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ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MCCORMICK COUNTY

R. Knox McMahon, Circuit Court Judge

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OCT 17 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANDREW JAMES HARRELSON,

APPELLANT

APPELLATE CASE NO. 2011-187406

RECORD ON APPEAL

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SC Court of Appeals

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2 COURT OF GENERAL SESSIONS
3 COUNTY OF MCCORMICK
4

5 STATE)
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7 V.) TRANSCRIPT OF RECORD
8) 07-GS-35-195
9 ANDREW JAMES HARRELSON, JR.)
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TRANSCRIPT OF RECORD

07-GS-35-195

DEFENDANT.

FEBRUARY 24, 2009
MCCORMICK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

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

H. FRANKLIN YOUNG, III, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

E. TIM MOORE, JR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

1

I N D E X

2

WITNESSESDIRECTCROSSREDIRECTRECROSS

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4

5

(There were no witnesses.)

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Court's 1	DMH Report	4	
Court's 2	Dr. Stephen Enns Report	14	

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1 (The following proceedings were held on
2 February 24, 2009.)

3 (Court's Exhibit Number 1, report, was
4 marked for identification purposes.)

5 MR. YOUNG: Your Honor, this is Andrew
6 Harrelson. He's indicted for criminal sexual
7 conduct with a minor. He's pleading guilty to a
8 negotiated sentence of 15 -- excuse me -- to a YOA
9 sentence for a lewd act. There is a prior order for
10 him to undergo evaluation at the Department of
11 Mental Health, that order has been handed to you.
12 The Court should conduct, first, a Blair hearing
13 into his competence so that we can proceed. I
14 believe there's a stipulation to the DMH order and
15 evaluation.

16 (Pause.)

17 THE COURT: Are you Andrew James Harrelson,
18 Jr., sir?

19 DEFENDANT HARRELSON: Yes, sir.

20 ANDREW JAMES HARRELSON, JR.,
21 having been duly sworn, testified as follows:

22 THE COURT: Mr. Harrelson, I've reviewed the
23 report that was prepared by Dr. Freeman and Counsel
24 Whetstone at Department of Mental Health and the
25 University of South Carolina School of Medicine.

1 It's a very detailed report. It goes through a
2 great deal of history. And the conclusion is that
3 you do not suffer from any type of mental disease or
4 defect that would have affected your ability to
5 differentiate right from wrong at the time of the
6 alleged offense or to conform your conduct to the
7 requirements of law. It also makes a determination
8 that you are competent to stand trial, you're
9 competent to make rational choices concerning the
10 case against you and to assist your attorney in your
11 defense.

12 I need to ask you some questions. These are
13 standard questions, all right?

14 DEFENDANT HARRELSON: Yes, sir.

15 THE COURT: Do you know why you're here today?

16 DEFENDANT HARRELSON: Yes, sir.

17 THE COURT: Tell me why you're here.

18 DEFENDANT HARRELSON: Because I touched a minor
19 inappropriately.

20 THE COURT: Okay. Do you know who that is to
21 your left?

22 DEFENDANT HARRELSON: Yes, sir, that's my
23 lawyer.

24 THE COURT: What's his job?

25 DEFENDANT HARRELSON: He's here to defend me.

1 THE COURT: To defend you?

2 DEFENDANT HARRELSON: Yes, sir.

3 THE COURT: Mr. Young works for Solicitor
4 Myers' office. Do you know what his job is?

5 DEFENDANT HARRELSON: Not really.

6 THE COURT: Do you know what a prosecutor does?

7 DEFENDANT HARRELSON: Not so much.

8 THE COURT: Okay. Do you know what a jury
9 does?

10 DEFENDANT HARRELSON: Yes, sir.

11 THE COURT: What does a jury do?

12 DEFENDANT HARRELSON: They're there to find if
13 you're guilty or not.

14 THE COURT: Okay. How do they make that
15 determination? What do they base it on?

16 DEFENDANT HARRELSON: The witnesses and the
17 testimony, sir.

18 THE COURT: Who puts up the witnesses against
19 you?

20 DEFENDANT HARRELSON: It's the person who --
21 it's not the defendant. It's not the person that's
22 being defended.

23 THE COURT: That's right. Who's on the other
24 side?

25 DEFENDANT HARRELSON: I can't think of the

1 name.

2 THE COURT: I'm not talking about an
3 individual's name. You know that, don't you?

4 DEFENDANT HARRELSON: Yes, sir, I know.

5 THE COURT: Do you know what my job is?

6 DEFENDANT HARRELSON: Yes, sir.

7 THE COURT: What's that?

8 DEFENDANT HARRELSON: To see the decision of
9 what is to come out of it.

10 THE COURT: Say again.

11 DEFENDANT HARRELSON: To see the decision of
12 what's to come out of it.

13 THE COURT: All right. If you enter this plea
14 of guilty, what will I do?

15 DEFENDANT HARRELSON: You will send me to
16 the --

17 THE COURT: You don't have to tell me specifics
18 of it, but what will I be doing?

19 DEFENDANT HARRELSON: Sentencing me.

20 THE COURT: That's right.

21 All right. So if Mr. Moore's going to defend
22 you and the jury's going to decide whether the case
23 has been proven or not and I'm going to do the
24 sentencing, you don't know who would put the case up
25 against you?

1 DEFENDANT HARRELSON: The witness, or no...

2 THE COURT: Yeah, the witnesses would have to
3 put the case up, but who brings the witnesses to
4 court?

5 DEFENDANT HARRELSON: The person you committed
6 the crime against.

7 THE COURT: That's a child, isn't it?

8 DEFENDANT HARRELSON: Yes, sir.

9 THE COURT: Okay. You don't think a child is
10 going to make arrangements to bring all of those
11 people in here, do you?

12 DEFENDANT HARRELSON: No, sir. It will be the
13 child's father.

14 THE COURT: Is the child's father a lawyer?

15 DEFENDANT HARRELSON: Yes, sir.

16 THE COURT: He is?

17 DEFENDANT HARRELSON: I'm sorry, what?

18 THE COURT: Is the child's father a lawyer?

19 DEFENDANT HARRELSON: No, sir.

20 THE COURT: Then how is he going to practice
21 law?

22 DEFENDANT HARRELSON: I have no idea.

23 THE COURT: He's not.

24 Okay. Who brought the charge against you? I
25 don't mean the victim. I mean, who came out and

1 said, you're under arrest?

2 DEFENDANT HARRELSON: It would be Ms. Jackie.

3 THE COURT: Ms. Jackie Crawford?

4 DEFENDANT HARRELSON: Yes, sir.

5 THE COURT: Who does she work for?

6 DEFENDANT HARRELSON: The sheriff's department.

7 THE COURT: Okay. Now, when the sheriff's
8 department -- do you think Ms. Jackie's a lawyer?

9 DEFENDANT HARRELSON: No, sir.

10 THE COURT: Okay. So she can't practice law?

11 DEFENDANT HARRELSON: No, sir.

12 THE COURT: Who does Ms. Jackie talk to about
13 presenting the case that she's made against you?

14 DEFENDANT HARRELSON: A lawyer.

15 THE COURT: That's right. Which lawyer?

16 DEFENDANT HARRELSON: (No response.)

17 THE COURT: Do you ever watch T.V. shows with
18 courtroom scenes?

19 DEFENDANT HARRELSON: Not really.

20 THE COURT: You never have?

21 DEFENDANT HARRELSON: No, sir.

22 THE COURT: Do you know what the word prosecute
23 means?

24 DEFENDANT HARRELSON: Yes, sir.

25 THE COURT: Tell me.

1 **DEFENDANT HARRELSON:** Means...

2 **THE COURT:** Just take your time. I'm not
3 trying to stump you. You've gotten everything
4 except this one issue and we've just got to get
5 through this issue. Do you know what the word
6 prosecute -- or to prosecute someone means?

7 **DEFENDANT HARRELSON:** I can't think of it.

8 **THE COURT:** You can't think of it?

9 **DEFENDANT HARRELSON:** Huh-huh.

10 **THE COURT:** How many times have you come to
11 court?

12 **DEFENDANT HARRELSON:** You mean how many
13 offenses or just --

14 **THE COURT:** I mean, on this charge. How many
15 times have you had to come into the courtroom?

16 **DEFENDANT HARRELSON:** Four or five times.

17 **THE COURT:** Were you ever here during a trial?

18 **DEFENDANT HARRELSON:** Yes, sir.

19 **THE COURT:** When the judge said, call your
20 first witness, who did he say that to?

21 **DEFENDANT HARRELSON:** The prosecutor.

22 **THE COURT:** Amen.

23 Mr. Young is an attorney. He works for
24 Solicitor Myers. We call them Solicitors in South
25 Carolina. In Georgia, they call them District

1 Attorney. And he would be the one who would be
2 allowed to practice law and present the case against
3 you.

4 So he'd bring the case against you and as you
5 said, Mr. Moore would defend you, the jury would
6 hear the evidence and decide whether the State had
7 proven you guilty or not. And I would preside over
8 the trial, try to make sure it was a fair trial and
9 then if the jury did find you guilty, I would
10 sentence you.

11 Now, if you plead guilty, you know what -- we
12 cut out a lot of that; do you understand?

13 DEFENDANT HARRELSON: Yes, sir.

14 THE COURT: Are you taking any medications
15 today?

16 DEFENDANT HARRELSON: Yes, sir.

17 THE COURT: What you taking?

18 DEFENDANT HARRELSON: Vyvanse.

19 THE COURT: That's V-Y-V-A-N-S-E.

20 DEFENDANT HARRELSON: I think so.

21 THE COURT: I'm going by the doctor's report.
22 Believe me, I don't know how to spell it without
23 looking at the doctor's report.

24 The doctor indicated that that medication has
25 been very helpful for your symptoms. It helped

1 decrease defiance towards various individuals. And,
2 apparently, you have some hyperactivity issues and
3 it's helped with hyperactivity. So the doctor says
4 that medication is helping you. Do you think that's
5 right?

6 DEFENDANT HARRELSON: Yes, sir.

7 THE COURT: Do you feel like you're clearheaded
8 today? You know what you're doing?

9 DEFENDANT HARRELSON: Yes, sir.

10 THE COURT: Does the State have anything else
11 related to the competency of Mr. Harrelson?

12 MR. YOUNG: No, sir. We stand on the report.

13 THE COURT: Mr. Moore, do you have anything
14 further related to competency on Mr. Harrelson?

15 MR. MOORE: Yes, sir. I would like to hand up
16 a report from Dr. Stephen Enns, who is a
17 psychiatrist who's also been treating him for a
18 number of years. And I would also like to comment
19 on the State's report.

20 (Pause.)

21 THE COURT: Has the State seen -- I think I've
22 read this before, haven't I?

23 MR. MOORE: We didn't have it, but we
24 referenced it at a bond hearing, Your Honor. I
25 think we may have given it to you at the hearing to

1 take off the electronic monitoring. That's probably
2 when you saw it.

