

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

The Honorable Perry H. Gravely, Circuit Court Judge

Civil Action No. 2014-CP-32-4479

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S.C. SUPREME COURT

Glenn Edwin Vanover, ...Petitioner,

v.

State of South Carolina Respondent.

APPENDIX

VOLUME II

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Glenn E. Vanover,	)	
	)	
Applicant,	)	
v.	)	Case No. 14-CP-32-04479
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on April 19, 2016, before The Honorable Perry H. Gravely in the Court of Common Pleas for Lexington County, South Carolina; attended by counsel as follows:

APPEARANCES:

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*Taken Under Advisement

1 (APPLICANT PRESENT)

2 (COUNSEL CONFERS WITH APPLICANT)

3 THE COURT: All right. I'll be
4 glad to hear from you.

5 MS. VALENZUELA: Yes, Your Honor.
6 This is the case of Glenn Vanover versus the
7 State of South Carolina, case number 2014-CP-
8 32-4479.

9 The applicant filed his application
10 for post-conviction relief on December 20th,
11 2014. This was after he was indicted for two
12 counts of criminal sexual conduct with a
13 minor under the age of eleven. And that was
14 CSC first degree. He was indicted before the
15 August, 2011 term by the Lexington County
16 Grand Jury.

17 At trial he was represented by Theo
18 Williams. That case was called at trial on
19 August 28th, 2012 before the Honorable Perry
20 Buckner. The jury found the applicant guilty
21 as indicted on both offenses at that trial.
22 And then Judge Buckner sentenced applicant to
23 two terms of twenty-six years imprisonment to
24 be served concurrently.

25 Katharine Good filed a notice of

1 appeal on the applicant's behalf and the
2 Court of Appeals affirmed the applicant's
3 sentences in an unpublished Opinion and the
4 remittitur was issued for that on January 8th,
5 2014.

6 In the present application before
7 the Court, the applicant has alleged failure
8 to object to preserve an objection for appeal
9 based on the victim's testimony; failure to
10 investigate into the victim's school medical
11 records; failure to interview and call a
12 witness, that witness being Brandon Vanover;
13 failure to cross-examine the victim based on
14 a letter or something the victim had written
15 in middle school; failure to call the
16 applicant to testify while he -- it's phrased
17 as such. And then that the Defendant was
18 under the influence of Morphine and Xanax.
19 Failure to investigate an allegation against
20 a former teacher made by -- allegedly made by
21 the victim for inappropriately touching the
22 victim; and, then failure not to recall
23 State's witness Horne to elicit further
24 testimony on school records.

25 We filed our return to this

Glenn E. Vanover v. State of South Carolina
Case No. 14-CP-32-04479
Hearing of April 19, 2016
Testimony of Theo Williams - Direct Examination

5

1 application on March 19th of 2015.

2 Presently the Applicant is
3 represented by Jonathan Milling. Both the
4 Applicant and Mr. Milling are present in the
5 courtroom.

6 THE COURT: All right. I'll be
7 glad to hear from you.

8 MR. MILLING: Thank you, Your Honor,
9 may it please the Court? We would call as
10 our first witness Mr. Theo Williams.

11 (WITNESS TAKES STAND)

12 THEO WILLIAMS, having been duly sworn to
13 tell the truth, and nothing but the truth,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MILLING:

17 Q. Good morning, Mr. Williams?

18 A. Good morning.

19 Q. I'm just going to jump right into
20 it. Did you have an occasion back in 2011 to
21 meet Glenn Vanover, the applicant in this
22 case?

23 A. I did.

24 Q. And under what circumstances did you
25 meet him?

1 A. I represented him on the charges
2 that we're here on today.

3 Q. Do you recall when, about it was
4 that you first became aware of the
5 allegations?

6 A. Not really.

7 Q. But sometime after they were ---

8 A. Sometime after they were filed.

9 Q. You were the only attorney
10 representing him in connection with the
11 criminal charges; is that correct?

12 A. I was.

13 Q. He also had pending Family Court
14 allegations or Family Court actions related
15 to this; correct?

16 A. But I didn't represent him on the
17 Family Court.

18 Q. But you were also familiar with what
19 was going on in the Family Court case;
20 correct?

21 A. I was aware about the Family Court
22 action.

23 Q. Okay. The trial proceeded in August
24 of 2012; correct?

25 A. Correct.

1 Q. Prior to the trial, what witnesses
2 did you meet with as a part of your investi-
3 gation of the case?

4 A. Well, the entire family. It
5 essentially involved a lot of family members,
6 to include the Defendant. I guess that's it.

7 Q. Did you meet with -- obviously,
8 Glenn Vanover -- Melody Vanover?

9 A. Yes.

10 Q. Margaret Vanover?

11 A. Yes.

12 Q. Brandon Vanover?

13 A. Who?

14 Q. Brandon Vanover?

15 A. The son?

16 Q. Yes.

17 A. I want to say he actually came in
18 with the parents, with the mother at some
19 point in time, but we didn't talk extensively
20 because I knew -- I have since met Brandon,
21 after this case was over with, but because of
22 the allegations and about -- there was some
23 concern about whether or not Brandon could
24 testify or not testify based on what his mama
25 and daddy told him.

1 Q. Okay. Tell me specifically what
2 your understanding about Brandon's background
3 would have prevented him from being able to
4 testify?

5 A. He was ADHD. There were some
6 problems when he didn't take his medication.
7 In terms of what he actually knew, the
8 knowledge of any events that he actually knew
9 about, the only thing he can testify to, I
10 guess, in relationship to this trial would be
11 the fact of the 16th -- I guess it was his 16th
12 birthday party where there was this big to-do
13 of buying a car and supposedly the alleged
14 victim got mad because of it. There were
15 some allegations that Brandon was present in
16 the house during some of these situations but
17 she never said Brandon was in the room. And,
18 as a matter of fact, neither the mother nor
19 the father ever said that -- obviously, they
20 never said that it ever occurred.

21 Q. Right.

22 A. So I guess the question is whether
23 or not Brandon would have been able to
24 testify. Now, the mother and the father
25 indicated that -- I don't think they thought

1 it was a good idea for him to testify.

2 Q. Okay. Brandon and Taylor, the
3 victim in this case, or alleged victim, they
4 were close in age, about three and a half
5 years apart; correct?

6 A. Chronological age.

7 Q. Yes, sir.

8 A. (Affirmative nod).

9 Q. Okay. Do you remember what other
10 family members you may have spoken with?

11 A. I want to say I spoke to the
12 Defendant's brother, because I recognize him.
13 I think I may have talked to him at some
14 point in time.

15 Q. How about his sister?

16 A. Oh, yes. Well, that's Caroline.
17 Oh, yeah. She is the secretary for Ken
18 Matthews.

19 Q. Correct.

20 A. That's actually how I ended up
21 getting the case is because Ken Matthews and
22 I went to law school together. And I knew
23 Caroline anyway.

24 Q. Okay. Did you talk to Caroline
25 specifically about the allegations, the case

1 or anything like that?

