary intoxication, that if  
8 someone chooses to take drugs or alcohol, whatever state  
9 they may be in, if they commit a crime they are still  
10 legally responsible for that crime. It is not a  
11 situation where you can come to court and blame it on the  
12 drugs, blame it on the Percocet.

13 In that statement to law enforcement he said,  
14 it was 2007 he had sex with the girls. How many times do  
15 you think it was? Three. When were they? 2007. We  
16 were all in there together. How many times did you have  
17 sex with her? About three, it was all during the same  
18 time. I can remember having them both in there. Exactly  
19 what the girls reported, and the details that he gave  
20 during that statement. They asked him how it happened.  
21 He said, I would get on my knees. He made that statement  
22 to law enforcement having never seen that forensic  
23 interview. Not Adrianna. The same forensic interview  
24 where she talked about him getting on his knees. And in  
25 that interview with law enforcement, in that statement,

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1 he talks about using condoms. He said yeah, I used  
2 condoms. The same condoms that Victim #1 tried to explain  
3 him using. The condoms in the blue package.

4 Ladies and gentlemen, there is no way that a  
5 father would go into a interview with law enforcement and  
6 admit to doing these things to his children, except for  
7 the fact that he did it. He did it. And that is the one  
8 thing that stands like a stone throughout this case. The  
9 emotion that he showed even after the officers left the  
10 room cannot be fake. That was remorse. That was the  
11 realization of the damage that he had done.

12 When he wrote that letter to the girls, and in this  
13 letter that you will have with you in the jury room --- I  
14 just want you to know that I love you and will do  
15 anything for you. I don't want y'all to have to go  
16 through this anymore. I don't feel there is a need to  
17 bring you girls to court or anything like that, because I  
18 did wrong. I admit I did wrong. Yet, here we are,  
19 because in the end he comes first. Not them.

20 I am going to talk briefly about the law in  
21 this case, which Your Honor is going to charge you on in  
22 a few minutes.

23 The first charge before you as to these girls is  
24 what is called criminal sexual conduct with a minor.  
25 Criminal sexual conduct with a minor in the first degree.



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1 The elements of this offense that the State has proven, I  
2 submit, are that the victims were under the age of  
3 eleven. And we know that in the time frame of 2007 to  
4 the summer of 2008 both **Victim #1** and **Victim #2** were under  
5 the age of eleven.

6 The second element is the act of sexual  
7 battery. Sexual battery is defined as any intrusion,  
8 however slight, into the vaginal opening. So it can be  
9 sexual intercourse, or even the beginning of sexual  
10 intercourse. It is any intrusion, however slight. Those  
11 elements have both been met, ladies and gentlemen, beyond  
12 a reasonable doubt.

13 The second charge before you is attempting or  
14 committing a lewd act upon a child. The elements of  
15 this offense are that both girls are under the age of  
16 sixteen, which they were.

17 Additional element, is that there was an  
18 attempt or completion of an act of touching. And it can  
19 be a child touching the perpetrator or the perpetrator  
20 touching the child, or attempting to touch a child in a  
21 way that is lewd or lascivious. Here there are multiple  
22 incidents where sexual contact occurred. **Victim #1**'s  
23 underwear were removed as she was in the bed with him.  
24 We know that there were multiple occasions that would  
25 have required touching of the Defendant's body with the

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1 body of the children.

2 Again the final element of proof, beyond a  
3 reasonable doubt, of attempting or committing a lewd act  
4 upon a child.

5 The final charge before you on both girls are  
6 incest. And the elements of this offense are carnal  
7 intercourse, which is basically sexual intercourse. It  
8 doesn't mean that the act has to be completed all the way  
9 to the end. Any act of intercourse, sexual intercourse  
10 is sufficient.

11 And finally, that the relationship between the  
12 perpetrator and the child is daughter or stepdaughter.  
13 Stepdaughter is defined as the daughter of the wife ---  
14 wife's daughter, which in the case would be Victim #2  
15 [REDACTED]. And both of the girls that relationship being  
16 either daughter or stepdaughter to the defendant.

17 When we talk about these offenses, the  
18 Indictment covers about a year, and can only be defined  
19 that at least one act occurred. At least one act  
20 occurred by unanimous agreement during that time frame.  
21 And when you have a criminal sexual conduct with a minor  
22 charge before you, you will be charged by the Court on  
23 the lesser offense that is included underneath this  
24 charge, and that is called assault and battery of a high  
25 and aggravated nature.

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1           And I submit, ladies and gentlemen, that charge does  
2           not apply in this case. I submit that it was not applied  
3           because this is a sex offense. This is not assault and  
4           battery. This is a sex offense. And I would submit to  
5           you that the greater charge that applies, should be  
6           designated as a sexual offense.

7           You have before you, ladies and gentlemen, the  
8           most noble of opportunities, a chance to strike back  
9           against injustice and deliver a verdict that speaks the  
10          truth. To deliver a message to this Defendant, Jimmy  
11          Gallishaw, if you commit a lewd act in Darlington County  
12          you will meet justice.

13          The State has met its burden of proof, beyond a  
14          reasonable doubt, that Jimmy Gallishaw is guilty as  
15          charged.

16          Thank you.

17                   **THE COURT:**     Move the easel please.

**CHARGE ON THE LAW**

18                   **THE COURT:**     All right, ladies and  
19          gentlemen of the Jury, if you would please give me your  
20          attention.  
21

22          You have followed very patiently and listened  
23          very attentively to the presentation of the evidence in  
24          this case, and also to the able arguments made by the  
25          prosecutor, Ms. Mayes, on behalf of the State, and Mr.

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1 Swilley, on behalf of the Defendant, and I thank you for  
2 that.

3 Unfortunately, the subject matter of this trial  
4 has necessarily been about subjects not normally  
5 discussed in polite society, and among folks that do not  
6 know each other well. The testimony and evidence has  
7 sometimes been graphic and descriptive, and it may have  
8 been personally offensive to you.

9 However, it was necessary to address matters that  
10 the General Assembly and the law of this state has  
11 declared to be illegal in a civilized society. I ask  
12 that you put aside any personal aversion as to the  
13 subject matter and evidence in this case, and view and  
14 evaluate the evidence objectively and unemotionally on  
15 behalf of both the State and the Defendant. And that you  
16 insure that both the State and the Defendant obtain and  
17 receive a fair, objective, and impartial evaluation of  
18 the facts.

19 It now becomes the duty of the trial judge,  
20 under the Constitution of this State, to charge and  
21 instruct you in the law applicable in this case. And it  
22 is your duty as Jurors to accept and apply the law as the  
23 Court will now state it to you.

24 And as Jurors, it is your exclusive duty to  
25 decide all of the issues of fact in this case. And for

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1 that purpose, to determine the effect, the value, the  
2 weight, and the truth of the evidence. Both the State  
3 and the Defendant have a right to expect that you will  
4 consciously consider, and evaluate the evidence, and  
5 apply the law of the case thereto, to the end that the  
6 State of South Carolina and the Defendant will receive,  
7 and obtain a fair, and impartial trial.

8 Now, when I use the word Defendant, I refer, of  
9 course, to Mr. Jimmy Gallishaw, Jr. The State of South  
10 Carolina, by the various Bills of Indictment in this  
11 case, charge the Defendant, Jimmy Gallishaw, Jr., with  
12 three separate offenses, and with allegedly two separate  
13 victims. The State charges the Defendant with criminal  
14 sexual conduct with a minor with both [Victim #2] [REDACTED] and  
15 with [Victim #1] [REDACTED]. The State also charges the Defendant  
16 with lewd act upon a child, and also with the crimes of  
17 incest.

18 The charges in the Indictment, and the  
19 Indictments are not evidence of anything, ut the charges  
20 in the Indictment, or to the charges on all of them, the  
21 Defendant has entered a plea of not guilty. This plea of  
22 not guilty, bases the burden of proof on the State to  
23 prove by evidence the guilt of the Defendant, beyond a  
24 reasonable doubt, before you can convict the Defendant  
25 and find him guilty. The Defendant, Mr. Gallishaw, is

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1 presumed in the law innocent of the charges contained in  
2 everyone of these Indictments.

3 It is a cardinal and fundamental rule of the law of  
4 evidence that a Defendant, irrespective of the enormity  
5 of the charges against him, ill always be presumed  
6 innocent of the crime or crimes for which he is indicted,  
7 unless and until the guilt of the Defendant has been  
8 proven by evidence which satisfies you, the Jury, of his  
9 guilt beyond a reasonable doubt.

10 The presumption of innocence is not a mere  
11 legal theory. It is not just a legal phrase. The  
12 presumption of innocence is a substantial right to which  
13 every accused is entitled.

14 Our Supreme Court has declared that the presumption  
15 of innocence is like a robe of righteousness placed about  
16 the shoulders of this Defendant, and it remains with him  
17 and assigns to him that class, the innocent, until that  
18 presumptive robe of righteousness has been stripped by  
19 his person by evidence satisfying, you, the Jury of the  
20 guilt of the Defendant beyond a reasonable doubt.

21 The presumption of innocence accompanies the  
22 Defendant from the time of his arraignment and appearance  
23 in this Court, and continues with the Defendant after you  
24 retire to the jury room to deliberate your verdict.

25 The presumption of innocence continues in existence

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1 to the benefit of the Defendant until you, the Jury,  
2 reach the conclusion that the State has proved the guilt  
3 of the Defendant, beyond a reasonable doubt.

4 The State is not required to prove the guilt of  
5 the Defendant beyond all doubt, or beyond every doubt,  
6 but beyond a reasonable doubt.

7 What is a reasonable doubt? It is not an  
8 imaginary or fanciful doubt, or a weak doubt. It is a  
9 substantial doubt. It is a doubt which the words imply,  
10 a doubt for which you can give or assign a reason based  
11 on the testimony and evidence in this case.

12 A reasonable doubt is not any sort of a doubt. You  
13 and I know, from everyday life experiences, that you may  
14 have a sort of a doubt about any matter that arises, no  
15 matter how trivial it may be, or how serious it may be.  
16 A reasonable doubt is a doubt which makes an honest,  
17 sincere, conscious Juror, in search of the truth,  
18 hesitate to act.

19 Proof beyond a reasonable doubt is proof which  
20 leaves you firmly convinced of the Defendant's guilt. If  
21 you have a doubt for which you can give or assign a  
22 reason as to the guilt of the Defendant, then he is  
23 entitled of a verdict of not guilty.

24 Reasonable doubt may arise from evidence that  
25 is in the case, or the lack of evidence in the case.

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1 You, the Jury, must make the determination of whether or  
2 not a reasonable doubt exist as to the guilt of the  
3 Defendant.

4 The very fact that the Jury engages in a full and  
5 free discussion of guilty or not guilty in the case, with  
6 the normal conversational ebb and flow on these issues,  
7 does not automatically mean that reasonable doubt exist  
8 in this issue or in any other case.

9 I charge you that the Defendant is entitled to every  
10 reasonable doubt arising in the whole case, or arising in  
11 any defenses asserted by the Defendant. If, upon any  
12 issue of fact, essential to conviction and a verdict of  
13 guilty, you have a reasonable doubt as to how that issue  
14 should be resolved, it would your duty to resolve that  
15 doubt in favor of the Defendant.

16 A Defendant, ladies and gentlemen, is not required  
17 to prove his innocence. But the State is required by law  
18 to prove every essential element of the offense charged  
19 against the Defendant by evidence which satisfies you,  
20 the Jury, of the guilt of the Defendant, beyond a  
21 reasonable doubt, before you can convict the Defendant  
22 and find him guilty.

23 If then upon the whole case you have a  
24 reasonable doubt, as to guilt or innocence of the  
25 Defendant, he is entitled to that reasonable doubt, and



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1 would be entitled to an acquittal and a verdict of not  
2 guilty.

3 But on the other hand, if upon the whole case  
4 you find that the State has proven by evidence which  
5 satisfies you, the jury, of the guilt of the Defendant,  
6 beyond a reasonable doubt, then in such circumstances it  
7 would equally be your duty to convict the Defendant and  
8 find him guilty.

9 If you find the Defendant guilty, but you have  
10 a reasonable doubt as to whether the Defendant would be  
11 guilty of the greater crime charged, or the lesser crime  
12 charged, then you would resolve that reasonable doubt in  
13 favor of the Defendant, and write a verdict of guilty of  
14 only as to the lesser crime. But, of course, you could  
15 not write a verdict of guilty to any charge, unless you  
16 find that all of the elements have been proven by the  
17 State, beyond a reasonable doubt.

18 Now, I would instruct you that the Indictments  
19 in this case, which I have in my hand, as I have all  
20 along, are not evidence of anything. The Indictments are  
21 simply the formal written instruments, which contain the  
22 charges against the Defendant. And they serve as the  
23 formal documents by which this matter is brought to  
24 trial.

25 During this trial, ladies and gentlemen, you

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1 and I have certain duties to perform. As the trial  
2 judge, it is my responsibility to preside over the trial  
3 of this case. And I also have the duty to pass upon or  
4 rule upon the admissibility of the evidence offered  
5 during the progress of this trial.

6 The Court rules only on the admissibility, not the  
7 credibility, or the weight that you should give to the  
8 evidence. You are to consider only the competence  
9 evidence before you, and you are to disregard and  
10 disabuse from your mind any testimony ordered stricken  
11 from the record of this case during the progress of this  
12 trial, if there be any. And you are to consider only the  
13 testimony which has been presented from the witness  
14 stand, together with any exhibits admitted into the  
15 record of this case, and any stipulations of counsel made  
16 into the record, if there be any.

17 I have the additional duty to charge you the  
18 applicable law in this case. As the presiding Judge, I  
19 am the sole judge of the law in this case. And it is  
20 your duty to accept and apply the law as I now state it  
21 to you.

22 If you have a preconceived idea as to what the law  
23 is, or what the law ought to be, and it does not agree  
24 with what I tell you the law is, you are obligated under  
25 your oath to abandoned this preconception on your part,

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1 because you are sworn to accept the law precisely as I  
2 state it to you.

3 In every case tried in this Court before a  
4 Jury, the Jury becomes the sole and exclusive judge of  
5 the facts. You, the jury, are the judge of the facts in  
6 this case. The Court is the judge of the law.

7 The Constitution of this State has declared  
8 that the trial Judge should not intimate, state, comment  
9 upon, or make any statement to a trial Jury about the  
10 facts in the case.

11 Since you are the sole judges of the facts, you are  
12 not to infer from anything that I have said during the  
13 progress of this trial in ruling upon the admissibility  
14 of evidence, or otherwise, or anything that I say to you  
15 now during the course of this charge to you that I have  
16 any opinion about the facts of this case. I do not. The  
17 law does not permit me to have an opinion about the facts  
18 in the case. This is a matter solely for you, the Jury,  
19 to determine.

20 As Jurors then, it is your duty to determine,  
21 as I have stated the effect, the value, the weight, and  
22 the truth of the evidence presented during the course of  
23 this trial. Necessarily then, you must assess the  
24 credibility of the witnesses who have testified in this  
25 case.

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1           Credibility is simply a legalistic term which means,  
2   believability. It becomes your duty to analyze and  
3   evaluate the evidence, and to determine that evidence  
4   which convinces you of its truth.

5           I charge you that in determining the credibility, or  
6   believability of the witnesses, you may believe one  
7   witness as against several witnesses, or several  
8   witnesses as against one witness. You may believe a part  
9   of the testimony of a witness, and reject the remaining  
10   part of the testimony of that same witness. You may  
11   believe the testimony of a witness in its entirety, or  
12   reject the testimony of a witness in its entirety. You  
13   may consider whether any witness has exhibited any  
14   interest, any bias, or any prejudice in the case.

15           And you may consider the demeanor of the witness,  
16   the appearance of the witness from the witness stand.  
17   And you may consider the opportunity for knowledge  
18   concerning those things about which a witness testified.  
19   These considerations, you do not exercise arbitrarily,  
20   but, if, in your good judgment, there is sound reason in  
21   the record for so doing. Because your objective, ladies  
22   and gentlemen, is to find the truth, whether it comes  
23   from a witness or witnesses from the State of South  
24   Carolina, or a witness or witnesses for the Defendant.  
25   And in doing so, in exercising your mental processes, and

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1 in determining what you consider to be true, the law  
2 simply requires that you exercise your good judgment,  
3 your common sense, your sense of logic and reason, and  
4 your experiences in life. You then apply these  
5 attributes of ability to the evidence and determine what  
6 you consider to be the truthful evidence. And to these  
7 true state of facts as determined by you, the Jury, you  
8 take and apply the law as I will now state it to you, and  
9 thus arrive at a verdict in this case.

10 Now, the Defendant in this case and in these  
11 Indictments, is charged with several different offenses,  
12 and I am going to instruct you on the various offenses.  
13 I will tell you that you should consider each charge  
14 separately, and determine whether the evidence in the  
15 case meets that charge, or satisfies that particular  
16 charge. But each charge should be considered separately,  
17 and you will be asked to return a verdict separately on  
18 each of those charges.

19 But in two of the Indictments the Defendant is  
20 charged with the crime of criminal sexual conduct with a  
21 minor, and I will instruct you on what the law in South  
22 Carolina says with regard to that charge.

23 This charge is a statutory charge. It is  
24 contained in the Code of Laws for South Carolina passed  
25 by the General Assembly as Section 16-3-655(a), and it

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1 sets forth the following language, and is a statutory  
2 provision for first degree criminal sexual conduct with a  
3 minor.

4 The statute provides that a person is guilty of  
5 criminal sexual conduct with a minor in the first degree  
6 if the actor engages in sexual battery with a victim who  
7 is less than seven years of age.

8 Section 16-3-65(a) defines an actor as a person  
9 accused of criminal sexual conduct.

10 Section 16-3-651(I) provides victim means the  
11 person alleging to have been subjected to criminal sexual  
12 conduct.

13 The first element the State must prove, beyond  
14 a reasonable doubt, is that the Defendant engaged in a  
15 sexual battery with the victim.

16 What is a sexual battery? Section 16-3-651(h)  
17 of the Code of Laws defines sexual battery as: sexual  
18 intercourse, cunnilingus fellatio, anal intercourse, and  
19 any intrusion, however slight, of any part of a person's  
20 body, or of any object into the genital, or anal openings  
21 of another person's body, except when such intrusion is  
22 accomplished for medically recognized treatment, or  
23 diagnostic purposes.

24 If you find the State has not proven, beyond a  
25 reasonable doubt, that sexual battery occurred, you would

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1 stop deliberating on that charge and find the Defendant  
2 not guilty.

3 If you find that a sexual battery did occur, then  
4 you must decide whether the State has proven, beyond a  
5 reasonable doubt, that the victim was less than eleven  
6 years of age at the time of a sexual battery.

7 Now, under the principle that the greater  
8 offense includes a lesser offense, or what we sometimes  
9 call a lesser included offense. A lesser included  
10 offense of criminal sexual conduct with a minor is the  
11 offense assault and battery of a high and aggravated  
12 nature.

13 What is an assault and battery of a high and  
14 aggravated nature? An assault is an unlawful attempt,  
15 or offer to commit a violent injury upon another person,  
16 coupled with the present ability to complete the attempt  
17 or offer by a battery.

18 Assault has been defined as placing another in  
19 apprehension of harm. It is not necessary that the  
20 intended injury or harm actually take place. While words  
21 alone do not constitute an assault, if by words and  
22 conducts a person intentionally creates a reasonable  
23 apprehension of bodily harm it is an assault.

24 An assault is an attempt to do violence to the  
25 person of another in a rude, angry, or resentful manner.

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1 An assault is the intentional creation of fear of  
2 imminent bodily harm.

3 A battery on the other hand is the completion  
4 of the assault. And that is, if there is any touching  
5 then it becomes a battery. So, assault and battery of a  
6 high and aggravated nature, the State must prove, beyond  
7 a reasonable doubt, that the Defendant unlawfully  
8 attempted --- or offered to commit a violent injury to  
9 the person of another, and actually did accomplish that  
10 injury to a person of another under circumstances of  
11 aggravation that would result in a battery.

12 And I would tell you that among the  
13 circumstances of aggravation are: The use of a deadly  
14 weapon. The attempt to commit a felony. Infliction of  
15 serious bodily injury. Great disparity in the ages or  
16 the physical condition of the parties. A difference in  
17 gender. Taking indecent liberties or familiarities with  
18 a female. Purposeful infliction of shame and disgrace.  
19 And resistance of lawful authority. Any of these  
20 circumstances of aggravation may be considered by you,  
21 but for the crime of assault and battery of a high and  
22 aggravated nature only one circumstance of aggravation is  
23 required.

24 Now, the Defendant has also been charged with  
25 the crime of incest with both of the victims in this



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1 case. What is incest? The General Assembly has passed a  
2 Statute that is contained in Section 16-5-20 of the Code  
3 of Laws in South Carolina, and provides as follows:

4 Any person who shall have carnal intercourse  
5 with each other within the following degrees of  
6 relationships, to wit, a man with his mother,  
7 grandmother, daughter, granddaughter, stepmother, sister,  
8 grandfather's wife, son's wife, grandson's wife, wife's  
9 mother, wife's grandmother, wife's daughter, wife's  
10 granddaughter, brother, sister, brother's sister,  
11 sister's daughter, father's sister, or mother's sister  
12 shall be guilty of the crime of incest.

13 The State must prove, beyond a reasonable  
14 doubt, that the Defendant had sexual intercourse with  
15 certain types of relatives. And as I said, if the  
16 Defendant is a man these relatives include the  
17 Defendant's child or the child of the wife's --- or the  
18 child of the Defendant's wife.

19 Now finally, the last charge against the  
20 Defendant is what we describe in the law as lewd act upon  
21 a child, under sixteen. In Section 16-15-140 of the Code  
22 of Laws in the State of South Carolina, provides as  
23 follows:

24 It is unlawful for a person over the age of  
25 fourteen years to wilfully and lewdly commit or attempt

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1 to commit a lewd or lascivious act upon the body or its  
2 parts of a child under the age of sixteen years with the  
3 intent of arousing, appealing to, or gratifying the lust,  
4 or passions, or sexual desires of the person, or of the  
5 child.

6 An act is wilfully done if done voluntarily and  
7 intentionally, and with the specific intent to do  
8 something the law forbids.

9 Lewd means obscene, lustful, indecent,  
10 lascivious, tending to moral impurity.

11 Lascivious means, intending to excite lust,  
12 indecent, obscene, tending to deprave the morals in  
13 respect to sexual relations.

14 Section 16-15-140 requires criminal intent on  
15 the part of the Defendant. It is known as *Mens rea* in  
16 the law. *Mens rea* is a Latin term meaning guilty mind.

17 What does criminal intent mean in the law?  
18 Criminal intent is a state of mind which operates jointly  
19 with the act or commission in the commission of a crime.  
20 Criminal intent is a mental state of conscious  
21 wrongdoing.

22 Criminal intent includes those consequences which  
23 represent the very purpose for which the act is done, or  
24 known to substantially certain to result regardless of  
25 one's desire. Intent may be shown by acts and conduct of

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1 the Defendant, and other circumstances from which you may  
2 naturally and reasonably infer intent.

3 In order to convict the Defendant of committing  
4 or attempting to commit a lewd act upon a child, the  
5 statutory provisions must be proven, beyond a reasonable  
6 doubt. The State must prove, beyond a reasonable doubt,  
7 that first the Defendant is over fourteen years of age.

8 Second, the Defendant wilfully and lewdly  
9 attempted, or lewdly committed, or attempted a lewd or  
10 lascivious act.

11 Third, upon or with the body or its parts of a  
12 child under sixteen years of age.

13 And fourth, with the intent of arousing, or  
14 appealing to, or gratifying the lust, or passions of  
15 sexual desires of the Defendant, or of the child.

16 The State must prove all four of these  
17 elements, beyond a reasonable doubt, before you can  
18 convict the Defendant and find him guilty.

19 So now, ladies and gentlemen, there are several  
20 things that I want to --- Those are the statutory  
21 offenses, but there are several other things from a legal  
22 standpoint that I want to tell you.

23 One has to do with the voluntariness of a  
24 statement. While the Court determines the admissibility  
25 of the evidence, you, the Jury, must determine the

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1 existence, voluntariness, and weight of any alleged  
2 statement made by the Defendant. You must make the  
3 ultimate determination of whether or not the Defendant in  
4 fact made the alleged statement. If you determine that  
5 the Defendant made the alleged statement, you must then  
6 determine whether the statement was made voluntarily.

7 Finally, you will decide what weight, if any,  
8 should be given to any alleged statement. You must  
9 determine whether the alleged statement was the product  
10 of a free and unconstrained choice by its maker. The  
11 State must prove voluntariness of the statement, beyond a  
12 reasonable doubt.

13 If you determine, beyond a reasonable doubt, that  
14 the statement was given freely and voluntarily, then you  
15 may give the statement such further consideration as you  
16 deem proper.

17 If you determine that the alleged statement was not  
18 the free, voluntarily, willed expression of the  
19 Defendant, then you should not consider the statement as  
20 evidence.

21 Now, in determining whether a Defendant's will  
22 was overcome in obtaining a statement, the law requires  
23 you to consider what is known as the totality of the  
24 circumstances. You should consider both the  
25 characteristics of the Defendant and the circumstances

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1 surrounding any questioning or interrogation. Some of  
2 the factors the law says you may consider are the age of  
3 the Defendant, the Defendant's educational background,  
4 the Defendant's mental ability or capacity, and the  
5 Defendant's background, along with other facts and  
6 circumstances surrounding the making of the alleged  
7 statement.

8 In determining the voluntariness of any alleged  
9 statement, you should consider whether the Defendant was  
10 advised of and understood his constitutional rights.

11 The law requires that before any interrogation  
12 or questioning of a body in custody may begin, law  
13 enforcement must advise the accused of his Miranda  
14 Rights. This means that the accused must be advised by  
15 the authorities of the following: that he has the right  
16 to remain silent; that any statement could be used  
17 against him in a court of law; that he has the right to  
18 have a lawyer present; that if he cannot afford a lawyer  
19 then a lawyer will be appointed to represent him without  
20 any costs; and that he can stop making the statement at  
21 anytime. Other factors to be considered are the place  
22 and length of any detention, and the nature of  
23 questioning.