3 THE COURT: Okay. I read the report of
4 Stephen, that's with a P-H, J. Enns, E-N-N-S, who's
5 an M.D. Dr. Enns had started Mr. Harrelson on that
6 medication that we referenced earlier and taken him
7 off of a different medication and also seemed to
8 concur that his impulse control had improved and
9 finds him a relatively low risk of repeat offense.

10 Anything else?

11 MR. MOORE: Yes, sir. We would point out that
12 on the Department of Mental Health's report, the
13 last sentence on both the -- the recommendations, it
14 says that Mr. Harrelson will need further
15 psychiatric care for monitoring and management of
16 his attention deficit hyperactivity disorder. In
17 addition, the attorney and the legal system should
18 provide him with additional time to help him gain
19 understanding and communicate effectively regarding
20 his case. That seems to me to be in contradiction
21 of the finding of competency to stand trial.

22 THE COURT: All right. So you all are
23 challenging his competency?

24 MR. MOORE: No, sir. I'm just pointing that
25 out to the Court. I'm not challenging the finding

1 that he was competent to stand trial. I just
2 pointed that out to the Court that there did seem to
3 be some hesitancy in the examiner. And I'm not here
4 to interpret what he means by that statement.

5 **THE COURT:** Okay. Well, I mean, I'd be happy
6 to have a hearing with witnesses and you all can
7 call all the doctors and I can make an evaluation,
8 have a different type of Blair proceeding if you all
9 would like it.

10 **MR. MOORE:** I'm not asking for that.

11 **THE COURT:** Okay. Well, based upon my
12 observations of Mr. Harrelson, my discussions with
13 him and reviewing the reports of the Department of
14 Mental Health and Dr. Enns, I am convinced beyond a
15 reasonable doubt that he's competent to stand trial,
16 he's competent to make rational decisions concerning
17 the case against him, competent to assist counsel in
18 his own defense and that he's clearheaded today and
19 knows what he's doing. He demonstrated rational
20 thought, problem solving whenever we kept discussing
21 the roles of the court officials. And I don't know
22 if I -- when I was his age, if I could have answered
23 some of those questions I was asking him.

24 I need to make those court's exhibits.

25 (Court's Exhibit Number 2, report from Dr.

1 Stephen Enns, was marked for identification
2 purposes.)

3 THE COURT: All right. Mr. Harrelson, I have
4 to ask you a lot of questions and I have to ask your
5 lawyer questions and there's a reason for every one
6 of these questions I ask. If I ever ask anything
7 that you don't understand, you let me know. If I
8 get to a point where you feel like you need to stop,
9 you let me know. If you want to talk to your lawyer
10 at any time, you let me know, all right?

11 DEFENDANT HARRELSON: Yes, sir.

12 THE COURT: Now, the first thing I have to do
13 is read to you what you're charged with.

14 DEFENDANT HARRELSON: Yes, sir.

15 THE COURT: The indictment is the charging
16 paper. And this piece of paper charges that you,
17 and it alleges your date of birth was

18 , did in McCormick County on or about
19 August 11, 2007, engage in a sexual battery. It's
20 alleged that you did that on a child whose named in
21 the indictment, if you want to look at the name,
22 I'll be happy to show it to you, whose date of birth
23 is , she being less than 11 years
24 of age. It's alleged that you placed your hand
25 inside her bathing suit and inserted your fingers

1 into her vagina, you being older than she. And
2 that's a charge of criminal sexual conduct with a
3 minor.

4 Now, what you're pleading to -- pleading guilty
5 to, according to these papers they've handed me, is
6 a different charge of committing a lewd act on a
7 minor. And you're giving up the right to have the
8 grand jury consider that different charge. Is all
9 of that accurate what I just said?

10 **DEFENDANT HARRELSON:** Yes, sir.

11 **THE COURT:** You're pleading guilty to a lewd
12 act on a minor?

13 **DEFENDANT HARRELSON:** Yes, sir.

14 **THE COURT:** Mr. Moore, have you fully explained
15 to your client the nature and elements of the
16 offense, the possible punishment and his
17 constitutional rights, including trial by jury?

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

19 **THE COURT:** Are you satisfied there's a factual
20 basis for his plea?

21 **MR. MOORE:** There is.

22 **THE COURT:** Do you agree with his decision?

23 **MR. MOORE:** No, sir.

24 **THE COURT:** All right. Mr. Harrelson, your
25 lawyer says he doesn't agree with your decision to

1 plead guilty.

2 MR. MOORE: May I explain?

3 THE COURT: Sure.

4 MR. MOORE: Mr. Harrelson has never denied his
5 involvement in this incident. He's freely admitted
6 that from the beginning. As his lawyer, I explained
7 to him the various charges that could result from an
8 incident like this. Among those charges are
9 criminal sexual conduct first, lewd act on a minor,
10 criminal sexual conduct third and assault and
11 battery of a high and aggravated nature.

12 The punishments vary, but not significantly for
13 the last three. The difference in lewd act on a
14 minor and CSC third and assault and battery of a
15 high and aggravated nature is that the court has
16 some discretion as to the sex offender registration.
17 And in the event of -- and also some discretion in
18 two of the charges, the CSC third and ABHAN, as to
19 electronic monitoring.

20 A person who pleads guilty under 23-540 to lewd
21 act on a child or CSC first must be sentenced by the
22 court to electronic monitoring and sex offender
23 registry for life and the electronic monitoring is
24 also for life. The other -- if the court sentences
25 -- requires electronic monitoring to CSC third or

1 ABHAN, the defendant can petition the court after
2 ten years to have electronic monitoring removed.
3 Under the lewd act, you cannot petition the court,
4 so it's essentially a life sentence to electronic
5 monitoring and to reporting monthly to the
6 department of probation and parole. The court
7 apparently has no discretion in that matter.

8 The statute is somewhat vague because it says
9 that in paragraph B that you have to be monitored
10 and in paragraph H that you can petition the court,
11 but then paragraph C says that if you're sentenced
12 under that provision and violate your probation,
13 then you must be sentenced.

14 So the statute is vague in itself, but I
15 believe a fair reading of the statute as it's
16 presented requires lifetime monitoring and lifetime
17 monthly reporting to the department. And an
18 individual with Mr. Harrelson's academic and mental
19 capacity and status likely does not have significant
20 employment prospects in the future.

21 Currently, it costs \$40 a week to be on
22 electronic monitoring. The Court placed him on
23 monitoring to begin with. He stayed on it over six
24 months. The Court found there were no violations
25 and took him off of the monitoring at that time,

1 which he's been off since then and still had no
2 violations of any kind.

3 I would assert that the statute is
4 unconstitutional both as to the State and Federal
5 Constitutions as cruel and unusual punishment and is
6 a violation of his due process to have an
7 opportunity to have the monitoring removed at some
8 point in his life expectancy of over 50 years.

9 This is a one time incident at age 16. The
10 case could have been handled in family court, but
11 the Solicitor chose to bring it in general sessions.
12 There were all sorts of options available to resolve
13 this case, you know, for this child. He's now just
14 barely turned 18, but at the time of the offense, he
15 was a 16-year-old child functioning much lower than
16 that in all of his cognitive ability and in his
17 emotional stabilities.

18 And for those reasons, I personally can't say
19 that it's in anybody's best interest for him to
20 plead to this charge. However, given the options
21 presented to him by the State, I think he's made a
22 rational decision in agreeing to plead guilty to
23 this charge, but I can't concur in it.

24 THE COURT: Do you know all of that,
25 Mr. Harrelson?

1 **DEFENDANT HARRELSON:** I'm sorry, what?

2 **THE COURT:** Did you know all of that?

3 **DEFENDANT HARRELSON:** Not so much.

4 **MR. MOORE:** We've talked about it, Your Honor,
5 at length.

6 **DEFENDANT HARRELSON:** He has talked about it,
7 though, sir.

8 **MR. MOORE:** We've talked about it for hours.
9 We met in my office on Thursday or Friday of last
10 week. We met today for an hour and a half. We've
11 been through all that time and time again. It's not
12 like it's the first time he's heard that. I mean,
13 he's heard it and heard it and heard it. His
14 father's heard it and heard it and heard it. I've
15 had these same concerns for months. I've discussed
16 it with the Prosecutors.

17 I understand where he is and I understand that
18 given the choice of going to trial on a criminal
19 sexual conduct first offense and the ramifications
20 of that or accepting his plea, and I've explained it
21 to him, I said, It's your decision, in conjunction
22 with his family and that's what they decided to do.
23 But as a lawyer and as an officer of the court, I
24 believe there are other appropriate options to the
25 Court.

1 **THE COURT:** Mr. Harrelson, do you want to go
2 against your lawyer's advice?

3 **DEFENDANT HARRELSON:** No, sir.

4 **THE COURT:** Stand aside.

5 (Whereupon, the proceedings were concluded
6 for February 24, 2009.)

7 (The following proceedings were held on
8 February 27, 2009.)

9 **THE COURT:** Mr. Harrelson, you're still under
10 oath; you understand that?

11 **DEFENDANT HARRELSON:** No, sir.

12 **THE COURT:** You don't understand that you're
13 still under oath?

14 **MR. MOORE:** When you swore to tell the truth
15 the other day, they placed you under oath and you
16 swore to tell the truth, so you're still under that
17 oath to tell the truth.

18 **DEFENDANT HARRELSON:** Yes, sir, I understand.

19 **THE COURT:** So you're promising me to tell me
20 the truth, the whole truth and nothing but the whole
21 truth so help you God; do you understand that?

22 **DEFENDANT HARRELSON:** Yes, sir.

23 **THE COURT:** Now, you came before me a couple
24 days ago and we had started into your case and I had
25 done that hearing, that Blair hearing, about whether

1 you were competent to go forward or not.

2 **DEFENDANT HARRELSON:** Yes, sir.

3 **THE COURT:** And made findings on the record
4 that you were competent. Today, are you clearheaded
5 and you know what you're doing?

6 **DEFENDANT HARRELSON:** Yes, sir.

7 **THE COURT:** Are you taking the medications
8 prescribed for you?

9 **DEFENDANT HARRELSON:** Yes, sir.

10 **THE COURT:** You're taking them in the dosage
11 that's prescribed for you?

12 **DEFENDANT HARRELSON:** Yes, sir.

13 **THE COURT:** Does it have any kind of adverse
14 affect on your ability to think clearly today?

15 **DEFENDANT HARRELSON:** No, sir.

16 **THE COURT:** Now, after that, I had asked your
17 attorney some questions and those were questions I
18 ask in every case. And the third question is
19 whether your attorney agreed with your decision to
20 enter this plea of guilty.

21 **DEFENDANT HARRELSON:** Yes, sir.