2 A. Sure. Because she's a legal
3 secretary.

4 Q. Right. As a part of your pretrial
5 investigation, did you issue any subpoenas in
6 this case?

7 A. No.

8 Q. Did you request discovery in the
9 case?

10 A. Yes.

11 Q. Did you receive discovery responses
12 from the Solicitor's office?

13 A. Yes.

14 Q. Did you have an opportunity to
15 review those discovery responses?

16 A. I did.

17 Q. Okay. During the trial, when Taylor
18 began to testify, in response to a question
19 regarding the delay of the response, she
20 began to testify that she saw how Glenn, your
21 client, treated her mother and how he hit
22 her, to which an objection was raised?

23 A. Correct.

24 Q. What was your intended objection at
25 that time?

1 A. Tell me exactly -- what year was
2 this?

3 Q. 2012.

4 A. Okay.

5 Q. Would you like to read the
6 transcript?

7 A. No. I'm certain I did object to it.
8 But you're asking me for my recall for
9 something four years ago. Obviously, I
10 objected it because it didn't have anything
11 to do with the charges that were pending
12 against the Defendant.

13 Q. Right.

14 A. And it was unnecessarily bringing in
15 some act, I guess, of anger between the
16 Defendant and his wife if it did happen.
17 But it wasn't relevant to anything that was
18 pending.

19 Q. Do you think it also would be a
20 prior bad act under 404(b)?

21 A. It could be.

22 Q. Were you given an opportunity to
23 specify what your basis for the objection
24 was?

25 A. I just remember objecting to it and

1 I assume that the court dealt with my
2 objection. And I think they probably let
3 them go forward, if I remember right.

4 Q. Okay. Again, you don't think that
5 it was relevant to the allegations in this
6 case?

7 A. Do I think it's relevant whether or
8 not he and his wife had some sort of argument
9 or hard feelings between each other? I don't
10 know that they did.

11 Q. Right. No evidence was ---

12 A. I don't think it's relevant to
13 whether or not he committed this crime, the
14 alleged crime, or not.

15 Q. Yes, sir. And that was my question.
16 Did you have an occasion during your
17 representation of Mr. Vanover to review
18 Taylor's school records?

19 A. No. And I don't think they were
20 introduced on behalf of the Solicitor either.
21 I don't think the State introduced the record
22 nor I introduced the records.

23 Q. Was there a reason why you didn't
24 issue a subpoena for those records?

25 A. I didn't need to look at the

1 records.

2 Q. Okay.

3 A. Because it was all over the place
4 whether or not -- if she had bad grades you
5 could say they were a result of her being
6 abused. If she had good grades you could say
7 that it didn't happen. I knew she had bad
8 grades. At least that's what her parents
9 said. I mean, there was no question that she
10 had had bad grades. And most of the time she
11 had bad grades was because she was skipping
12 school.

13 Q. Regarding the skipping school, would
14 her attendance records have been relevant or
15 important in this case?

16 A. To show that she skipped? Well, I
17 guess she could have been skipping school
18 because she was emotionally upset because she
19 had been sexually assaulted. Or she was
20 skipping school because she was like not a
21 good student, didn't want to be in school
22 because she was hanging out with other
23 students or because she was going to the
24 doctor's office because -- the bottom-line, I
25 guess, on all of that is, is that the burden

1 of proof is on the State.

2 Q. Right.

3 A. And I thought it was more beneficial
4 to wait as a last shot to the Solicitor and
5 say if they wanted to bring the records, they
6 could have brought the records, to make it
7 look like the Solicitor was hiding something.

8 Q. Right. Okay. And so that was your
9 strategic decision as to why you didn't want
10 to have the school records there?

11 A. That was a strategic decision in
12 regards to why we didn't subpoena them or
13 introduce them into evidence.

14 Q. Right. Okay. But because you
15 didn't review them, you didn't know exactly
16 what might have been included in them?

17 A. I knew exactly what the parents told
18 me. I didn't need to review them. I trusted
19 exactly what the Defendant and what his wife
20 told me. And I don't believe they lied to me
21 about anything.

22 Q. Do you think that or do you recall
23 whether Taylor indicated that she did not
24 missed the number of days that her parents
25 had suggested?

1 A. Whether or not she said that?

2 Q. Yes, sir.

3 A. No, I don't recall that.

4 Q. Okay. Do you believe it would have
5 been helpful to have those school records if
6 she said that she did not miss that many days
7 and, in fact, the records would have shown
8 otherwise?

9 A. Only if we were determining whether
10 or not she was guilty of truancy in Family
11 Court.

12 Q. Okay. Or deception?

13 A. Well, I took it for granted that the
14 child was not going to be a hundred percent
15 honest because she's a child. And she's
16 already indicated that she's not a hundred
17 percent straightforward.

18 Q. And you indicated earlier that you
19 did not, I guess, interview Brandon Vanover
20 based upon the information that the parents
21 had provided to you?

22 A. That's true.

23 Q. Okay. So you don't know what
24 information he could have provided to you
25 that could have assisted in your

1 investigation into this case?

2 A. I knew what the parents told me that
3 he would say.

4 Q. Okay. What do you recall that the
5 parents told you that he would have said
6 regarding these allegations?

7 A. He would say that his sister was
8 jealous of him.

9 Q. Okay.

10 A. That -- I guess that's about it.
11 That his sister was not -- obviously, he
12 would say that nothing ever happened in the
13 house.

14 Q. Right?

15 A. But then she never said that he was
16 actually in the room at any time that
17 anything actually happened.

18 Q. Okay.

19 A. But the fact that he was or was not
20 taking his medicine I thought would be, would
21 be more of a problem than him just saying
22 that.

23 Q. Okay. Do you recall during the
24 trial as to whether or not you were aware
25 that Mr. Vanover was under the influence of

1 any type of prescription medications?

2 A. He was fine.

3 Q. Okay. Were you aware as to whether
4 or not he was under the influence of any
5 prescription medication or taking any
6 prescription medications?

7 A. If he were taking medications -- I
8 think he has a bad back, if I remember right.
9 He probably was taking medications, but he
10 was fine. He was coherent. He understood my
11 questions. He was fine.

12 Q. Okay.

13 A. If he wasn't fine, I wouldn't have
14 tried the case.

15 Q. Did you notice anything about his
16 appearance as to whether he appeared to be
17 out of it, emotionless?

18 A. Again, if there were anything wrong
19 with my client when I was trying a case, I
20 would have asked for a postponement of the
21 trial.

22 Q. Yes, sir.

23 A. And I think probably his mother, his
24 sister, who works for Ken Matthews, his
25 brothers -- somebody would have asked that I

1 postpone the trial if they thought that there
2 was anything wrong with him.

3 Q. What went into your thought process
4 in calling Mike Horn or recalling Mike Horn
5 as a witness as your last witness in this
6 particular case?

7 A. To have that last idea placed in the
8 jury's mind that the State could have brought
9 the school records but they didn't bring it,
10 so they must have something to hide.

11 Q. Okay. Have you ever hear the name
12 Kenneth Pace?

13 A. I assume that's the guy who was a
14 teacher at school when there was some
15 allegation about the alleged victim. And
16 there was a dispute with the school
17 administrators.