24 You must carefully scrutinize all of the  
25 surrounding circumstances before you give any weight to

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1 the alleged statement. You must be satisfied, beyond a  
2 reasonable doubt, that the statement was made by the  
3 Defendant, uninfluenced by promises of reward or threat  
4 of harm. If you find, beyond a reasonable doubt, that  
5 any alleged statement was given voluntarily, then you  
6 must decide what weight, if any, should be given to the  
7 statement. If you find the statement was not voluntary,  
8 then in that event you must not consider the statement as  
9 evidence for any purpose.

10 Now, I would also tell you that the Court has  
11 qualified in this case witnesses that we refer to as  
12 expert witnesses. Although lay witnesses are limited to  
13 testifying to facts within their knowledge, and are not  
14 allowed to give opinion; certain witnesses who by their  
15 training, education, or experience are considered experts  
16 in a particular field. They may give their opinions in  
17 that field based on the facts of the matter and their  
18 conclusion. These opinions constitute evidence to be  
19 considered by you in connection with all of the other  
20 testimony and evidence in this case. You may consider  
21 the expert's opinion just as you do all other evidence in  
22 this case.

23 It is for you, the Jury, to give as much weight to  
24 it as you in your experience and discretion may  
25 determine.

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1           The testimony of experts on a subject that is  
2 little known to the general public is entitled to  
3 consideration. Such testimony must be submitted to your  
4 judgment and considered to be weighed by you as a part of  
5 the evidence in connection with all of the other factors  
6 in this case --- of the facts in this case.

7           The testimony of experts is to aid and assist  
8 you as jurors. Not to dominate or control you in the  
9 decision of questions of facts. The opinions and  
10 deductions from the evidence before you, and their  
11 judgments and opinions do not preclude yours. You are  
12 not required to decide disputed questions after  
13 comparison and consideration of all the evidence in this  
14 --- Excuse me, let me read that again. You are required  
15 to decide all disputed questions and comparisons and  
16 considerations of all the evidence in this case. You  
17 should consider expert opinions received in this case,  
18 and give it such weight you feel it deserves. An expert  
19 witness testimony is to be given no greater weight than  
20 that of other witnesses simply because the witness is an  
21 expert. You are not required to accept an expert's  
22 opinion even though it is not contradicted. If you  
23 decide the opinion of an expert is not based upon  
24 sufficient education and experience, or if you conclude  
25 that the reasons given to support that opinion are not

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1 sound; or if you feel that it is outweighed by other  
2 evidence you may disregard the opinion entirely. Give  
3 the testimony of experts the weight, if any, you feel it  
4 should receive.

5 Now, I want to talk to you just a minute about  
6 one other principle of law and that is voluntary  
7 intoxication. Voluntary intoxication is not an excuse  
8 for a --- Is not an excuse for or a defense to a crime,  
9 regardless of whether the crime is one involving general  
10 or specific intent. The rule also extends to the  
11 voluntary ingestion of drugs. A person who voluntarily  
12 ingest alcohol or drugs and thereby becomes intoxicated  
13 is no less responsible for his acts while in such  
14 condition. If one drinks intoxicated liquor, wine or  
15 beer, or ingest drugs, and becomes intoxicated to  
16 whatever degree, and if while in that condition commits  
17 an act which would be a crime if it would have been  
18 committed by a sober person the fact of intoxication  
19 would not relieve the intoxicated person from  
20 responsibility.

21 Now, ladies and gentlemen, I have just about  
22 finished my instructions to you. I want to tell you that  
23 it has been said that you are not partisans or advocates  
24 for the State of South Carolina, or for this Defendant.  
25 When you serve on the jury you have no friends to reward



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1 or no enemies to punish. Obviously, such a perverted  
2 system of justice would be intolerable. You have been  
3 selected by both the State and this Defendant as fair and  
4 impartial jurors. It is your duty then by your joint  
5 deliberations to determine the truth in this case.  
6 Giving to the Defendant the benefit of each and every  
7 reasonable doubt on each and every issue. And then to  
8 the facts that you determine to be true, you then take  
9 and apply the law which the Court has given to you and  
10 arrive at a verdict that speaks the truth. Because the  
11 word verdict ladies and gentlemen comes from the Latin  
12 verb veredictum, meaning to speak the truth. And when  
13 you have accomplished these responsibilities you will  
14 have satisfied your oath as Jurors, and you will have  
15 discharged your duty to this Court.

16 Now, I want to instruct you on the forms of  
17 verdict in this case. On the charges of criminal sexual  
18 conduct with a minor there are three possible verdicts.

19 Guilty of criminal sexual conduct with a minor.  
20 Guilty of assault and battery of a high and aggravated  
21 nature, or not guilty. One of those three.

22 On the other charges that is the incest charge, and  
23 the lewd act upon a minor the possible verdicts are  
24 either guilty or not guilty. If the State has failed to  
25 prove the guilt of the Defendant beyond a reasonable

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1 doubt your verdict would be two words, not guilty. If  
2 the State has proven the guilt of the Defendant on that  
3 particular charge, beyond a reasonable doubt, your  
4 verdict would be one word; guilty.

5 The verdict that you render in this case must  
6 be the verdict of each and every juror. It must be your  
7 unanimous verdict. All twelve of you must agree on the  
8 verdict which you authorize the foreman to write.

9 Now, Mr. Foreman, I have prepared a verdict  
10 form for your use, and I have prepared a verdict form on  
11 each of the charges in this case. So there are a total  
12 of seven verdict forms. And I will tell you that the  
13 order in which I have put the possible verdicts on these  
14 verdict forms has no significance whatsoever. You should  
15 not infer from the order in which I have put the possible  
16 verdicts that I have any opinion as to what your verdict  
17 should be. I do not. The law does not permit me to have  
18 an opinion on the facts. That is a matter that is  
19 totally up to you. But in putting down on paper I  
20 obviously had to put something first and something  
21 second. But the order on which the verdicts are on here  
22 have no significance whatsoever.

23 Now, as I said on the charges of criminal  
24 sexual conduct with a minor there are two verdict forms.  
25 One involves the alleged victim Victim #2, and the

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1 other one involves the alleged Victim #1 [REDACTED]. And there  
2 are three possible verdicts on each one of those charges.  
3 And, of course, across the top up here we simply have  
4 State of South Carolina, County of Darlington, the  
5 Indictment Number, the name of the case, and the verdict  
6 form. But the form says this. We, the Jury, by  
7 unanimous agreement, find the Defendant, Jimmy Gallishaw,  
8 Jr. on the charge of this Indictment involving in this  
9 particular case is Victim #2 [REDACTED], and the other one is  
10 Victim #1 [REDACTED], guilty of criminal sexual conduct with a  
11 minor, or guilty of assault and battery of a high and  
12 aggravated nature, or not guilty. And you would pick one  
13 of those, whichever y'all agree on unanimously. Put an  
14 "X" or a check mark there, and sign your name on that  
15 verdict form.

16 Now the same applies to the charges of lewd  
17 act. The victims names are also on the verdict form, or  
18 the alleged victims as being Victim #1 [REDACTED] or Victim #2  
19 [REDACTED], but there are only two possible verdicts in each  
20 one of those charges, and only two possible verdicts on  
21 the ones involving incest. And that is again, we, the  
22 Jury, by unanimous agreement, find the Defendant, Jimmy  
23 Gallishaw, the lewd act upon a child with victim Victim #1  
24 [REDACTED], guilty or not guilty, or Victim #2 [REDACTED], guilty  
25 or not guilty, and the same with the incest charges. We

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1 find the Defendant by unanimous agreement on the charge  
2 of incest with [Victim #2] [REDACTED], guilty or not guilty.  
3 And each verdict form should be completed, but only  
4 block, of course, on each verdict form would be  
5 appropriate.

6 Now, I am going to send you to your jury room.  
7 I am going to ask that you not begin your deliberations  
8 just yet. The law requires that I take up certain  
9 matters of law with the attorneys involved in this case.  
10 If it is not necessary for me to return you to the  
11 courtroom for additional instructions, the bailiffs will  
12 bring you the exhibits in this case. They will also  
13 bring you the verdict forms and tell you to begin your  
14 deliberations.

15 Now, I will tell you that I know that in this  
16 case there are some video exhibits. And you are entitled  
17 to see those, and if you should desire to see those we  
18 will make arrangements for you to do so. You will not  
19 have the equipment in the jury room with you. But if you  
20 want to see any, or all, or part of any of the videos  
21 that were introduced into evidence, you just give a  
22 signed note to the bailiff, telling him what you would  
23 like to see. And we will make arrangements for that to  
24 be played for you either in total or in part. It may be  
25 either bring you back into the courtroom for doing that,

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1 or bringing the equipment into the jury room for doing  
2 that. I will have to confer with the lawyers about that,  
3 but you are certainly entitled to view any of those  
4 matters that are in evidence that you wish to see in  
5 total or in part, and we will make that equipment  
6 available to you, and make sure that that can be done if  
7 you wish to see any of it.

8 With that then I am going to go ahead and  
9 excuse you now. I will allow you to go to your jury  
10 room. Please do not begin your deliberations just yet.  
11 And we will send the information to you in just a few  
12 minutes. Thank you.

13 (Whereupon, the Jury exits the courtroom  
14 at 10:27 a.m..)

15 **THE COURT:** Are there additions or  
16 exceptions on behalf of the State, Ms. Mayes?

17 **MS. MAYES:** Yes, sir, Your Honor.  
18 During the first charge on the criminal sexual conduct  
19 with a minor first degree. At the outset of the charge,  
20 Your Honor charged the Jury that it involved a minor less  
21 than seven years of age. At the closing you did say  
22 eleven, and there may be some confusion about that.

23 **THE COURT:** All right. Thank you.  
24 Anything else?

25 **MS. MAYES:** No, sir, Your Honor.

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1 THE COURT: Anything else?

2 MS. LITTLE: No, sir.

3 THE COURT: All right. I guess that may  
4 have been confusing if I said seven. Maybe they had  
5 better come back in and let me clarify that for them.

6 Bring the Jury back please. Is there any  
7 reason we should excuse the alternate at this time, Ms.  
8 Mayes?

9 MS. MAYES: None from the State, Your  
10 Honor.

11 THE COURT: Ms. Little?

12 MS. LITTLE: No, Your Honor.

13 THE COURT: Okay.

14 (Whereupon, the Jury returns to the  
15 courtroom at 10:29 a.m..)

16 THE COURT: All right, ladies and  
17 gentlemen of the Jury, thank you. I have been advised by  
18 counsel that I may have mis-spoke, and if I did, I want  
19 to make sure that I clarify any confusion in giving you  
20 the definition of criminal sexual conduct with a minor.  
21 The Statute provides that criminal sexual conduct with a  
22 minor is a sexual battery with a victim who is less than  
23 eleven years of age, and that is one of the elements  
24 which the State must prove. I may have said seven years  
25 of age in my charge. But I want to make sure that it is

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1 clearly understood that first degree --- or that criminal  
2 sexual conduct with a minor is engaging in a sexual  
3 battery with a victim who is less than eleven years of  
4 age.

5 All right. Thank you. You may go to your jury  
6 room. I am going to ask the alternate to stay with me  
7 please.

8 (Whereupon, the jury exits the courtroom  
9 at 10:30 a.m..)

10 THE COURT: Any additions or exceptions  
11 now Ms. Mayes?

12 MS. MAYES: No, sir, Your Honor.

13 THE COURT: Ms. Little?

14 MS. LITTLE: No, sir.

15 THE COURT: All right. If you will come  
16 check the exhibits, make sure we have all of the  
17 exhibits. And we can tell the Jury to begin  
18 deliberations. And while they are looking at those.  
19 Madame Alternate, let me tell you that the law does not  
20 allow me to have but twelve jurors. And even though you  
21 have heard all of the testimony in this case, you are not  
22 going to participate in the decision. I am going to  
23 excuse you now.

24 And I will tell you that once you have been excused,  
25 there is nothing wrong with you discussing with anyone

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1 your service on this case. There is nothing wrong with  
2 anybody talking to you about your service on this case.  
3 It is a practice, of which I strongly disapprove, and I  
4 strongly discourage, but it is not illegal. But you have  
5 the right to talk to anyone, or the right not to talk  
6 with anyone.

7 And if anybody wants to continue to harass you or  
8 bother you after you have told them you do not wish to  
9 talk about it, you let the Court personnel know, and I  
10 will deal with them.

11 I would ask that you not discuss it with anybody  
12 until after this Jury reaches a decision, and you won't  
13 know when that is. So, I would ask that you not discuss  
14 it with anybody until, at least, tomorrow. Other than  
15 that then I am going to excuse you from any further  
16 service, and also from any further service this week. You  
17 will get a check from Mr. Suggs next week. It will not  
18 pay you for the time that you have been up here, but it  
19 is a small token of appreciation on behalf of the county  
20 for your services this week. Thank you, and you are free  
21 to go. Thank you very much.

22 (Whereupon, the alternate was dismissed at  
23 10:32 a.m..)

24 THE COURT: All right. Mr. Suggs, get  
25 the exhibits, make sure they are right. Submit them to



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1 the Jury, along with the verdict form. Tell them to  
2 begin their deliberations. To advise us when they have  
3 reached a verdict. We will be at ease for a few minutes  
4 while we switch around, and I think we are going forward  
5 with probation violations as soon as we take a brief  
6 recess. Thank you.

7 Clerk of Court: Are you in agreement that  
8 this all goes?

9 MS. MAYES: Yes.

10 MS. LITTLE: Yes.

11 (Whereupon, the Jury begins deliberations  
12 at 10:34 a.m. and announces a verdict at 11:09 a.m..)

13 THE COURT: Counsel, I have been advised  
14 that in the Gallishaw matter the Jury has reached a  
15 verdict. So, if we will get Mr. Gallishaw in.

16 All right. We are back on the record with  
17 regard to the matter of Jimmy Gallishaw, Jr. The Court  
18 has been advised that the Jury has reached a verdict.

19 Before I bring the Jury in I want to make this  
20 statement to everyone that is present. This applies to  
21 the Defendant and his family. It also applies to the  
22 victims and the victims family in this case. I know that  
23 this is an important case for everyone. That everyone is  
24 very emotional with everyone, and involves a great deal  
25 of pressure, and interest by all of the parties that are

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1 involved here.

2           However, this is a court of law, and I am going  
3 to have to require that when the verdict is read that all  
4 parties, the Defendant, the victims, spectators, everyone  
5 else sit quietly and take the verdict without any shows  
6 of emotion, or any outburst of emotion in the form of  
7 verbal outburst, or clapping, or anything else. If there  
8 is anyone in the courtroom that feels that they cannot  
9 sit quietly when the verdict is published by the Clerk  
10 then I would ask that you leave now. Because failure to  
11 do so could result in a citation of contempt of that  
12 person who causes the outburst. If there is anyone who  
13 feels that they cannot sit quietly during the publication  
14 of the verdict, please leave now.

15           (PAUSE.)

16           **THE COURT:**     All right. With that, is  
17 there anything before we bring the Jury in, Ms. Mayes?

18           **MS. MAYES:**     No, sir, Your Honor.

19           **THE COURT:**     Ms. Little?

20           **MS. LITTLE:**    No, sir, Your Honor.

21           **THE COURT:**     All right. Bring the Jury  
22 in, please.

23                               (Whereupon, the Jury enters the courtroom  
24 at 11:18 a.m..)

25           **THE COURT:**     Mr. Foreman, have you

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1 reached a verdict?

2 **MR. FOREMAN:** We have, Your Honor.

3 **THE COURT:** Would you pass it up to the  
4 clerk please?

5 **(PAUSE.)**

6 **THE COURT:** All right. From the  
7 standpoint of from --- the verdicts appear to be correct,  
8 I have put them in their chronological order according to  
9 case number.

10 Mr. Suggs, you may publish the verdicts.

11 **CLERK OF COURT:** Yes, sir, Your Honor.

12 **THE COURT:** Wait just a minute. Would  
13 you and Mr. Gallishaw rise please?

14 **MS. LITTLE:** Yes, sir.

15 **THE COURT:** Go ahead.

16 **VERDICT**

17 **CLERK OF COURT:** Your Honor, this is  
18 case number 2009-GS-16-1235, The State of South Carolina  
19 versus Jimmy Gallishaw, Jr.

20 We, the Jury, by unanimous agreement find the  
21 Defendant, Jimmy Gallishaw, Jr., on the charge this  
22 Indictment involving victim **Victim #1** **[REDACTED]**; guilty of  
23 criminal sexual conduct with a minor. Signed Foreperson  
24 Wayne Hicks, July 23, 2010.

25 If this is your verdict, would you so signify

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1 by raising your right hand, please? All twelve have  
2 risen their right hand.

3 Your Honor, this is case number 2009-GS-16-  
4 1236, The State of South Carolina versus Jimmy Gallishaw,  
5 Jr.

6 We, the Jury, by unanimous agreement find the  
7 Defendant, Jimmy Gallishaw, Jr., on the charge lewd act  
8 upon a child, victim **Victim #1** [REDACTED]; guilty. Signed  
9 Foreperson Wayne Hicks, July 23, 2010.

10 If this is your verdict, would you so signify  
11 by raising your right hand, please? All twelve have  
12 risen their right hand.

13 Your Honor, this is case number 2009-GS-16-  
14 1237, The State of South Carolina versus Jimmy Gallishaw,  
15 Jr. We, the Jury, by unanimous agreement find the  
16 Defendant, Jimmy Gallishaw, Jr., on the charge incest,  
17 victim **Victim #1** [REDACTED]; guilty. Signed Foreperson Wayne  
18 Hicks, July 23, 2010.

19 If this is your verdict, would you so signify  
20 by raising your right hand, please? All twelve have  
21 risen their right hand.

22 Your Honor, this is 2009-GS-16-1238, The State  
23 of South Carolina versus Jimmy Gallishaw, Jr. We, the  
24 Jury, by unanimous agreement find the Defendant, Jimmy  
25 Gallishaw, Jr., on the charge criminal sexual conduct

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1. with a child, first degree; victim **Victim #2** **[REDACTED]**;

2. guilty. Signed Foreperson Wayne Hicks, July 23, 2010.

3. If this is your verdict, would you so signify  
4. by raising your right hand, please? All twelve have  
5. risen their right hand.

6. Your Honor, this is 2009-GS-16-1239, The State  
7. of South Carolina versus Jimmy Gallishaw, Jr. We, the  
8. Jury, by unanimous agreement find the Defendant, Jimmy  
9. Gallishaw, Jr., on the charge in this Indictment,  
10. involving the victim **Victim #2** **[REDACTED]**; guilty of criminal  
11. sexual conduct with a minor. Signed Foreperson Wayne  
12. Hicks, July 23, 2010.

13. If this is your verdict, would you so signify  
14. by raising your right hand, please? All twelve have  
15. risen their right hand.

16. Your Honor, this is case number 2009-GS-16-  
17. 1240, The State of South Carolina versus Jimmy Gallishaw,  
18. Jr. We, the Jury, by unanimous agreement find the  
19. Defendant, Jimmy Gallishaw, Jr., on the charge lewd act  
20. upon a child, victim **Victim #2** **[REDACTED]**; guilty. Signed  
21. Foreperson Wayne Hicks, July 23, 2010.

22. If this is your verdict, would you so signify  
23. by raising your right hand, please? All twelve have  
24. risen their right hand.

25. Your Honor, this is 2009-GS-16-1241, The State

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1 of South Carolina versus Jimmy Gallishaw, Jr. We, the  
2 Jury, by unanimous agreement find the Defendant, Jimmy  
3 Gallishaw, Jr., on the charge incest, victim **Victim #2**  
4 **██████████**; guilty. Signed Foreperson Wayne Hicks, July 23,  
5 2010.

6 If this is your verdict, would you so signify  
7 by raising your right hand, please? All twelve have  
8 risen their right hand.

9 **THE COURT:** All right. Thank you.  
10 Thank you, Ms. Little. You and Mr. Gallishaw may be  
11 seated.

12 Anything before the jury is excused, Ms.  
13 Little?

14 **MS. LITTLE:** No, Your Honor.

15 **THE COURT:** All right. Ladies and  
16 gentlemen of the Jury, this will conclude your services  
17 in this case, and I am going to excuse you in just a few  
18 minutes.

19 First of all, I want to thank you not for your  
20 verdict, but for your services in this case. I know that  
21 it is a --- has been a difficult case for everyone that  
22 is involved and you included, and you had a difficult  
23 decision to make in connection with this matter. And I  
24 appreciate the diligence which you have shown to your  
25 duties as Jurors in this case. I am going to excuse you

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1 in just a few minutes from any further service in this  
2 case, and I will tell you that once you have been excused  
3 as a Juror in this case there is nothing illegal about  
4 your talking with anyone about your service. There is  
5 nothing wrong with anybody talking with you about your  
6 service. It is a practice of which I strongly  
7 disapprove, and I strongly discourage, but it is not  
8 illegal.

9 You can talk to anyone or not talk with anyone. But  
10 if anyone contacts you, or wants to talk to you about  
11 your service on this case, and you don't wish to discuss  
12 it with them, and you tell them that, and they continue  
13 to harass you, you let the Court personnel know, and we  
14 will deal with them. But it is your call as to whether  
15 you wish to discuss your service on this case, or you  
16 don't wish to discuss your service on this case.

17 But I am going to excuse you and allow you to  
18 go not only, of course, for this case, but I am going to  
19 excuse you from any further service this week. I will  
20 tell you that by serving on the Jury this week you have  
21 met your citizenship responsibilities for jury service in  
22 the circuit court for the next three years. That means  
23 if you were to get a summons in the first year we  
24 couldn't take you even if you wanted to serve. You are  
25 disqualified. In the second and third years you have an

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1 exemption, and you would not have to serve. So, you  
2 can't be required to serve as a juror in the circuit  
3 court more than once every three years.

4 The only other thing that remains for us to do  
5 in this case is the sentencing. And we are going into  
6 the sentencing phase right now. And we will take up  
7 those matters. And I know that Jurors sometimes are  
8 interested in the outcome, the final outcome of the  
9 matter. And you are certainly welcome to stay here if  
10 you would like to stay for the sentencing phase.

11 What I am going to do is excuse you in a few  
12 minutes, allow you to go out this way with the bailiff,  
13 and they will take up your badges. And if you wish to  
14 stay for the sentencing phase which we are going into  
15 now, you can come into the back of the courtroom and have  
16 a seat. And I will tell you that after I finish the  
17 sentencing phase I will excuse you first and allow you to  
18 get out of the building before anyone else is excused  
19 from the case, if you would like to stay. But that is up  
20 to you. If you would like to go back around and come  
21 back in the back of the courtroom and have a seat for the  
22 sentencing phase, you certainly may do so, or you will be  
23 excused and allowed to go about your business.

24 Again, on behalf of the city, the county, and  
25 the State of South Carolina, I want to thank you for your



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1 service this week. Not only on this case, but just for  
2 being here. I know that it is never convenient to serve  
3 on a jury. But, it is important that we have good  
4 citizens who are willing to come forward and serve when  
5 they are summoned to do so. And it is this citizen  
6 participation in the judicial process which makes our  
7 system of justice the best in the world. It is not  
8 without its flaws, but it is still the best that has ever  
9 been devised by the mind of man. And it is because we  
10 have the citizen participation in the judicial process.  
11 Thank you for your service. You are free to go. Thank  
12 you very much.

13 (Whereupon, the Jury was dismissed in this  
14 case at 11:20 a.m..)

**MOTION FOR A NEW TRIAL**

15  
16 **THE COURT:** All right. Ms. Little,  
17 motions on behalf of the Defendant.

18 **MS. LITTLE:** Yes, Your Honor. At this  
19 time the Defense would move for a new trial. The Defense  
20 contends that there was a lack of competent evidence for  
21 which the Jury could have reached its verdict. And  
22 respectfully request a new trial, Your Honor.

23 **THE COURT:** All right. Ms. Mayes, do  
24 you want to be heard?

25 **MS. MAYES:** No, sir, Your Honor.

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1                   **THE COURT:**     All right. The Court will  
2 respectfully deny the motion for a new trial. In my  
3 view, the Jury heard all of the evidence, including the  
4 Defendant's own testimony in this case. And they made  
5 the decision on the questions of fact. There was  
6 evidence in the record by which they could reach the  
7 decision that they did on all charges. And for the Court  
8 to substitute its judgment, and grant a new trial would  
9 be for me to substitute my judgment for that of the jury.  
10 And this, I do not believe that I can do.

11                   And for that reason, I would respectfully deny  
12 the Motion for a New Trial.

13                   Counsel, approach just a moment please.

14                   (Whereupon, a bench conference was heard  
15 in the presence of the Defendant, but not in the hearing  
16 of the Defendant.

17                   **SENTENCING HEARING**

18                   **THE COURT:**     All right. Let the record  
19 reflect that the Solicitor has handed to the Court the  
20 sentencing sheets, and let me just review them with you,  
21 Ms. Little, to make sure that we are on the same page,  
22 and then I will have the parties come up.

23                   But with regard to the criminal sexual conduct  
24 with a minor, in Indictment Number 1235, that is with  
25 [REDACTED], that is under Jessie's Law, which would be

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1 twenty-five years to life; is that correct?

2 MS. LITTLE: Yes, sir.

3 THE COURT: Do you agree? All right.  
4 Under lewd act upon a child under Indictment 1236, also  
5 with [REDACTED] [REDACTED] would be zero to fifteen years?

6 MS. LITTLE: Yes, Your Honor.

7 THE COURT: The incest with Victim #1 [REDACTED]  
8 under Indictment Number 1237 is one to ten years.

9 Indictment Number 1238 is criminal sexual  
10 conduct with a minor, and that is with Victim #2. That is  
11 under the old law of zero to thirty years.