22 **THE COURT:** And he told me that he could not
23 agree, that -- and he gave a very detailed
24 explanation of his concerns. So then I asked you
25 something along the lines of did you want to go

1 forward with your guilty plea against the advice of
2 your attorney and you said no. And that's when I
3 told you all to stand aside.

4 DEFENDANT HARRELSON: Yes, sir.

5 THE COURT: Do you agree that's about where we
6 were in your plea?

7 DEFENDANT HARRELSON: Yes, sir.

8 THE COURT: All right. Now, Mr. Harrelson,
9 since then, have you and your attorney had chances
10 to talk?

11 DEFENDANT HARRELSON: Yes, sir.

12 THE COURT: I want to make absolutely certain
13 that you understand this. If you don't understand
14 anything else, this is perhaps the most critical,
15 and they're all critical, so it's important you
16 understand everything.

17 DEFENDANT HARRELSON: Yes, sir.

18 THE COURT: The decision about whether you
19 plead guilty or not, that's your decision.

20 DEFENDANT HARRELSON: Yes, sir.

21 THE COURT: The decision about whether to waive
22 rights that you may have, that's your decision; you
23 understand?

24 DEFENDANT HARRELSON: Yes, sir.

25 THE COURT: I want you to pay attention to your

1 attorney. I want you to listen to him and I want
2 you to give his advice to you the utmost, the
3 highest consideration.

4 DEFENDANT HARRELSON: Yes, sir.

5 THE COURT: But it's really not his decision to
6 make as to whether you plead guilty or not; you
7 understand that?

8 DEFENDANT HARRELSON: Yes, sir.

9 THE COURT: Do you want to go forward with your
10 guilty plea or do you not want to go forward with
11 your guilty plea?

12 DEFENDANT HARRELSON: I wish to go forward,
13 sir.

14 THE COURT: So in spite of everything your
15 lawyer said the other day, all of the things he told
16 you, all of his concerns and all of his issues, you
17 want to -- you want to make the decision to go
18 forward with your guilty plea?

19 DEFENDANT HARRELSON: Yes, sir.

20 THE COURT: Is it your own decision?

21 DEFENDANT HARRELSON: Yes, sir.

22 THE COURT: Is it made of your own free will?

23 DEFENDANT HARRELSON: Yes, sir.

24 THE COURT: Has anybody forced you, threatened
25 you, coerced you, exercised any improper influence

1 over you to get you to waive your rights and enter
2 this plea?

3 **DEFENDANT HARRELSON:** No, sir.

4 **THE COURT:** Mr. Moore mentioned this earlier
5 when you were in front of me the other day --

6 **DEFENDANT HARRELSON:** Yes, sir.

7 **THE COURT:** One of the major issues he has is
8 with this statute, this law that was passed by the
9 legislature that provides under section 23-3-540,
10 that if you plead guilty to committing a lewd act on
11 a minor under the age of 16, then I have to order
12 you to be placed on an electronic monitoring device
13 upon your release from incarceration. Do you
14 understand that?

15 **DEFENDANT HARRELSON:** Yes, sir.

16 **THE COURT:** That law states that, pursuant to
17 that order, that I have to impose upon you to be
18 placed on electronic monitoring after you're
19 released from incarceration, that you are to remain
20 on that monitoring for the entire time that you're
21 required to remain on the sex offender registry,
22 which, under the current law, would be the rest of
23 your life.. Do you understand that?

24 **DEFENDANT HARRELSON:** Yes, sir.

25 **THE COURT:** Now, Mr. Moore may wish to

1 challenge that law, you all may wish to appeal that
2 part of the order, I don't know. I think we had a
3 case that came down recently like in the last day or
4 so, I haven't had a chance to read, but you have to
5 understand, sir, that if you enter this plea of
6 guilty, I'm going to make that part of the order and
7 unless your attorney or some other attorney on some
8 other case is successful in changing that law
9 through the courts or unless the legislature changes
10 it or, I guess, Congress could step in or something,
11 you have to enter this plea of guilty with the
12 understanding that you, under the current version of
13 law, are going to have to remain registered as a sex
14 offender for the rest of your life and that you'll
15 be on electronic monitoring. Do you understand
16 that?

17 **DEFENDANT HARRELSON:** Yes, sir.

18 **THE COURT:** You sure you want to plead guilty
19 to this?

20 **DEFENDANT HARRELSON:** Yes, sir.

21 **THE COURT:** Now, I have to -- as I told you at
22 the outset the other day, I have to ask everybody
23 who pleads guilty in front of me certain questions.
24 This is not just curiosity on my part. Some of the
25 questions I may ask you later deal with your

1 particular circumstance, but I have to ask you
2 certain things because I have to make a
3 determination -- in order to allow somebody to plead
4 guilty, I have to determine that the person is
5 entering the plea freely, knowingly, they know what
6 they're doing, voluntarily, in other words, nobody's
7 forcing you to do it against your will, and
8 intelligently, that you've looked at all of the
9 circumstances and you've decided that this is
10 something you should do, and it's an intelligent
11 decision, realizing that people may reach different
12 conclusions about different decisions or the same
13 decisions.

14 **DEFENDANT HARRELSON:** Yes, sir.

15 **THE COURT:** So that's why I'm asking you these
16 questions. If I ask you anything that you don't
17 understand, if you need me to stop at any time, if
18 you want to talk to your lawyer at any time, like I
19 told you the other day, you don't hesitate to tell
20 me that and we'll stop, okay?

21 **DEFENDANT HARRELSON:** Yes, sir.

22 **THE COURT:** All right. Now, when you plead
23 guilty, you give up very important rights. Do you
24 understand that?

25 **DEFENDANT HARRELSON:** Yes, sir.

1 **THE COURT:** Everybody in criminal court who is
2 accused of a crime has a right to remain silent.
3 And if you went to a jury trial, you could remain
4 silent, you don't have to say anything at all and
5 nobody can make you offer any evidence and cannot
6 make you testify in any way. You're the only person
7 who can decide whether you say anything to the jury
8 if you went to a jury trial. You understand?

9 **DEFENDANT HARRELSON:** Yes, sir.

10 **THE COURT:** So you have a right to remain
11 silent and nobody can force you to give up that
12 right. And if you were to have a jury trial, the
13 trial judge would turn to that jury and say, if you
14 did not testify, Ladies and gentlemen, you cannot
15 hold his silence against him in any way at all.
16 They're not to think about it when they decide the
17 case against you. They're not to talk about it in
18 the jury room. You have an absolute right to remain
19 silent. You understand?

20 **DEFENDANT HARRELSON:** Yes, sir.

21 **THE COURT:** If you plead guilty, you're
22 admitting that you're guilty. So, obviously, the
23 words that you're saying are used against you
24 because you're saying, I did it, I'm guilty. You
25 understand?

1 **DEFENDANT HARRELSON:** Yes, sir.

2 **THE COURT:** So you give up the right to remain
3 silent if you plead guilty by definition. You
4 understand?

5 **DEFENDANT HARRELSON:** Yes, sir.

6 **THE COURT:** Now, in a jury trial, you're
7 presumed to be innocent, which means you don't have
8 to prove a thing. The State has got to prove to all
9 12 jurors that you are guilty beyond a reasonable
10 doubt in order for you to be convicted of anything,
11 a greater crime or a lesser crime or anything at
12 all. You understand?

13 **DEFENDANT HARRELSON:** Yes, sir.

14 **THE COURT:** You don't have to offer any
15 evidence. You don't have to put up any other
16 witnesses. You don't have to put up experts. You
17 don't have to do anything. You can just sit at that
18 table and the State's got the entire burden of
19 proof. Do you understand?

20 **DEFENDANT HARRELSON:** Yes, sir.

21 **THE COURT:** And I promise you that if you had a
22 jury trial, whoever the trial judge is, the jury
23 would be told about your presumption of innocence
24 and the fact that the State has to prove you guilty
25 beyond a reasonable doubt and the State had the

1 entire burden of proof and the jury would be told
2 that numerous times. Do you understand?

3 **DEFENDANT HARRELSON:** Yes, sir.

4 **THE COURT:** Now, if you plead guilty, there's
5 no need to have a jury convene, you're giving up
6 your presumption of innocence and you're saying, I
7 did it, I'm guilty. You understand?

8 **DEFENDANT HARRELSON:** Yes, sir.

9 **THE COURT:** All right. In a jury trial, you
10 have a right to confront the witnesses against you
11 is what it's called. I'm going to explain that to
12 you a little bit more.

13 Now, what that means is that every witness who
14 testifies against you has to come up here and sit in
15 this chair. You'd sit right over there. You would
16 get to see those witnesses testify, hear what they
17 have to say and your lawyer would get to question
18 them, cross-examine them. You understand?

19 **DEFENDANT HARRELSON:** Yes, sir.

20 **THE COURT:** If there's a child involved in a
21 case, sometimes children get on the stand and they
22 make wonderful witnesses, same thing for adults.
23 Sometimes children get on the stand and they just
24 don't recall much of anything. You could challenge
25 whether the child witness was competent to testify,

1 they're presumed to be competent, but you could go
2 through a hearing and have the judge listen to the
3 little girl, if she was going to testify, to hear
4 her version of what happened and make a
5 determination as to whether she is competent to
6 testify as a witness for the jury to consider. And
7 your lawyer could object to her ability to testify.
8 And if the judge ruled with your side, that would
9 mean the little girl couldn't testify. Do you
10 understand all of those things?

11 **DEFENDANT HARRELSON:** Yes, sir.

12 **THE COURT:** Now, if you plead guilty, you give
13 up all of that because you're admitting you did it
14 and there's no need to put witnesses on the stand.
15 So you'd give up the right to confront the witnesses
16 against you and to challenge whether a witness is
17 competent or not. You understand that?

18 **DEFENDANT HARRELSON:** Yes, sir.

19 **THE COURT:** If they obtain any evidence against
20 you in violation of your rights, for example, if
21 they were supposed to give you Miranda warnings,
22 tell you you had a right to remain silent, anything
23 you could say -- that you did say would be used
24 against you, those things you hear on T.V. all the
25 time, that you have a right to an attorney and have

1 a right to have an attorney present with you at all
2 times during all questioning, you have a right to
3 stop at any time, you don't have to answer any
4 questions, you have a right to ask for a lawyer at
5 any time, those kind of things are called Miranda
6 warnings. That's just one example I'm giving. If
7 they were supposed to give you Miranda warnings and
8 they didn't, then your attorney could raise that
9 challenge to the trial judge. And the trial judge
10 may say, well even though he told the police this,
11 they can't tell that to the jury because they did it
12 in violation of his rights, they, the police, did it
13 in violation of your rights. Those types of things
14 are called challenges to evidence.

15 If they seized something and didn't have a
16 valid search warrant and they were required to get
17 one, all of those kinds of things can be challenged,
18 the evidence that came from that could be challenged
19 and anything that stemmed from what they got at the
20 beginning could be challenged.