18 Q. Okay. Did you attempt to do
19 anything to learn more about that allegation?

20 A. Well, the way I learned about that
21 allegation is that there was a one-page line,
22 which was written about him by the wife. And
23 if I could just read to you that one-page
24 line?

25 Q. Please.

1 A. This is when she tried to commit
2 suicide. And she basically was putting
3 everything that she could think of about what
4 was going on. And she said that -- maybe
5 it's on the other side here. I'll read you
6 word for word what his wife said.

7 Q. Please do.

8 A. She almost had a teacher fired
9 because she said he said, "what color is your
10 underwear" But he said "no one wants to see
11 that, pull your pants up."

12 That is the extent of that sentence and I
13 can tell you, I guess, probably I'm basing
14 some of my decision based on my knowledge of
15 teaching school and stuff like that. I went
16 to Clemson in Secondary Ed/History and I was
17 going to be a history teacher.

18 Q. Yes, sir.

19 A. And my mother was a teacher. And I
20 guess being a teacher I could see myself
21 telling some young girl to 'pull your pants
22 up.' Nobody wants to see what color your
23 underwear -- I could hear my mother saying
24 that to children. And I don't really think
25 that's sexual in nature.

1 Q. Okay. But you didn't talk with Mr.
2 Pace to find out whether or not there might
3 have been more to the story?

4 A. I accepted that as being true. I
5 don't know if Mr. Pace said that or not, but
6 if he said that -- I don't see that as being
7 that bad a thing for a teacher to tell some
8 young student running about -- because old-
9 school, you wanted the students to dress
10 properly.

11 Q. Okay.

12 A. I would add that neither the
13 Defendant or any of his family wanted me to
14 subpoena him and bring him to Court to
15 testify.

16 Q. You had that conversation with them?

17 A. I asked if there was anything else.
18 I asked him 'is there anything else you think
19 we should do?' And I would assume that
20 Caroline would have said something. I didn't
21 really know that -- I didn't put that much
22 faith -- and maybe, Ms. Vanover, in doing
23 that. Because she's a lovely lady. But she
24 doesn't have experience with the criminal
25 system. But I thought if Caroline really

1 thought it was important, she would have said
2 something to me. But I didn't think it was
3 important.

4 Q. Okay.

5 MR. MILLING: I beg the Court's
6 indulgence for a moment.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. MILLING:

9 Q. I'm going to show you a page which
10 has up at the top a numbering system of
11 August 7, 2012, Page 276 of 310. Do you
12 recognize that document? Or I guess -- let
13 me take a step back. Do you recognize that
14 numbering system?

15 A. I recognize the numbering system.
16 The question is whether or not I can actually
17 read what you've highlighted for me to read.

18 Q. Yes, sir. And I highlighted a
19 portion of that page for ease of reference.

20 MS. VALENZUELA: And just before
21 anyone reads this aloud, I'd like to be heard
22 on an objection.

23 THE COURT: All right. I'll be
24 glad to hear from you.

25 MS. VALENZUELA: And, Your Honor,

1 from what counsel just showed me, I would
2 argue that this is hearsay. It involves two
3 people who -- neither person is present in
4 the courtroom. It appears to be a Facebook
5 message and an exchange. So on the basis of
6 hearsay, I going to object and say that it
7 should not be allowed.

8 MR. MILLING: And, Judge, I'm not
9 offering this document or this questioning
10 for the truth of the matter asserted. I'm
11 rather offering it to whether or not Mr.
12 Pace's name appeared in the discovery in
13 addition to the reference by Ms. Vanover in
14 her note to Mr. Williams.

15 THE COURT: Is this a part of this
16 discovery? Is that what that is?

17 MR. MILLING: Yes, sir, Your Honor.

18 WITNESS: It would be, Your Honor.

19 MR. MILLING: And I do have Brandon
20 Vanover who is the one who was typing here.
21 He is here in the courtroom as well to answer
22 any questions that the State may have.

23 THE COURT: I'll allow it then.

24 COURT REPORTER: Do you want it
25 marked? Applicant's Exhibit Number 1.

1 DIRECT EXAMINTAION CONTINUED

2 BY MR. MILLING:

3 A. You will have to help me read it.

4 Can you blow it up so I can read it?

5 Q. I tell you what ---

6 A. And I have bifocals on too.

7 MS. VALENZUELA: I'm going to mark
8 this as Appellant's [sic] Exhibit Number 1.

9 (SO MARKED AS APPLICANT'S EXHIBIT 1)

10 DIRECT EXAMINATION CONTINUED

11 BY MR. MILLING:

12 Q. And I've got my contacts in so -- it
13 appears to be a Facebook messaging between
14 Brandon Vanover and an individual identified
15 as Taylor Richburg. And the highlighted
16 portion appears to say, "What you did to Mr.
17 Pace, saying all those lies, that man could
18 have lost his job. You are sick. Goodbye.
19 Don't call or text. You have no family."

20 MS. VALENZUELA: We would agree
21 that that's the language that we just read.

22 THE COURT: All right.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. MILLING:

25 Q. Thank you.

1 A. Okay.

2 Q. So there was at least a second
3 reference in the State's discovery to a Mr.
4 Pace?

5 A. Okay.

6 MS VALENZUELA: Your Honor, I
7 would object to this on the basis of opposing
8 counsel's explaining why this wasn't hearsay
9 because he was admitting it for the purpose
10 of stating that Defense counsel knew of Mr.
11 Pace's name. The Defense counsel just
12 indicated that he could barely read the
13 script in this. I think that to be fair
14 there needs to be questions that establish
15 whether Defense counsel was ever able to read
16 that when that was in his possession because
17 it goes strictly to the point of whether he
18 even had seen the name in the past.

19 THE COURT: I overrule. Go ahead.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. MILLING:

22 Q. When you back Mr. Williams and look
23 at that are you able to discern the name, Mr.
24 Pace?

25 A. I am. Particularly after you read

1 it to me.

2 Q. Yes, sir. Yes, sir. And again,
3 this is probably a copy of a copy of a copy.
4 But you've also gotten other people in your
5 office, paralegals, who review your discovery
6 materials as well?

7 A. Well, I'm sure I probably would have
8 read it a lot better four years ago?

9 Q. Yes, sir. Yes, sir. But you never
10 spoke with Mr. Pace; did you?

11 A. No.

12 Q. Okay. So you don't ---

13 A. That was never emphasized as being
14 anything crucial from the Defendant or from
15 any of his family.

16 Q. Okay. But you didn't know what he
17 would have said because you didn't talk to
18 him?

19 A. No, I didn't.

20 MR. MILLING: I beg the Court's
21 indulgence for one moment.

22 Your Honor, we don't have any
23 further questions at this time.

24 THE COURT: Cross-examination

25 CROSS-EXAMINATION

1

2 BY MS. VALENZUELA:

3

4

Q. Okay. Mr. Williams, can you tell us
how long you've been practicing criminal law?

5

6

A. Well, I was sworn in in '76, so I
guess that makes forty years.

7

8

Q. Forty years. And your practice is
focused on criminal defense?

9

10

A. Up until this month it was a hundred
percent focused on criminal practice.

11

12

13

Q. And about how many times do you
recall meeting with the Applicant before his
trial?

14

15

16

17

A. I don't know. Many times. In all
honesty, they were very good about coming in
and talking and -- I don't know how many
times.