12 The second Indictment for lewd act, 09-1239 is  
13 criminal sexual conduct with a minor under Jessica's Law,  
14 which is a minimum of twenty-five to life.

15 And then again the lewd act with Victim #2  
16 [REDACTED] would be zero to fifteen. And the incest with  
17 Victim #2 [REDACTED] would be one to ten. Do you agree that  
18 those are the sentences?

19 MS. LITTLE: Yes, sir.

20 THE COURT: All right. Mr. Gallishaw,  
21 if you and your counsel would come forward please. And,

22 MS. MAYES: I will be glad to hear from  
23 you if there is anything that the State would like to  
24 present first. And if there is anything that the victims  
25 would like to say, or somebody on their behalf I will

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1 hear from them before I call on Ms. Little, and Mr.  
2 Gallishaw for mitigation.

**PRESENTATION OF PRIOR RECORD**

3  
4 **MS. MAYES:** Yes, sir, Your Honor, if it  
5 please the Court?

6 Prior record that Your Honor is aware of. 2002  
7 conviction, I believe that conviction was actually  
8 entered in 2007 --- or was entered in 2002, and he was  
9 served with that in 2007, and that is breach of trust  
10 with fraudulent intent.

11 And in 2007, a conviction for cocaine first  
12 offense. He received a sentence of two years suspended  
13 to eighteen months of probation. And I am not sure about  
14 the status of that probation prior to arrest on current  
15 charges.

16 Your Honor, this is an unfortunate situation  
17 that the families are in today. Both **Victim #1** [REDACTED] and  
18 **Victim #2** [REDACTED] have victim counseling following these  
19 events. They continue to be in counseling up through  
20 this recent date.

21 Both families have been cooperative with the  
22 State throughout our efforts of plea negotiations. They  
23 had wanted to avoid trial, and unfortunately we ended up  
24 in the situation that we are in. The families have  
25 decided to leave the sentencing in the discretion of the

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1 Court. They do not wish to address the Court any  
2 further, Your Honor.

3 **THE COURT:** All right. Thank you. And  
4 I am sure, Ms. Mayes, that you have advised them of their  
5 rights under the Victims Right Act, and, of course, I  
6 know that they did testify in this case, so I have a good  
7 idea of what they would say if they were to address the  
8 Court during this phase.

9 Ms. Little?

10 **STATEMENT BY DEFENSE COUNSEL**

11 **ON BEHALF OF DEFENDANT**

12 **MS. LITTLE:** Thank you, Your Honor.  
13 Your Honor, Jimmy Gallishaw is thirty-three years old.  
14 He is a high school graduate. He has always worked for a  
15 living during his life with his father in the  
16 construction business. Later with his father in the pool  
17 building business. And as you heard Your Honor, he was  
18 working as a barber at the time of his arrest, a skilled  
19 barber.

20 Your Honor, he has also been engaged in those  
21 activities out at the jail at the Detention Center. He  
22 has been acting as a barber for the other inmates.

23 Your Honor, prior to his arrest he was very  
24 active in church. Since his arrest he has continued with  
25 Bible studies there at the jail, anytime they are

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1 available.

2 Your Honor, I would like to remind the Court  
3 that there is nothing violent in Jimmy's past criminal  
4 history. The only thing that he has is those misdemeanor  
5 charges. He has never done anything --- never been in  
6 trouble for anything like this before, Your Honor.

7 Before the trial, Your Honor, in plea  
8 negotiations, after discussing the matter with Ms. Mayes  
9 on several occasions I was able to secure a plea offer --  
10 - Well, actually we discussed a plea offer of a  
11 negotiated fifteen-years. And that was, Your Honor, the  
12 last offer that I was able to present to my client in  
13 which he rejected against my advice and against Mr.  
14 Swilley's advice.

15 However, Your Honor, he has exercised his right  
16 to a trial in this case. We would ask that you consider  
17 the minimum sentence, which under Jessie's Law on, at  
18 least, two of the charges would be twenty-five years.  
19 And we would also ask that you consider concurrent  
20 sentences on all of these charges, because the acts for  
21 which he has been convicted are all related.

22 We would also request that the Court grant him  
23 credit for time served since February 4, 2009.

24 THE COURT: All right. Thank you.

25 MS. LITTLE: And I want to ask my client

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1 if he wants to be heard.

2 THE COURT: Yes, I will call on him.  
3 Mr. Swilley, is there anything that you would like to  
4 add?

5 MR. SWILLEY: I think Ms. Little covered  
6 it all, Your Honor.

7 THE COURT: All right. All right, Mr.  
8 Gallishaw, I will be glad to hear from you if there if  
9 there is anything you would like to tell me. Keeping in  
10 mind, Ms. Little, that anything that she says, of course,  
11 could impact on appeal.

12 MS. LITTLE: Yes, Your Honor, may I just  
13 advise him for just one moment.

14 THE COURT: Sure, go ahead.

15 (Whereupon, a discussion takes place  
16 between Ms. Little, Mr. Swilley and Mr. Gallishaw off the  
17 record.)

18 MS. LITTLE: Your Honor, Mr. Gallishaw  
19 would like to address the Court, briefly.

20 THE COURT: All right, yes, sir.

21 STATEMENT BY MR. GALLISHAW

22 MR. GALLISHAW: First of all, I just  
23 want to give homage to the Lord, Jesus Christ in what to  
24 say.

25 Basically, I just want to let my family know

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1 that I love them. And I just ask my pastor to help my  
2 wife take care of my children. And do the best that they  
3 can for them.

4 **THE COURT:** All right. Thank you, sir.  
5 Anything else, Ms. Little?

6 **MS. LITTLE:** No, sir.

7 **THE COURT:** Anything else from the  
8 State?

9 **MS. MAYES:** No, sir, Your Honor.

10 (PAUSE.)

11 **SENTENCE OF THE COURT**

12 **THE COURT:** All right, Mr. Gallishaw.  
13 As you have heard us discuss, and I am sure you have been  
14 advised by your counsel; a number of years ago --- not a  
15 number of years ago, but several years ago our  
16 Legislature passed a law, which is Jessie's Law, which  
17 increases the severity of the punishment for individuals  
18 convicted of criminal sexual conduct with a minor. The  
19 old law had been that criminal sexual conduct with a  
20 minor under the age of eleven carried zero to thirty  
21 years. The new law under what is referred to now as  
22 Jessie's Law carries a minimum of twenty-five years to  
23 life. Both of these crimes are considered violent. And  
24 both of them are considered most serious. There is no  
25 parole eligibility, which means that you have to serve a



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1 minimum of eighty-five percent of the sentence before you  
2 can be released to any kind of community supervision.

3 Also, they are considered sexually violent  
4 offenses, and require registration on the Child Abuse  
5 Registry. And, of course, registration of your bodily  
6 fluids in the DNA Data Base. That is the situation on  
7 the criminal sexual conduct charges. So two of these  
8 fall under Jessie's Law, which is twenty-five years to  
9 life. That is one offense with each of the victims in  
10 this case, Ms. Victim #1 and Ms. Victim #2. The other criminal  
11 sexual conduct case is under the old law of zero to  
12 thirty years, but it is still considered a no parole  
13 offense.

14 Lewd act upon a child carries zero to fifteen  
15 years, and incest carries one to ten years. I just want  
16 to make sure that you are aware of the total number of  
17 years that you could be sentenced to. Actually you are  
18 subjected here because of these convictions to two life  
19 sentences; plus the other years, if I were to impose that  
20 on you. Do you understand that?

21 MR. GALLISHAW: Yes.

22 THE COURT: I am not going to impose  
23 life sentences, but they are going to be rather severe  
24 sentences, because of the conduct in this case is  
25 egregious.

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1 But with regard to Indictment Number 09-GS-16-  
2 1235, which is criminal sexual conduct with a minor,  
3 **Victim #1** [REDACTED], the sentence of the Court is, the Defendant  
4 is committed to the State Department of Corrections for a  
5 term of twenty-five years. Be given credit for time  
6 served. Of course, the requirement of the Child Abuse  
7 Registry.

8 With regard to Indictment Number 1236, the lewd  
9 act charge involving **Victim #1** [REDACTED], the sentence of the  
10 Court is, the Defendant is committed to the State  
11 Department of Corrections for a term of fifteen years to  
12 run concurrent with 0 09-GS-16-1235, which I just  
13 announced.

14 With regard to Indictment Number 09-GS-16-1237,  
15 which is the charge of incest with **Victim #1** [REDACTED], the  
16 sentence of the Court is Defendant is committed to the  
17 State Department of Corrections for a term of ten years  
18 to run concurrent with Indictment Number 09-GS-16-1235,  
19 which is the first charge that I announced.

20 Now, with regard to Indictment --- and I am  
21 going to skip one. The Indictment that is 09-GS-16-1240  
22 --- I'm sorry, 1238 --- No, 1239, I am going to skip 1238  
23 and go to 1239.

24 09-GS-16-1239, which is criminal sexual conduct  
25 with a minor first that falls under Jessie's Law. And

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1 this would be the charge with Victim #2 [REDACTED], the  
2 sentence of the Court is the Defendant is committed to  
3 the State Department of Corrections for a term of twenty-  
4 five years; however that is consecutive to the sentence  
5 of 09-GS-16-1235.

6 The charge of 09-GS-16-1238, which is criminal  
7 sexual conduct with a minor with Victim #2 [REDACTED], which  
8 is the non Jessie's Law case is twenty-five years to run  
9 concurrent with 09-GS-16-1238 --- I'm sorry 1239.

10 And then the lewd act on a child involving Ms.  
11 Victim #2 is fifteen years to run concurrent with 09-GS-16-  
12 1239.

13 And the lewd act with Ms. Victim #2 is ten years  
14 to run concurrent with 09-GS-16-1239. So the bottom line  
15 Ms. Little, if you will explain this to him is the  
16 twenty-five years under Jessie's Law on the two charges  
17 that qualify for Jessie's Law, and which Jessie's Law is  
18 the minimum, the second one with Ms. Victim #1 is to run with  
19 --- I'm sorry, the second one with Ms. Victim #2 is to run  
20 consecutive to the one with Ms. Victim #1.

21 All of the rest of the charges will run  
22 concurrent. So, it is two twenty-five year sentences,  
23 one is consecutive to the other. And all of the rest of  
24 the charges are concurrent.

25 A total of fifty years.

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1 MS. LITTLE: I understand.

2 THE COURT: All right. This will  
3 conclude the matter, and we will be in recess for about  
4 five minutes.

5 All right. Jurors are excused. Everyone keep  
6 your seat please.

7 (Whereupon, this trial was concluded  
8 at 11:56 a.m. on Friday, July 23, 2010.)

9 -- END OF TRANSCRIPT --

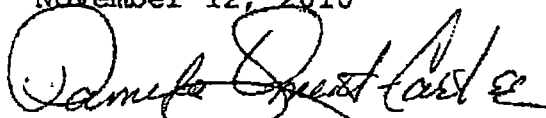
## CERTIFICATE OF REPORTER

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I, the undersigned, Pamela Ozment-Cartee, Official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of General Sessions in Darlington County, South Carolina, on the 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, and 23<sup>rd</sup> days of July 2010.

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

November 12, 2010



Pamela Ozment-Cartee  
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Darlington County

Howard P. King, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

JIMMY GALLISHAW, JR.,

APPELLANT

---

FINAL BRIEF OF APPELLANT

---

TRISTAN M. SHAFFER  
Appellate Defender

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEYS FOR APPELLANT.

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**Rules**

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STATEMENT OF ISSUES ON APPEAL

Can a forensic interviewer be qualified as an expert in “child abuse assessment” when the State fails to offer any evidence concerning the reliability of that “field of expertise”?

STATEMENT OF THE CASE

Appellant was indicted by the Darlington County Grand Jury for three counts of Criminal Sexual Conduct with a minor, two count of lewd act on a child, and two counts of incest. On April 5, 2010 Appellant was called to trial before the Honorable Howard P. King and a jury. R. 1. Appellant was represented by Mathew Swilley and Tonya Copland-Little. R. 1. The State was represented by Suzanne Mayes and Sherrie Baugh. R. 1.

At the conclusion of the trial, Appellant was found guilty of all charges. Appellant was sentenced to twenty-five years on each of the criminal sexual conduct charges, two of which were to run consecutive. R. 545, l. 1 – R. 546, ll. 25. Appellant was also sentenced to fifteen years for each lewd act on a child and ten years for each incest charge. R. 545, l. 1 – R. 546, ll. 25. Appellant was sentenced to a total of fifty years. R. 546, l. 25. This appeal follows.

## ARGUMENT

A forensic interviewer can not be qualified as an expert in "child abuse assessment" when the State fails to offer any evidence concerning the reliability of that "field of expertise".

### **Introduction**

During Minor 1's *first* forensic interview she denied that her biological father, Appellant, sexually abused her or Minor 2<sup>1</sup>. During a subsequent medical examination by a nurse practitioner, Minor 1 changed her story and claimed that she had been sexually assaulted by Appellant. The CARE House brought Minor 1 back for a second interview six days later. During the second interview, Minor 1 told Debbie Elliot that Appellant had sexually abused her.

At trial, Judge King allowed Elliot to testify as an expert in "child abuse assessment." In her "expert" opinion, Elliot essentially told the jury that Minor 1's first interview denying sexual abuse was evidence that her father sexually abused her. R. 313, ll. 8-15.

### **Relevant facts**

On a January morning in 2009, Adrienne Galishaw walked into her bathroom and allegedly saw her husband, Appellant, standing behind her daughter, Minor 2. Adrienne claimed that Appellant was not wearing pants and that Minor 2 was pulling up her pants. R. 221, ll. 3-21. Adrienne confronted Minor 2 who claimed that Appellant was about to sexually assault her. R. 225, ll. 21-25. Adrienne took her to the doctor who referred her to the CARE House abuse counseling center. R. 226, l. 8 – R. 227, l. 4.

Minor 2 was interviewed by Debbie Elliot at the CARE House. Minor 2 told Elliot that Appellant had sexually assaulted her and Minor 1. R. 98, ll. 2-23; R. 105, ll. 20-25. The CARE House then set up an interview with Minor 1 for February 10, 2009.

Prior to her interview, Minor 1 had already been interviewed by the CARE House for being sexually abused by her brother. R. 336, ll. 2-8. During the February 10th interview, Minor 1 denied any sexual abuse. After the interview, Minor 1 was then examined by a nurse practitioner at the CARE House. During the exam, Minor 1 told the nurse that Appellant had sexually abused her. Minor 1 was called back for an interview six days later. During this interview Minor 1 recanted her previous story and claimed that Appellant had sexually abused her. Minor 1 would later testify that both her and Minor 2 had been sexually abused by Appellant. R. 126, l. 21 - R. 129, ll. 16. Appellant was arrested and called to trial before the honorable Howard P. King and a jury.

At trial, the State called Elliot to testify. Instead of simply allowing Elliot to testify as a lay witness<sup>2</sup>; the State wanted her qualified as an expert. The State argued that she needed to be qualified as an expert so that Elliot could testify as to whether Minor 1 and 2's case was "consistent with other child abuse cases." R. 195, ll. 2-5. Judge King did not qualify Elliot as an expert in "forensic interviewing"<sup>3</sup> and instead

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<sup>1</sup> Minor 2 is Appellant's step daughter, and she lived with him. Whereas, Minor 1 does not live with Appellant but is his biological daughter. Minor 1 and 2 are friends and often spend time together.

<sup>2</sup> See *State v. Douglas*, 369 S.C. 424, 632 S.E.2d 845 (2006).

<sup>3</sup> Judge King was the trial judge in *Douglas*. R. 70, ll. 14-23

qualified her as an expert in "child abuse assessment."<sup>4</sup> R. 70, ll. 14-23; R. 194, ll. 8-12; R. 198, l. 5 – R. 203, l. 2.

Appellant argued that the field of "child abuse assessment" was not reliable under *Rule 702*, SCRE and that Elliot's testimony would only serve to bolster the girls' testimony. R. 194, ll. 13-24. The State failed to present any evidence that the field of "child abuse assessment" was reliable. Judge King interpreted *State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999) as stating that this type of testimony was reliable, and he allowed Elliot to be qualified as an expert. R. 200, ll. 4-8.

Elliot told the jury that Minor 1's denial of any sexual abuse at the February 10, 2009 interview was consistent with other cases of sexual abuse. R. 313, l. 8-15. Furthermore, Elliot also testified that sexually abused children act out sexual; essentially she told the jury that Minor 1's sexual contact by her brother was evidence that Appellant had been sexually abusing her. R. 312, l. 15 – R. 313, l. 15. Additionally, Elliot testified that Minor 2 was accommodating to Appellant, and that accommodation was consistent with an abused child. Supp. R. 1, l. 10-25, continued on R. 304, l. 1-2.

Despite the fact that Appellant denied ever abusing the girls, the jury found him guilty of all charges.

### Discussion

"When admitting scientific evidence under *Rule 702*, SCRE, the trial Judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the

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<sup>4</sup> According to Elliot, the field of "child abuse assessment" is broader than forensic interviewing. This "field of expertise" takes into account information from the intake form, the parents, law enforcement and the department of social services. R. 190, l. 19 - R. 191, l. 10.

*underlying science is reliable.* The trial judge should apply *Jones*<sup>5</sup> to determine reliability” *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). When conducting a *Jones* reliability inquiry the trial court should consider if the underlying science has “*quality control procedures used to ensure reliability*” and the consistency of the method with recognized scientific laws. *State v. Jones I*, 343 S.C. 562, 541 S.E.2d 813 (2001). The same reliability standard must be met even will dealing with “non-scientific” experts. See *State v. White*, 382 S.C. 265, 272-273, 676 S.E.2d 684, 687 (2009) (*Overruling State v. Morgan*, 326 S.C. 503, 485 S.E.2d 112 (Ct. App. 1997) “to the extent it suggest that only scientific expert testimony must pass a threshold of reliability”).

Essentially, “[a]n expert cannot testify to an opinion predicated” upon an unreliable science. Cf. *Jamison v. Morris*, 385 S.C. 215, 228, 684 S.E.2d 168, 175 (2009) (finding expert opinion on blood alcohol content inadmissible without establishing a chain of custody). The proponent of the expert has the burden of putting forth the facts necessary for the court to determine the reliability of the science. Cf. *State v. Henry*, 329 S.C. 266, 274, 495 S.E.2d 463, 466 (Ct. App. 1997) (noting that the proponent of an expert has the burden of establishing their qualifications).

In Appellant’s case, the trial court ruled that the testimony of Elliot was *reliable* because the underlying science has been recognized as reliable in *State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). R. 200, ll. 4-8. However, the *Weaverling* court examined whether the testimony of an expert in “victims of sexual abuse” was *relevant*, *not* whether the underlying science was *reliable*. *Id.*, 337 S.C. at 473, 523

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<sup>5</sup> *State v. Jones*, 273 S.C. 723, 259 S.E.2d 120 (1970)

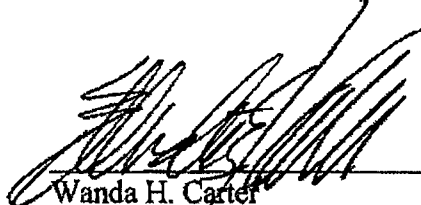
S.E.2d at 794. Similarly, *State v. Shumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993) also dealt with whether the rape trauma testimony was *relevant*.

In the absence of reliability Elliot's testimony "could only operate to provide inaccurate and inconclusive information for the jury. *See State v. Jones II*, 383 S.C. 535, 558, 681 S.E.2d 580, 590 (2009). Since the State failed to produce any evidence that the science and methodology behind Elliot's opinion were reliable, this court should grant Appellant a new trial. *See Jones I, supra*; *See State v. Jones II, supra*.

CONCLUSION

For the foregoing reasons Appellant respectfully requests that this Court grant him a new trial.

Respectfully submitted,

  
\_\_\_\_\_  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

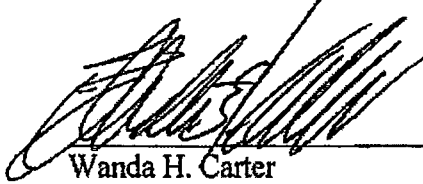
This 29<sup>th</sup> day of February, 2012.



## 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."

February 29<sup>th</sup>, 2012



Wanda H. Carter  
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

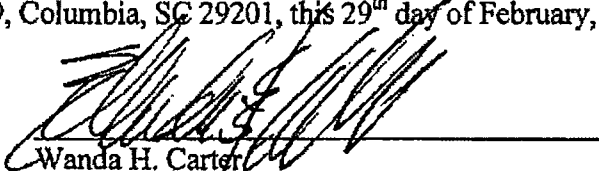
V.

JIMMY GALLISHAW, JR.,

APPELLANT

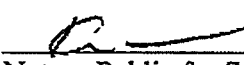
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29<sup>th</sup> day of February, 2012.

  
Wanda H. Carter  
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 29<sup>th</sup> day of February, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

**STATE OF SOUTH CAROLINA****IN THE COURT OF APPEALS**

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Appeal from Darlington County  
Honorable Howard P. King, Circuit Court Judge

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**THE STATE,****Respondent,****vs.****JIMMY GALLISHAW, JR.,****Appellant.**

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**FINAL BRIEF OF RESPONDENT**

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**ALAN WILSON**  
Attorney General

**JOHN W. McINTOSH**  
Chief Deputy Attorney General

**SALLEY W. ELLIOTT**  
Senior Assistant Deputy Attorney General

**MARK R. FARTHING**  
Assistant Attorney General

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

**WILLIAM B. ROGERS, JR.**  
Solicitor, Fourth Judicial Circuit

Post Office Box 616  
Bennettsville, SC 29512  
(843) 479-6516

**ATTORNEYS FOR RESPONDENT**

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**STATEMENT OF ISSUE ON APPEAL**

The trial judge properly admitted the testimony of an expert in the field of child abuse assessment because the expert's testimony on the common behavioral characteristics exhibited by juvenile victims of sexual abuse met the threshold level of reliability required for the admission of expert testimony. Furthermore, even if the trial judge erred in admitting the expert's testimony, any error was entirely harmless in light of the other overwhelming evidence of Appellant's guilt, including Appellant's confession to the crimes.

**STATEMENT OF THE CASE**

Appellant Jimmy Gallishaw, Jr., was arrested following an investigation into allegations of sexual abuse regarding his daughter and step-daughter. In October of 2009, the Darlington County grand jury indicted Appellant for three counts of first-degree criminal sexual conduct with a minor, two counts of lewd act upon a minor child, and two counts of incest. On July 19, 2010, a jury trial was commenced in the Darlington County court of general sessions with the Honorable Howard P. King, circuit court judge, presiding. At the conclusion of trial, Appellant was convicted as indicted. The trial judge sentenced Appellant to concurrent terms of imprisonment of twenty-five years for two counts of criminal sexual conduct with a minor, fifteen years for each count of lewd act upon a minor child, and ten years for each count of incest. Additionally, the trial judge sentenced Appellant to a consecutive term of imprisonment of twenty-five years for the remaining count of criminal sexual conduct with a minor. Subsequently, Appellant filed a timely notice of appeal.



## STATEMENT OF FACTS

Appellant Jimmy Gallishaw, Jr., was the biological father of several children, including his daughter, Victim 1, and was the stepfather of another girl, Victim 2. (R. p. 88; p. 122; p. 148; pp. 211-212). In January of 2009, Adrienne Gallishaw ("Adrienne"), Appellant's wife, resided at Appellant's mother's apartment with Appellant, their two children, and her ten-year-old daughter, Victim 2. (R. p. 210; pp. 211-212; p. 218; p. 228; State's Ex. # 10). One morning, Adrienne opened the bathroom door and started to enter the room when she observed Appellant and Victim 2 inside. (R. pp. 219-220). Victim 2 was bent over the toilet pulling up her pajama bottoms, and Appellant, dressed only in a shirt, was standing behind her with his penis exposed and erect. (R. pp. 220-221). Adrienne asked them what was going on inside the bathroom, and Appellant attributed the incident to medication he was taking at the time. (R. p. 222).

Subsequently, Adrienne privately spoke with Victim 2 about the incident, and Victim 2 revealed to her that "something" was in the process of happening between her and Appellant when Adrienne walked into the bathroom. (R. pp. 224-226). Following the conversation, Adrienne did not report the incident to law enforcement but, instead, revealed it to a friend. (R. p. 226). After speaking with her friend, Adrienne decided to take Victim 2 to see a doctor, and the doctor referred Victim 2 to CARE House, a child advocacy center that investigates allegations of sexual abuse involving children. (R. pp. 226-228; pp. 271-272).

On February 4, 2009, approximately two weeks after the incident, Victim 2 was interviewed at CARE House by a forensic interviewer, Debbie Elliott. (R. p. 231; pp. 289-290). During the interview, Victim 2 disclosed she was sexually abused by

Appellant on multiple occasions over the past four to five years.<sup>1</sup> (R. p. 105; p. 271; p. 273; p. 289; State's Ex. # 10). Victim 2 further revealed she observed Appellant engage in sexual intercourse with her eleven-year-old stepsister, Victim 1. (R. p. 105; p. 122; pp. 290-291; State's Ex. # 10). Dr. Kathy Saunders, a pediatric nurse practitioner at CARE House, then performed a medical examination on Victim 2 and discovered past injuries consistent with chronic or ongoing penetration and sexual intercourse. (R. p. 329; p. 341; p. 343; p. 350). Subsequently, Elliott referred the matter to the Department of Social Services and to law enforcement and arranged for Victim 1 to be interviewed based on Victim 2's revelations. (R. pp. 152-153; pp. 290-291).