21 **DEFENDANT HARRELSON:** Yes, sir.

22 **THE COURT:** Do you understand?

23 **DEFENDANT HARRELSON:** Yes, sir.

24 **THE COURT:** If you plead guilty, you give up
25 all of that; you understand?

1 DEFENDANT HARRELSON: Yes, sir.

2 Can I talk to my dad?

3 THE COURT: Sure.

4 (Pause.)

5 THE COURT: Do y'all need some time to talk,
6 Mr. Moore?

7 MR. MOORE: Yes, sir, if we can have five
8 minutes.

9 THE COURT: Sure. There's supposed to be a
10 conference room over there. We'll be at ease.

11 (Brief recess.)

12 THE COURT: All right. Mr. Harrelson, you
13 understand that if you plead guilty, you give up any
14 challenges you may have to the evidence?

15 DEFENDANT HARRELSON: Yes, sir.

16 THE COURT: Have you had enough time to talk to
17 your lawyer?

18 DEFENDANT HARRELSON: Yes, sir.

19 THE COURT: All right. Are you ready to
20 continue to go forward?

21 DEFENDANT HARRELSON: Yes, sir.

22 THE COURT: If you have any defenses in your
23 case that could be raised, if you have the ability
24 to assert that you're entitled to be evaluated for a
25 determination that you're not guilty by reason of

1 insanity or that you're guilty but mentally ill, if
2 you give up -- if you plead guilty, you give up any
3 defenses you may have in the case and you give up
4 the right to assert those types of issues about your
5 mental state; you understand?

6 **DEFENDANT HARRELSON:** Yes, sir.

7 **THE COURT:** Understanding all of those things,
8 Mr. Harrelson, do you want a jury trial or do you
9 want to plead guilty?

10 **DEFENDANT HARRELSON:** I wish to plead guilty,
11 sir.

12 **THE COURT:** Is that your own decision made of
13 your own free will?

14 **DEFENDANT HARRELSON:** Yes, sir.

15 **THE COURT:** All right. I want you to listen to
16 the State, please.

17 **MR. YOUNG:** Your Honor, on Saturday, August
18 11th, 2007, the Church of God from Aiken there on
19 Whiskey Road put together an opportunity for the
20 young people to go to Parksville and swim in Clark
21 Hill Lake, Strom Thurmond Lake. The group went
22 there. And during that period of time, several
23 people from both the families present here today
24 were there.

25 Minor , who was eight years old at the

1 time, was part of the group as was Andrew Harrelson,
2 he was then 16. Andrew's friends of the family.
3 They have a daughter -- the Leaches have a daughter
4 named Kayla who was 16 also, both attended school
5 together, go to the same church, everybody knows
6 everybody.

7 During the period of time the event went on,
8 several people did notice Minor acting a little
9 differently, guarded, not wanting to go back out in
10 the water after they'd seen her out there in the
11 water with Andrew, out in the deeper water. But
12 when she got home, she told her sister, Kayla, who
13 did not get to go on the trip, asked her how it had
14 been and she began to explain that while she was out
15 in the deep water at the lake in McCormick in
16 Parksville playing with Andrew, he touched her under
17 her bathing suit.

18 She said the first time she thought it could
19 have been an accident, but she didn't say anything
20 so she just ignored it, but then he did it again and
21 she tried to swim away and he grabbed her feet and
22 pulled her back. A few minutes later he did it
23 again. She told him to stop. He said okay, okay,
24 but a few minutes later he did it again. During the
25 period of time that Minor was telling her older

1 sister this, she was very upset.

2 This resulted in a police investigation and
3 evaluation forensically of what Minor had to say.
4 And doing that forensic interview in September, she
5 was asked how this happened, how did he get inside
6 of her bathing suit. She said he took his hand and
7 went up the side and she didn't remember if he did
8 this to the upper part of her body, but he asked
9 about how this happened, you know, how did he touch
10 her. She said, Well, like, he went in there. And
11 she moves her finger in relation to the question
12 along the private portion of her body.

13 And she said -- he said, Did he touch you,
14 where and how? She says, On my private with his
15 hand. And she says, Something went inside of that
16 part. And she said, It was his finger, didn't feel
17 good. She said, Finger went inside.

18 She said there were other people around, but
19 she doesn't think anybody knew exactly what was
20 going on. She said the water was up to her neck so
21 all of the touching was under water.

22 And this occurred during the time they were
23 here in McCormick County in Parksville on the 10th
24 of August, 2007.

25 I don't believe this gentleman has any other

1 record, Your Honor.

2 THE COURT: All right. Mr. Harrelson, do you
3 admit you're guilty of what the Solicitor told me?

4 DEFENDANT HARRELSON: Yes, sir.

5 THE COURT: And your date of birth is

6 ?

7 DEFENDANT HARRELSON: No, sir.

8 THE COURT: What is it -- I'm sorry, that's the
9 date of the incident. Your date of birth is

10 ?

11 DEFENDANT HARRELSON: Yes, sir.

12 THE COURT: So at the time you were 16?

13 DEFENDANT HARRELSON: Yes, sir.

14 THE COURT: And the child would have been less
15 than 11 years of age?

16 DEFENDANT HARRELSON: Yes, sir.

17 THE COURT: Has anyone -- I know this is being
18 duplicative of what I asked you before, but has
19 anybody forced you, threatened you, coerced you,
20 exercised any undue influence over you to get you to
21 enter this plea of guilty?

22 DEFENDANT HARRELSON: No, sir.

23 THE COURT: Any plea bargains the State made
24 with you, that includes any deals, any agreements
25 that the State made to drop a charge, reduce a

1 charge, recommend a sentence, anything like that,
2 they have to say that to me in open court on the
3 record, that lady has to take it down or you lose
4 what they don't tell me about. Do you understand?

5 DEFENDANT HARRELSON: Yes, sir.

6 THE COURT: So the plea agreement is what?

7 MR. YOUNG: Imposition of the youthful offender
8 sentence, Your Honor.

9 THE COURT: Was he charged with lewd act
10 originally?

11 MR. YOUNG: Sir, he was charged with criminal
12 sexual conduct with a minor. And he's waived
13 presentment, as I understand it, for the lesser --
14 not a lesser included offense, but for the separate
15 charge of lewd act on the same factual pattern.

16 THE COURT: So instead of criminal sexual
17 conduct with a minor, you're pleading guilty to lewd
18 act on a minor. And this indicates they've
19 negotiated an active youthful offender sentence.

20 DEFENDANT HARRELSON: Yes, sir.

21 THE COURT: So other than what they've put on
22 the record, has anybody promised you anything to get
23 you to plead guilty?

24 DEFENDANT HARRELSON: No, sir.

25 THE COURT: Are you fully satisfied with your

1 attorney?

2 DEFENDANT HARRELSON: Yes, sir.

3 THE COURT: Is there anything else you want
4 your lawyer to do on the case that he hasn't done
5 for you other than speak for you and perhaps pursue
6 appeals of these issues that he indicated he may
7 challenge?

8 DEFENDANT HARRELSON: No, sir.

9 THE COURT: Anything else --

10 DEFENDANT HARRELSON: No, sir.

11 THE COURT: Do you have any complaint of any
12 kind against law enforcement officials, your
13 attorney or anybody who's dealt with your case?

14 DEFENDANT HARRELSON: No, sir.

15 THE COURT: Have you had enough time to meet
16 with Mr. Moore and discuss things with him so that
17 he can represent you properly?

18 DEFENDANT HARRELSON: Yes, sir.

19 THE COURT: Have you had enough time to make up
20 your own mind about all of this?

21 DEFENDANT HARRELSON: Yes, sir.

22 THE COURT: Now, this case -- you were
23 originally charged with criminal sexual conduct with
24 a minor. You're pleading guilty to a different
25 offense, which is a lewd act on a minor, that's a

1 different charge and you have a right to have that
2 charge go before the grand jury, for the grand jury
3 to consider it. And if you wanted that done, at
4 least 12 out of 18 grand jurors would have to agree
5 that you're probably guilty or the case stops there.
6 You understand?

7 **DEFENDANT HARRELSON:** Yes, sir.

8 **THE COURT:** The papers indicate you're giving
9 up that right. Is that your own decision, made of
10 your own free will?

11 **DEFENDANT HARRELSON:** Yes, sir.

12 **THE COURT:** All right. Committing a lewd act
13 on a minor is a felony that carries up to 15 years
14 in prison as a possible punishment; do you
15 understand that?

16 **DEFENDANT HARRELSON:** Yes, sir.

17 **THE COURT:** As I indicated to you previously,
18 you will be required to register as a sex offender
19 for the remainder of your life; do you understand
20 that?

21 **DEFENDANT HARRELSON:** Yes, sir.

22 **THE COURT:** As I indicated to you previously,
23 you will be required to be placed on electronic
24 monitoring or an active electronic monitoring device
25 under the provisions of that law and any regulations

1 or policies or procedures that might be implemented
2 pursuant to it. So if you plead guilty to this,
3 they can put you on monitoring devices and require
4 you to remain on those for the rest of your life
5 unless you're successful in getting that law
6 overturned or getting excluded from it under some
7 provision of law later; you understand?

8 DEFENDANT HARRELSON: Yes, sir.

9 THE COURT: The standard conditions related to
10 sex offenders are very strenuous, very detailed,
11 very broad. They prohibit you from being in a lot
12 of places. They prohibit you from living with a lot
13 of different types of people, children, things like
14 that. They prohibit you from doing things like
15 leaving your home on Halloween, you can't go.

16 Isn't that right, Halloween they have to be
17 home?

18 PROBATION AGENT: He can never stay overnight.

19 THE COURT: It's very restrictive. It's very
20 broad. They, being the probation office, parole,
21 whoever's -- whatever entity might be supervising
22 you pursuant to the laws, they're going to have a
23 great deal of control over your life, some of which
24 is probably going to seem to you to be very unfair.
25 You understand?

1 **DEFENDANT HARRELSON:** Yes, sir.

2 **THE COURT:** And if you plead guilty to this, as
3 I've told you, I intend to order you to be actively
4 monitored after you're released. And you're going
5 to have to abide by all of the conditions that are
6 imposed for sex offenders. You understand that?

7 **DEFENDANT HARRELSON:** Yes, sir.

8 **THE COURT:** You sure you want to plead guilty
9 to this?

10 **DEFENDANT HARRELSON:** Yes, sir.

11 **THE COURT:** All right. I'm getting close to
12 being through, but I've still got one rather short
13 thing to cover with you and one rather long thing to
14 cover with you.

15 **DEFENDANT HARRELSON:** Yes, sir.

16 **THE COURT:** If you plead guilty to this, you'll
17 have to provide a blood sample and your DNA profile
18 will be put in a central computer registry and
19 they'll keep that on file like fingerprints. You
20 understand?