18

19

20

Q. Okay. And were you ever asked by
the Applicant or his family to locate Mr.
Pace?

21

22

23

24

25

A. No.

Q. Did they ever name, other than the
reference that opposing counsel just gave you
in that Facebook message, was Mr. Pace's name
ever spelled-out for you?

1 A. You say spelled-out for me. There
2 was a conversation with the Defendant as well
3 as, I guess, family members that she had lied
4 about something that happened in school. And
5 not necessarily a lot of substance to it, but
6 that -- and then obviously I read the note
7 from his wife where she referenced what had
8 happened.

9 Q. And in that conversation did they
10 tell you when they were talking about the
11 victim allegedly lying about something in
12 school, did they mention the teacher's name?

13 A. I think it was phrased 'a teacher in
14 school.' Clearly -- well, I didn't note it.
15 The name is not referenced in here.

16 Q. And when you say in here, you're
17 referencing the letter from the Defendant's
18 wife?

19 A. The Defendant's wife, (affirmative
20 nod).

21 Q. And it does not mention Ken Pace's
22 name?

23 A. It does not.

24 Q. And now the discovery material that
25 you had received from the State, you reviewed

1 all that material?

2 A. I did.

3 Q. And you went over that with the
4 Applicant prior to his trial?

5 A. Yes.

6 Q. And you discussed his version of the
7 facts with him?

8 A. Well, his version of the facts was
9 it didn't happen. So, yes.

10 Q. And you discussed possible defenses
11 with him?

12 A. Yes.

13 Q. Okay. And what was your strategy in
14 terms of how you were going to defend this
15 case in trial?

16 A. Well, the strategy would be to
17 indicate that it didn't happen. She got mad.
18 She got mad because her brother got a car and
19 she didn't get a car. She had said it before
20 and she had gone back on it.

21 Q. Were you also planning to highlight
22 any inconsistencies in her testimony?

23 A. There is a lot that would have made
24 -- there's a lot that might have helped him
25 if we had been able to not -- if we'd been

1 able to penetrate the rape shield statute, I
2 think. Because their view of the whole thing
3 was that this young lady had been out with a
4 lot of guys, had been getting in trouble with
5 a lot of guys, but there was no legal way
6 which we could introduce that information
7 without violating the rape shield statute.

8 Q. And when you say the rape shield
9 statute, are you referring to 16-30-659.1?

10 A. Yes.

11 Q. Could you briefly describe the
12 State's evidence against the Applicant? What
13 they had going into trial?

14 A. Well, they had essentially her
15 testimony that it happened. There was no
16 physical evidence that it happened. There
17 were [sic] no witness to corroborate that it
18 happened. Essentially, it was just her word
19 that it happened.

20 Q. Did you feel like you had ample time
21 to prepare for the trial?

22 A. Yes.

23 Q. Now, when you actually got into
24 trial you were able to highlight some of the
25 inconsistencies from the victim; right?

1 A. Yes.

2 Q. You were able to highlight that at
3 one point in the trial she told the jury that
4 she had been molested by her father upwards
5 of seventy to seventy-six times; correct?

6 A. Correct.

7 Q. And then you were able to compare
8 that and have her admit that when she had
9 told the detective to begin with, she had
10 said that it was only somewhere between six
11 and seven times?

12 A. That's correct.

13 Q. And she admitted that that was an
14 inconsistent -- that that was two different
15 statements that she'd made in front of the
16 jury?

17 A. That's true.

18 Q. And you were also able to highlight
19 the fact that she had said that it was
20 happening on a monthly basis, but it was
21 probably more of an annual basis?

22 A. That's correct.

23 Q. You were also able to touch on the
24 delay in her reporting this molestation?

25 A. Yes.

1 Q. Okay. And earlier, opposing counsel
2 asked you about what relevance, if any, the
3 fact that the victim said that she had
4 observed her father hit her mother, and she
5 had testified to that. And you said that
6 there was no relevance to it?

7 A. Correct.

8 Q. Do you believe that the State would
9 have felt that that would have been relevant
10 to explain why the victim was so scared that
11 it took her two years to report this against
12 her father?

13 A. Repeat that question?

14 Q. Sure. Would the State's position be
15 that it took -- that the watching your father
16 beat your mother would give you the fear that
17 you wouldn't report something for two years?

18 A. I assume that is one position they
19 could take.

20 Q. Okay. And you do, in fact, cross
21 the victim on her poor performance and her
22 poor grades?

23 A. I did.

24 Q. And you also crossed her on being
25 jealous of her brother?

1 A. I did.

2 Q. And you crossed her on sneaking out
3 of the house?

4 A. I did.

5 Q. And using doctor's excuses to sneak
6 out of the house?

7 A. I did.

8 Q. You also pointed out the fact that
9 she was not, the victim was not able to give
10 a specific date on when the molestation
11 occurred?

12 A. That's true.

13 Q. And you pointed this out to help --
14 that there was no way to establish an alibi
15 for your client because there was no specific
16 date to be able to point to?

17 A. That's true.

18 Q. And you crossed the victim on making
19 some sort of poem or statement that was
20 favorable to her father while she was in
21 middle school?

22 A. Say that again?

23 Q. Sure. I'm turning to Page 150 in
24 the transcript.

25 MS. VALENZUELA: Your Honor, may I

1 approach?

2 THE COURT: Yes.

3 CROSS-EXAMINATION CONTINUED

4 BY MS. VALENZUELA:

5 Q. Here. I'll just ---

6 A. I got it.

7 Q. 150?

8 A. Okay.

9 Q. And then at Line 10 you ask the
10 victim, (reading):

11 "So you wouldn't have written poetries
12 about him in school talking about how great
13 he was.

14 I can't remember.

15 Are you saying you did or didn't do it?
16 You just can't remember?"

17 She says, "I probably did."

18 And you said, "Probably did?"

19 And she said, "I wanted everyone at
20 school to think that I had a good life. I
21 didn't want anyone to know."

22 A. I did.

23 Q. In fact, you were able to bring out
24 in cross and on direct that the victim
25 claimed, after she first reported on her

1 father, that she went to live with a friend
2 for two months. And both the mother and
3 father and the grandmother testified that she
4 only went to stay with her friend for three
5 days?

6 A. That's correct.

7 Q. And then in going to the school
8 records, you specifically left it for your
9 last witness to call before you closed your
10 case?

11 A. I did.

12 Q. And you emphasized that if the State
13 had wanted to, they would have been able to
14 subpoena the records?

15 A. Correct.

16 Q. And then in closing you told the
17 jury, you made a point of telling the jury
18 that if the State had had the opportunity to
19 embarrass your client's by correcting them
20 with school records, they could have done so
21 but had chosen not to. And kind of left it
22 as a dot, dot, dot for the jury to consider
23 why the State wouldn't have wanted to bring
24 those records?