On February 10, 2009, Victim 1 was interviewed about the alleged sexual abuse by Dana Collins, another forensic interviewer at CARE House.<sup>2</sup> (R. p. 292). During the interview, Victim 1 did not report being sexually abused by Appellant.<sup>3</sup> (R. p. 293; p. 306; State's Ex. # 11). However, following the interview, Dr. Saunders examined Victim 1 and discovered injuries consistent with chronic or repeated past penetration. (R. pp. 334-336; p. 350). After Dr. Saunders discovered the injuries, Victim 1 revealed she was sexually abused by Appellant during several visits to see Victim 2 around the time she was ten years old. (R. p. 293; p. 336). Victim 1 further stated Victim 2's mother observed the abuse occurring on one occasion and responded by telling her to go to bed. (R. p. 336). In response, Elliott re-interviewed Victim 1 on February 16, 2009, and

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<sup>1</sup> A recording of the interview was introduced during trial and played for the jury. (R. p. 299; State's Ex. # 10).

<sup>2</sup> Prior to the initial interview in February of 2009, Victim 1 was previously interviewed and examined at CARE House in August of 2008 regarding allegations of sexual abuse involving her half-brother, Appellant's son. (R. p. 140; p. 151; p. 334). However, she did not disclose any sexual abuse involving Appellant at that time. (R. p. 141).

<sup>3</sup> A recording of the interview was introduced during trial and played for the jury. (R. p. 299; State's Ex. # 11).

Victim 1 revealed she was sexually abused by Appellant multiple times beginning around when she was ten years old.<sup>4</sup> (R. p. 294; p. 306; State's Ex. # 12).

Meanwhile, Investigator Patricia Ray of the Darlington County Sheriff's Office met with Appellant on February 4, 2009, while investigating the allegations of sexual abuse involving Victim 2. (R. pp. 6-7). During the meeting, Appellant waived his rights and agreed to speak with the officer, but he made no incriminating statements. (R. p. 8; p. 11). Subsequently, on February 19, 2009, Captain Daniel Watson of the Darlington Police Department met with Appellant to discuss the allegations of sexual abuse involving Victim 1.<sup>5</sup> (R. p. 396). During the meeting, Appellant adamantly denied the accusations and agreed to take a polygraph examination.<sup>6</sup> (R. p. 29; p. 32; p. 396; pp. 399-400; State's Ex. # 17).

On the following day, Investigator Michael August of the Darlington Police Department conducted a polygraph examination of Appellant with Appellant's consent. (R. p. 13; pp. 18-19). After hearing the results of the examination, Appellant confessed to engaging in sexual intercourse with Victim 1. (R. pp. 21-22; p. 372; p. 378; p. 387). Immediately after Appellant's confession to Investigator August, Captain Watson re-interviewed Appellant.<sup>7</sup> (R. p. 401; p. 403). During the second interview, Appellant admitted to engaging in sexual intercourse with both Victim 1 and Victim 2 on multiple occasions, including when they were in the same room together. (R. p. 34; p. 403; State's

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<sup>4</sup> A recording of the interview was introduced during trial and played for the jury. (R. p. 299; State's Ex. # 12).

<sup>5</sup> A recording of Appellant's initial statement was introduced during trial and played for the jury. (R. p. 404; State's Ex. # 17).

<sup>6</sup> All references to the polygraph examination were omitted during the officers' testimony before the jury. (R. p. 372; p. 402).

<sup>7</sup> A recording of Appellant's confession was introduced during trial and played for the jury. (R. p. 404; State's Ex. # 18).

Ex. # 18). Following the interview, Appellant wrote a letter of apology to Victim 1 and Victim 2 in which he asked for the children's forgiveness and attributed his actions to drugs and the devil. (R. p. 35; p. 409; p. 549). Appellant was then arrested and indicted for numerous charges arising out of the incidents, and he proceeded to trial. (R. pp. 2-5; pp. 550-551; pp. 553-554; pp. 556-557; pp. 559-560; pp. 562-563; pp. 565-566; pp. 568-569).

During trial, each of the victims recounted the details of the sexual abuse they suffered at Appellant's hands. Victim 2 testified Appellant inappropriately touched her and engaged in sexual intercourse with her on multiple occasions when she was under the age of eleven, including when Victim 1 was present on several occasions. (R. pp. 96-98; p. 106). Specifically, Victim 2 testified her mother walked into the bathroom on one occasion when Appellant was preparing to have sex with her. (R. pp. 100-101; pp. 109-110). Victim 2 noted her pants were down during the incident and Appellant was standing behind her with his penis exposed. (R. p. 102). She testified the fact her mother walked into the room was the only reason Appellant did not have sex with her during the incident. (R. p. 117). Victim 2 further testified she disclosed the sexual abuse to her mother multiple times but always later recanted. (R. p. 103; p. 113). Victim 2 stated she recanted her accusations in the past because she did not think her mother would believe her over Appellant, because her mother loved Appellant, because she was afraid her mother would go to jail, and because Appellant was a father figure in her life. (R. pp. 103-104; p. 111; pp. 114-115).

Likewise, Victim 1 testified she occasionally went to visit Victim 2 and stayed overnight in an apartment with Appellant, Victim 2, and the rest of Victim 2's family. (R. pp. 124-125). During several of these visits, Victim 1 testified Appellant touched her

inappropriately and had sex with her, including when Victim 2 was present in the room. (R. p. 127; p. 129; p. 145). Furthermore, Victim 1 stated she was present in the room when Appellant did the same things to Victim 2. (R. pp. 129-130; p. 144). Victim 1 also testified Victim 2's mother caught Appellant having sex with them and responded by sending them to another bed. (R. p. 142). Victim 1 further testified she did not reveal the abuse during her initial interviews at CARE House because she was scared and did not want to talk about it. (R. p. 132; p. 139).

Additionally, Adrienne testified about several occasions where she observed Appellant in inappropriate situations with the victims. On one occasion, Adrienne stated she discovered Appellant standing behind Victim 2 in the bathroom with an exposed, erect penis. (R. pp. 219-221). Adrienne further testified she went into the bedroom on an earlier occasion and found Victim 2 sitting on Appellant's lap on the bed with the lights off. (R. pp. 234-235). During the incident, she noticed Victim 2's underwear was pulled to the side. (R. p. 235). Adrienne also testified she walked into the bedroom on another occasion and discovered Appellant in bed with Victim 1, who was not wearing any underwear. (R. pp. 243-245). Consistent with Victim 2's testimony, Adrienne testified she then sent Victim 1 back to bed with Victim 2. (R. pp. 244-245).

In addition to the testimony of the victims and Adrienne, the State offered the testimony of Elliott, the forensic interviewer who interviewed each of the victims. (R. p. 289; p. 294). Prior to her testimony, defense counsel objected to Elliott's qualification on the basis her field of expertise was not reliable under Rule 702, SCRE, which led the trial judge to conduct an in camera hearing on the matter. (R. p. 78). During the hearing, Elliott testified she conducted approximately 2,500 to 3,000 forensic interviews of children during her years in child advocacy. (R. pp. 165-166; p. 169). She noted

incomplete disclosure and delayed reporting commonly occurred in cases involving the sexual abuse of children frequently due to the victims' relationship to the abuser along with their general lack of understanding. (R. pp. 173-176). Elliott testified she observed these behavioral patterns during the course of her clinical experience and cited to several published works discussing and recognizing delayed reporting and child abuse accommodation syndrome. (R. p. 174; p. 177; p. 180). She further testified she had clinical experience with recantation, which she noted was very common in situations involving the sexual abuse of a child. (R. pp. 178-180). Elliott asserted she previously testified concerning the issues of delayed reporting, child abuse accommodation syndrome, and the common behavioral characteristics associated with ongoing child abuse and was previously qualified as an expert in the field of child abuse assessment. (R. p. 182).

On cross-examination, Elliott testified she had training and experience with child abuse assessment throughout the course of her entire career. (R. pp. 186-187). She stated she did not have statistics with her regarding the frequency of delayed reporting, incomplete disclosure, and other behavioral characteristics, but she noted approximately eighty percent of the roughly 800 children interviewed at CARE House during the previous year delayed reporting the abuse. (R. pp. 188-189). Elliott explained child abuse assessment was a broad analysis that involved examining a variety of components to assess what was occurring in a child's life, including through reviewing intake information, statements and information from the forensic interview, follow-up information from the parent, and information from social workers and law enforcement officers. (R. pp. 190-191).

On redirect examination, Elliott testified the publications and literature she referenced on child abuse accommodation syndrome and delayed reporting were generally accepted by child abuse professionals. (R. p. 192). Additionally, Elliott testified her forensic interviews, which involved child abuse assessment, were recorded and peer-reviewed by other professionals both inside and outside of CARE House. (R. p. 192). She further stated delayed reporting, child abuse accommodation syndrome, and other behavioral characteristics consistent with child abuse were regularly taught and discussed at all the training seminars and conferences she attended in the field of child abuse assessment. (R. p. 193).

Following Elliott's testimony, defense counsel challenged her expert qualifications, arguing Elliott did not have enough academic experience and her field of expertise itself was not reliable. (R. p. 194). The trial judge questioned defense counsel as to which of the Jones factors on reliability the witness' testimony did not meet, stating:

Well, the Jones Factors are the factors used in determining reliability. And they are the publications and peer review of the technique. Prior application of the method of the type of evidence involved in the case. Quality control procedures used to insure reliability. And the consistency and the method recognized scientific laws and procedures. Those are the four Jones Factors. Which one of these are not met? She testified regarding publications and peer review. She testified regarding application and method, and the type of evidence involved. She testified as to quality control, i.e., the filming and videotaping of the procedure. And that is consistent with matters of the field. I am just trying to figure which of the – you indicated that you didn't think it was reliable, and I am trying to figure out why.

(R. pp. 195-196). In response, defense counsel simply asserted child abuse assessment was not really a field. (R. p. 196).

Subsequently, after considering the arguments of counsel along with the testimony presented during the hearing, the trial judge ruled Elliott was qualified as an

expert in the field of child abuse assessment. (R. p. 202). In support of the ruling, the trial judge concluded: (1) the testimony would assist the jury in determining facts at issue and in understanding the behavioral aspects of minor victims of sexual assault; (2) the witness was qualified by virtue of her education, skill, experience, and training; (3) the type of testimony was previously recognized as reliable and relevant; and (4) the evidence's probative value outweighed its prejudicial effect. (R. pp. 198-203).

Subsequently, subject to Appellant's objection, Elliot testified as an expert in child abuse assessment about her interviews with the victims and about the common behavioral characteristics observed in minor victims of sexual abuse, including delayed reporting, recantation, and accommodation. (R. pp. 274-275; p. 276; pp. 283-286; p. 290; pp. 304-305). Based on her assessment, Elliott concluded the victims' behavior was consistent with the behavioral characteristics of victims of sexual abuse. (R. pp. 303-304; pp. 312-313).

Following Elliott's testimony, Dr. Saunders noted without objection that delayed reporting in minor victims of sexual assault was very common, with less than one percent of sexual assault examinations occurring within seventy-two hours of the incident. (R. p. 332). Based on her examinations of the victims, Dr. Saunders concluded her findings were consistent with chronic or ongoing penetration and sexual abuse. (R. p. 332; pp. 340-341; p. 343).

Following the testimony of the staff members at CARE House, the law enforcement officers who investigated the case testified about the details of their investigation, including in regards to Appellant's initial denial of involvement and subsequent confession to sexually assaulting both of the victims. (R. p. 387; p. 395; p. 400; p. 403). Subsequently, Appellant testified in his own defense and denied



committing any of the alleged acts. (R. p. 441). He attributed Victim 2's accusations to jealousy and anger over being punished for bad behavior. (R. pp. 437-440). He further attributed his confession to a desire to protect his family. (R. p. 457).

After the defense rested, the trial judge instructed the jury on the applicable law. (R. p. 507). During the jury instructions, the trial judge charged the jury that expert testimony should be given no greater weight than any other testimony and could be accepted or completely disregarded if found to be unsound. (R. pp. 526-528). At the conclusion of trial, Appellant was convicted of all indicted offenses involving his daughter and stepdaughter. (R. pp. 537-542). The trial judge then sentenced Appellant to an aggregate fifty-year term of imprisonment. (R. pp. 545-546).

## ARGUMENT

**The trial judge properly admitted the testimony of an expert in the field of child abuse assessment because the expert's testimony on the common behavioral characteristics exhibited by juvenile victims of sexual abuse met the threshold level of reliability required for the admission of expert testimony. Furthermore, even if the trial judge erred in admitting the expert's testimony, any error was entirely harmless in light of the other overwhelming evidence of Appellant's guilt, including Appellant's confession to the crimes.**

Appellant contends the trial judge erred in admitting the testimony of an expert in the field of child abuse assessment. Appellant maintains the solicitor failed to offer any evidence concerning the reliability of the expert's field of expertise. To the contrary, the evidence presented during trial established the reliability of the expert's testimony by demonstrating: (1) the expert personally observed common behavioral characteristics exhibited by juvenile victims of sexual abuse during her extensive clinical experience with minor victims; (2) numerous peer-reviewed studies and publications generally accepted in the field recognized those behavioral characteristics; (3) those common behavioral characteristics were discussed and taught in all conferences and training seminars on the subject; (4) expert testimony on those behavioral characteristics had previously been presented during criminal trials, including by the expert testifying in Appellant's case; and (5) the expert's interviews were recorded and peer-reviewed. Based on this evidence, the trial judge properly concluded the expert's testimony met the threshold level of reliability required for its admission before admitting the evidence. Appellant's claims that no evidence of the reliability of the testimony was presented are wholly without merit. Appellant's convictions should be affirmed.

### **A. Reliability of the Expert Testimony**

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The decision to admit or exclude

evidence rests in the sound discretion of the trial judge and will not be reversed on appeal absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). Likewise, the decision whether to admit or exclude expert testimony rests within the trial judge's sound discretion and will not be reversed on appeal absent an abuse of that discretion. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

Pursuant to the South Carolina Rules of Evidence, expert testimony is admissible under the following circumstances:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. Before a witness is qualified as an expert, the trial court must find: (1) the expert's testimony will assist the trier of fact; (2) the expert has the required knowledge, skill, experience, training, or education; and (3) the testimony is reliable. State v. Martin, 391 S.C. 508, 514, 706 S.E.2d 40, 42 (Ct. App. 2011); see also State v. Jones, 343 S.C. 562, 572, 541 S.E.2d 813, 819 (2001) ("Scientific evidence is admissible under Rule 702, SCRE, if the trial judge determines: (1) the evidence will assist the trier of fact; (2) the expert witness is qualified; (3) the underlying science is reliable, applying the factors found in State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); and (4) the probative value of the evidence outweighs its prejudicial effect.").

In determining whether a witness' knowledge, skill, training, or experience qualifies the witness as an expert, no mandatory set of qualifications is required. State v. Henry, 329 S.C. 266, 274, 495 S.E.2d 463, 467 (Ct. App. 1998). Instead, an expert can become sufficiently skilled or knowledgeable to be able to provide an opinion helpful to the trier of fact in a multitude of ways. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). "[D]efects in the amounts and quality of the expert's education or experience go to the weight to be accorded the expert's testimony and not to its admissibility." Henry, 329 S.C. at 274, 495 S.E.2d at 467.

In addition to ensuring the expert is qualified, the trial judge must also ensure the testimony "meets a threshold level of reliability, regardless of whether it is scientific or nonscientific." State v. Tapp, 387 S.C. 159, 165, 691 S.E.2d 165, 168 (Ct. App. 2010). When making the determination of whether the testimony meets a threshold level of reliability, the trial judge can find the testimony sufficiently reliable even where the opposing party challenges some aspect of the evidence's reliability. See State v. White, 382 S.C. 265, 273, 676 S.E.2d 684, 688 (2009) ("With respect to the qualifications, a witness may satisfy the Rule 702 threshold yet the opponent may still challenge the amount or quality of the qualifications. It is in this latter context that the trial court properly concludes that 'defects in the amount or quality of education or experience go to the weight to be accorded the expert's testimony and not its admissibility.' Turning to the reliability factor, a trial court may ultimately take the same approach, but only after making a threshold determination for purposes of admissibility." (citations omitted)). Thus, once a threshold level of reliability has been met, any defects in or challenges to the reliability of the evidence merely impact the weight of as opposed to the admissibility of the expert's testimony. Id.

In cases involving scientific expert testimony, the trial court should consider the following factors: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. State v. Council, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999). However, in cases involving nonscientific expert testimony, the factors applied in an analysis of scientific evidence cannot readily be applied. See White, 382 S.C. at 274, 676 S.E.2d at 688 ("The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony."). Accordingly, no formulaic approach can or must be applied to determine reliability in cases involving nonscientific expert testimony. Id.

In the case sub judice, the trial judge properly found the expert's testimony on the common behavioral characteristics of juvenile victims of sexual abuse satisfied the threshold level of reliability required for the testimony to be admissible. Testimony was presented during trial establishing the expert personally observed common behavioral patterns in juvenile victims of sexual abuse during the course of her clinical experience, which included approximately 2,500 to 3,000 forensic interviews of children. In addition to her substantial personal experience regarding common behavioral patterns, the expert testified in regards to several published works on the subject recognizing and discussing the frequency of delayed reporting and other aspects of child sexual abuse accommodation syndrome, and she noted the common behavioral characteristics of juvenile victims of sexual abuse were regularly taught and discussed at all training seminars and conferences on the subject. Additionally, the expert testified she was

previously qualified as an expert and presented testimony on the common behavioral characteristics observed in juvenile victims of sexual abuse in other criminal trials. She further noted approximately eighty percent of the children interviewed at CARE House in the previous year had delayed reporting abuse. Furthermore, the expert testified the publications on delayed reporting and child abuse accommodation syndrome were generally accepted in the field by other child abuse professionals. Finally, she testified her interviews conducted to assess allegations of child abuse assessment were recorded and peer-reviewed.

Because the expert's testimony was on behavioral science not involving the application of a traditional scientific method, an analysis of the Jones factors only offered guidance in determining whether the nonscientific expert testimony met a threshold level of reliability, meaning there was no formulaic approach that could be applied to the reliability determination. See Tapp, 387 S.C. at 168, 691 S.E.2d at 170 (recognizing some of the factors used to analyze the reliability of scientific evidence may be "quite relevant" to a consideration of the reliability of nonscientific evidence). Looking to those factors for guidance, the testimony presented during trial established numerous studies had been published on the common behavioral characteristics of juvenile victims of sexual abuse, those studies were peer-reviewed, and the theories developed from those studies were generally accepted in the field. See State v. J.Q., 130 N.J. 554, 573, 617 A.2d 1196, 1206 (N.J. 1993) ("There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS identifies or describes behavioral traits commonly found in child-abuse victims."); see also See John E. B. Meyers, Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion, 14 U.C. Davis J. Juv. L. & Pol'y 1, 45-46 (2010) ("Psychological research demonstrates

that delayed reporting is common among sexually abused children. Frequently when children finally disclose, they give slightly different versions of the abuse to different interviewers. Finally, although there is debate about how many sexually abused children recant, it is undisputed that some children recant and some recant their recantation. Thus, from a psychological point of view, expert testimony about delay, inconsistency, and recantation is not controversial. From the legal perspective, such testimony is not worrisome.” (footnotes omitted)). The fact the expert’s testimony was consistent with theories generally accepted in the field was strong evidence of the reliability of the testimony. Cf. State v. Jones, 273 S.C. 723, 732, 259 S.E.2d 120, 125 (1979) (finding the trial judge properly exercised his discretion in admitting expert testimony on “bite-mark” evidence where “[t]here was no showing that the techniques and theories employed were other than accepted by the photographic and dental communities”).

Additionally, the expert stated she previously testified about the common behavioral characteristics displayed in juvenile victims of sexual abuse, which demonstrated the same or similar evidence was introduced and applied in earlier criminal trials. Notably, numerous decisions of South Carolina appellate courts confirm behavioral evidence regarding victims of sexual abuse has historically been introduced in criminal sexual conduct cases. See State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) (“[B]oth expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect.”); State v. Kirton, 381 S.C. 7, 17, 671 S.E.2d 107, 112 (Ct. App. 2008) (quoting testimony on the subject of delayed reporting presented during Kirton’s trial on a charge of criminal sexual conduct with a minor); State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) (“Expert

testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.”); see. e.g., State v. Reser, 244 Kan. 306, 313, 767 P.2d 1277, 1282 (Kan. 1989) (“There are numerous cases from other jurisdictions where expert testimony regarding characteristics of sexually abused children has been held properly admitted as providing helpful background information to the jury.”). Furthermore, the expert testified all of her interviews of juvenile sexual assault victims were recorded and peer-reviewed, which served as a quality control mechanism to ensure the reliability of her findings on the common behavioral characteristics of those victims.

Prior to admitting the expert’s testimony, the trial judge considered the expert’s testimony in relation to the relevant factors involved in determining the reliability of scientific expert testimony. Based on his analysis, the trial judge concluded the expert’s testimony met a threshold level of reliability, and his ruling was fully supported by the evidence. The expert’s testimony established behavioral evidence regarding the common traits displayed by minor victims of sexual assault was recognized, accepted, and taught in the field. Her testimony further established she had frequent personal experience with those behavioral characteristics, and her findings were analyzed and peer-reviewed by her colleagues. Based on this testimony, the trial judge did not abuse his discretion in finding the expert’s testimony met a threshold level of reliability sufficient to warrant its admission during trial, and his ruling was consistent with the rulings of many courts in other jurisdictions faced with a challenge to the reliability of similar behavioral evidence. See, e.g., Elizabeth Trainor, Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case, 85 A.L.R. 5th 595 (listing cases in which courts have found testimony on the common characteristics of victims of sexual



abuse to be reliable and unreliable). As the testimony established the threshold level of reliability of the expert's testimony, the trial judge properly admitted the evidence during trial and correctly left the determination of the relative weight of the evidence to the jury. Accordingly, Appellant's convictions should be affirmed.

**B. Harmlessness of Any Error in the Admission of the Expert Testimony**

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Thus, when overwhelming evidence of guilt has been presented, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988).

Even assuming in Appellant's case the trial judge erred in admitting the expert's testimony on the common behavioral characteristics of minor victims of sexual abuse,

any error was harmless because the other evidence presented during trial overwhelmingly established Appellant's guilt. Initially, both victims testified during trial and stated Appellant repeatedly sexually abused them in the past, and their testimony was consistent with their statements from their forensic interviews, which were also presented during trial. Furthermore, the victims corroborated each other's testimony regarding the sexual abuse due to the fact Appellant abused the victims in each other's presence, and their testimony was further corroborated by Victim 2's mother, who observed Appellant in inappropriate situations with the victims on multiple occasions. Most tellingly, Victim 2's mother testified she found Appellant standing in the bathroom behind Victim 2 with his penis exposed and erect while Victim 2 pulled up her pants. Those circumstances simply left no plausible explanation to innocently explain Appellant's conduct in the bathroom.

In addition to Victim 1, Victim 2, and Victim 2's mother's testimony, Dr. Saunders testified about her findings from her medical examinations of eleven-year-old Victim 1 and ten-year-old Victim 2. In her examinations of each victim, Dr. Saunders discovered past injuries consistent with repeated sexual abuse and sexual intercourse. Additionally, Dr. Saunders testified without objection about the high frequency of delayed reporting, which rendered portions of the expert's challenged testimony merely cumulative to Dr. Saunders' unchallenged testimony. See State v. Griffin, 339 S.C. 74, 77-78, 528 S.E.2d 668, 670 (2000) ("There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted.").

Furthermore, notwithstanding the victims' testimony and the testimony about the medical examination of the victims, multiple law enforcement officers testified about Appellant's admissions of guilt to engaging in sexual intercourse with each of the minor

victims on multiple occasions. Notably, a video recording of the confession was introduced and played for the jury, which allowed the jury to personally observe Appellant emotionally and unconditionally confess to sexually assaulting his daughter and stepdaughter. Additionally, at the conclusion of the video-recorded statement, Appellant wrote the victims a letter of apology asking for their forgiveness for the things he did to them, and the letter was also introduced during trial. When coupled with the other evidence presented during trial, Appellant's confession and letter of apology removed any doubt as to his guilt or innocence for the crimes.

Viewing the objected-to expert testimony in relation to the other evidence presented during trial, any error was entirely harmless in light of the other overwhelming evidence of guilt. The exclusion of the challenged evidence would have had no impact on the ultimate outcome of the case in light of the other evidence of Appellant's guilt, particularly Appellant's candid and emotional confession to the crimes. Cf. State v. Spears, 393 S.C. 466, 485, 713 S.E.2d 324, 334 (Ct. App. 2011) (finding any error in the admission of inadmissible evidence to be harmless in light of the other overwhelming evidence of guilt presented during trial, including two witnesses' identifications of Spears as the gunman in the robbery and testimony from another witness indicating Spears confessed to the crime in a phone call). Accordingly, even if the trial judge erred in admitting the expert's testimony, the error was an insubstantial one not warranting the reversal of Appellant's conviction. See State v. McLeod, 362 S.C. 73, 82, 606 S.E.2d 215, 220 (Ct. App. 2004) ("[A]n insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached."). Appellant's convictions should be affirmed.

**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

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

MARK R. FARTHING  
Assistant Attorney General

WILLIAM B. ROGERS, JR.  
Solicitor, Fourth Judicial Circuit

BY:



Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

February 23, 2012

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

---

Appeal from Darlington County  
Honorable Howard P. King, Circuit Court Judge

---

THE STATE,

Respondent,

vs.

JIMMY GALLISHAW, JR.,

Appellant.

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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON  
Attorney General

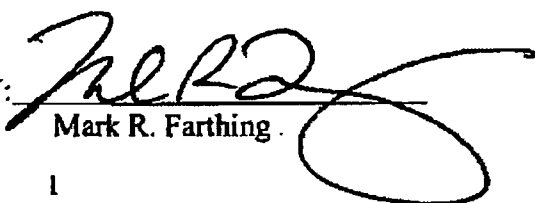
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

MARK R. FARTHING  
Assistant Attorney General

WILLIAM B. ROGERS, JR.  
Solicitor, Fourth Judicial Circuit

BY:

  
Mark R. Farthing

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

**ATTORNEYS FOR RESPONDENT**

**February 23, 2012**

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

Appeal from Darlington County  
Honorable Howard P. King, Circuit Court Judge

THE STATE,

Respondent,

vs.