21 **DEFENDANT HARRELSON:** Yes, sir.

22 **THE COURT:** So if they have a crime scene
23 anywhere and there's DNA evidence left there, they
24 run it through the computers and if it matches you,
25 they're coming looking for you. Do you understand?

1 **DEFENDANT HARRELSON:** Yes, sir.

2 **THE COURT:** Now, Mr. Harrelson, you're in
3 criminal court as you know.

4 **DEFENDANT HARRELSON:** Yes, sir.

5 **THE COURT:** There's a different kind of court,
6 civil court. And though the same judge may preside
7 over criminal court one week and civil court a
8 different week, they are different types of court
9 altogether.

10 In addition to everything I've told you about
11 that applies on the criminal side, there is a law
12 that's called Sexually Violent Predator Act and that
13 law is a civil process, it's in civil courts. And
14 it's similar in nature to if somebody is an
15 alcoholic, can't stop drinking, and the family goes
16 into the probate court and tries to get that person
17 committed against his will to get alcohol treatment
18 or if somebody's mentally ill and the family says he
19 can't take care of himself or he's a danger to the
20 community, they can go into a court on the civil
21 side and try to get that person committed against
22 his will for treatment for that mental illness.

23 Well, that Sexually Violent Predator Act allows
24 the Attorney General of South Carolina upon your
25 release or before you're released or any time

1 thereafter, I guess, to try to have you declared as
2 a sexually violent predator. I'm not saying that
3 they will or they won't, I don't know, but having
4 this conviction on your record is something that
5 allows them to try to declare you a sexually violent
6 predator. Do you understand that?

7 **DEFENDANT HARRELSON:** Yes, sir.

8 **THE COURT:** Now, there's a whole series of
9 steps that they have to go through and I don't need
10 to go and detail every one of those steps, but if
11 the Attorney General's Office brings an action in
12 civil court to try to get you declared to be a
13 sexually violent predator and if everything went
14 against you, you could be housed against your will
15 until it was determined that you were no longer a
16 danger to be released into the community, and,
17 presumably, that would be for treatment for sex
18 offenders. But I'm not going to sugar coat it,
19 right now those people are kept in an old jail
20 facility, an old prison facility.

21 So you understand that even after you finish
22 this Youthful Offender Act sentence, there is the
23 possibility they could try to have you involuntarily
24 committed on the civil side. In theory, that could
25 be the rest of your life. You understand.

1 **DEFENDANT HARRELSON:** Yes, sir.

2 **THE COURT:** All right. I'm basically through.
3 I need to check a couple things. I've gone into a
4 lot of detail with you because I want to make
5 absolutely certain, no question in my mind, that you
6 know what you're doing, particularly since you
7 decided not to follow the advice of your attorney.

8 (Pause.)

9 **THE COURT:** All right. Mr. Moore, I'm going to
10 give you an opportunity to speak and put on the
11 record anything you need to put on the record before
12 sentencing or after sentencing or both.

13 I find beyond a reasonable doubt Mr. Harrelson
14 has made a free, knowing, voluntary and intelligent
15 decision to waive his rights and plead guilty. I
16 renew the findings previously made at the Blair
17 hearing. Mr. Harrelson appears to be an alert,
18 intelligent individual and he understands the
19 consequences of his decision to enter a plea of
20 guilty. There are facts to support his plea.

21 He is aware of the issues that his attorney has
22 with going forward with this plea. He has made a
23 free, knowing, voluntary and intelligent decision to
24 determine to go forward with the plea. It is his
25 choice to make.

1 I've noted that throughout these discussions,
2 his family has been present and his father is with
3 him now and has been during the times that we have
4 taken breaks so that they could have conferences.
5 He is fully satisfied with his attorney. And he's
6 made a free, knowing, voluntary and intelligent
7 decision to waive presentment to the grand jury.

8 Okay. Mr. Moore.

9 MR. MOORE: Your Honor, I would urge the Court
10 to adopt my previous statement as to my objections
11 at this time without going back through all of
12 the --

13 THE COURT: Yes, sir.

14 MR. MOORE: -- and ask that that be included in
15 the record.

16 THE COURT: Yes, sir. The record from the very
17 beginning should be included.

18 MR. MOORE: And reserve the right to speak to
19 sentencing perhaps after the sentencing.

20 THE COURT: All right. Do you want to say
21 anything, Mr. Harrelson?

22 DEFENDANT HARRELSON: No, sir.

23 THE COURT: I'll give you another chance if you
24 want to later, but it's a negotiated plea.

25 Did you want to talk to me about the sentencing

1 or do you want to just make objections after the
2 sentencing?

3 MR. MOORE: I think the Court's very familiar
4 with Mr. Harrelson and his background, his history,
5 emotional state, that he had spinal meningitis when
6 he was five which resulted in some injury. The
7 Court has reviewed his psychological records in
8 great detail and I think they contain all of the
9 information that I would normally present to a
10 sentencing court at this time.

11 THE COURT: Anybody from the victim's side want
12 to be heard?

13 MR. YOUNG: The Leaches have indicated to me
14 they didn't want to speak, Your Honor.

15 THE COURT: Did his father want to say
16 anything?

17 MR. MOORE: No, sir.

18 THE COURT: Do they want a no contact order?

19 MR. YOUNG: Your Honor, I'm not certain. That
20 was the one question I really hadn't addressed.

21 THE COURT: I really won't have any power over
22 them except it'll be part of the conditions. I
23 don't think they're going to let him have any
24 contact.

25 MR. YOUNG: I don't think they will either.

1 MR. MOORE: It's been a year and a half and
2 there's been no contact.

3 THE COURT: I guess I want to know whether I
4 need to put anything -- if I just put the victim as
5 the child, I don't know what the relationship
6 between the two families is.

7 MR. YOUNG: I don't think there's a problem
8 between the two families, Your Honor, I think the
9 victim and this young man clearly. And I think the
10 -- this young man and the family might be
11 appropriate with no contact, but other than that,
12 the two families interact.

13 THE COURT: If there's nothing else, the Court
14 accepts the plea. Mr. Harrelson is a proper person
15 to sentence under the Youthful Offender Act. The
16 sentence is that he be committed to the South
17 Carolina Department of Corrections Youthful Offender
18 Division for an indeterminate period not to exceed
19 six years plus pay the costs and assessments that
20 are applicable.

21 He must be placed under the supervision of the
22 South Carolina Department of Probation, Parole and
23 Pardon Services upon release from active
24 incarceration and be monitored with an active
25 electronic monitoring device under the provisions of

1 section 23-3-540 and adhere to the standard
2 conditions for sex offender monitoring as authorized
3 under that statute, as well as any regulations and
4 policies for such monitoring implemented by the
5 Department of Probation, Parole and Pardon Services
6 or appropriate authorities and amendments thereto in
7 the discretion of Probation, Parole and Pardon
8 Services, including that the Department of
9 Probation, Parole and Pardon Services may establish
10 exclusion zones.

11 Now, I told you all there was a recent case
12 that I recall skimming but had not read that case,
13 it's the State versus Hoss Hicks. It's indicated as
14 case number two. It's opinion 4510. It was handed
15 down two days ago, February 25th, 2009. And it
16 talks about -- it's a different scenario, but it
17 talks about exclusion zones. And I see you have it
18 with you --

19 MR. MOORE: Yes, sir.

20 THE COURT: -- in your hand there, Mr. Moore.
21 But when I say exclusion zones, basically what I'm
22 referring to is that they can establish that you
23 can't be within a certain perimeter of the victim or
24 other people or other places that they define.

25 There are court costs on your case that I

1 cannot waive. You pay that within 90 days of being
2 released from incarceration. And it's automatic,
3 but you have to register as a sex offender. Do you
4 understand all of that?

5 DEFENDANT HARRELSON: Yes, sir.

6 THE COURT: All right. Good luck to you, sir.
7 Do you wish to object to the sentence?

8 MR. MOORE: Yes, I do, Your Honor.

9 Your Honor, we would submit that electronic
10 monitoring portion of the sentence, which I
11 understand the Court is required to impose, would
12 violate provisions of the United States and the
13 State Constitutions to include cruel and unusual
14 punishment in violation of due process.

15 Additionally, the statute 23-3-540 is vague
16 and, I believe, confusing because it says in section
17 A that you must sentence this person to the
18 monitoring, but then if you read paragraph B --
19 excuse me -- C, it says, A person who is required to
20 register pursuant to this article for committing
21 sexual conduct with a minor or a lewd act and who
22 violates the terms of probation, parole or community
23 service or community supervision program must be
24 ordered by the court or agency with jurisdiction to
25 be monitored by the Department of Probation, Parole

1 and Pardon Services with active electronic
2 monitoring device.

3 The statute contradicts itself because it
4 provides in paragraph A that you have to do it, but
5 then in paragraph C, it says that if they violate
6 probation, then you have to do it. I'm not sure how
7 you reconcile those two paragraphs of the same
8 statute because it clearly contemplates in paragraph
9 C that a person could be convicted of this charge
10 and not be on sexual monitoring, but be ordered to
11 be on monitoring if they violate the probation and
12 parole.

13 So it's my position that the statute is vague,
14 misleading, confusing and void as a matter of public
15 policy because what it tries to do is the burden
16 that it places on this person is greatly
17 disproportionate to the protection it seeks to
18 impose on a child or children in general. To take
19 somebody who was 16 years of age and commits assault
20 and battery or a lewd act or a touching of a minor
21 child and to impose lifetime punishment on that
22 individual is greatly disproportionate to the actual
23 act which occurred. And we would suggest that it's
24 void as to public policy.

25 The Court has been very clear and outlined all

1 ramifications of this particular section of law and
2 we understand what the law is except for 23-5 --
3 23-3-540, which I don't understand how it can be
4 conflicting in its various provisions. But for
5 those reasons, we would object to the sentence that
6 includes electronic monitoring for life.

7 **THE COURT:** The objection's overruled. And the
8 motion to eliminate that from -- that requirement
9 from the sentence is denied.

10 And, Mr. Harrelson, you need to understand
11 something. If you want to pursue that challenge,
12 your lawyer's probably going to have to do that
13 through an appeal. I can't give you legal advice,
14 but if you want him to appeal anything, he has to
15 file a written notice of appeal. It's a very narrow
16 time frame. And he has to file that notice.

17 Now, if you are indigent and unable to obtain
18 an attorney to pursue the appeal, the Office of
19 Appellate Defense or the office -- the Commission on
20 Indigent Defense, they changed the name, I don't
21 know what it's called now, may provide you an
22 attorney to pursue the appeal. Do you understand
23 all of that?

24 **DEFENDANT HARRELSON:** Yes, sir.

25 **THE COURT:** Make sure you talk to your lawyer

1 now before they take you out. Good luck to you,
2 sir.