25 A. That's true.

1 Q. And did you do that for a strategic
2 reason?

3 A. I did.

4 Q. Now, you mentioned when you were
5 talking about Brandon Vanover earlier, that
6 you have met him since the trial?

7 A. I have.

8 Q. How have you come in contact with
9 Mr. Vanover?

10 A. I'm not sure I can even comment on
11 that. Well, I can't say why. Maybe Brandon
12 can waive that. But I can't comment on why.

13 MR. MILLING: Judge, what might have
14 happened subsequent to the trial I don't
15 think would be relevant.

16 THE COURT: Yeah. I'm going to
17 sustain that.

18 MS. VALENZUELA: Yes, sir. Yes,
19 Your Honor.

20 CROSS-EXAMINATION CONTINUED

21 BY MS. VALENZUELA:

22 Q. Were you aware that Brandon Vanover
23 had dropped out of high school prior to the
24 trial?

25 A. Yes, because -- I want to say it was

1 something in there -- I want to say she was
2 complaining about the fact that -- oh, no. I
3 know, I know what she said in the trial. I
4 was trying to remember that. She said that
5 -- she tried to put a different light on it.
6 She said that Brandon had dropped out of
7 school but she didn't want to be like that.
8 She wanted to finish school or something like
9 that. Just some rosy thing that the
10 Solicitor had painted on her to make her look
11 -- I don't know; that she was trying to do
12 better than her brother.

13 Q. But in considering your strategic
14 decision on who to call to testify at trial,
15 was one of the things that you considered the
16 things that would have reflected badly on
17 your witnesses?

18 A. That -- whether or not Brandon
19 dropped out of school or didn't drop out of
20 school, did not -- is not an indication of
21 whether or not I would use Brandon or not. I
22 was more concerned about the fact that they
23 would make hay with whether or not he was
24 taking medication or not taking medication,
25 whether or not he was ADHD or not ADHD. I

1 think Brandon's a good guy.

2 Q. Okay. So during the course of your
3 representation, did the Applicant appear to
4 comprehend everything that y'all were
5 discussing about the case?

6 A. He did.

7 Q. Did he seem to understand the
8 charges that he was facing?

9 A. He did.

10 Q. Comprehend the evidence that the
11 State was prepared to present against him?

12 A. He did.

13 Q. Did any of his questions raise any
14 concerns about his mental capacity, if it was
15 affected by medication?

16 A. No.

17 Q. Okay. Did he ever express any
18 concerns to you that if he were on medication
19 that it was affecting his ability to
20 understand either prior to trial or during
21 trial?

22 A. Absolutely not.

23 Q. Did any of his family members ever
24 come to you and express any concerns about
25 how the medication was affecting him, either

1 -- actually, let's start with before trial?

2 A. No.

3 Q. And then during trial, did they ever
4 approach you to say anything?

5 A. If anyone had said that he couldn't
6 understand what was going on -- I've been
7 practicing law for forty years. I think I
8 probably would have stopped the trial some
9 way.

10 Q. So that's a "no"?

11 A. That's a big no.

12 Q. And then during the actual trial,
13 did you observe your client was able to
14 understand everything that you were -- that
15 was going on during the trial?

16 A. He did.

17 Q. And then prior to him taking the
18 stand to testify, did you have an opportunity
19 to talk to him about his decision to testify?

20 A. I did.

21 Q. And did he appear to understand
22 everything that you were talking to him about
23 at that time?

24 A. He did.

25 Q. And then the court also went through

1 an exchange with him on whether he wanted to
2 testify; correct?

3 A. It did.

4 Q. And he appeared to understand what
5 the court was saying?

6 A. He did.

7 Q. Okay. And then how did you feel
8 about your client's testimony during the
9 trial?

10 A. Boy, that's a ---

11 Q. Well, let me take that question
12 back. Did your client appear confused at
13 trial?

14 A. No, he wasn't confused. He was not
15 confused.

16 Q. Did he appear to understand the
17 questions that you were asking?

18 A. He did.

19 Q. And did he appear to understand the
20 questions that the prosecution was asking?

21 A. He did.

22 Q. Was there anything about his
23 behavior while he was testifying that was
24 significantly or even a little bit different
25 than his everyday interaction with you?

1 A. Well, I don't know that I had every
2 day inter reaction (sic) with him. But he
3 appeared -- my assessment of him was that he
4 was fine. He does look better today, though.

5 APPLICANT VANOVER: Thank you.

6 CROSS-EXAMINATION CONTINUED

7 BY MS. VALENZUELA:

8 Q. You ---

9 A. And I think that only goes --
10 everybody's a little nervous when you try a
11 case but he was fine.

12 Q. And regarding Ken Pace, the teacher
13 who was not called to testify?

14 A. Yes.

15 Q. Based on the information that you
16 had in front of you, what did you think you
17 were going to find out from Ken Pace if you
18 had reached out to him?

19 A. That he, as a teacher, told some
20 young girl to straighten up how she dressed
21 and that was going to be it.

22 Q. And did you think that that would in
23 any way be helpful to your client's case?

24 A. No.

25 Q. I'm sorry?

1 A. No.

2 MS. VALENZUELA: Thank you, Your
3 Honor.

4 REDIRECT EXAMINATION

5 BY MR. MILLING:

6 Q. But you don't know what Mr. Pace
7 would have said because you didn't talk to
8 him; correct?

9 A. I did not talk to him.

10 Q. Okay.

11 MR. MILLING: Nothing further, Your
12 Honor.

13 THE COURT: Thank you. You may
14 step down.

15 WITNESS: Thank you, Your Honor.

16 (WITNESS STEPS DOWN)

17 THE COURT: Can this witness be
18 released?

19 MR. MILLING: No objection, Your
20 Honor.

21 MS. VALENZUELA: No objection.

22 THE COURT: All right. You're
23 released.

24 WITNESS: Thank you, Your Honor.

25 THE COURT: All right. Next

1 witness.

2 MR. MILLING: Judge, we would call
3 Kenneth Pace.

4 (WITNESS TAKES STAND)

5 KENNETH PACE, having been duly sworn to
6 tell the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MILLING:

10 Q. Mr. Pace, where do you live?

11 A. I currently live in Lexington.

12 Q. Where do you work?

13 A. I work at Pine Ridge Middle School
14 in West Columbia.

15 Q. Is that the first middle school
16 you've ever worked at?

17 A. No, it is not.

18 Q. Where had you worked before?

19 A. I worked at Batesburg-Leesville for
20 three years. And I've worked at Kingstree
21 Junior High School for one year.

22 Q. As a part of your teaching at
23 Batesburg-Leesville, did you have occasion
24 to meet Taylor Vanover?

25 A. Yes, I did.

1 Q. In what capacity?

2 A. I was her, I believe, seventh grade
3 teacher at the time.

4 Q. During that seventh grade year, did
5 Taylor get in trouble with you?

6 A. Yes, she did.

7 Q. Can you tell me what happened to
8 cause her to get in trouble?

9 A. If I recall, she was very talkative
10 and being very social in the class with
11 another female student. And after several
12 warnings, I ended up giving her a
13 disciplinary action, keeping her after
14 school.