JIMMY GALLISHAW, JR.,

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:

Wanda H. Carter, Esquire  
Tristan M. Shaffer, 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 23rd day of February, 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.

Jimmy Gallishaw, Jr., Appellant.

Appellate Case No. 2010-168509

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Appeal From Darlington County  
Howard P. King, Circuit Court Judge

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Unpublished Opinion No. 2012-UP-532  
Submitted September 4, 2012 – Filed September 19, 2012

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**AFFIRMED**

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Appellate Defender Tristan M. Shaffer and Deputy Chief  
Appellate Defender Wanda H. Carter, both of Columbia,  
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney  
General John W. McIntosh, Senior Assistant Deputy  
Attorney General Salley W. Elliott, and Assistant  
Attorney General Mark R. Farthing, all of Columbia; and  
Solicitor William B. Rogers, Jr., of Bennettsville, for  
Respondent.

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**PER CURIAM:** Jimmy Gallishaw, Jr. appeals his convictions of three counts of first-degree criminal sexual conduct with a minor under the age of eleven, two counts of lewd act upon a child, and two counts of incest, arguing the trial court erred in qualifying an expert in the field of child abuse assessment because the State failed to offer any evidence concerning the reliability of the field. Because the State presented evidence establishing the expert witness's testimony regarding behavioral characteristics of sexually abused children met the reliability threshold, we affirm<sup>1</sup> pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Weaverling*, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) ("The question of whether to admit or exclude testimony of an expert witness is within the discretion of the trial court."); Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."); *State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009) ("All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold for the jury's ultimate consideration."); *State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999) (enumerating several factors the trial court should apply in determining the reliability of scientific evidence, including: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures"); *White*, 382 S.C. at 274, 676 S.E.2d at 688 ("The foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the *Council* factors for scientific evidence serve no useful analytical purpose when evaluating [experience based] expert testimony."); *Weaverling*, 337 S.C. at 474-75, 523 S.E.2d at 794 ("Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault." (citations omitted)).

**AFFIRMED.**

**HUFF, THOMAS, and GEATHERS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

## FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF DarlingtonJimmy M Gallishaw JR.  
Full name and prison number (if any) of Applicant.  
341908

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

**13CP160578**

APPLICATION FOR

POST-CONVICTION RELIEF

FILED  
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CLERK OF COURT/RMC  
DARLINGTON COUNTY, SCINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee County Corrections
2. Name and location of Court which imposed sentence Darlington County S.C.
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 1, 2009-GS-16-1235, 2, 2009-1236, 3, 2009-1237, 4,
  - (b) 2009-1238, 5, 2009-1239, 6, 2009-1240. (1) criminal sexual
  - (c) conduct with minor (2) attempting a lewd act upon a child, 3, incest
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 7/24/2000 a total of Fifty years
  - (b) \_\_\_\_\_

TRUE CERTIFIED COPY,  
Revised 3/2003CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes \_\_\_\_\_
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Affirmed \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. September 19, 2012 \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion NO. 2012-UP-532 \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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SCOTT B. JONES  
CLERK OF COURT  
DARLINGTON, S.C.

- (a) see, Attachment
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) see, Attachment
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the specific nature thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the proceedings in which each ground was raised:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (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. Tanya Copland Little P.O. Box 648 Darlington S.C. 29540
  - ii. Tristan Mashaffer Appellant Defender P.O. Box 11589
  - ~~iii.~~ Columbia, S.C. 29211-1589
- (b) the proceedings at which each such attorney represented you:
  - i. Trial
  - ii. Appeal
  - iii. \_\_\_\_\_

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

Applicant seeks relief from his conviction and sentence.

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

NO

STATE OF SOUTH CAROLINA

)  
)  
)

VERIFICATION

County of

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.

Mr. Jellison J

SWORN to and subscribed before me this 2  
day of July, 2013.

Debra J (L.S.)  
Notary Public

My Commission Expires: 11-4-2015-

FILED  
2013 JUL -3 PM 1:44  
SCOTT B. SMITH  
CLERK OF COURT/R.O.D.  
CHARLINGTON COUNTY, S.C.

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.

*Mr. J. L. L. L.*  
Applicant

SWORN or affirmed to and subscribed before me this

2 day of July, 2013.

*Dina J. L.*  
Notary Public

My Commission Expires: 11-4-2015

FILED  
2013 JUL -3 PM 1:44  
SCOTT B. SUTHERS  
CLERK OF COURT/R.O.D.  
DARLINGTON COUNTY, S.C.



10, A Applicant was denied the effective assistance of trial Counsel as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and the provisions of the South Carolina Constitution. When trial Counsel failed to perform her duty as competent Counsel before and at trial.

11 A The ground for relief states the relevant facts see *Strickland v. Washington*, 466 U.S. 668 (1984)

10, B Applicant was denied effective assistance of Appealant Counsel, in return denied him his first bite at the apple.

11, B Applicant's counsel failed to present all issues available to him on appeal that the record reflects. Applicant's Sixth and Fourteenth Amendments were violated State and Federal constitutional rights among others.

I do not have post conviction Counsel at this time. Further, I do not yet have a copy of trial counsel's file, access to discovery, or any ability to conduct an investigation. Given those limitations, I cannot provide further information regarding additional claims for PCR although I believe there are other viable post-conviction claims.

FILED

2013 JUL -3 PM 1:45

SCOTT B. SUGGS  
CLERK OF COURT  
DORCHESTER COUNTY, MASS.

available to me with the exception of the specific issues included in this application at this time. I do not waive the attorney-client privilege to any extent, and I request that my trial counsel not provide any portion of my files to any representative of the attorney general's office outside the scope of these specific claims.

Applicant has attempted to contact solicitors office and trial attorney and has not had any response.

FILED

2013 JUL -3 PM 1:45

SCOTT B. SUDS  
CLERK OF COURT  
DARLINGTON COUNTY, S.C.

Forwarded to Solicitor's office  
2-19-13

769

FILED  
January 22, 2013  
2013 JAN 28 PM 12:25

To whom this may concern;

SCOTT B. SUGGS  
CLERK OF COURT/R.O.D.  
DARLINGTON COUNTY, S.C.

Applicant released several documents to his trial lawyer Mrs. Tanya C. Little pertaining to his Rule 5. Upon the closure of his trial these documents were not returned, therefore leaving applicant with an incomplete Motion of Discovery. Applicant forwarded a copy of an F.O.I.A form (completed) to Clerk of Court trying to retrieve a copy of his (Complete Rule 5) not knowing who he really needed to contact. Also applicant informed Clerk of Court to forward a copy to the Solicitors Office as well. Clerk of Court responded by say "Rule 5. info. is provided by Solicitors Office not Clerk of Court / Forward to Solicitors Office," but no response was made. Today is 1/22/2013 and applicant have yet to receive a response. Please notify my trial lawyer Mrs. Tanya C. Little at the Public Defenders Office on this matter. Applicant and family have been trying to reach Mrs. Little but she will not respond. On that note, enclosed is a stamped envelope to forward this to Public Defenders Office or to Mrs. Tanya C. Little. Attached is a stamped copy of applicants request letter and F.O.I.A form to Clerk of Court, please file, with clock stamp on current letter. Applicant is in need of this item to go forward with proper steps for P.C.R. hearing.

Your assistance would be very much appreciated.

Thank You & God Bless.

770 Rule 5 info. is provided by Solicitor's Office  
not Clerk of Court.  
Forward to Solicitor

January 11, 2012

To whom it may concern;

The attached document (F.O.I.A.) is requested by, Jimmy M. Sallabaw Jr. I'm an indigent inmate at Lee C.I. I'm requesting a \*complete copy\* of my Rule 5 / Motion of Discovery. Your help in this matter would be greatly appreciated. Please forward a copy of this document to:

William B Rogers, Jr. (Solicitor)  
Deputy Solicitor 1 Public Sq. RM 410  
Darlington S.C. 29532.  
(Sherie C. Baugh)

Please allow this correspondence to serve as my formal request for production of documents, Pursuant to the S.C. Freedom of Information act (Here after 'F.O.I.A's' code E 30-40-10 through E 30-4-110.

Your promptness in this matter will be greatly appreciated.

Thank You, & God Bless.

FILED

2012 JAN 18 AM 10:34

SCOTT B. SUGGS  
CLERK OF COURT / R.D.O.  
DARLINGTON COURT, S.C.

Mr. Jimmy M. Callahan #341905  
Richland Unit A-162  
Lee Correctional Institution  
990 Wisacky Hwy, Bishopville S.C. 29010

2012 JAN 18 AM 10:34  
 FILED  
 SCOTT B. SUGGS  
 CLERK OF COURT / R.O.D.  
 DARLINGTON COUNTY, S.C.

Scott B. Suggs  
Clerk OF Court / R.O.D.  
Darlington S.C. 29532

RE: FOIA Request pursuant to S.C. Code §§ 30-4-10 - 30-4-110; Fed. 5 U.S.C. 552(a)(b)  
 Case ID. 0902-0136 Request Entire Motion of Discovery

Dear Custodian of Records;

This request is pursuant to S.C. Freedom of Information Act (FOIA) and the Federal Mandates: Fed. 5 U.S.C. 552 and the Privacy Act et al. Please send copies of all Investigative Reports, Forensic Reports, Files, Records, Statements, etc., that your agency accumulated when it was involved in this case. As you know the FOIA provides that if any documents, or portions, are exempt from release the remainder must be segregated or redacted and disclosed. As to the records which have been requested it is asked that you justify any deletions with reference to specific exemptions to the FOIA request submitted.

This information requested is not to be used for commercial benefit so there is not expected to be a fee for your reviews of requested materials to see if it falls within one of FOIA's exceptions. It is also advised that this matter is criminal case related and all charges for fees are deemed waived pursuant to S.C. Supreme Court laws. It is further clear that disclosures of the information is in the public interest ~~because it is likely to contribute to the public's significant understanding of the~~ operations and the activities of the government. It is respectfully requested that you send a notice of any objections; if any are given, to any portion of the request immediately upon the receipt of this request so that a review of the legal options to seek a formal resolution. Please send any material or correspondence to the name and address listed above.

Your prompt attention and response to this matter is appreciated.

Respectfully,

Date: JAN 12 2012

S/

Mr. Jimmy M. Callahan Jr.

CC: File

Mr. Jimmy M. Gallishaw #341905  
Richland Unit-A-162  
Lee Correctional Insti.  
990 Wiscacky Hwy, Bishopville, SC. 29010

William B. Rogers Jr. (Solicitor)  
Deputy Solicitor & Public Sq. #410  
Norlington S.C. 29532  
(Sherrie C. Baugh)

RE: FOIA Request pursuant to S.C. Code §§ 30-4-10 - 30-4-110; Fed. 5 U.S.C. 552(a)(b)  
 Case ID. 0902-0136 Requesting Entire Motion of Discovery.

Dear Custodian of Records;

This request is pursuant to S.C. Freedom of Information Act (FOIA) and the Federal Mandates: Fed. 5 U.S.C. 552 and the Privacy Act et al. Please send copies of all Investigative Reports, Forensic Reports, Files, Records, Statements, etc., that your agency accumulated when it was involved in this case. As you know the FOIA provides that if any documents, or portions, are exempt from release the remainder must be segregated or redacted and disclosed. As to the records which have been requested it is asked that you justify any deletions with reference to specific exemptions to the FOIA request submitted.

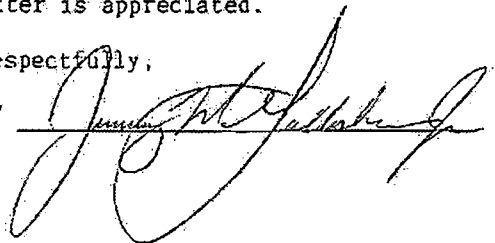
This information requested is not to be used for commercial benefit so there is not expected to be a fee for your reviews of requested materials to see if it falls within one of FOIA's exceptions. It is also advised that this matter is criminal case related and all charges for fees are deemed waived pursuant to S.C. Supreme Court laws. It is further clear that disclosures of the information is in the public interest because it is likely to contribute to the public's significant understanding of the operations and the activities of the government. It is respectfully requested that you send a notice of any objections, if any are given, to any portion of the request immediately upon the receipt of this request so that a review of the legal options to seek a formal resolution. Please send any material or correspondence to the name and address listed above.

Your prompt attention and response to this matter is appreciated.

Date: **JAN 12 2012**

Respectfully,

S/



CC: File

|                                  |   |                                 |
|----------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS    |
| COUNTY OF DARLINGTON             | ) | FOR THE FOURTH JUDICIAL CIRCUIT |
| Jimmy M. Gallishaw Jr., #341905, | ) | Case No. 2013-CP-16-576         |
| Applicant,                       | ) |                                 |
| v.                               | ) | <b>RETURN</b>                   |
| State of South Carolina,         | ) |                                 |
| Respondent.                      | ) |                                 |

---

Respondent, making its Return to the Application for Post-Conviction Relief filed July 3, 2013, would respectfully show this Court:

**I.**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In October 2009, the Darlington County Grand Jury indicted Applicant for three counts of first degree criminal sexual conduct with a minor (2009-GS-16-1235, -1238, -1239), two counts of lewd act on a minor (2009-GS-16-1236, -1240), and two counts of incest (2009-GS-16-1237, -1241). Tonya Copeland Little, Esquire, and Matthew S. Swilley, Esquire, represented Applicant. On July 19, 2010, Applicant proceeded to trial before the Honorable Howard P. King and a jury. On July 23, 2010, the jury found Applicant guilty as indicted. Judge King sentenced Applicant to consecutive terms of imprisonment for twenty-five years on two of the first degree criminal sexual conduct with a minor convictions. Judge King sentenced Applicant to concurrent term of twenty-five years on the remaining first degree criminal sexual conduct with a minor conviction, fifteen years on each lewd act conviction, and ten years on each incest conviction.

Applicant filed a timely notice of appeal. Tristan M. Shaffer, Esquire, and Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on September 19, 2012. State v. Gallishaw, Op. No. 2012-UP-532 (S.C. Ct. App. filed September 19, 2012). The remittitur was returned to the circuit court on October 5, 2012.

## II.

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

1. "Applicant was denied the effective assistance of trial counsel as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and the provisions of the South Carolina Constitution when trial counsel failed to perform her duty as a competent counsel before and at trial."
  - a. "The ground for relief states the relevant facts"
2. "Applicant was denied effective assistance of Appealant Counsel, in return denied him his first bite at the apple"
  - a. "Applicant's counsel failed to present all issues available to him on appeal that the record reflects. Applicant's Sixth and Fourteenth Amendments were violated State and Federal Constitutional rights among others."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this Return and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not



attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III.

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel and ineffective assistance of appellate counsel. The Uniform Post-Conviction Procedure Act requires applicants to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Question 11 of the PCR application asks Applicant to state concisely the supporting facts for each of his grounds for relief. In response to that question, Applicant fails to set forth any specific facts to explain his allegations. Respondent submits Applicant's allegations are so vague and ambiguous that Respondent cannot be reasonably required to frame a responsive return. Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter.

### IV.

Without waiving its motion for a more definite statement in Part III, supra, Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove trial counsel's "conduct so undermined the proper

functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

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

## V.

Without waiving its motion for a more definite statement in Part III, supra, Respondent further submits Applicant's allegation of ineffective appellate counsel is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 396 (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, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. 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, 1235 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687. 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.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. 264, 305 S.E.2d 247.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests Applicant provide a more definite statement of his claims, and an evidentiary hearing be held on any claims so requiring one.

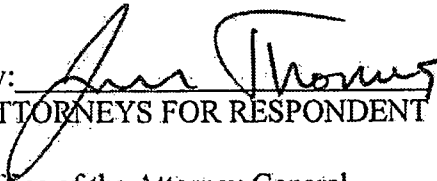
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
S.C. Bar No. 100777

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3737

June 11, 2014

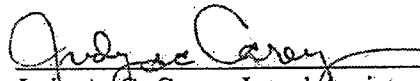
|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) |                              |
|                                 | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF DARLINGTON            | ) |                              |
|                                 | ) |                              |
|                                 | ) | 2013-CP-16-0576              |
|                                 | ) |                              |
| JIMMY M. GALLISHAW, JR., 341905 | ) |                              |
|                                 | ) |                              |
| 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** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Tristan M. Shaffer, Esquire**  
**Axelrod & Associates, PA**  
**4701 Oleander Drive**  
**Myrtle Beach SC 29577**

DATED this 11th day of June, 2015.

  
 Judy A. C. Carey, Legal Assistant  
 For Respondent

|                                   |   |                                 |
|-----------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS    |
|                                   | ) | FOURTH JUDICIAL CIRCUIT         |
| COUNTY OF DARLINGTON              | ) | C/A NO: 2013-CP-16-576          |
|                                   | ) |                                 |
| Jimmy M. Gallishaw, Jr., #341905, | ) |                                 |
|                                   | ) |                                 |
| Applicant,                        | ) |                                 |
|                                   | ) | <b>FIRST AMENDMENT TO PRIOR</b> |
| v.                                | ) | <b>APPLICATION FOR PCR</b>      |
|                                   | ) |                                 |
| State of South Carolina,          | ) |                                 |
|                                   | ) |                                 |
| <u>Respondent.</u>                | ) |                                 |

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed July 3, 2013:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (i) Trial counsel failed to adequately cross-examine and attack credibility of witnesses.

THE BOOZER LAW FIRM, LLC

  
 Lance S. Boozer

Attorney for Applicant  
 807 Gervais Street, Suite 203  
 Columbia, SC 29201  
 Phone: (803) 608-5543  
 Fax: (803) 926-3463

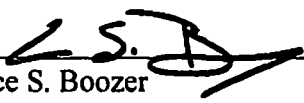
Columbia, South Carolina  
 June 15, 2016

|                                   |   |                               |
|-----------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA           | ) | IN THE COURT OF COMMON PLEAS  |
|                                   | ) | FOURTH JUDICIAL CIRCUIT       |
| COUNTY OF DARLINGTON              | ) | C/A NO: 2013-CP-16-576        |
|                                   | ) |                               |
| Jimmy M. Gallishaw, Jr., #341905, | ) |                               |
|                                   | ) |                               |
| Applicant,                        | ) |                               |
|                                   | ) | <b>CERTIFICATE OF SERVICE</b> |
| v.                                | ) |                               |
|                                   | ) |                               |
| State of South Carolina,          | ) |                               |
|                                   | ) |                               |
| <u>Respondent.</u>                | ) |                               |

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Caitlin Hastings  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC

  
Lance S. Boozer  
Attorney for Applicant  
807 Gervais Street, Suite 203  
Columbia, SC 29201  
Phone: (803) 608-5543  
Fax: (803) 926-3463

Columbia, South Carolina  
June 15, 2016

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF DARLINGTON ) 2013-CP-16-0576

JIMMY GALLISHAW, JR. )  
 ) APPLICANT )  
 vs. ) TRANSCRIPT OF RECORD )  
 )  
STATE OF SOUTH CAROLINA )  
 ) RESPONDENT )

July 20, 2016  
Chesterfield, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

LANCE S. BOOZER, ESQUIRE  
Attorney for the Applicant

JESSICA E. KINARD, ASSISTANT ATTORNEY GENERAL  
Attorney for the Respondent

TONYA COPELAND LITTLE, Esquire  
MATTHEW SWILLEY, Esquire

HATTIE O. GORDON  
Circuit Court Reporter



I N D E X

|    |                                   |    |
|----|-----------------------------------|----|
| 1  |                                   |    |
| 2  | Colloquy . . . . .                | 4  |
| 3  | JIMMY GALLISHAW                   |    |
| 4  | Direct By Mr. Boozer . . . . .    | 6  |
| 5  | Cross By Ms. Kinard . . . . .     | 35 |
| 6  | TONYA COPELAND LITTLE             |    |
| 7  | Direct By Ms. Kinard . . . . .    | 41 |
| 8  | Cross By Mr. Boozer . . . . .     | 53 |
| 9  | MATTHEW SWILLEY                   |    |
| 10 | Direct By Ms. Kinard . . . . .    | 61 |
| 11 | Cross By Mr. Boozer . . . . .     | 64 |
| 12 | Certificate of Reporter . . . . . | 68 |
| 13 |                                   |    |
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| 25 |                                   |    |

EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

1  
2 THE COURT: Mr. Boozer.

3 MR. BOOZER: Judge, he has a hard time once he sits  
4 down and getting back up. We can go ahead and have him  
5 seated.

6 THE COURT: Sure.

7 MR. BOOZER: In the witness stand.

8 THE COURT: Sure. If somebody is going to call him as  
9 a witness.

10 MR. BOOZER: I'm will call him first thing.

11 THE COURT: Come around, sir. Go ahead and seat him  
12 and swear him. Sir, we've just handed him the Bible.  
13 Place your left hand on the Bible.

14 JIMMY GALLISHAW, after being duly sworn,  
15 testified as follows:

16 THE COURT: All right. Have a seat in the witness  
17 box and state your full name. Solicitor -- I mean Madam  
18 Attorney General.

19 MS. KINARD: Thank you, Your Honor. May it please  
20 the Court. This is the matter of Jimmy M. Gallishaw, Jr.  
21 v. the State of South Carolina. 2013-CP-16-576. We re  
22 before the Court on application for post conviction relief  
23 that was filed July 3rd 2013.

24 The Applicant is presently confined to order of  
25 commitment of the Darlington County Clerk of Court. In

1     October 2009 the Darlington County Grand Jury indicted the  
2     Applicant for three counts of first degree criminal sexual  
3     conduct with a minor, two counts of lewd act on a minor,  
4     and two counts of incest. He was represented by Tonya  
5     Copeland Little and Matthew Swilley.

6             On July 19th 2010 the Applicant proceeded to trial  
7     before the Honorable Howard P. King and the jury. On  
8     July 23rd 2010 he was found guilty as indicted. Judge  
9     King sentenced the Applicant to two consecutive terms for  
10    25 years on two of the first degree criminal sexual  
11    conduct with a minor charges. He also sentenced the  
12    Applicant to concurrent terms of 25 years on the remaining  
13    first degree criminal sexual conduct on a minor charge.  
14    Fifteen years on each lewd act conviction and ten years on  
15    each incest conviction.

16            Mr. Gallishaw timely filed a notice of appeal and the  
17    Office of Appellate Defense perfected that appeal. The  
18    Court of Appeals confirmed his conviction September 19th  
19    2012 and remitter was returned to the circuit court on  
20    October 5th 2012.

21            The State is present and ready to proceed. The  
22    Applicant is present and represented by Lance Boozer.

23            THE COURT: Mr. Boozer.

24            MR. BOOZER: Thank you, Your Honor. If it pleases  
25    the Court. Judge, we do have an amendment that was filed

1 some time ago, and I'm not sure if that is a part of your  
2 file.

3 THE COURT: I got a first amendment.

4 MR. BOOZER: That would be it, Your Honor. With that  
5 being said, Judge, we would go ahead and call Mr.  
6 Gallishaw to the stand. He's already seated.

7 THE COURT: All right. Go ahead.

8 DIRECT EXAMINATION

9 BY MR. BOOZER:

10 Q. Mr. Gallishaw, how are you doing today?

11 A. I'm good. I'm good.

12 Q. Good. If you could while you're testifying keep your  
13 voice up and speak a little bit slow so that Madam Court  
14 Reporter can take everything down that you're saying,  
15 okay?

16 A. Yes, sir.

17 Q. Mr. Gallishaw, do you know what you're doing here  
18 today?

19 A. Yes, sir. I'm here for my P.C.R.

20 Q. And you filed a P.C.R. application; is that right?

21 A. Yes, sir.

22 Q. And what is it that you're asking this Court to do  
23 for you today?

24 A. I'm asking for some relief on my sentencing or maybe  
25 even a new trial.

1 Q. Well, and that's what -- you and I have discussed  
2 that, right?

3 A. Yes, sir.

4 Q. Okay. And do you understand that pretty much all  
5 circumstances if you're successful here today the only  
6 thing this Court can do is to basically start you over and  
7 give you a new trial on your original charges?

8 A. Yes, sir.

9 Q. Okay. Do you understand that the Court can't let you  
10 out early or reduce your sentence or anything like that?

11 A. Yes, sir.

12 Q. And knowing that do you still wish to go forward with  
13 your P.C.R. and request a new trial?

14 A. Yes, sir.

15 Q. Okay. Now, obviously, you did have a trial on these  
16 charges?

17 A. Yes, sir. Yes, I did.

18 Q. Who represented you at that time?

19 A. Ms. Tonya Little and Matthew Swilley.

20 Q. All right. Were Ms. Little and Mr. Swilley, were  
21 they appointed or retained to represent you?

22 A. I think appointed. I really don't -- I can't -- I  
23 think appointed.

24 Q. Do you recall when -- do you recall when you were  
25 first arrest on these charges?

1 A. Yes, sir.

2 Q. When was that?

3 A. That was February 4th. February 4th of 2009.

4 Q. And when was your trial?

5 A. My trial was I think July 19th of 2010.

6 Q. Okay. Do you know about when those lawyers were

7 appointed to represent you?

8 A. I have it in my paperwork that Miss Little was

9 appointed. Let me see.

10 Q. Would April of 2009, would that sound familiar?

11 A. April?

12 Q. April of 2009?

13 A. That's sound about right.

14 Q. Okay.

15 A. April, March, end of March. Not April.

16 Q. Right. Prior to your trial do you know how many

17 times you met with Ms. Little or Mr. Swilley?

18 A. Yes, sir. I met with Miss Little like three times

19 within a seven month -- within a 17 month span.

20 Q. Okay. Was Mr. Swilley initially on your case or how

21 did he become involved?