3 PROBATION AGENT: Your Honor, I just want to
4 put on the record that he will be placed on GPS
5 because we place everybody on GPS that has his
6 conviction.

7 THE COURT: Thank you, Mr. Reeder.
8 Good luck, Mr. Harrelson.

9
10 END OF PROCEEDINGS

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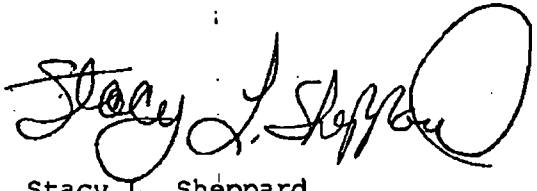
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF MCCORMICK

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the guilty plea of the captioned cause, relative to appeal in the Criminal Court for McCormick County, South Carolina, on the 24th of February, 2009.

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

June 9, 2009



Stacy L. Sheppard
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA

2 COUNTY OF MCCORMICK

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA)

6 -vs-)

TRANSCRIPT OF RECORD

7 ANDREW JAMES HARRELSON, JR.,)

07-GS-35-0195

8 Defendant.)

9
10 February 22, 2011
11 Saluda, South Carolina

12
13
14
15 B E F O R E:

16 HONORABLE R. KNOX MCMAHON, Judge.

17
18
19 A P P E A R A N C E S:

20 H. FRANKLIN YOUNG, Asst. Solicitor
Attorney for the State

21 E. TIM MOORE, JR., Esquire
22 Attorney for the Defendant

23
24
25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 February 22, 2011).

3 MR. YOUNG: Your Honor, this is Andrew James
4 Harrelson. Mr. Harrelson is currently being held in
5 confinement in McCormick County. There was an attempt
6 to try to take this case up in McCormick County during
7 the last term, but due to Mr. Moore's difficulties in
8 his family -- I believe he had a family tragedy -- he
9 was unable to attend court and accomplish the necessary
10 act we are trying to accomplish today.

11 Mr. Harrelson is here to plead guilty today,
12 Your Honor. This case has been sent back on remittitur
13 on a remand by the Supreme Court after having considered
14 a plea offered in McCormick County at a prior date in
15 which a conditional plea was found to have existed.

16 It was based on a constitutional objection, I
17 believe, to the G.P.S. monitoring aspect of the plea
18 taken then. He is pleading guilty today to a charge of
19 lewd act on a minor. He has been indicted on criminal
20 sexual conduct with a minor.

21 I have case law indicating that C.S.C. with a
22 minor cannot be pled to lewd act as a lesser-included
23 offense. There is, in fact, case law. I would site 535
24 S.E.2d 928. Judge Peebles took a plea on a C.S.C. with
25 a minor case, actually pleading down to lewd act.

1 In an attempt to do so, he did not waive
2 presentment to the grand jury. In that situation the
3 Court found that there was no jurisdiction, as there is
4 no such thing as a lesser-included offense of C.S.C. as
5 lewd act.

6 He is therefore waiving presentment to the
7 grand jury. I'd ask Mr. Harrelson to put his initials
8 on his waiver right there. He has signed the back of
9 the indictment waiving such presentment.

10 (Pause.)

11 MR. YOUNG: For the record, Your Honor, the
12 victim in the case is ^{Minor} . Her father is present
13 in the courtroom representing the interest of the
14 family.

15 Your Honor, I have to point out to the Court
16 that Mr. Leach is a war veteran. He has been severely
17 injured in the past. He has difficulty standing for any
18 length of time. I would ask the Court that if he wants
19 to address the Court, he be able to do so from a seated
20 position.

21 He is pleading here today, Your Honor, to lewd
22 act with a minor with a recommendation for a Y.O.A. I
23 understand the credit would be for time served. It
24 would be a determinate time served, Y.O.A.

25 He will be required to register under the sex

1 offender registry and then have G.P.S. monitoring. The
2 sentence, I understand, is 15 years, and there is a fine
3 in the discretion of Court. I believe that has been
4 variously interpreted as being up to \$10,000.

5 THE COURT: I don't mind taking the plea at
6 all. My understanding of a Y.O.A. is all I can do is
7 sentence someone to a Y.O.A. for a sentence not to
8 exceed X-amount of time and that if it's an active
9 Y.O.A., you don't get credit for time served.

10 It all goes through the Department -- I don't
11 want to say youth services. That shows my age -- but
12 D.J.J. In other words, I thought Youthful Offender
13 Division made the decision of when an individual
14 sentenced under Y.O.A. should be released.

15 MR. YOUNG: Yes, sir. Actually, Your Honor,
16 my understanding of the average time -- if a person goes
17 into a place like Turbeville, which is specifically set
18 aside for youthful offenders, while there if they
19 successfully comply with the treatment plan they set in
20 place as a youthful offender, they serve a portion of
21 that sentence up to six years.

22 At some point they determine, if he is in
23 adequate compliance they release him on parole, and
24 thereafter if he violates parole, he can be returned
25 until completion of the full six years.

1 As the Court has correctly stated, my
2 understanding was there could be no such prior credit
3 for time served on a Y.O.A. sentence, even though this
4 gentleman has been previously sentenced under a Y.O.A.
5 and has served time.

6 I'm not familiar with -- apparently
7 Mr. Moore worked this out and had a determinate
8 sentence in mind for a time served. I'm unfamiliar
9 with that.

10 THE COURT: I am, too. Mr. Moore.

11 MR. MOORE: Your Honor, as the Court
12 indicated, you can sentence someone under Y.O.A. for a
13 term not to exceed a given amount of time. In this case
14 what we believe to have been the bargain was that the
15 Court would sentence him to a determinate sentence not
16 to exceed the amount of time he has already served.

17 THE COURT: Well, I think --

18 MR. MOORE: I think he is automatically a
19 youthful offender. I think the recent case said that
20 anybody under that age, whether the Court sentences him
21 under it or not, they are still considered a youthful
22 offender. But how you term it, I don't really think
23 matters.

24 THE COURT: I always thought those were
25 decisions that had to be made by the Youthful Offender

1 Division. I could give somebody a Y.O.A. suspended. I
2 could give someone a Y.O.A. for a sentence not to exceed
3 a certain amount of time.

4 Once they go over there, it was up to the
5 department to determine when they would be released. In
6 other words, they wouldn't really get credit for time
7 served is the way I thought it was.

8 MR. MOORE: That's, I guess the --

9 THE COURT: We all three may be saying the
10 same thing in a different way.

11 MR. MOORE: The other thing is that that plea
12 was vacated, so I don't know that he is actually under
13 the Y.O.A. division at this particular time. It's kind
14 of like back at square one.

15 THE COURT: I understood that.

16 (Attorneys confer.)

17 MR. YOUNG: Your Honor, just a moment. I
18 think we have just about worked it out.

19 THE COURT: Sir?

20 MR. YOUNG: We are working this out, I
21 believe.

22 (Attorneys confer.)

23 MR. YOUNG: Your Honor, youthful offender is
24 24-19-10, et seq.

25 (Attorneys confer.)

1 MR. MOORE: That will be fine, Your Honor.

2 MR. YOUNG: Your Honor, that will be
3 acceptable to the State. We have reached an agreement
4 then. The State would agree to a youthful offender
5 sentence, which I believe would be from one to six
6 years, an indeterminate sentence, suspended to a term of
7 probation as determined by the Court, sex offender
8 registry, and G.P.S. monitoring.

9 THE COURT: You recommend a sentence of a
10 Youthful Offender, indeterminate amount, suspended, a
11 period of probation based on the sex offender registry,
12 G.P.S. monitoring, and subject to all the terms and
13 conditions of the probation and sex offender management.

14 MR. YOUNG: Yes, sir, that's under the statute
15 as I understand it.

16 THE COURT: Mr. Moore?

17 MR. MOORE: Yes, I think the statute requires
18 those additional provisions as far as the registry and
19 monitoring for a conviction of this particular kind.

20 THE COURT: Mr. Moore, you represent -- Madame
21 Clerk, has Mr. Harrelson been placed under oath?

22 CLERK: No, sir.

23 THE COURT: If you would place him under oath,
24 please.

25 CLERK: Raise your right hand.

1 ANDREW JAMES HARRELSON, Jr. is
2 first duly sworn.

3 THE COURT: Mr. Moore, you represent Andrew
4 James Harrelson, Jr.?

5 MR. MOORE: Yes, sir, I do.

6 THE COURT: Have you explained to him the
7 charge in the indictment, the possible punishment, and
8 his rights, including his right to a jury trial?

9 MR. MOORE: Yes, I have.

10 THE COURT: In your opinion does he understand
11 those things?

12 MR. MOORE: He does.

13 THE COURT: How does he indicate he intends to
14 plead to lewd act on a minor?

15 MR. MOORE: Guilty, Your Honor.

16 THE COURT: Are you Andrew James Harrelson,
17 Jr.?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Before I can accept a plea of
20 guilty, it's necessary for me to determine if your plea
21 is being given freely and voluntarily. Therefore, I
22 need to ask you some questions.

23 If you do not understand my questions, please
24 let me know, and I will try to explain them to you. If
25 at any time you wish to talk with your lawyer, please

1 advise me, and I will allow you to do so. Do you
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: How old are you?

5 THE DEFENDANT: Twenty, sir.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: Completed high school.

8 THE COURT: Prior to being incarcerated, what
9 type of work did you do?

10 THE DEFENDANT: I worked for my parents, sir.

11 THE COURT: What type of work was that?

12 THE DEFENDANT: I was working at McDonald's.

13 THE COURT: Today are you under the influence
14 of any medication, drugs or alcohol?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you aware of any physical,
17 emotional or nervous problem that keeps you from
18 understanding what you are doing today?

19 THE DEFENDANT: No, sir.

20 THE COURT: You heard your lawyer tell me that
21 he has explained to you the charge, the possible
22 punishment, and your rights and that you understand
23 these things; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I have been handed up Indictment

1 2007-GS-35-195. It basically reads that Andrew James
2 Harrelson, Jr., date of birth, , did in
3 McCormick County, on or about August 11, '07, engage in
4 a sexual battery with the victim, a female, date of
5 birth, , being less than 11 years of age, in
6 that he did put his hands inside her bathing suit and
7 did insert his fingers into her vagina, the Defendant
8 being older than the victim, in violation of Section
9 16-3-655(1).

10 You are familiar with the name of the victim
11 that appears in the indictment, Mr. Harrelson?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: That is an indictment for criminal
14 sexual conduct with a minor. It appears you are being
15 allowed to plead to lewd act on a minor, for which you
16 could receive a sentence of up to 15 years and a fine of
17 up to \$10,000 and mandatory G.P.S. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: When you plead guilty, you give up
20 certain very important constitutional rights. First,
21 you give up your right to remain silent. That is your
22 right against self-incrimination, your right to say
23 nothing at all.