15 Q. Okay. When you say a disciplinary
16 action, what specifically happened?

17 A. I wrote her up, gave her a behavior
18 note and gave her detention.

19 Q. Okay. Was she talkative all the
20 time? What were your general observations of
21 her during ---

22 A. Yes, she was very social, which most
23 seventh graders are. But she was -- you
24 could tell that she was, you know, searching
25 to be popular.

1 Q. Okay. Was she looking for attention
2 from people?

3 A. I would definitely say so,
4 (affirmative nod).

5 Q. After you wrote her up, did you
6 receive a call about Taylor?

7 A. Yes. Approximately the day after,
8 during class, I got a phone call from
9 Taylor's parents. Her father was on the
10 phone ---

11 MS. VALENZUELA: Objection, Your
12 Honor, to any hearsay before it is announced.

13 THE COURT: All right.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. MILLING:

16 Q. You received a call from Taylor's
17 parents?

18 A. Yes.

19 Q. Did you talk to her father?

20 A. Yes, I did.

21 Q. Did you also talk to her mother?

22 A. Yes, I did.

23 Q. Was there a difference in demeanor
24 between the two of them?

25 A. Absolutely.

1 Q. What observations were you able to
2 make regarding the demeanor of Mr. Vanover?

3 A. Mr. Vanover, like I said before was
4 the first I spoke with. He seemed very calm.
5 And he basically, again I'm trying to recall,
6 uh, that he had a concern.

7 MS. VALENZUELA: Objection to
8 hearsay?

9 THE COURT: Yeah. Sustained.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. MILLING:

12 Q. You can't say what he said. But was
13 he angry? What was his demeanor?

14 A. No, he did not. He seemed that he
15 wanted to get to the bottom of what was being
16 brought to his attention.

17 Q. Okay. How about her mother, did you
18 speak with her mother?

19 A. Yes. He immediately gave -- he said
20 'I need you to talk to my wife.' And Ms.
21 Vanover was very accusing and basically was
22 accusing me of doing something wrong.

23 MS. VALENZUELA: Objection.

24 THE COURT: Yeah. We need to get
25 away from the hearsay here.

1 MR. MILLING: Yes, sir.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MILLING:

4 Q. Subsequent to that telephone
5 conversation, did you learn that Taylor had
6 made allegations against you?

7 A. That was from that conversation on
8 the phone.

9 Q. Okay. What was your understanding
10 that Taylor had said that you had done?

11 A. Her mother said ---

12 MS. VALENZUELA: Objection.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. MILLING:

15 Q. Wait a minute. You can't -- hold
16 on. Excuse me. What is your understanding
17 that Taylor said?

18 A. That I had been asking what color
19 panties her and her friend wore. What time
20 of the month their period was, if they had a
21 boyfriend or not.

22 Q. Okay. So it was your understanding
23 that in the seventh grade Taylor accused you
24 of asking questions about her underwear, her
25 menstrual period, and her boyfriends?

1 A. Yes.

2 Q. Did you?

3 A. No.

4 Q. Subsequent to that call, what was
5 the next thing that happened regarding
6 Taylor's allegations?

7 A. Say that again. I'm sorry?

8 Q. After you had the call with Taylor's
9 parents, what was the next thing that
10 happened? Did you speak with the school ---

11 A. I went immediately to my
12 administration and told them about the
13 situation and they said they would take
14 control of it from there on. And the very
15 next day it was recanted.

16 Q. Okay. So the very next day, Taylor
17 withdrew her allegations against you?

18 A. Correct.

19 MS. VALENZUELA: Objection to
20 hearsay, Your Honor. And the fact that
21 withdrawing assumes the words that she's
22 saying.

23 THE COURT: Okay.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. MILLING:

1 Q. Were you fired as a result?

2 A. I was not fired. I never missed one
3 single day.

4 Q. Okay. Were these allegations true?

5 A. Absolutely not.

6 Q. Did you understand the allegations
7 that Taylor made towards you to be of a
8 sexual nature?

9 A. It sounded like she was trying to
10 make that.

11 Q. Okay. Were you concerned that you
12 could lose your job based upon the
13 allegations she made against you?

14 A. Absolutely.

15 Q. Did any school administrator ever
16 take any action against you?

17 A. Absolutely not.

18 Q. Okay. Did you talk to Taylor
19 subsequent to that?

20 A. No. They removed her immediately
21 from my class and I never saw her in eighth
22 grade, the very next year either. So they
23 pretty much separated us.

24 Q. Okay.

25 MR. MILLING: I beg the Court's

1 indulgence. One moment.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MILLING:

4 Q. Was it your understanding that
5 Taylor had alleged any type of physical
6 contact or just the inquiries; if you recall?

7 A. No, not that I recall.

8 Q. Prior to me contacting you last
9 year, had you ever spoke with a lawyer of
10 Glenn Vanover about this situation?

11 A. No, I did not.

12 Q. Did you know that Glenn Vanover had
13 -- that Taylor Vanover had made allegations
14 of a sexual nature ---

15 A. Not until I spoke with you did I
16 know about that.

17 Q. Okay.

18 MR. MILLING: Nothing further at
19 this time, Your Honor.

20 THE COURT: Any cross?

21 MS. VALENZUELA: Yes, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. VALENZUELA:

24 Q. Mr. Pace, how are you?

25 A. Good, thank you.

1 Q. Mr. Pace, did you ever speak to
2 Taylor about these alleged allegations?

3 A. No.

4 Q. Okay. Did you ever hear Taylor
5 saying these things or claiming these things
6 about you?

7 A. No.

8 Q. I just want to get the timeline
9 correct. Did administration come to you
10 inquiring about this?

11 A. No. I literally walked out of
12 class. I asked another teacher to come take
13 my class because, again, I was worried about
14 my job.

15 Q. And so you went out to
16 administration?

17 A. Correct.

18 Q. And so you were contacted directly
19 by the Applicant?

20 A. Absolutely, yes.

21 Q. And you heard about these supposed
22 allegations from the Applicant?

23 A. Yes.

24 Q. And you never heard from anyone else
25 about these allegations being made, aside

1 from the Applicant and his wife?

2 A. No.

3 Q. And are you aware that -- and this
4 was in the seventh grade?

5 A. If I recall.

6 Q. The victim was in the seventh grade?

7 A. If I recall, (affirmative nod).
8 Again, it was five years ago.

9 Q. Were you aware that in the seventh
10 grade was the same time that the victim made
11 the first allegations -- made the first
12 statement that her father had been sexually
13 abusing her?