22 A. No. He became involved in my case when it got to a

23 point where I wanted to talk with someone about some

24 problems I was having. But I was a little uncomfortable

25 speaking with the female on this problem. So that's when

1 Matthew -- that's when Mr. Swilley came in at.

2 Q. Okay. Why were you uncomfortable speaking with Ms.  
3 Little about the problem?

4 A. Had something to do with being in -- some  
5 incompetencies.

6 Q. Okay.

7 A. So.

8 Q. And so when did Mr. Swilley become involved in the  
9 case? Do you know about when he became involved in the  
10 case?

11 A. That I really don't -- I can't remember. It was  
12 closer to the end. It was almost close to trial time.  
13 Maybe a week or two before trial I guess.

14 Q. What was your relationship like with Ms. Little?

15 A. In the beginning the first interview she had with me  
16 was pretty descent. We was okay. But then the second  
17 interview seems like she was a little -- seems like she  
18 was a little frustrated because when I was talking to her  
19 then she made the comment of -- that of, "Well, I'm not  
20 the one sleeping with my -- I'm not the one sleeping with  
21 my children." So I said right then, I said, "Well, okay,  
22 then. I see right now that you are not the lawyer for  
23 me."

24 But she was -- Mr. Sergeant Goodman was also present  
25 at that time when those statements was being said between



1 Ms. Little and myself. And I tried to relieve her and I  
2 wanted to relieve her then as my Public Defender but ---

3 MS. KINARD: Your Honor.

4 THE WITNESS: --- Mr. Goodman told me to just hold  
5 on, wait a minute, just calm down, take it easy and we'll  
6 talk about it.

7 THE COURT: Yes, ma'am.

8 MS. KINARD: I object to anything Ms. little said as  
9 being hearsay.

10 THE COURT: Well, we don't have a jury. I'm going to  
11 go ahead. I generally allow some latitude ---

12 MS. KINARD: Thank you, Your Honor.

13 THE COURT: --- in this testimony so I will overrule  
14 your objection.

15 MS. KINARD: Thank you.

16 MR. BOOZER: Thank you, Your Honor.

17 THE COURT: Go ahead.

18 BY MR. BOOZER:

19 Q. Mr. Gallishaw?

20 A. Yes.

21 Q. Did you -- how did that make you feel when you say  
22 Ms. Little made those comments to you?

23 A. I just put in my mind right then that she wouldn't be  
24 the proper counsel for me if that's what she thought  
25 already. Then there was no need -- there was no need to

1 go any further with her if she already felt that way and  
2 it wasn't even trial time.

3 Q. Okay.

4 A. There wasn't no need to go any further with her. I  
5 wanted a new public defender then.

6 Q. Well, did you ever ask that she be relieved from your  
7 case?

8 A. Yes, sir. Even the first day of the trial when I  
9 asked the Judge, she, Mr. Little [sic]. She put in the  
10 motion and I also got up and spoke to the Judge and let  
11 him know that I would like for her to be relieved as my  
12 counsel because for one, in 17 months I really only spoke  
13 to her like maybe three times.

14 I have both -- I have all three -- I have all three  
15 papers that when she came to visit the things that she  
16 wrote on the paper, so I have those.

17 Q. Let me ask you this. What was the basis for having  
18 her relieved? Why did you not want her to be your lawyer?

19 A. Because she already felt that I was guilty.

20 Q. And did you actually have a hearing on that motion?

21 A. No.

22 Q. You never had a hearing on the motion?

23 A. If you're talking about maybe the day of the trial  
24 and then you spoken to the Judge. And if that's what the  
25 hearing was I guess that's what it is then I had one.

1 Q. Well, did the Judge relieve Ms. Little from your  
2 case?

3 A. No, he denied that.

4 Q. Okay. Now, you've made some allegations in your  
5 P.C.R. application as well as well as in an amendment that  
6 was filed on your behalf; is that correct?

7 A. Yes, sir.

8 Q. Okay. Let's go through those and then we'll discuss  
9 those for the Court. Your first allegation is that you  
10 allege ineffective assistance of counsel in that you were  
11 denied the effective assistance of trial counsel as  
12 guaranteed by the Sixth and 14th Amendments to the U.S.  
13 Constitution and provisions of the South Carolina  
14 Constitution when counsel failed to perform her duty as  
15 competent counsel before and at trial. Is that one of  
16 your allegations?

17 A. Yes, sir.

18 Q. You have another allegation that you were denied  
19 effective assistance of appellant counsel in denying you  
20 the first bite at the apple. Is that one of your  
21 allegations?

22 A. Yes, sir.

23 Q. You also have that counsel failed to present all  
24 issues available to you on appeal, and your language is so  
25 the record reflects?

1 A. Yes.

2 Q. All right. And is that against your appellate  
3 counsel?

4 A. Yes, sir.

5 Q. Who was your appellant counsel?

6 A. Tristen Schaffer.

7 Q. Now, you have an amendment in which you allege that  
8 trial counsel failed to adequately cross-examine and  
9 attack the credibility of witnesses?

10 A. Yes.

11 Q. Did you discuss with Mr. Schaffer the issues you  
12 would be pursuing on appeal?

13 A. Once I found out he was my lawyer then I think I  
14 wrote him a couple letters trying to get to know him  
15 because I never did see him, ever. So I wrote a couple  
16 letters trying to get to know him, giving him some  
17 background on the case.

18 So some of the stuff that I have to present I sent it  
19 to him just to let him know where exactly it was in the  
20 transcript, what inconsistencies there were in the  
21 transcript. So I sent him a whole layout and run down of  
22 those things. Yes, sir.

23 Q. What type -- did you ever speak to Mr. Schaffer  
24 during his representation of you on the appeal?

25 A. No, sir. Only through letters.

1 Q. Only through letters?

2 A. Yes, sir.

3 Q. Do you know how much -- would he respond to your  
4 correspondence?

5 A. I think he did. Yes. Yes. I would say, yeah. Not  
6 every time, but say if I maybe sent four he might have  
7 responded twice, you know.

8 Q. What do you think your lawyer, your appellate lawyer,  
9 should have done for you?

10 A. I just think he should have -- I think he should have  
11 searched -- my search of the transcript as well as much as  
12 talk with me so I can guide and show him, you know what  
13 I'm saying, exactly where everything was that he could  
14 raise if it -- I mean if Ms. Tonya would have preserved  
15 it. I guess preserved it right.

16 Q. Well, let me ask. What issues did you want Mr.  
17 Schaffer to raise? Did you want him to raise the issue of  
18 the Court failing to relieve Ms. Little?

19 A. Yes. That and also I wanted him to raise the issue  
20 about the Judge when he -- when he escorted -- when the  
21 Judge stopped the questioning that Miss Little was -- I  
22 think it was Mr. August. I think she was interviewing --  
23 cross-examining Mr. August, and she was crossing him up.  
24 You know what I mean.

25 She was almost getting him to say what he needed to

1 say, but the Judge stopped it and he sent the jury out.  
2 So when he did that it seemed like I lost a little bit of  
3 the jury because, Tonya, she was doing a real good job at  
4 the time as far as questioning him. But the Judge stopped  
5 it and he sent the jury out. And then he told her that  
6 she couldn't do that line of questioning or whatever like  
7 that.

8 Couldn't let them know -- actually, it was about  
9 videotaping, and she was cross-examining him about  
10 videotaping. She actually was doing a real good job, and  
11 then the Judge stopped her. So I wanted him to raise some  
12 questions about some of the Judge's, his decisions, some  
13 of his overruling and stuff.

14 Q. Well, did you write Mr. Schaffer and ask him that?

15 A. I don't think I asked him that, but I think I  
16 maybe -- I think I maybe told him about it I guess in a  
17 letter. I'm not sure.

18 Q. Okay. Are there any other issues you asked Mr.  
19 Schaffer to raise on your behalf?

20 A. No. Cause he just told me -- the paper that he sent  
21 it only -- I think it maybe only had like one issue, and  
22 that was the issue of the expert witness. And it was just  
23 the one issue of the expert witness. I guess once he had  
24 that and I figure maybe that was the strongest issue that  
25 I had, I guess. So that's the only one that he went with,

1 I think.

2 Q. Does that cover your allegations against what you  
3 fell like your appellate lawyer was not doing for you?  
4 And I'm only talking about your appellate relief?

5 A. So my appellate lawyer, you mean, Schaffer?

6 Q. Schaffer, yes.

7 A. Does that -- said that again.

8 Q. Does that cover all of your issues against Mr.  
9 Schaffer?

10 A. Yes. I don't really have ---

11 Q. Okay.

12 A. --- too much to say about Mr. Schaffer.

13 Q. Let's talk about the trial, okay?

14 A. Um hum.

15 Q. What did you guys review and discuss during the  
16 meetings prior to trial?

17 A. Let me think. I can show exactly what we discussed.  
18 Just pardon me for a minute while I find it.

19 Q. Okay. Go ahead, Mr. Gallishaw.

20 A. Okay. I was looking -- as I was looking as well as  
21 she was doing something. I had -- I got the three papers  
22 that Tonya wrote on while like when we talked. And,  
23 basically, she just talked about maybe that pictures at  
24 that house or what the witnesses that I need or what did I  
25 think would help me.

1           So that's basically what the first visit she come.  
2       She is like she didn't know anything. No, nothing else  
3       was changing. The second time was basically the same.  
4       She just doodled on the paper real big letters, real big  
5       word. And, really, the third one was about the same as  
6       well.

7       Q.    Well, would you discuss any defenses to the charges?

8       A.    No. That really too much that she discussed too  
9       much, really.

10      Q.    Would you discuss the evidence the State had against  
11      you?

12      A.    We did that when I was asking about -- for my motion  
13      of discovery.

14      Q.    Who would you discuss that with?

15      A.    I think I talked with her about it maybe once it got  
16      it but I took so long to get it.

17      Q.    When was the first time you found out that you would  
18      be going to trial? How far in advance of the trial did  
19      you know about it?

20      A.    That I can't even remember. That I can't even  
21      everyone remember then.

22      Q.    Did you know what the trial strategy would be at  
23      trial?

24      A.    Basically, on my defense, all I wanted her to do,  
25      once I got my Rule Five and when I went through it, and



1 when I saw all the inconsistencies, the lies, and when I  
2 saw those things and it was right there and then I  
3 separate them. Those are the same things I took to trial  
4 with me.

5 So I didn't ask for no witnesses to be on my behalf.  
6 I didn't ask for nobody to testify against -- testify for  
7 me or anything. All I wanted her to do if she can present  
8 these papers with -- that would contradict what they're  
9 saying on the stand then that's all I needed.

10 Q. Well, what was that? What did you want her to do?

11 A. Okay. There is a -- all right. As far as like cross  
12 examining everybody that was there I had also had  
13 questions and stuff I wanted her to ask as well, but when  
14 I would like maybe nudge her to get her to maybe ask a  
15 question or maybe object she would tell me just, "Wait a  
16 minute. Wait a minute. Don't say nothing right now."

17 That's what she would tell me. When I'm trying to  
18 give her black and white papers with the statement on it  
19 that they're saying that they said this when now they're  
20 on the stand they're saying something else. But she would  
21 not accept it.

22 Q. Let's talk about that specifically. Okay. You're  
23 referring to the testimony of Officer August?

24 A. As well as some others. Yes, sir.

25 Q. Okay. But let's go by each one where you feel she

1 didn't effectively cross-examination certain witnesses.  
2 The first one that you've indicated to me that you had  
3 some issue with the way she cross examined Officer August?

4 A. Um hum.

5 Q. Okay. Do you recall --

6 MR. BOOZER: And, Your Honor, just for the record for  
7 the Court's information I'm looking at Page 87 of the  
8 trial transcript.

9 THE COURT: All right. Hold on a minute. Madam --  
10 Ms. Kinard, seems that I have only Volume Two. I don't  
11 have Volume One.

12 MS. KINARD: Certainly. I apologize, Your Honor.

13 THE COURT: Go ahead. What page?

14 MR. BOOZER: This is Page 87, Your Honor.

15 THE COURT: I've got it. Okay.

16 BY MR. BOOZER:

17 Q. Mr. Gallishaw, have you reviewed the transcript?

18 A. Yes, sir.

19 Q. Okay. Is one of your complaints with regard to  
20 Officer August's testimony on Page 87? This is during  
21 direct examination?

22 A. Um hum.

23 Q. Where he was asked, "And were you there? Did you  
24 hear what Agent Charles said to the Defendant during that  
25 time?" The response, "He didn't say anything. He was

1 just present."

2 A. Um hum.

3 Q. So it's your testimony that while you were there  
4 Agent Charles never made any threats to the Defendant  
5 about losing his child or locking up his wife?" And the  
6 answer is, "Absolutely not."

7 A. Um hum.

8 Q. Do you have a complaint with regard to that specific  
9 line of questioning? How it relates to any other  
10 testimony in the case?

11 A. Yes. It contradicts Page 539 where ---

12 Q. Hang on one second. You said that's Page 539?

13 A. Yes, sir, Page 539.

14 Q. In Volume Two of the transcript?

15 A. I don't know if ---

16 THE COURT: Yes, it's Volume Two.

17 THE WITNESS: Okay. Say if I have the same thing  
18 everybody else has.

19 BY MR. BOOZER:

20 Q. That's right.

21 A. Page 539, well, on Page 87 he says, "He didn't say  
22 anything. He was just present." Okay. That's clear cut.  
23 If I say, 'you were just there. You were just present.  
24 You say anything,' that means you didn't speak.

25 Q. Okay.

1 A. Okay. So on Page 539.

2 Q. Agent Charles eventually testified at the trial?

3 A. Say again.

4 Q. Did Agent Charles eventually testify at the trial?

5 A. I think he did. Yes, sir.

6 Q. Was that what you're referring to on Page 538?

7 A. Yes, sir.

8 Q. Okay. Go ahead.

9 A. All right.

10 Q. Or excuse me. 539?

11 A. 539. Also 538 as well. Okay. Okay. Question, "Did  
12 you say anything." Okay. Now, it goes on down her to  
13 say -- okay, before he said he didn't say anything. So  
14 now they ask the question. Said, "Did you ever say  
15 anything to Mr. Gallishaw." Now, he says, "I asked him --  
16 it was lunch time, and I asked was he hungry. Did he want  
17 anything to eat. He agreed." So on and so on.

18 Then it goes on to say, "Okay, Mr. Charles. Did you  
19 say anything else to him decides about whether he was  
20 hungry or not." And then he says when he started weeping,  
21 I could see that he was never distressed. He did look  
22 like he was very remorseful about what he was doing. I  
23 told him he would probably feel better if he just got it  
24 out."

25 So then the question says, "Oh, I see. So you are

1 saying -- so you say he seemed very distressed like he  
2 didn't want to be there." So that just let you know that  
3 he did -- that he talked; that he said more than that, but  
4 in the beginning he was saying that he didn't -- that he  
5 didn't say anything..

6 Q. Okay.

7 A. So when you're telling someone -- when you're saying  
8 you didn't say anything and then later on from his own  
9 mouth saying that he did spoke, that's contradicting.

10 Q. Okay. So you have two officers here who are  
11 testifying. One of which says that ---

12 A. He didn't say anything.

13 Q. --- second officer didn't say anything whereas the  
14 first officer, he did say something to you?

15 A. Exactly.

16 Q. Do you feel that your lawyer effectively; that he  
17 brought out through cross-examination for him in some sort  
18 of closing statements those inconsistencies?

19 A. Yes, I do.

20 Q. What do you feel that she did cross-examination or  
21 had brought those inconsistencies out in closing  
22 statement?

23 A. Okay. You asked me -- say that one more time.

24 Q. Yes, sir. Do you feel that your lawyer ---

25 A. Um hum.

1 Q. --- effectively cross examined either of those  
2 witnesses about those inconsistent statements?

3 A. No.

4 Q. Do you feel that your lawyer brought that out before  
5 the jury about those inconsistent -- the inconsistent  
6 testimony?

7 A. No, sir.

8 Q. Do you feel that that is something she should have  
9 done for you?

10 A. Yes. Yes.

11 Q. Do you feel that that prejudiced your trial?

12 A. Yes.

13 Q. Okay. Do you also have some complaints -- let me ask  
14 you this. Did your wife testify at this trial?

15 A. Yes, she did.

16 Q. All right. Do you have any complaints about the  
17 cross-examination your attorney did of your wife at the  
18 trial?

19 A. Yes. Yes, I did.

20 MR. BOOZER: And, Your Honor, for the Court's  
21 information the cross-examination of Adrian Gallishaw  
22 begins on Page 381 of Volume One.

23 THE COURT: She testified?

24 MR. BOOZER: Yes, Your Honor.

25 BY MR. BOOZER:

1 Q. Okay, Mr. Gallishaw?

2 A. Um hum.

3 Q. What's your complaint against your attorney about her  
4 cross-examination -- her or his cross-examination of  
5 Ms. Gallishaw?

6 A. For one it's how many inconsistent statements that  
7 she made. Her statements that she made to the police in  
8 the beginning versus what she said on the stand. It  
9 wasn't the same.

10 THE COURT: Go ahead.

11 THE WITNESS: Okay. It just wasn't the same.

12 BY MR. BOOZER:

13 Q. Okay. What other complaints about cross-examination  
14 of Ms. Gallishaw do you have?

15 A. Really, about that -- okay, in the beginning she was  
16 saying that -- she said nothing happened. Okay. She  
17 said, "House worker Supervisor Kelly talked with Adrian  
18 about the allegations concerning Jimmy's daughter, minor  
19 House caseworker informed agent that an allegation was  
20 made towards her."

21 Now, see, before anything was said about allegations  
22 being made towards her she said that she didn't see  
23 anything and she never did see me do anything like that.  
24 But once they told her that there would be some  
25 allegations towards her then everything changed. But even

1     though -- okay. I'm going to continue reading.

2             "Allegations was made concerning her. Home case  
3 worker asked agent if she had ever seen her husband,  
4 Jimmy, having sex with his daughter. Adrian denied  
5 knowing that anything like that had happened. Home social  
6 worker informed Adrian that it was alleged that she had  
7 walked in on Jimmy having sex with minor

8             And she said just -- she just told her to go back to  
9 bed. Agent stated that she doesn't know when that could  
10 have been because she never seen him do anything like  
11 that." So when I got in touch with her, when I sued the  
12 phone I couldn't call her through my number, through my  
13 pin number what I had. So I had to use a friend's number  
14 when I called.

15             And she said that was when -- she said that they were  
16 trying to accuse her of knowing what was going on. And  
17 she was saying about they were going to take the kids and  
18 things like that so.

19 Q.     Let me ask you this. Did you ever have any knowledge  
20 of or was it your understanding that your wife was being  
21 threatened with any sort of charges in this case?

22 A.     That's what, from what she said, that's what it was.

23 Q.     Okay. Did you also have any knowledge of whether  
24 there were any threats made to your wife about removing  
25 the children from the home?



1 A. Yes, sir.

2 Q. Did your lawyer ever ask on cross-examination of Ms.  
3 Gallishaw whether she had ever been threatened with any  
4 charges or whether she had been threatened to have the  
5 children removed from the home?

6 A. I don't remember her asking that. As I search the  
7 transcript I don't recall her asking that.

8 Q. If it was asked it would be in the transcript. If It  
9 wasn't asked then it wouldn't be in the transcript?

10 A. Exactly.

11 Q. Okay. If it weren't asked do you feel like that is  
12 something that your lawyer should have done?

13 A. Yeah, exactly. Absolutely.

14 Q. Do you think that would have affected the outcome of  
15 your trial?

16 A. I think it could have brought question. You know  
17 what I mean. I think it would have made you think about  
18 more things that as they went on. Yes, sir.

19 Q. Okay. Are there are any other witnesses your lawyer  
20 failed to adequately cross-examine?

21 A. Yes. Actually, some of my daughter's testimony.  
22 Also, Ms. Elliott was considered as the expert witness.  
23 The inconsistencies in that. Detective August.

24 Q. What inconsistencies do you think she should have  
25 raise in regards to the expert's testimony?

1 A. Okay. It was just some things my wife said and then  
2 some things that the expert said that wasn't matching up.  
3 On Page -- Transcript Page 350.

4 Q. Hold on one second.

5 A. Okay.

6 Q. Page 350?

7 A. Yes, sir. Transcript Page 350.

8 Q. All right. Hang on one second. Okay.

9 A. Okay. Transcript Page 350 is my wife's testimony  
10 where she says -- the question is, "And what do you see  
11 when -- and what did you walk in on." She said, "I walked  
12 in on her like bent over the toilet pulling up her pajamas  
13 and he was there with just a shirt on." Okay. Then you  
14 go to Transcript Page 466.

15 Q. And just ---

16 A. That's ---

17 Q. Hold on a second. 466 of Volume Two?

18 A. Yes. That would be Ms. Elliott's testimony.

19 Q. All right. Hang on one second. Okay. Go ahead.

20 A. Okay. And I didn't write the question down. I just  
21 wrote the answer from Ms. Elliott. It says, "From --  
22 okay. Let me just go there so I can read it.

23 Okay. 466. All right. The question was -- let's  
24 see. "Now, you stated one thing" -- going on to Question  
25 19. It says, "Now, you stated one thing that is.

1 significant about the family dynamics is that the mother  
2 in this case was a passive. When it comes to the -- when  
3 it came to the abuse, it says, "Is it your opinion that  
4 the mother was aware that this was going on." And she  
5 answered, "With the trial." And the question says,  
6 "Withdrawn."

7 Okay. Then answer again, "From what the child told  
8 me the mother walked in. And what the mother reported to  
9 me in the intake information she walked in and saw Jimmy  
10 with the child with his pants down."

11 Q. What do you think your lawyer should have done in  
12 regards to the testimony from your wife and that  
13 testimony?

14 A. Okay. I think she just should have maybe spoke on  
15 the inconsistent statements because you got one saying --  
16 you had my wife saying that I just had a shirt on. You  
17 got Ms. Elliott saying that my wife told her that she  
18 walked in and caught me -- and seen me with my pants down.

19 Q. And you feel your lawyer ---

20 A. So I can't be one way on one thing and then another  
21 way like that from the same person like that.

22 Q. So do you feel that your attorney was able to bring  
23 out any of those inconsistencies either through her  
24 cross-examination or during closing?

25 A. I feel she would have if she would have accepted the

1 papers that I was trying to give her that had this  
2 information on it. I feel she would have done a better  
3 job.

4 Q. Other than the testimony of Officer August and  
5 Officer -- Agent Charles and your wife and the expert are  
6 there any other witnesses that you feel as though your  
7 lawyer should have cross examined either differently or in  
8 a better manner?

9 A. I mean when you say it like that I have -- when I  
10 come through my transcript I mean I find the -- I found  
11 evidence from everybody from all things even this is the  
12 one I was trying to get her to -- this is the one I was  
13 trying to get her to really speak on concerning one of  
14 the -- concerning one of the cases which would be -- okay.  
15 Which would be right here, Your Honor.

16 Q. Mr. Gallishaw, what is it that you're referring to?

17 A. Okay. It's a Notice of Intent to Present Hearsay  
18 Testimony. When it goes -- it was an allegation brought  
19 towards me when it was stating that -- it says, "Statement  
20 and/or communication behavior of a minor child, minor ---

21 Q. Mr. Gallishaw?

22 A. Yes.

23 Q. I can't understand you so I know the court reporter  
24 probably can't understand you.

25 A. Okay.

1 Q. Tell me what you're trying to tell the Court about  
2 the issue. You feel like there was some hearsay presented  
3 that was not objected?

4 A. Okay. Yes, sir. In this they had me charged doing  
5 something that is clearly -- that is clearly read and can  
6 be shown that this is from somebody. This is from her  
7 cousins; that this is from her cousin's testimony. This  
8 has nothing to do with me. This is the exact same thing  
9 that was written out for her cousin. And they took it and  
10 put it on me.

11 MR. BOOZER: Okay. May I approach the witness?

12 THE WITNESS: Right here. How long ---

13 BY MR. BOOZER:

14 Q. Hang on one second.

15 A. And these.

16 Q. Stop. Hang on one second, please.

17 A. All right.

18 Q. Okay, Mr. Gallishaw.

19 A. Yes, sir.

20 Q. Is it your understanding at trial the statements were  
21 introduced or testimony was given basically by someone who  
22 heard the children say something? Is that's what you're  
23 saying?

24 A. Okay. Say that one more to, e.

25 Q. Sure. Was there testimony at the trial that

1     either -- was it Charles, Jr.?

2     A.    Yes.

3     Q.    Okay.  That Charles, Jr. said something else?

4     A.    No.

5     Q.    Okay.  Explain to me ---

6     A.    My ---

7     Q.    --- what you mean.

8     A.    Okay.  My daughter, she had already went been to the  
9     Care House one time, but she been -- she was there for her  
10    cousin.  Charles, Jr.  And the statement that they have  
11    there for him is, "Minor stated she cousin, Charles, Jr,  
12    touched her numerous times on her breast, vagina, and butt  
13    while they were staying at their aunt's house when she was  
14    seven years old."

15           Okay.  Now, when you -- go to the paper of what they  
16    wrote and what they have me -- how they have me charged it  
17    says, "The Care House of the Pee Dee on or about February  
18    11th 2009 indicated that she had been touched numerous  
19    times by Defendant, Jimmy Gallishaw, on her breast, vagina  
20    and but while they were staying with her aunt.  Said --  
21    minor     stated she was seven years old.  That is her  
22    cousin's statement.  That is not me.

23    Q.    Did your lawyer make any sort of objection?

24    A.    No, she didn't.  When I tried to give it to her she  
25    told me that was just a mistake in paperwork.  She did not

1 do anything about that. No, she didn't.

2 Q. And for what witness did that testimony come out?

3 A. Say again.

4 Q. What witness testified to what you were just  
5 discussing?

6 A. No witness did. This was just -- this was in all  
7 the -- in all of my Rule Five.

8 Q. Okay.

9 A. So this is what everybody else was seeing and what  
10 they were going off of.

11 Q. So you feel like you lawyer should have made either  
12 some sort of motion or attempted to quash the indictment?  
13 What's your allegation?