24 Second, you give up your right to have a jury
25 trial. That is your right to have a jury decide whether

1 or not you are guilty beyond a reasonable doubt. Third,
2 you give up your right to confront and be confronted by
3 the witnesses against you. Do you understand these
4 rights?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that when you
7 plead guilty, you give up these very important
8 constitutional rights?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Is that what you want do?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand you will not get a
13 jury trial if you plead guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Also, the charge of committing a
16 lewd act on a minor has not yet been before the grand
17 jury of McCormick County for their consideration. Do
18 you give up your right to have the grand jury examine
19 the charge of contributing to the delinquency of a minor
20 (sic)?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: The indictment appears to be
23 stamped, grand jury action waived, a signature, Andrew
24 J. Harrelson, Jr. Is that your signature where I am now
25 pointing?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The sentencing sheet also
3 indicates waiver of presentment of the grand jury, and
4 it's initialed by the Defendant.

5 Also, we are in Saluda County today. This, of
6 course, is a McCormick County case. You have the
7 absolute right to have this case heard and disposed of
8 in McCormick County. Do you give up your right to have
9 your case heard in McCormick County?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you wish to proceed with the
12 disposition of your case here today in Saluda County?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Understanding then the nature of
15 the charge of contributing to the delinquency of a minor
16 (sic) and the consequences of that guilty plea, how do
17 you wish to plead to that charge, guilty or not guilty?

18 THE DEFENDANT: Guilty, sir.

19 THE COURT: Do you understand that when you
20 plead guilty, you admit the truth of the charge made
21 against you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did you commit this crime?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Plea negotiations, Solicitor?

3 MR. YOUNG: Your Honor, my understanding is
4 that there will be a sentence rendered in this case of
5 Youthful Offender Act for an indeterminate period,
6 suspended upon a period of probation to be determined by
7 the Court, sex offender registration, and G.P.S..
8 monitoring and all other conditions, of course,
9 associated with the sex offender under the Probation
10 Pardon, and Parole Office here in the State of South
11 Carolina.

12 THE COURT: Mr. Harrelson, a moment ago I may
13 have said, how do you plead to the charge of
14 contributing to the delinquency of a minor.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I was incorrect in that
17 characterization. That is a separate and distinct
18 statute. The statute you are pleading under is
19 16-15-140, which is lewd act on a minor. How do you
20 plead to that charge, guilty or not guilty?

21 THE DEFENDANT: Guilty, sir.

22 THE COURT: Mr. Moore, you heard the solicitor
23 state the plea negotiations into the record. Did he
24 fully and accurately state those negotiation?

25 MR. MOORE: Yes, sir, he did.

1 THE COURT: Is that your understanding,
2 Mr. Harrelson, of the plea negotiations?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you still wish to plead guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anyone promised you anything
7 or held out any hope of reward to get you to plead
8 guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has anyone threatened you or use
11 force to get you to plead guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has anyone used any pressure or
14 intimidation to cause you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you had enough time to make
17 up your mind as to whether or not you want to plead
18 guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you pleading guilty of your
21 own free will and accord?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you satisfied with the manner
24 in which your lawyer has advised you and represented
25 you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you talked with your lawyer
3 as often and for as long as you feel necessary for him
4 to properly represent you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need anymore time to talk
7 with your lawyer?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you understood your talks
10 with your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has your lawyer done everything
13 for you that you feel like he could have done or should
14 have done?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you totally and completely
17 satisfied with your lawyer's services?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any complaint you want
20 to make about your lawyer, the solicitor or any police
21 officers involved in your case?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have you understood my questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything you would like

1 to ask me about what we have just been over?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you understand that you have a
4 right to appeal your guilty plea and the sentence of the
5 Court and that you or your lawyer must do so within ten
6 days?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Solicitor.

9 MR. YOUNG: Your Honor, on August 11, 2007,
10 the youth group at First Assembly of God in Aiken, South
11 Carolina, Whiskey Road, took a trip to McCormick County.
12 They went there for the purpose of going to Parksville
13 to go to the recreation and swimming area there in
14 Parksville. They did so.

15 The Leach family was there, part of it was.
16 Mr. Leach was at home, I believe, and so was his older
17 daughter Kayla. But while they were there, this
18 gentleman was also part of that group.

19 The victim in this case whose date of birth
20 was , did not want her feet to be touching
21 the muddy bottom, and Mr. Harrelson recognized that
22 opportunity. His date of birth is .

23 He took her out into the deeper water. While
24 he was out there in the deeper water, he used that
25 opportunity to put his hand inside her bathing suit and

1 place his finger into her vagina.

2 He touched her at least one, possibly twice.

3 She pulled away once and tried to get back. He pulled

4 her back in the water and apparently repeated the act.

5 She reported this to her older sister Kayla when she got

6 home.

7 Then Kayla took those steps to talk to momma

8 and Rebecca and daddy, who is here behind me. They took

9 her to the hospital and had her checked out. They found

10 redness in her vaginal area consistent with what had

11 happened.

12 During a subsequent interview on the 27th of

13 September, 2007, and after Miranda warnings, this

14 gentleman was asked did he go to the church outing. He

15 said, yes, I did touch the victim inappropriately.

16 When asked whether he inserted his fingers

17 into her private area, he said, I'm not sure whether I

18 did or not. Your Honor, we believe this is an

19 appropriate disposition of this case. It has been a

20 substantial period of time. I know that counseling has

21 been completed.

22 Mr. Leach, do you want to say anything to the

23 Court?

24 (Witness shakes head.) (Indicating negative

25 response.)

1 MR. YOUNG: Your Honor, Mr. Leach, as I have
2 indicated, is an active war veteran. He was severely
3 injured serving our country and has severe back problems
4 as a result of being injured in a combat environment,
5 and it has been a very difficult time for the family.

6 THE COURT: Prior record?

7 MR. YOUNG: No, sir.

8 THE COURT: I find there is a substantial
9 factual basis for the plea of guilty to committing a
10 lewd act on a minor. I find that the Defendant's
11 decision to enter the plea to that charge is freely,
12 voluntarily, knowingly, and intelligently made. He has
13 had the advice and counsel of a very competent attorney
14 with whom he says he is well and totally satisfied. His
15 guilty plea is accepted. Mr. Moore.

16 MR. MOORE: Thank you, Your Honor.
17 Mr. Harrelson is now 20 years of age. He was 16 years
18 of age when this event occurred. There is no dispute
19 generally as to the facts.

20 There's some question about whether there was
21 any penetration or not penetration. Judge, it didn't
22 really didn't matter in this case. It still would be a
23 lewd act, a battery, touching whether there was or there
24 wasn't.

25 Mr. Harrelson had no prior record of any kind

1 at that time. He was a juvenile and was waived up at
2 the request of the solicitor by the family court to
3 general sessions court.

4 Mr. Harrelson had some significant emotional
5 issues and developmental situations at that time. He
6 was evaluated several occasions. Judge Keesley ordered
7 both a competency exam, as well as an exam to determine
8 what else might be bothering him.

9 The determinations at that time were that
10 there was impulse disorders. He was competent to stand
11 trial. Intellectually, Your Honor, he doesn't seem to
12 show any signs -- I have been working on this case since
13 1997, so I am fairly familiar with the situation --
14 excuse me -- 2007. I'm sorry. He has matured quite a
15 bit. He was very much at a low chronological age level
16 in emotional development at the time this thing
17 occurred.

18 His family owns a number of McDonald
19 franchises in the Augusta area. His father is here.
20 His grandfather and grandmother, I think, actually own
21 them. I'm not sure whether Mr. Harrelson is actually an
22 owner. They all work in the family business and have
23 done so for many years.

24 Mr. Harrelson has completed high school. He
25 has served approximately 16 months time since this thing

1 occurred, plus whatever pre-confinement time since the
2 case was remanded back.

3 I think he pretty well understands where he is
4 right now. He has continued to receive mental health
5 counseling. He was receiving mental health counseling
6 prior to this incident and has continued to receive it
7 while he was in the Department of Corrections.

8 He indicates that has helped him and that he
9 is -- my observation is that he is much further along
10 now than he was three years ago when we were in court
11 the first time.

12 I don't see any signs that he would be
13 involved in any further criminal activity. We would ask
14 the Court to accept the recommendation of the State as
15 far as the probationary sentence, Your Honor.

16 As to the sentence, Your Honor, I would wish
17 to preserve Mr. Harrelson's rights. As this Court
18 indicated in the appellate decision, they didn't reach
19 the merits of whether or not Section 23-3-540 violates
20 the Constitution of prohibition against cruel and
21 unusual punishment and disproportionate sentencing.

22 As to the electric monitoring and registration
23 provision of the sentence, we would state our objection
24 as to that portion of the sentence, Your Honor. I
25 understand there are four or five other cases similar

1 that are before the Court of Appeals at the present time
2 on the exact same issue.

3 And just to protect Mr. Harrelson's rights in
4 the event that provision would change, we would state on
5 the record, as far as the sentencing, it is that part of
6 the sentencing. This isn't a conditional plea. He has
7 fully -- has pled guilty to the offense as charged.

8 THE COURT: Maybe I am misreading the
9 appellate decision, Mr. Moore. I don't know the
10 difference between the position you are taking today and
11 the position that was taken in front of Judge Keesley
12 when Judge Keesley sentenced Mr. Harrelson that was
13 reversed by the South Carolina Supreme Court.

14 MR. MOORE: Your Honor, my understanding from
15 reading the decision and from talking to folks at
16 Appellate Defense, and I didn't understand it when I
17 first read it either, but what is my understanding the
18 Court said that as -- when I objected on two occasions,
19 both during the guilt phase and during the sentencing,
20 that that made the plea a conditional plea.

21 So they declined to address the sentencing.
22 It says there was a case of State v. Easter that talked
23 about conditional pleas. In the appellate decision it
24 says when Easter entered his guilty plea but objected to
25 the sentence, he did not enter an invalid conditional

1 guilty plea.

2 That's what I'm attempting to do today, Your
3 Honor, maybe not quite as artfully as I should. We are
4 not objecting to the plea. We are not raising any
5 issues at that stage of the proceeding, but I believe
6 the case says, where they distinguish Easter from this
7 case, it says that I made the constitutional objection
8 before the guilty plea was accepted by the Court, which
9 made it a conditional plea.

10 Today I have not made any such objection prior
11 to the Court accepting the plea. So I am trying to
12 follow the procedure outlined in the Easter case.

13 THE COURT: Thank you, Mr. Moore. Solicitor,
14 do you have any issue on that point?

15 MR. YOUNG: Your Honor, I tend to agree that
16 the way the opinion is written, although I don't --
17 whether I like it or not, the approach being taken by
18 defense counsel here, regardless of that, it appears
19 that that is an accepted practice in the State of South
20 Carolina, so long as there is no conditional aspect to
21 the guilty plea itself.