14 A. No. I had no idea about that.

15 Q. Did DSS ever contact you?

16 A. No.

17 Q. Did law enforcement ever contact
18 you?

19 A. No.

20 Q. So aside from the parents and then
21 your action talking to administration, this
22 never came up again?

23 A. Absolutely. Right.

24 MS. VALENZUELA: Thank you, Your
25 Honor.

1 REDIRECT EXAMINATION

2 BY MR. MILLING:

3 Q. Mr. Pace, do you recall whether
4 these allegations arose during the fall of
5 the year or the spring of the year?

6 A. I wouldn't even try to remember
7 that.

8 Q. Sometime just during the calendar
9 school year?

10 A. Yes. It was sometime during the
11 calendar school year.

12 Q. After you spoke with the school
13 administrators on the day that the
14 allegations arose, did you have occasion to
15 speak with the school administrators again?

16 A. Yeah. The next day because I mean,
17 I called in before I even attempted coming to
18 school. I go, 'should I still come in until
19 y'all do...' -- they said "absolutely."

20 MS. VALENZUELA: Objection.
21 Hearsay.

22 MR. MILLING: You can't say what ---

23 WITNESS: Sorry. I'm sorry. I
24 apologize.

25 REDIRECT EXAMINATION CONTINUED

1 BY MR. MILLING:

2 Q. After your conversation with them,
3 were you allowed to come back to school?

4 A. Yes.

5 Q. Was it your understanding that
6 Taylor withdrew the allegations?

7 MS. VALENZUELA: Your Honor, I'm
8 going to object to hearsay here and it's
9 because it is so important whether this was
10 actually retracted or taken away. And that's
11 the entire basis of hearsay. Rephrasing it
12 as if this is your understanding, it's still
13 putting that issue in front of the Court for
14 the truth of the matter asserted, that the
15 victim actually came and withdrew those
16 allegations, when we don't have that person
17 here to say that. And we don't even have the
18 person that she supposedly told it to in the
19 courtroom. So I understand that counsel is
20 trying his best to avoid hearsay. But using
21 that different phrasing, it is still hearsay.

22 THE COURT: I agree. Sustained.

23 REDIRECT EXAMINATION

24 BY MR. MILLING:

25 Q. But again, you were never fired

1 because of this allegation?

2 A. No.

3 Q. You were never reprimanded?

4 A. No.

5 Q. You were never docked pay?

6 A. No.

7 Q. No adverse action was taken against
8 you?

9 A. No.

10 Q. Okay.

11 MR. MILLING: Nothing further, Your
12 Honor.

13 THE COURT: You may step down.

14 (WITNESS STEPS DOWN)

15 THE COURT: Any reason why this
16 witness cannot be excused?

17 MR. MILLING: No, please.

18 MS. VALENZUELA: No objection.

19 THE COURT: You're excused, Mr.
20 Pace.

21 MR. MILLING: Your Honor, I'm going
22 to call Brandon Vanover as my next witness.

23 (WITNESS TAKES STAND)

24 BRANDON VANOVER, having been duly sworn
25 to tell the truth, and nothing but the truth,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MILLING:

4 Q. Mr. Vanover, you're Glenn Vanover's
5 son; correct?

6 A. Yes, sir, I am.

7 Q. Taylor Vanover's brother?

8 A. Yes, sir.

9 Q. Did you grow up in the home with
10 Taylor and Glenn Vanover?

11 A. Yes, sir, I did.

12 Q. Okay. Who else lived in the home?

13 A. Alex, Taylor, my dad, and my mom and
14 me.

15 Q. What is the age difference between
16 you and Taylor?

17 A. I believe it's three years, three
18 and a half, maybe, something like that.

19 Q. Okay. Where did y'all live when you
20 would have been eleven years old?

21 A. I believe it was at the Richburg
22 house.

23 Q. Okay. When you say the Richburg
24 house, which location are you talking about?

25 A. The one in Gilbert.

1 Q. Okay. And during that same time
2 period, Taylor would have been eight;
3 correct?

4 A. Yes, sir.

5 Q. Do you recall when y'all moved from
6 that location?

7 A. I believe I was in fourth grade or I
8 was about to be in the fourth grade.

9 Q. And where did y'all move from there?

10 A. We moved from -- what, was it in
11 West Columbia? I think West Columbia. South
12 Congaree, I think. I think it was South
13 Congaree.

14 Q. Okay. You're aware of why your
15 father is in custody right now; correct?

16 A. Yes, sir, I am.

17 Q. Were you there during his trial?

18 A. No, sir, I wasn't.

19 Q. Did you want to be there?

20 A. Yes, sir. I did.

21 Q. Have you read the transcripts of the
22 trial?

23 A. I read a little bit into it. I
24 don't think I read the transcripts though.
25 But I know my name was mentioned and I wasn't

1 there to, you know, say anything on my
2 behalf.

3 Q. Well, let's talk about how you might
4 have been mentioned?

5 A. Yes, sir.

6 Q. If Taylor testified that you were
7 present in the home on each and every time
8 she was molested; would that have been
9 accurate?

10 A. Could you ask the question again?

11 Q. If Taylor testified during your
12 father's trial that you, Brandon Vanover,
13 were present inside the home each and every
14 time she was molested ---

15 A. Uh-huh.

16 Q. --- would that have been an accurate
17 statement by Taylor?

18 A. That I was home when this was
19 happening?

20 Q. Yes, sir?

21 A. I'd be home but I wouldn't see this
22 happening?

23 MS. VALENZUELA: Objection, Your
24 Honor. I'm going to object based on
25 speculation. The entire theory of the case

1 is that the victim, this was being done to
2 the victim in secret. So I don't know how
3 the witness would possibly be able to testify
4 that he knew he was in the house when this
5 was happening. Because the victim never
6 claimed that he was aware that she was being
7 abused in the house.

8 THE COURT: Right. And I mean,
9 I'll take it for what it's worth.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. MILLING:

12 Q. Did you ever see an occasion where
13 your father would take Taylor into a room and
14 shut the door?

15 A. No, sir.

16 Q. Did you ever observe an occasion
17 where your father would take Taylor into a
18 room and you would hear unusual sounds?

19 A. No, sir. Never.

20 Q. Did you ever observe your father and
21 Taylor go into a room and your father exit
22 the room, appearing to be sweaty?

23 A. No, sir. Never.

24 Q. Okay. Do you ever recall a time
25 when you and Taylor fought to go into your

1 parents' bedroom to watch TV?

2 A. No, sir. We got a TV in every room.

3 Q. Okay. And, again, this is at the
4 house in Gilbert when you were eleven?

5 A. Yes, sir. That's at the house in
6 Gilbert. Also at the lake house they have
7 one in their room. Taylor had one in her
8 room. There was one in the living room. The
9 only one that didn't have a TV in their room
10 was me at the time.

11 Q. Okay. So there wouldn't have been
12 an occasion for you and Taylor to argue or
13 fight about who gets to go into your parents'
14 bedroom and watch TV?

15 A. No, sir.

16 Q. And, likewise, there were multiple
17 television sets in the residence?

18 A. Yes, sir.

19 Q. Was the TV set in your parents'
20 bedroom the only one that was hooked up to
21 cable?

22 A. No. All of them were hooked up.

23 Q. Was the one in your parents' bedroom
24 nicer than all the other ones?

25 A. No, it was actually not nicer than

1 the other one.