14 A. Yes, it clearly states in black and white that what  
15 you -- okay. When you go back to my daughter's statement  
16 from the Care House she says that the first time I touched  
17 her was -- she said she was ten. And she said that last  
18 time I touched her she was 11.

19 But they have stated here where her says she was  
20 seven, and she was seven when Charles Jr. did these things  
21 to her. But you have -- but they have that written up  
22 saying on me. And when it says right here that that's not  
23 it.

24 Q. Okay. Other than that do you have any other issues  
25 with regard to the way or manner in which your lawyer was

1 cross-examining the witnesses at your trial?

2 A. Other than that -- other than that she just didn't do  
3 an effective job like I thought she would have.

4 Q. Okay. We've covered a number of issues today. Is  
5 there anything we have not brought before the Court that's  
6 in your application or in your amendment that you wish to  
7 address before this Court?

8 A. I would also like to say there was one incident where  
9 when they -- I think my daughter was on the stand, and my  
10 wife, she jumped up. She jumped up and ran out crying so  
11 the Judge hushed the courtroom. And my lawyer asked for I  
12 think a continuance on the trial. I think Ms. Little  
13 asked for a continuance, but the Judge denied it.

14 She said due to the outburst was going to bolster the  
15 testimony -- said the outburst was going to bolster the  
16 testimony. So I think that outburst played a very  
17 emotional part with the jury.

18 Q. Okay. Well, actually, did your lawyer move for a  
19 mistrial, and that's on Page 446?

20 A. Yes. Yes.

21 Q. Okay. And that was based on your wife crying loudly?

22 A. Yeah, and running out of the courtroom.

23 Q. All right. And was that -- the motion for mistrial,  
24 was that denied?

25 A. Yes, that was denied.



1 Q. All right. Was that issue raised on appeal?

2 A. No, sir.

3 Q. Do you know if any curative instruction was given to  
4 the jury?

5 A. I mean I think the Judge told them to overlook that  
6 and -- but it's hard to overlook that when just like we're  
7 in here now and somebody jumps up and just starts crying  
8 and then run out. It's hard to not see that and not  
9 remember that any more concerning your trial.

10 Q. But that issue was not -- did you discuss that issue  
11 with your appellate counsel?

12 A. No, sir. Like I said the only time I ever spoke with  
13 him was when I wrote him or he wrote me.

14 Q. Did he ever raise that issue with you?

15 A. No, sir.

16 Q. You feel that was something he should have alleged?

17 A. Yes, sir.

18 Q. Or raised?

19 A. Yes, sir. If you searched -- if he had searched the  
20 transcript I guess like he was supposed to, I guess, it  
21 would be something that he would have saw and it would  
22 have raised a red flag, I think.

23 Q. Okay. Have we covered all of your allegations?

24 A. Yes, sir. I would say pretty close. Yes, sir.

25 Q. Okay. Not pretty close. Have we covered it or we

1 haven't?

2 A. Yes, sir.

3 Q. If you would please answer any questions Madam  
4 Attorney General may have for you.

5 A. I will.

6 CROSS-EXAMINATION

7 BY MS. KINARD:

8 Q. Hello, Mr. Gallishaw?

9 A. Hello. How are you?

10 Q. When you were meeting with -- well, let's take a step  
11 back. Most of the questions that I'm going to be asking  
12 you could refer to the activity of either of your  
13 attorneys. So if you remember asking either of your  
14 attorneys just let me know what you remember, if you  
15 don't. Did you review all the evidence the State  
16 presented beforehand or discovery?

17 A. Did I review all of the evidence? I mean -- okay.  
18 There are some things that I reviewed. I don't remember  
19 viewing everything that was brought out.

20 Q. How would you know?

21 A. How would -- from the -- from -- once I -- from the  
22 transcript I guess. Or either from the Motion for  
23 Discovery.

24 Q. That's what I'm saying. When your attorneys received  
25 the Motion for Discovery did they bring it to you? Did

1 they bring you the paperwork and look through it with you?

2 A. No. She brought it to me, and she just said, "Look  
3 through it and whatever you see" -- she said, "Look  
4 through it and whatever you see I guess just get back in  
5 touch with me. We never did look through it together.

6 Q. But you did look it over?

7 A. No. If it was in the rule -- if it was in the Motion  
8 for Discovery, then I looked at it. Yes, ma'am. I looked  
9 at it, yes, ma'am.

10 Q. Thank you. Regarding the evidence that was presented  
11 do you recall Ms. Little moving for a continuance at the  
12 beginning of the trial?

13 A. I recall her moving for -- I recall her moving to be  
14 relieved as my counsel. I don't -- and maybe that will  
15 draw a continuance, I guess.

16 Q. Now, this is specifically regarding the evidence that  
17 has recently been presented. Does that jar your memory?

18 A. No, ma'am. Whatever it is could you read it to me,  
19 please? Maybe it will.

20 Q. I'll be happy to. Actually, I point you to Page 61.

21 A. Okay.

22 Q. Do you have a copy?

23 A. Sixty-one?

24 Q. Yes, sir.

25 A. Okay.

1 Q. So Page 61 through the end of Page 67?

2 A. Yes.

3 Q. Do you remember what's going on now?

4 A. Yes, ma'am.

5 Q. And what was this about? Was this about letters that  
6 you had written?

7 A. I remember us talking about some letters, so, yes, I  
8 did. I did write some letters, so this very well could be  
9 it.

10 Q. So the basis for this motion for continuance is that  
11 your attorney had just received copies of letters you had  
12 written while you were incarcerated?

13 A. Yes.

14 Q. And so basically six days before trial, about six  
15 days, the State had just handed over these items, correct?

16 A. Um hum.

17 Q. So based on the recent discovery of this evidence by  
18 your attorneys Ms. Little moved for a continuance so she  
19 could look into these further?

20 A. Um hum.

21 Q. And you must answer verbally.

22 A. Yes.

23 Q. Thank you. Did you feel that that would have been in  
24 your best interest or that she made the proper argument to  
25 try to get more time to look at that?

1 A. Yes.

2 Q. Now, when y'all were preparing for trial did either  
3 or both of your attorneys discuss the charges that you  
4 were facing?

5 A. Really, the only thing that they discussed, really,  
6 was that it was criminal sexual conduct. As far as like  
7 the other charges that was it we. But we really didn't  
8 discuss that too much. They just stuck with the criminal  
9 sexual conduct charges.

10 Q. Did you understand what the State had to prove?

11 A. Yes.

12 Q. So with that in mind I believe you testified that you  
13 never told Ms. Little of any witnesses to call on your  
14 behalf; is that correct?

15 A. Um hum.

16 Q. But she did ask you to provide her names of potential  
17 witnesses?

18 A. Yes.

19 Q. And she also asked you to provide her with any  
20 information that would be beneficial to your case?

21 A. Yes.

22 Q. Did you provide her with anything?

23 A. I provided -- well, we tried to get some credit card  
24 statements, but I think that was maybe like a week before  
25 the trial. You know, and we couldn't retrieve them

1     because I guess they couldn't find them.

2     Q.    So you only told her about that the week before the  
3     trial?

4     A.    No. We tried to get it. They only tried to get it a  
5     week before the trial.

6     Q.    Okay. And you didn't give her or Mr. Swilley any  
7     names of witnesses to interview?

8     A.    No.

9     Q.    You mentioned during the trial you had nudged her and  
10    tell her, 'why don't you look at this. Why don't you  
11    question them about that'?

12    A.    Yes.

13    Q.    Did you give her all the information beforehand?  
14    Everything you're trying to point out? Did you give it to  
15    her before the trial started?

16    A.    Everything? We tried to talk about it on like -- on  
17    a previous visit. Yes.

18    Q.    So all those issues you had already discussed with  
19    her?

20    A.    She knew. That's why I brought them along with me.

21    Q.    Okay. Do you think it was a decision by Ms.  
22    Little not to bring up these issues at trial?

23    A.    It had to be.

24           MR. BOOZER: Objection, Your Honor.

25           THE COURT: Overruled. If he knows..

1 THE WITNESS: I was fixing to say it had to be. If  
2 I'm trying to nudge her and show her. Okay, the person on  
3 the stand says this, but here is a paper right here  
4 clearly saying this. It had to be her decision to say,  
5 no, when I'm trying to show her. When I'm trying to give  
6 it to her.

7 MS. KINARD: Beg the Court's indulgence. Those are  
8 all the questions I have at this time. Thank you.

9 THE COURT: All right. Thank you. Redirect?

10 MR. BOOZER: No redirect, Your Honor.

11 THE COURT: All right. You may come down, sir.  
12 Thank you very much. Next witness.

13 MR. BOOZER: No further witnesses on behalf of the  
14 Applicant.

15 THE COURT: Are there any witnesses on behalf of the  
16 State?

17 MS. KINARD: Yes, Your Honor. The State calls Tonya  
18 Copeland Little.

19 THE COURT: Come around, Ms. Little.

20 TONYA COPELAND LITTLE, after being duly sworn,  
21 testified as follows:

22 THE COURT: Be seated in the witness box. State your  
23 full name for the record.

24 THE WITNESS: I'm sorry. Tonya Copeland Little.

25 MS. KINARD: May it please the Court.

DIRECT EXAMINATION

BY MS. KINARD:

Q. Good afternoon, Ms. Little?

A. Good afternoon.

Q. Before we get into the facts of this case I'd like to ask you some background questions. You long have you been practicing law?

A. About ten years.

Q. And what percentage of that has been in criminal law?

A. Probably 80 percent.

Q. Do you recall if you were appointed or retained to this case?

A. I was appointed.

Q. And you were in the Public Defender's Office at that time?

A. I was.

Q. How many times did you meet with Mr. Gallishaw prior to the trial?

A. Looking at my notes, nine times that I actually saw him at the jail. A couple of those were twice on one day as we are getting closer to trial.

Q. Did Mr. Swilley sit second chair on this trial?

A. He did.

Q. Was he helping you from the beginning?

A. No. Actually, just a couple of weeks before trial he



1 got on board and assisted me from then on throughout the  
2 trial.

3 Q. Did he have any meetings independent of those you  
4 just mentioned to your knowledge?

5 A. I have in my notes he and I saw the Defendant twice  
6 together and that he saw the -- I know he saw the  
7 Defendant at lease once without me present.

8 Q. Did Mr. Gallishaw understand what was discussed in  
9 your meetings?

10 A. I thought he did.

11 Q. Was he cooperative with your presentation and  
12 development of the case?

13 A. He was.

14 Q. Did you file a Rule Five and Brady Motion or did your  
15 office file that on your behalf?

16 A. We did.

17 Q. Do you believe that you received everything you  
18 should have received?

19 A. I think I received everything that the State had at  
20 that time. Yes.

21 Q. And that included, as you previously heard, the  
22 letters presented about a week before trial?

23 A. The letters that were presented a week before trial  
24 were not in the initial Rule Five.

25 Q. And when you received the additional discovery,

1 whether all at once or piece by piece, did you review  
2 those items with Mr. Gallishaw?

3 A. I did.

4 Q. Do you believe he understood them?

5 A. He did.

6 Q. Did you leave some of them with him to review and  
7 report back to you with any thoughts he had?

8 A. I did. I gave him a copy, paper copy, of everything  
9 that was printable. I also sent my investigator and who  
10 actually sat at the jail with him and they watched all the  
11 forensic interviews.

12 Q. Prior to trial did you discuss the elements of the  
13 crimes and charges with Mr. Gallishaw?

14 A. Yes, we did.

15 Q. Did he understand all of those?

16 A. Yes.

17 Q. Did you discuss the potential punishments for all the  
18 charges?

19 A. Yes.

20 Q. Was there a plea offer?

21 A. Yes, there was a good plea offer.

22 Q. I'm sorry, a good?

23 A. A good plea offer. I thought it was a good plea  
24 offer.

25 Q. Could you describe that, please?

1 A. There was an offer of 15 years. A negotiated plea of  
2 15 years.

3 Q. Did you discuss this thoroughly with Mr. Gallishaw?

4 A. Yes, I did.

5 Q. And about how long before trial was scheduled was  
6 that offer made?

7 A. Just one moment. Offer was made on May 25th. That  
8 would have been a little less than two months before  
9 trial.

10 Q. Can you describe your discussion of the plea offer  
11 with Mr. Gallishaw before the Court?

12 A. I have a note here that says, "I went along with my  
13 investigator at the time, Mr. Goodman. Went and saw him  
14 at the jail. Discussed the offer at length. Gave him a  
15 copy of the offer." At the time the offer was 10 to 30  
16 years. At that time he rejected outright and said he  
17 would not plead to anything.

18 Then later, and I'm going to try to tell you exactly.  
19 Okay. I don't know exactly when we narrowed it down to 15  
20 years, but I do have a note on July 15th, which was right  
21 before the trial, that he was not willing to accept a  
22 negotiated 15 years. And I had a note that the offer was  
23 off the table per Suzanne Mayes, however, who was the  
24 prosecutor.

25 Have I ever -- I spoke with him about trying to get

1 the offer back.

2 Q. So it's my understanding that he essentially didn't  
3 want the plea because he didn't want to admit guilt?

4 A. That's correct.

5 Q. So it was -- forgive my phrase. It was a bit more of  
6 a philosophical thing than an issue of time?

7 A. Yeah, he just -- at one point I thought I had him. I  
8 have a note here that he was on the verge of taking the  
9 plea, but at the last minute declined. That would have  
10 been on July 15th.

11 Basically, he said at the time that he wasn't going  
12 to plead to anything; that the girls were lying and that  
13 he thought his wife was going to back him up.

14 Q. So based on your characterization and the way you're  
15 answering these questions did you think a plea was in his  
16 best interest?

17 A. Yes, I did.

18 Q. Did you encourage him to take the plea?

19 A. I did. His mother actually -- I have notes where his  
20 mother called me begging me to get him to take the plea.

21 Q. In regards to that did you prepare for the trial to  
22 the best of your abilities?

23 A. Yes, I did.

24 Q. And you proceeded to trial with Mr. Swilley?

25 A. Correct.

1 Q. Now, when you got to trial there is some issues that  
2 Mr. Gallishaw has brought up primarily regarding  
3 cross-examination of witnesses or failure to attack  
4 credibility. Were you in the courtroom to listen to his  
5 testimony?

6 A. I was.

7 Q. Do you recall any of these issues? Have you had a  
8 chance to review the transcript?

9 A. I was review -- I would pull, look at the transcript  
10 as he was testifying and refresh my memory about what he  
11 was talking about.

12 Q. In looking at the issue regarding the two officers  
13 and whether -- I believe it boils down to whether one  
14 officer was present or not. Do you recall that coming up  
15 at trial or do you recall that being an issue?

16 A. I actually didn't recall that until I just looked at  
17 it while he was talking about it. He was referring to the  
18 testimony in a Jackson v. Denno Hearing where Detective  
19 August stated that the other officer was just there. He  
20 different say anything.

21 And then he was referring to when that officer  
22 actually testified, and he did say something. He asked  
23 him if he wanted some lunch.

24 Q. Do you believe that was a material statement?

25 A. I did not think so.

1 Q. So the fact that it was said would have no weight on  
2 the case in your presentation?

3 A. I didn't think it would.

4 Q. Moving on to the potential inconsistencies between  
5 Ms. Adrian Gallishaw's testimony versus that of the  
6 expert, Miss Elliott. I believe that boils down to  
7 whether he had pants on or his pants down. Is that your  
8 recollection?

9 A. Yes.

10 Q. Do you believe that was a material difference?

11 A. No, I didn't because it was two different people  
12 saying. One was saying what the mother told him -- I  
13 meant told her. And then it was something that the mother  
14 said when she testified. She said he only had a shirt on.

15 Frankly, I have trying to stay away from that  
16 testimony as much as I could, and I didn't want to call  
17 any attention to it.

18 Q. So that was -- could be described as a strategy on  
19 your part?

20 A. Yes.

21 Q. Lastly, I believe you pointed to the Care reports,  
22 and whether it accurately reflects what was presented  
23 during the forensic interview regarding Mr. Gallishaw. Do  
24 you recall that testimony?

25 A. I didn't follow exactly what she was talking about.

1 Q. My understanding, if I can have a little leeway, is  
2 that, apparently, this victim had gone to Care earlier  
3 regarding a different allegation with a different  
4 perpetrator?

5 A. That is correct.

6 Q. That is correct. And then when the reports are  
7 produced Mr. Gallishaw it included some incorrect  
8 information that was included in the first report. That  
9 was my understanding.

10 A. I don't think that's what they were talking about. I  
11 think he was talking about a written motion that was filed  
12 by the prosecutor when she was stating that she intended  
13 to produce some hearsay evidence. And she was summarizing  
14 what she thought the allegations against Mr. Gallishaw  
15 were, and in that motion I believe she did not correctly  
16 summarize what the allegations against Mr. Gallishaw were.

17 Q. Thank you for clarifying that. At the time of the  
18 trial was that something worth pursuing?

19 A. Not in my opinion.

20 Q. Is that the equivalent of a Scribner's error?

21 A. That is what I told Mr. Gallishaw; that I did not  
22 think it was relevant or carried any weight.

23 Q. And in preparing for trial what was your overall  
24 defense for Mr. Gallishaw?

25 A. Defense was that it didn't happen; that his

1 confession was coerced; and that the girls were lying  
2 because they were jealous of each other. Just one moment.  
3 I have something else about that. Oh, he said the girls  
4 were coached, and that they were jealous of each other.  
5 And also that he had sexual performance issues that would  
6 prevent him from having sex with the girls.

7 Q. Did you feel you had adequate evidence to back up  
8 this defense?

9 A. No. Well, wait a minute. About the girls being  
10 jealous of each other or lying?

11 Q. Any elements?

12 A. There was no medical evidence. No, none of it -- did  
13 I think we would be able to do effectively convey to the  
14 jury especially since at the time he had a young baby that  
15 she had recently fathered.

16 Q. There was some talk with Mr. Gallishaw about  
17 allegations towards his wife? Whether any threats were  
18 made to remove the children from the home. Do you  
19 remember that?

20 A. I do.

21 Q. How did you address that?

22 A. The ---

23 Q. Or take a step back. Did that come up at trial?

24 A. I'm not sure if that came at trial or not. I know it  
25 came up in the Jackson v. Denno where all the officers



1 denied making any threats. I would have to go back and  
2 review the transcript. I know I did cross-examine  
3 Ms. Gallishaw about whether or not she had called the  
4 police and reported certain things to the police.

5 But I don't recall that she ever said she was  
6 threatened. In fact she specifically denied that she was  
7 ever threatened. I'm sorry.

8 Q. That was during the Jackson v. Denno hearing?

9 A. No. Actually, Ms -- in -- during Ms. Gallishaw's  
10 testimony I believe that she denied ever being threatened.  
11 If I'm not mistaken I just read that. And I don't see  
12 that. I'm sorry. If you can go back to the original  
13 question.

14 Q. Which was that generally about whether any threats  
15 were conveyed to Ms. Gallishaw, and your memory was that  
16 there were no threats were made to her and that was her  
17 testimony at some point in time?

18 A. At some point, yes.

19 Q. And just briefly for the record do you recall  
20 initially raising the motion to be relieved as counsel?

21 A. I do.

22 Q. And that was denied by the Judge?

23 A. Yes, it was.

24 Q. And you conveyed that on Mr. Gallishaw's request?

25 A. Yes.

1 Q. Did you believe you were prepared and ready to go  
2 forward? There would be no conflict?

3 A. Yes.

4 Q. The last issue I believe that was brought up on --  
5 excuse me. Through Mr. Gallishaw was that of the motion  
6 for mistrial when Ms. Gallishaw left crying?

7 A. Yes.

8 Q. You made a motion for a mistrial based on possible --  
9 what were your reasons?

10 A. Well, I don't have it right in front of me, but  
11 basically because the outburst would be prejudicial and  
12 might lend some weight to what the child was saying during  
13 the interview and if I could find that page.

14 Q. Potentially?

15 A. Yes.

16 Q. Do you recall making a jury instruction request  
17 regarding any inference about that behavior?

18 A. I did, and the Judge did give a curative instruction.

19 MS. KINARD: And I would point the Court to Page 449  
20 is where that's at.

21 BY MS. KINARD:

22 Q. During this trial is it your practice to move for  
23 directed verdict at the close of testimony?

24 A. Yes.

25 Q. Do you recall whether any testimony was presented by

1 the Defense in this case?

2 A. Yes. The Defendant testified.

3 Q. Can you describe generally what was conveyed through  
4 the testimony?

5 A. What was conveyed through Mr. Gallishaw's testimony?

6 Q. Yes. And any discussion you had with him about  
7 whether he should testify?

8 A. Just one moment, please.

9 Q. His testimony begins on Page 582, if that's helpful.

10 A. Okay. I'm sorry. Your question was what? Did his  
11 testimony convey?

12 Q. Yes.

13 A. I know that he testified that the girls were jealous  
14 of each other. He testified that he was on drugs. We  
15 actually -- Mr. Swilley brought out his prior criminal  
16 record on direct. He testified about his sexual problems  
17 performing and the need to use enhancements.

18 He testified about what happened the day that this  
19 wife allegedly walked in the bathroom and gave and  
20 alternate story about what had happened. He was on  
21 medication, and he went in there to wash.

22 Q. I'm just going to stop your here. We talked instead  
23 about any conversations y'all had before trial about  
24 whether he should testify?

25 A. Well, yes, we did because we knew what the -- we knew

1 basically what the testimony was going to be from the  
2 daughters, and Jimmy all along wanted to testify. He  
3 think he thought he could convince the jury that the girls  
4 were lying and that he was telling the truth.

5 Q. Did you provide him any advice on whether he should  
6 testify?

7 A. I just thought -- Mr. Swilley mostly talked to him  
8 about that. I'm sure we talked about his criminal record  
9 and whether or not the jury would try to use that to --  
10 would use that against him or hold that against him. So I  
11 don't think that he had a significant record, and  
12 basically there was no -- there was nothing to dispute  
13 what happened without him testifying.

14 So I think all along he wanted a trial, and he wanted  
15 to testify, but we did talk about the dangers of  
16 testifying and his record being brought out.

17 Q. I don't think I have any further questions, though I  
18 would like to give you the opportunity to state anything  
19 to the Court that you believe I haven't cover regarding  
20 representation of Mr. Gallishaw?

21 A. I don't have anything.

22 Q. Thank you.

23 MS. KINARD: Nothing further.

24 CROSS-EXAMINATION

25 BY MR. BOOZER:

1 Q. Ms. Little, how are you?

2 A. Good. Thank you.

3 Q. Good. Did Mr. Gallishaw ever consider a plea or was  
4 he intent on having a trial the entire time?

5 A. I have in my notes that he always rejected a plea;  
6 that he wanted a trial. But I also have in my notes that  
7 at one point I thought he was on the verge of accepting  
8 the plea, and that would have been about two weeks, three  
9 weeks, before the trial. But I have in my notes just say  
10 last minute he reconsidered. And it says against my  
11 repeated advice.

12 Q. Okay. Who had the most contact with Mr. Gallishaw?  
13 Would it have been you or Mr. Swilley?

14 A. It would have been -- I think it was me up to maybe  
15 the last week before the trial. It was probably more  
16 Mr. Swilley especially getting into the sexual matters.  
17 Mr. Gallishaw did not want to talk to me a lot about that.

18 Q. Okay. And was that a big part of the defense of the  
19 case for some of the sexual issues that he was alleged to  
20 have experienced?

21 A. Yes.

22 Q. Okay. Do you think that Mr. Swilley was able to  
23 develop all that in a short time that he was meeting with  
24 Mr. Gallishaw?

25 A. Yes, I think so.

1 Q. What was the relationship like between you and Mr.  
2 Gallishaw? Were y'all on good terms or difficult terms?

3 A. I thought we were on good terms except for -- if you  
4 will just give me a second. I want to see where I think  
5 that that kind of broke down. Okay. I just have a note  
6 here. It was actually about three weeks before the trial  
7 after I spoke with Defendant he told me he wanted to talk  
8 to Matt alone. And then Mr. Swilley actually told me that  
9 Mr. Gallishaw was complaining because he didn't think I  
10 believed him.

11 That was when I decided to -- Mr. Swilley agreed to  
12 assist me with the trial. Mr. Gallishaw liked him. They  
13 seemed to have a good rapport. So I definitely brought  
14 Mr. Swilley on board and continued to be Mr. Gallishaw's  
15 attorney. But, obviously, he felt more comfortable  
16 talking to Matt. So I didn't feel like I could leave the  
17 case without being relieved, but I did bring Matt in to  
18 assist.

19 Q. Did you ever have any sort of discussion with  
20 Mr. Gallishaw as to whether you had an opinion about his  
21 guilt or innocence?

22 A. No. I don't -- I didn't -- I never -- I gave him a  
23 personal opinion about his guilt or innocence.

24 Q. Did you ever make a statement -- I think you said you  
25 were here for his testimony earlier?

1 A. Yeah, but I didn't hear exactly what he said.

2 Q. And if I may I believe it was something along the  
3 lines of that he stated that you indicated to him that you  
4 were not the one molesting his own daughter?

5 A. I never -- I don't recall ever saying that. I don't  
6 think I would have ever said that to a client. I might  
7 have said, "Im not the one charged with molesting or  
8 accused of," but I never told him.

9 Q. You may have made the statement that you were not the  
10 one charged with or accused of molesting?

11 A. Well, I don't recall making that statement, but I  
12 know I never told him that. What he's saying I said I  
13 never said that.

14 Q. Did -- Mr. Gallishaw, is he the one that actually  
15 filed time the motion to have you relieved or was that  
16 something you were seeking?

17 A. When I found out that he had the problem with me and  
18 he wanted Matt to be his lawyer I immediately filed the  
19 motion.