22 THE COURT: All right.

23 MR. MOORE: And we have no objection to the
24 plea itself.

25 THE COURT: Thank you. Thank you very much,

1 Mr. Moore. Mr. Harrelson, anything you would like to
2 say?

3 THE DEFENDANT: No, sir.

4 THE COURT: And I think, Mr. Moore, in a close
5 reading, it does appear that the Court pointed out the
6 plea before Judge Keesley, Harrelson, his attorney at
7 that time, made a constitutional objection before the
8 guilty plea was accepted, and Harrelson reiterated his
9 objection during the sentencing portion of the hearing,
10 but the Court overruled the objection. Under State
11 versus Easter, 584 S.E.2d 117, 2003, no conditional plea
12 resulted from this situation.

13 In Easter the Court held that sentencing,
14 although often combined with the admission of guilt in a
15 hearing, is a separate issue from guilt and a distinct
16 phase of criminal prosecution. Therefore when Easter
17 entered his guilty plea but objected to his sentence, he
18 did not entered an invalid, unconstitutional guilty
19 plea.

20 They found Easter distinguishable from the
21 facts in Harrelson because in Harrelson trial counsel
22 made an constitutional objection before the guilty plea
23 was accepted by the circuit court. That did not occur
24 before me today.

25 That clearly does not indicate that I was in

1 any -- that I was closer to the top of my class than was
2 Judge Keesley. I assure you I was not. I just had the
3 benefit of reading this decision of Judge Keesley before
4 the plea today.

5 2007-GS-35-00195, Andrew James Harrelson, Jr.,
6 lewd act on a minor, the Defendant is committed to the
7 State Department of Corrections under the Youthful
8 Offender Act for a sentence not to exceed six years,
9 provided that is suspended with probation for five
10 years.

11 Special conditions of probation, mental health
12 counseling, continued sex offender registry, no contact
13 with the victim or any member of the victim's family,
14 subject to all conditions of Probation, Parole, and
15 Pardon services in reference to sex offender management,
16 in addition to all normal standard conditions of
17 probation, subject to mandatory G.P.S. monitoring.

18 Does that fully and completely cover the terms
19 of conditions of the plea negotiations?

20 MR. YOUNG: It does, Your Honor.

21 THE COURT: Mr. Moore?

22 MR. MOORE: It does, Your Honor.

23 THE COURT: Good luck to you. Thank you very
24 much.

25 MR. MOORE: Your Honor, if it please the

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for McCormick County, South Carolina, but heard in Saluda County, South Carolina, on the 22nd day of February, 2011.

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

May 10, 2011

L Coconut Pantsari

Court Reporter

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 Supreme Court**

The State, Respondent,

v.

Andrew James Harrelson, Jr., Appellant.

Appeal From McCormick County
William P. Keesley, Circuit Court Judge

Memorandum Opinion No. 2010-MO-030
Heard October 6, 2010 – Filed November 8, 2010

VACATED AND REMANDED

Deputy Chief Appellate Defender Wanda H.
Carter, of South Carolina Commission on
Indigent Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W.
Elliott, Senior Assistant Attorney General Norman
Mark Rapoport and Assistant Attorney General
Mark R. Farthing, Office of the Attorney General,
all of Columbia, and Solicitor Donald V. Myers, of
Lexington, for Respondent.

PER CURIAM: Andrew James Harrelson, Jr. ("Harrelson") appeals the circuit court's sentence placing him on an active electronic monitoring device following a guilty plea. Harrelson asserts the electronic monitoring provision found in Section 23-3-540 of South Carolina Code (Supp. 2009) is unconstitutional because it violates the Eighth Amendment prohibition against cruel and unusual punishment and disproportionate sentencing. Because Harrelson's plea was conditional, we decline to address the issues raised, vacate the plea and remand for

further proceedings.

FACTUAL/PROCEDURAL BACKGROUND

Harrelson pled guilty to committing a lewd act on a minor. During the plea colloquy, the judge informed Harrelson section 23-3-540 required he be placed on an electronic monitoring device. Harrelson's attorney made a constitutional objection before the guilty plea was accepted. After accepting Harrelson's plea, the circuit court judge sentenced him to be committed to the South Carolina Department of Corrections Youthful Offender Division for an indeterminate term not to exceed six years, plus the applicable costs and assessments. In addition, Harrelson, upon release from imprisonment, was to wear an active electronic monitoring device and ordered to adhere to the standard conditions for sex offender monitoring. Harrelson reiterated his objection during the sentencing portion of the hearing, but the court overruled the objection. This appeal followed.

ISSUE

Harrelson raises one issue on appeal: Whether the electronic monitoring provision under section 23-3-540 is unconstitutional to the extent it violates the Eighth Amendment prohibition against cruel and unusual punishment and disproportionate sentencing.

STANDARD OF REVIEW

Generally, "[i]n criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007).

LAW/ANALYSIS

It is axiomatic that conditional pleas may not be accepted in South Carolina. See *In re Johnny Lee W.*, 371 S.C. 217, 220, 638 S.E.2d 682, 684 (2006); see also *State v. Peppers*, 346 S.C. 502, 504, 552 S.E.2d 288, 289 (2001) (court could not accept guilty plea where appellant conditioned guilty plea upon right to appeal constitutionality of indictment); *State v. Truesdale*, 278 S.C. 368, 370, 296 S.E.2d 528, 529 (1982) (conditional plea is a practice not recognized in South Carolina and a practice of which this Court expressly disapproves). If "an accused attempts to attach any condition or qualification" to a guilty plea, then "the trial court should direct a plea of not guilty." *Truesdale*, 278 S.C. at 370, 296 S.E.2d at 529.

The State contends that under *State v. Easter*, 355 S.C. 79, 584 S.E.2d 117 (2003), no conditional plea resulted from this situation. In *Easter*, the court held that "[s]entencing, although often combined with the admission of guilt in a hearing, is a separate issue from guilt and a distinct phase of the criminal process. Therefore, when Easter entered his guilty plea but objected to his sentence he did not enter an invalid, conditional guilty plea." *Id.* at 81-82, 584 S.E.2d at 119. We find *Easter* distinguishable from the facts here. In this case, Harrelson's trial counsel made a constitutional objection before the guilty plea was accepted by the circuit court. Additionally, counsel reiterated that objection during the sentencing portion. By objecting during the guilt portion of the hearing as opposed to just during the sentencing phase, Harrelson's plea became conditional.

Because we find Harrelson's plea was conditional, we decline to address his Eighth

Amendment challenges to section 23-3-540. See *State v. Allen*, 370 S.C. 88, 102, 634 S.E.2d 653, 660 (2006) (declining to address remaining issues addressed by appellant when prior issue was dispositive).

CONCLUSION

For the reason indicated above, we vacate Harrelson's guilty plea and remand for further proceedings.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

WITNESSES

Crawford

MCSO

ARREST WARRANT NUMBER

J 035860

ACTION OF GRAND JURY

True Bill

[Signature]
Jury of Grand Jury
Dated: NOV 20 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-35- 195

The State of South Carolina

County of MCCORMICK

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

THE STATE

vs.

ANDREW JAMES HARRELSON, JR.

CDR# 0385

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR

DONALD V. MYERS, SOLICITOR

GRAND JURY ACTION WAIVED

Andrew J. Harrelson Jr.

A TRUE COPY

Kenneth C. [Signature]
Clerk of Court, McCormick County

STATE OF SOUTH CAROLINA }
COUNTY OF MCCORMICK } INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR

At a Court of General Sessions, convened on November 20, 2007 the Grand Jurors of McCormick County present upon their oath:

That ANDREW JAMES HARRELSON, JR., DOB , did
in McCormick County on or about August 11, 2007, did engage in a sexual battery,
to wit: Andrew James Harrelson, Jr. did engage in a sexual battery with the victim,
Minor L. 1, DOB , being less than eleven years of age, in that he
did put his hand inside her bathing suit and did insert his fingers into her vagina,
the defendant being older than the victim, in violation of Section 16-3-655(1) of
the 1976 South Carolina Code of Laws, as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF McCormick
STATE

VS.
Mr. Andrew J Harrelson Jr

AKA:

Race:

Sex:

M

Age:

20

DOB:

SSN:

Address:

Zip: Aiken, SC 29801

DL#

SID#

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADS

TO: LEWD ACT ON A MINOR

In violation of S 16-15-140

of the S.C. Code of Laws, bearing CDR Code # 2446

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☒ Mandatory GPS

☐ §17-25-45

The charge is:

☐ As indicted.

☐ Lesser Included Offense.

☒ Defendant Waives Presentment to Grand Jury.

☐ (Not a H/Bale)

The plea is:

☐ Without Negotiations or Recommendation.

☒ Negotiated Sentence.

☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 6 days/months/years or ☒ under the Youthful Offender Act not to exceed 6 years and/or to pay a fine of \$ 5; provided that upon the service of 5 days/months/years and or payment of \$ 5; plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waiver Hearing ☐ Ordered PTUP

Total: \$ 5 plus 20% fee: 3

5 days/hours Public Service Employment

Payment Terms: * SPECIAL NOTE: TO REMAIN

Obtain GED ☐

☐ Set by SCOPPS IN MCCORMICK COUNTY DETENTION CENTER UNTIL PLACED ON GPS MONITORING

Attend Voc. Rehab. Or Job Corp.

Recipient:

*Fine:

\$14-1-208 (Assessments 107.5%)	\$	\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2965 (DUI Assessment)	\$12	\$
\$56-1-288 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2842(i) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
\$44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: MENTAL HEALTH COUNSELING
See also P. 15724
NO CONTACT WITH VICTIM OR FEAR

☐ Conditional Discharge, §44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

Presiding Judge

Judge Code: 62145

Sentence Date 2-2 Feb 11

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (08/2010)

Subject to all conditions & P.P. do: See also P. 15724
...first to MANDATORY LSC MONITORING

MANDATORY IN THE COURT OF GENERAL SESSIONS

GPS

INDICTMENT/CASE#

2007GS3500195

ANNE:

J035680

Date of Offense:

10/22/2007

S.C. Code §:

16-03-0655(1)

CDR Code #:

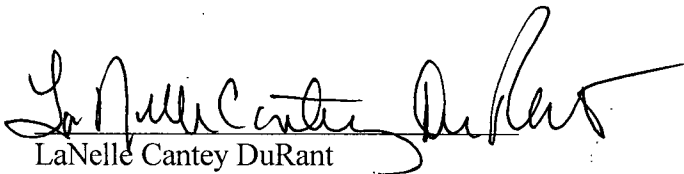
0395

SENTENCE SHEET

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 17th, 2013


LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

OCT 17 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from McCormick County

R. Knox McMahon, Circuit Court Judge

RECEIVED
OCT 17 2013
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANDREW JAMES HARRELSON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal 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 17th day of October, 2013.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 17th day of October, 2013.

Karen Fiedel (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.