20 Q. You filed the motion asking to be relieved or on his  
21 behalf?

22 A. I don't have that motion. I filed the motion to be  
23 relieved at his request.

24 Q. Okay.

25 A. Because he wanted Mr. Swilley.

1 Q. Do you recall or did you ever have any discussion  
2 with Mr. Gallishaw where he indicated to you that his wife  
3 had been threatened with charges or the children would be  
4 removed from the home?

5 A. I do recall -- yes, I do recall him -- us talking  
6 about that, yes.

7 Q. When would that have been?

8 A. I believe from the very beginning Mr. Gallishaw told  
9 me that the reason he made the confession was to get them  
10 to leave his wife alone.

11 Q. Were you ever able to bring that out at trial either  
12 with Mr. Gallishaw or in questioning Ms. Gallishaw?

13 A. I know I questioned Ms. Gallishaw about reporting or  
14 not reporting things to the police. I'm sorry. I would  
15 have to go back and review Mr. Gallishaw's testimony as to  
16 whether -- I know at the Jackson v. Denno hearing that was  
17 discussed. But I can't specifically recall.

18 Q. If you do want to take a minute, please, take a  
19 moment to review whatever you need to. But in the  
20 meantime would that have been important testimony to get  
21 before the jury?

22 A. I'm not sure. In what regard? The fact that they  
23 were threatening to take Ms. Gallishaw's children? I'm  
24 sorry. Can you go back and rephrase that?

25 Q. Yes, ma'am. The allegation is that there were some



1 threats made to Ms. Gallishaw that law enforcement was  
2 threatening to take away the children or have the children  
3 removed or she could be charged with some sort of charge  
4 with connection with what Mr. Gallishaw was charged with.  
5 Would that have been important for the jury to know if  
6 that were true?

7 A. I'm really not sure whether the jury would have found  
8 that important or not as -- are you saying as a motive for  
9 her to lie?

10 Q. Yes. Absolutely. As either a motive for her to lie  
11 or a motive for him to have given the statement that he  
12 made?

13 A. They certainly may have considered that. Yes.

14 Q. But if those questions weren't asked then there was  
15 no way for the jury to have taken that into consideration?

16 A. No. That is correct.

17 Q. And do you think they could have potentially affected  
18 the outcome of the trial?

19 A. No, I don't.

20 Q. Why not?

21 A. Because the evidence against Mr. Gallishaw was  
22 overwhelming.

23 Q. Do you recall when you became aware when this case  
24 would be on the trial roster?

25 A. Originally, it was placed on trial docket for May and

1 then it was continued. So I knew that it was coming up  
2 for trial probably in April.

3 Q. And how about the second trial?

4 A. I'm not sure. I believe that -- I believe when it  
5 was continued in May it was up for trial as soon as they  
6 could get it tried. So I'm sure I began preparing in  
7 earnest at that time.

8 Q. How much contact would you have had with  
9 Mr. Gallishaw immediately prior to trial? I think cause  
10 was it at that time he was meeting with Mr. Swilley?

11 A. Let me see. My notes say that I saw him  
12 September 14th and September 15th; that on the 15th he  
13 said he wanted to talk to Matt alone, so Matt was at the  
14 jail at the time I wrote this note on the 15th.

15 I have a not that Matt went to the jail on --  
16 again -- I'm sorry. That was on the 15th. I saw him  
17 again on the 16th, and part of what I was doing during  
18 that time was actually talking to people who might have  
19 been witnesses. And I visited the home where this  
20 allegedly took place.

21 Spoke to some family members. So I don't know how  
22 many times Mr. Swilley went to see him, but it looks like  
23 I saw him several times right before the trial.

24 Q. Did you file the Notice of Appeal for Mr. Gallishaw?

25 A. I did.

1 Q. Okay. Did you have any discussion with Mr. Gallishaw  
2 about what you thought might have been good appeal issues?

3 A. I don't recall that conversation. I just know that I  
4 told him that I would immediately file his appeal and that  
5 he would be given appellate counsel.

6 Q. Did you ever have any contact with his appellate  
7 counsel, Mr. Schaffer?

8 A. Not that I recall.

9 Q. Thank you, Ms. Little. That's all the questions I  
10 have for you.

11 THE COURT: Any redirect?

12 MS. KINARD: No redirect, Your Honor.

13 THE COURT: All right. You may come down.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you very much.

16 MS. KINARD: We call Mr. Swilley very briefly.

17 THE COURT: Come around, Mr. Swilley.

18 THE WITNESS: Yes, sir.

19 THE COURT: Mr. Swilley, you have been previously  
20 sworn in this Court.

21 MATTHEW SWILLEY, after previously being duly  
22 sworn, testified as follows:

23 THE WITNESS: Yes, sir.

24 THE COURT: Remind you that you're still under oath.

25 MS. KINARD: Thank you.

DIRECT EXAMINATION

BY MS. KINARD:

Q. Mr. Swilley, I have a few questions. You testified in an earlier hearings, but I just want to repeat for this record. Briefly, how long have you been practicing the law?

A. Since November of 2009.

Q. And what percentage of that was in criminal law?

A. Almost entirely.

Q. At the time of this case were you a member of the Public Defender's Office?

A. I was.

Q. And did you become involved in this case as a second chair for a term with Ms. Little?

A. Yes.

Q. What is your memory of how long you were involved with this case?

A. A number of weeks. I can't recall exactly how many, but the trial was looming. That's when I got involved.

Q. What's your memory of -- are there any particular reasons why you became involved in this case?

A. I think that -- I think Jimmy was having -- Jimmy and Miss Little's rapport wasn't as good as maybe she felt it should have been and got me involved.

Q. Were there any specific factual issues that he felt

1 discussed with you.

2 A. I'm sorry?

3 Q. Were there any specific factual issues that Mr.  
4 Gallishaw might have felt more comfortable discussing with  
5 you?

6 A. I think so.

7 Q. What would those have been, vaguely?

8 A. Matter pertaining to sexual functions.

9 Q. Do you feel like the conversations you had with him  
10 about those issues were constructive?

11 A. No, not in particular.

12 Q. Do you feel like he understood everything you  
13 discussed with him?

14 A. I can't really say. I think he understood everything  
15 I told him.

16 Q. Was he able to ask you informed questions?

17 A. Yes.

18 Q. Did you discuss the elements of the crimes and the  
19 charges he was faced with?

20 A. Yes.

21 Q. Did you discuss any potential punishment?

22 A. Yes.

23 Q. Did you discuss whether or not he should testify at  
24 his trial?

25 A. Yes.

1 Q. And that was a decision that he made on his own?

2 A. Yes.

3 Q. And did you discuss a plea offer with him?

4 A. Yes.

5 Q. And it was his decision to turn down his plea offer?

6 A. Yes.

7 Q. Did you offer him any advise regarding the plea  
8 offer?

9 A. Yes.

10 Q. What was that?

11 A. That he should consider taking it. That he should  
12 take it.

13 Q. So going into trial you thought that he understood  
14 his position?

15 A. Yes.

16 Q. And you subsequently understood the strategy and the  
17 defenses that y'all were going to present of his behalf?

18 A. Yes.

19 Q. Do you believe, for lack of a better term, faced an  
20 uphill battle in fighting those charges?

21 A. Yes.

22 Q. Is there anything else that you would like the Court  
23 to know about your representation of Mr. Gallishaw?

24 A. No.

25 Q. Thank you?

1 MS. KINARD: No further questions.

2 CROSS-EXAMINATION

3 BY MR. BOOZER:

4 Q. Mr. Swilley, how are you?

5 A. Good.

6 Q. How -- I may not have heard how long or how many  
7 times you met with Mr. Gallishaw, but how many times do  
8 you think you met with Mr. Gallishaw?

9 A. I can't remember an exact number, but I mean I met  
10 with Mr. Gallishaw. I remember meeting with him alone. I  
11 remember meeting him with Tonya at the jail. I can't  
12 recall exactly how many though.

13 Q. Did you examine witnesses at trial?

14 A. Yes.

15 Q. Okay. Did you examine either Ms. Gallishaw or -- did  
16 you examine Ms. Gallishaw?

17 A. I can't remember.

18 Q. You did give an opening statement?

19 A. Yes.

20 Q. Did you deliver the closing or was that Miss Little?

21 A. I delivered the closing.

22 Q. You delivered the closing?

23 A. Yes.

24 Q. Did you ever get into or did you have any discussion  
25 with Mr. Gallishaw about his wife, Mrs. Gallishaw, being

1 threatened by law enforcement with some sort of charge or  
2 with the children being removed from the home?

3 A. Not to my recollection.

4 Q. You're not sure y'all had any of that discussion?

5 A. Yeah, I can't remember.

6 Q. Would that have been important information to have at  
7 the trial to attack the credibility of anything  
8 Ms. Gallishaw said or to assist in the statement that Mr.  
9 Gallishaw made?

10 A. Yeah. Well, yes.

11 Q. And do you think that would have been important  
12 information for the jury to have heard?

13 A. Yes.

14 Q. Why would that be important?

15 A. It would relate to her credibility.

16 Q. Okay. Did you have any role in sort of the trial  
17 strategy itself? Were you there mainly to discuss and  
18 relay what Mr. Gallishaw told to you back to Ms. Little?

19 A. I'm sorry.

20 Q. Sure. That's probably a poorly phrased question.  
21 Were you involved in developing the trial strategy before  
22 trial?

23 A. Well, I mean, yes. The trial strategy in sex cases  
24 is the same very time. The person didn't do the abuse,  
25 more or less. I mean there is not -- when you say, 'trial



1 strategy' do you mean there is the theory and then there  
2 is the preparation. I mean I was involved in the  
3 preparation. The theory is usually -- doesn't usually  
4 deviate from case to case.

5 Q. Did you have any discussions with Mr. Gallishaw about  
6 entering any sort of plea?

7 A. Yes.

8 Q. What was that discussion?

9 A. Once -- the plea was offered originally -- I believe  
10 it was a straight up plea to C.S.C., criminal sexual  
11 conduct second degree with a minor, and I believe that  
12 Ms. Little and Ms. Mayes came to an agreement at some  
13 point of a negotiated 15 years to criminal sexual conduct  
14 second with a minor. And my advice was for him to take  
15 that offer.

16 Q. Your advice was for him to take it?

17 A. Um hum.

18 COURT REPORTER: I need a verbal response.

19 THE WITNESS: I'm sorry. I apologize. Yes, that was  
20 my advice.

21 BY MR. BOOZER:

22 Q. Okay. Did he ever in discussions with you ever  
23 indicate that he was thinking about accepting a plea or  
24 was he fairly adamant that he wanted a trial?

25 A. He was fairly adamant that he wanted a trial the

1 whole time to my recollection.

2 Q. Did he ever express to you any displeasure in the  
3 services of Ms. Little?

4 A. Yes.

5 Q. And what was that?

6 A. Basically, that I think he conveyed to me that he  
7 felt she wasn't advocating as fiercely for him as he felt  
8 she should be.

9 Q. Did -- other than that did he discuss any specifics  
10 with you?

11 A. I think he didn't feel comfortable talking about  
12 certain personal matters with a woman.

13 Q. Thank you, Mr. Swilley. That's all the questions I  
14 have.

15 MS. KINARD: No redirect.

16 THE COURT: All right. You may come down, sir.

17 MS. KINARD: That's the State's case, Your Honor.

18 THE COURT: All right. All right, counsel, I'll  
19 expect post orders in 30 days.

20 MS. KINARD: Thank you, Your Honor.

21 MR. BOOZER: Thank you, Your Honor.

22 THE COURT: All right.

23 END OF TRANSCRIPT OF RECORD

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA       )  
                                                  )  
COUNTY OF DARLINGTON       )

I, HATTIE O. GORDON, Official Court Reporter for the  
4th Judicial Circuit of 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 Common Pleas for  
Darlington County, South Carolina, on the 20th day of  
July, 2016.

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

June 29, 2017

A handwritten signature in dark ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

HATTIE O. GORDON, Court Reporter

TRUE CERTIFIED COPY,

STATE OF SOUTH CAROLINA  
COUNTY OF DARLINGTON

Jimmy Gallishaw, #341905,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTH JUDICIAL CIRCUIT  
DARLINGTON COUNTY, SC  
Case No. 2013-CP-16-0576**ORDER OF DISMISSAL**

This matter came before the Court by way of an Application for Post-Conviction Relief filed July 3, 2013. Respondent filed a return and motion for more definite statement on or about June 11, 2015. Applicant filed an amended application on June 17, 2016, to which Respondent did not file a return. The Court convened an evidentiary hearing into the matter on July 20, 2016, at the Chesterfield County Courthouse. Applicant was present and represented by Lance S. Boozer, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and Applicant's trial counsel, Tonya Copeland-Little and Matthew Swilley, Esquires, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Darlington County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. In October 2009, the Darlington County Grand Jury indicted Applicant for three counts of first degree criminal sexual

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DARLINGTON COUNTY, S.C.

conduct with a minor (2009-GS-16-1235, -1238, -1239), two counts of lewd act on a minor (2009-GS-16-1236, -1240), and two counts of incest (2009-GS-16-1237, -1241). Tonya Copeland Little, Esquire, and Matthew S. Swilley, Esquire, represented Applicant. On July 19, 2010, Applicant proceeded to trial before the Honorable Howard P. King and a jury. On July 23, 2010, the jury found Applicant guilty as indicted. Judge King sentenced Applicant to consecutive terms of imprisonment for twenty-five years on two of the first degree criminal sexual conduct with a minor convictions. Judge King sentenced Applicant to concurrent term of twenty-five years on the remaining first degree criminal sexual conduct with a minor conviction, fifteen years on each lewd act conviction, and ten years on each incest conviction.

Applicant filed a timely notice of appeal. Tristan M. Shaffer, Esquire, and Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on September 19, 2012. State v. Gallishaw, Op. No. 2012-UP-532 (S.C. Ct. App. filed September 19, 2012). The remittitur was returned to the circuit court on October 5, 2012

## II. Allegations

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

1. "Applicant was denied the effective assistance of trial counsel as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and the provisions of the South Carolina Constitution when trial counsel failed to perform her duty as a competent counsel before and at trial."
  - a. "The ground for relief states the relevant facts"
2. "Applicant was denied effective assistance of Appealant Counsel, in return denied him his first bite at the apple"
  - a. "Applicant's counsel failed to present all issues available to him on appeal that the record reflects. Applicant's Sixth and Fourteenth Amendments were

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violated State and Federal Constitutional rights among others.”

Applicant’s amended application included the ground of “Trial counsel failed to adequately cross-examine and attack credibility of witnesses.”

### III. Findings of Fact and Conclusions of Law

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel’s testimony credible and Applicant’s testimony not credible. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### Summary of testimony

##### Jimmy Gallishaw, Jr. - Applicant

Applicant began his testimony by describing his interactions with Ms. Little and stating that he met with her three times in seventeen months, and that Mr. Swilley was brought onto the case when Applicant wanted to speak with a male attorney about some private matters. He felt offended by comments that Ms. Little had made and inferred that she believed he was guilty, which led him to ask for her to be relieved the first day of the trial. This request was not granted, and the trial proceeded with both Ms. Little and Mr. Swilley as Applicant’s trial counsel.

Applicant testified that he remembered reviewing the discovery and State’s evidence with his attorneys, but was not sure that they discussed a trial strategy. However, Applicant testified that he never asked his attorneys to find witnesses to testify on his behalf, but rather wanted them to contradict what was being presented by the State with inconsistencies that he had found.

G2 3

Applicant went on to delineate some of these inconsistencies: differences between the testimonies of Officer August and Agent Charles; differences in his wife's testimony regarding what was said to law enforcement versus on the stand toward her; Ms. Little's failure to ask if his wife had been threatened with removal of the children; differences in his daughter's and the expert's testimony; and differences in the reporting of what he was wearing during the incident. Applicant also testified that he believed hearsay testimony was presented and not objected to by counsel, particularly in the statements of children and a CARE house report that he believed contained information from a prior visit of his daughter's. He was further concerned about the fact that his wife left in tears during their daughter's testimony, though he did recall that the judge gave a curative instruction to the jury to disregard the behavior.

Regarding his allegations about appellate counsel, Applicant testified that he provided appellate counsel with background and citations to the trial transcript that he thought may be helpful. He further testified that appellate counsel usually responded, but he wished that they had more interaction so he could have "guided" appellate counsel to show him that little had been preserved. He further testified that he thought Ms. Little was effective in her handling of the issue of the videotape during Officer August's testimony.

During cross-examination, Applicant recalled that Ms. Little moved for a continuance at the beginning of a trial due to the recent receipt of evidence. He also testified that he never provided his attorneys with any witness names or other information that would have been potentially beneficial to his case. Applicant testified that he understood the charges he was facing and all of the elements of those charges, as well as the contents of the discovery that he reviewed.



Tonya Copeland Little, Esquire – lead trial counsel

Ms. Little testified that she met with the Applicant approximately nine (9) times at the jail before trial, and that several of those times occurred within the same day as trial grew closer. She also went to the home and visited several potential witnesses. Ms. Little stated that some of her visits with the Applicant were with Mr. Swilley, and that Mr. Swilley met with the Applicant at least once without her present. She corroborated the Applicant's testimony that Mr. Swilley was brought on to assist with the case because the Applicant wanted to speak to a man about private, sexual matters, especially as these issues constituted a large part of the defense strategy. When asked if she believed the Applicant was guilty or told him she believed as much, Ms. Little stated that she never had a conversation with the Applicant about guilt or innocence.

Regarding discovery, Ms. Little testified that the proper motions were filed regarding discovery, and that she received everything in a timely matter except for letters that Applicant had written, which were not presented to her until very close to the time of trial. She further testified that she gave a hard copy of all discovery materials to the Applicant and the investigator on the case, and she watched the forensic interviews of the child victim with the Applicant. As part of the preparation process, she ensured that the Applicant understood the charges he was facing and elements of those charges.

Ms. Little testified that the Applicant received a plea offer of fifteen (15) years approximately two (2) months before the time of trial. She originally received an offer of 10-30 (ten-thirty) years, and went with the investigator to discuss this offer with the Applicant at length, but he outright rejected the offer and refused to plead to anything. Even when Ms. Little negotiated to an offer of fifteen (15) years, Applicant refused to plead and the offer was withdrawn. Ms. Little testified that the Applicant's mother called and begged her to get the offer



back on the table, yet Applicant still refused to consider an offer, despite the encouragement of his attorneys and family.

When questioned about specific facts arising during trial, Ms. Little was able to accurately and adequately explain her trial tactics. Because most of the issues that the Applicant brought up during his testimony were regarding inconsistencies between different accounts of the case, Ms. Little was able to point to each statement and explain that these differences existed but were not material. Regarding some of these, such as differences between versions of testimony, Ms. Little testified that not only were these differences immaterial, she was strategically attempting to avoid repeated mentions of certain factors in order to avoid drawing unnecessary attention. This is a similar tactic to Ms. Little's motion for a mistrial when the Applicant's wife left in tears during their daughter's testimony – she believed that the attention drawn was prejudicial and drew undue attention to the child's testimony. On cross-examination, Ms. Little was asked about Applicant's testimony during trial about whether charges were filed against Applicant's wife or if threats were made regarding removing the children from her home, and why she did not bring these forward. Ms. Little testified that she only remembered testimony about this during the pre-trial Jackson v. Denno<sup>1</sup> hearing, and did not believe that it would have made a difference in the case in chief if the jury heard this information, as the other evidence against the Applicant was overwhelming.

Ms. Little testified that the Applicant testified on his own behalf during trial, and he had always been intent on doing so. She further testified that it was her understanding that Mr. Swilley spoke with the Applicant about testifying, including that the State could use his prior criminal record against him if he chose to testify. Lastly, Ms. Little testified that she filed a

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<sup>1</sup> Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964).

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notice of appeal in this matter, but did not recall talking to the Applicant or appellate counsel about it.

Matthew Swilley, Esquire – second chair trial counsel

Mr. Swilley testified that he sat second chair on the trial of this matter and was involved for a number of weeks before the trial. His primary objective was to speak with the Applicant about his sexual functions and issues, though he was not sure how important it was to the case. Mr. Swilley testified that he reviewed the charges and elements of the charges that the Applicant faced, as well as what it meant for him to testify on his own behalf. He advised the Applicant to take the plea offer that was negotiated for him, but the Applicant was adamant that he wanted a trial and tell his side of the story. Mr. Swilley testified that the Applicant understood the defensive position and strategy that he and Ms. Little had prepared, but also that the Applicant faced an uphill battle. He testified that the strategy was typical of a sexual abuse case, in that the best argument is that the accused simply did not commit the crime. On cross-examination, Mr. Swilley testified that he could not recall if the threats of charges against the Applicant's wife or removal their children was discussed, though he admitted that it could have been important because it would have affected her credibility with the jury.

Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon

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as having produced a just result.” Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel’s performance was deficient. Id. Under this prong, the Court measures trial counsel’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

This Court finds Applicant has failed to show that either attorney’s performance fell below an objective standard of reasonableness. All testimony indicated that the attorneys were extremely familiar with the facts of Applicant’s case. This Court finds trial counsel met with Applicant an adequate number of times and were familiar with the discovery materials. Trial counsel indicated that they explained Applicant’s constitutional rights, and they explained the differences between going to trial and entering a guilty plea, especially in light of the favorable plea offer that was discussed. Counsel indicated they never had trouble communicating with

Applicant, and they never had any concern that Applicant did not fully understand their conversations.

Counsel refuted all allegations that Applicant made in his application as well as during his testimony including, but not limited to, inconsistencies in testimony; issues regarding charges against Applicant's wife and threats of removing children from the home; Applicant's motion to relieve Ms. Little; defense strategies; availability of witnesses; and the problems arising out of Mrs. Gallishaw's leaving the courtroom in tears. This Court finds that, through the presentation of evidence at the post-conviction relief hearing, Applicant has failed to demonstrate both deficiency by trial counsel, as well as any prejudice caused by trial counsel's actions. Therefore, this allegation is denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel

Applicant alleges he was denied effective assistance of appellate counsel in that appellate counsel failed to raise all meritorious issues that could have been raised on appeal. A criminal defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Applicant must show (1) that appellate counsel's performance was deficient; and (2) that he was prejudiced by the deficient performance. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citing Strickland v. Washington, 466 U.S. 668 (1984); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)). Further, the courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300

S.C. 115, 386 S.E.2d 624 (1989).

To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. (citing Evitts, 469 U.S. 387, 105 S.Ct. 830 (1999)). Counsel is not required to raise every non-frivolous claim, but instead may select among them to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259 (2009). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy." Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (quoting Jones v. Barnes, 463 U.S. 745, 754, 103 S.Ct. 3308 (1983)). See also Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985) (finding the failure to appeal all trial errors is not ineffective assistance where strategic decision to exclude issues on appeal is based on reasonable professional judgment).

When a claim of ineffective assistance of appellate counsel is based on 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. If the issue is not preserved for appeal, appellate counsel cannot be ineffective for not raising that issue on appeal. See State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991) (holding where an objection and the ground therefore is not stated in the record, there is no basis for appellate review).

Here, the issue Appellate Counsel raised on appeal was whether the trial court erred in qualifying an expert in the field of child abuse assessment because the State failed to offer any evidence concerning the reliability of the field. Applicant asserts that appellate counsel should



have also raised the fact that the trial court failed to relieve Ms. Little and that there were issues regarding the testimony of Officer August and the capability of law enforcement to videotape an interview. However, many of these arguments were either waived by Applicant at trial or were otherwise not properly preserved for appeal. Specifically, the trial judge gave proper rulings and curative instructions on the issues.

Accordingly, because this Court must presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment, Strickland, 466 U.S. 668, this Court finds that appellate counsel chose to assert the claim he found to be most meritorious. Furthermore, though he argues that appellate counsel could have made other arguments, Applicant has presented no showing of how they would have affected the outcome of his appeal. Therefore, this Court finds that appellate counsel raised the issue that had the greatest chance of being successful on appeal.

This Court finds, in viewing the record in the light most favorable to Applicant, there is no genuine issue of material fact with regard to Applicant's allegation that appellate counsel failed to raise issues on appeal, and it is therefore denied and dismissed.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.



#### IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### **IT IS THEREFORE ORDERED THAT:**

1. This Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17 day of February, 2016.

  
G. THOMAS COOPER, JR.  
Presiding Judge  
Fourth Judicial Circuit

2017 FEB 24 AM 11:24  
FILED  
SCOTT E. SUGGS  
CLERK OF COURT/R.O.D.  
BARLINGTON COUNTY, S.C.

Campbell, South Carolina

## WITNESSES

D Watson

Darlington Police Department

Law Enforcement Case #: 0902-0136



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## WAIVER OF PRESENTMENT

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

Defendant

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

Defendant

ARREST WARRANT NUMBER  
DAR0830

ARRESTED ON: Direct Presentment

## ACTION OF GRAND JURY

**TRUE BILL**

Grand Jury Foreperson

Date **OCT 22 2009**

## VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:  
2009-GS-16-1235

The State of South Carolina

County of Darlington

## COURT OF GENERAL SESSIONS

Term:  
October 2009

THE STATE

vs.

JIMMY GALLISHAW JR

## INDICTMENT FOR

Sex / Criminal sexual conduct with minor -  
victim under 11 years old

§16-03-0655(1)

CDR Code: 0385

TRUE CERTIFIED COPY, 1

  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC

William B. Rogers, Jr., Solicitor



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF DARLINGTON ) Sex / Criminal sexual conduct with minor - victim  
 ) under 11 years old

§16-03-0655(1)

At a Court of General Sessions, convened on October 26, 2009, the Grand Jurors of Darlington County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH A MINOR**  
**FIRST DEGREE**

CDR: 0385 16-03-0655(A)(1)

That Jimmy Gallishaw, Jr. did in Darlington County, state aforesaid, on or between June 10, 2007 and June 9, 2008, willfully and unlawfully commit criminal sexual conduct with a minor in the first degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: A [REDACTED] W [REDACTED], date of birth [REDACTED], 1997, in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

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

WILLIAM B. ROGERS, JR.  
SOLICITOR