2 Q. Okay. Was there a better seating
3 arrangement in your parents' bedroom?

4 A. No, there wasn't. The big-screen
5 television was usually always in the living
6 room.

7 Q. Did you ever observe an occasion
8 where Taylor was anxious to try to get into
9 your parents' bedroom, whether it was to
10 watch TV or anything else?

11 A. No, sir. Never.

12 Q. Was there an ever an occasion where
13 you were anxious to try and get into your
14 parents' bedroom, to watch TV or otherwise?

15 A. No, sir.

16 Q. Okay. When you got into high school
17 when y'all were living at the lake house as
18 you described, were you aware that Taylor
19 made allegations against a teacher?

20 A. Yes, sir, I was.

21 Q. Did she tell you what the
22 allegations were?

23 A. Yes, sir. She told me ---

24 MS. VALENZUELA: Objection.

25 MR. MILLING: I think he can testify

1 as to what Taylor said.

2 THE COURT: Was it ---

3 MS. VALENZUELA: I don't see how --
4 I don't know how what Taylor said to him is
5 still not hearsay?

6 THE COURT: How is that not
7 hearsay?

8 MR. MILLING: It's a statement
9 against interest.

10 THE COURT: Well, how is that not
11 hearsay?

12 MR. MILLING: It's a statement
13 against interest. It's an exception, Your
14 Honor.

15 THE COURT: I know it's an
16 exception but how is that against her
17 interest?

18 MR. MILLING: Because ultimately, --
19 and I guess we'll need to find out exactly
20 what she said. But ultimately, I believe,
21 that the testimony is going to be that she
22 made these allegations and that she recanted
23 these allegations as being untrue.

24 MS. VALENZUELA: I'm not
25 representing the victim. I mean, I don't --

1 this is not -- the Applicant has not brought
2 a case against the victim. The Applicant has
3 brought a case against the State. And the
4 victim could have been subpoenaed as well and
5 called in. She is not present. It is
6 hearsay. It is the definition of hearsay for
7 him to ask the witness to explain things that
8 were told to him by a person who's not here.

9 THE COURT: Well, I mean, I'll
10 allow him to go a little bit into that.
11 There's not a jury here, so I'm going to let
12 you go into that a little bit.

13 MR. MILLING: Thank you, Your Honor.

14 DIRECT EXAMINATIN CONTINUED

15 BY MR. MILLING:

16 Q. Did Taylor tell you something about
17 Mr. Pace?

18 A. Yes, sir.

19 Q. What did she tell you?

20 A. He said that -- well, she said. My
21 bad. She said that he said what color her
22 underwear was. And I just, you know, I
23 really didn't believe that too much because
24 Taylor was, like, promiscuous. And she was
25 always kind of lie about ---

1 MS. VALENZUELA: Objection.

2 MR. MILLING: Wait. You can't
3 talk.

4 MS. VALENZUELA: If we're going to
5 go into trashing the victim, that's ---

6 THE COURT: Right. I'm going to
7 ---

8 WITNESS: Sorry.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. MILLING:

11 Q. Prior to her making these
12 allegations against Mr. Pace, did you have
13 occasion to question her trustworthiness?

14 A. Yes, I did.

15 Q. Did she have a reputation, to your
16 knowledge, for telling the truth or being
17 honest?

18 A. Not for being honest, no, sir.

19 Q. Had she made up allegations against
20 you?

21 A. Just like, you know, sibling stuff.
22 'He hit me', when I really didn't. She just
23 wanted to get me in trouble pretty much.
24 Just, you know, sibling stuff.

25 Q. Okay. Would you later find out that

1 she made up other allegations about other
2 things?

3 A. Allegations such as lies?

4 MS. VALENZUELA: Objection.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. MILLING:

7 Q. Yes, sir.

8 A. Yeah.

9 MS. VALENZUELA: I'm going to renew
10 my objection for hearsay and to leading.

11 THE COURT: All right. Well, I
12 think you're getting into a little bit of the
13 hearsay now.

14 MR. MILLING: Well ---

15 THE COURT: Sustained.

16 MR. MILLING: --- and Judge, I think
17 we can get into her reputation for dishonesty
18 with specific acts under -- I think it's 803.

19 THE COURT: And what was your --
20 repeat your question that you were asking him
21 then.

22 MR. MILLING: I was asking him
23 whether or not she had a reputation --
24 whether or not he knew of a reputation that
25 she had for truthfulness or dishonesty.

1 MS. VALENZUELA: And then he said
2 and would you then later come to know other
3 specific instances of those.

4 THE COURT: All right. I think
5 you've gotten into the part about her
6 reputation. And anything specific, I'm going
7 to sustain the objection.

8 MR. MILLING: Okay.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. MILLING:

11 Q. Do you recall a time on or about
12 your sixteenth birthday when you received a
13 vehicle from your parents?

14 A. Yes, sir.

15 Q. Do you recall a situation arising,
16 a dispute between your parents and Taylor
17 during that time period?

18 A. A dispute as in?

19 Q. She wanted to do something and your
20 dad wouldn't let her.

21 MS. VALENZUELA: Objection to
22 leading.

23 MR. MILLING: I'm asking him whether
24 or not he recalls a situation. And then I'm
25 going to ask him to describe that situation.

1 THE COURT: Okay. I'll let you do
2 that.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. MILLING:

5 Q. Between your parents and Taylor?

6 A. Yeah. I recall that situation. You
7 know, I got a car and everything and pretty
8 much she would, like, want to be under my
9 wing. She'd want to hang out with me, my
10 friends. She wanted to be with the older
11 crowd. So I guess that's how that went.

12 Q. Okay. Do you recall specifically
13 what happened on that occasion?

14 A. I recall her accusing my dad of this
15 and everything and, you know, that's pretty
16 much it. And she went and stayed with this
17 girl, Mikala, -- and she didn't stay for
18 months. She literally stayed like three or
19 four days.

20 Q. Were you living at home during that
21 time period fulltime?

22 A. I was, (affirmative nod).

23 Q. Okay. So you would have been in a
24 position to know whether or not she was there
25 fulltime or not?

1 A. Yes, sir.

2 Q. Okay. Did she end up moving back
3 into the house?

4 A. Yes. Yes, she did.

5 Q. Did you notice any differences
6 between how your father treated Taylor since
7 that time?

8 A. No. He still loved his little girl.

9 Q. Okay. Did you know or were you
10 aware of what Taylor's grades were like or
11 how she was doing in school during that time
12 period?

13 A. I was aware that her grades were
14 slipping and she was, like, getting in
15 trouble in school, obviously. As Mr. Pace
16 said, also with other teachers too.

17 Q. Do you recall how her grades were
18 before she got to high school?

19 A. Yeah, she was doing good. I
20 honestly believe she got in with the wrong
21 crowd.

22 Q. Okay. What did you observe once she
23 got into high school?

24 A. I observed her saying -- well, not
25 her saying but me saying -- I'd come home,

1 you know, I'd be at a friend's house or
2 whatever because I'd go out and hang with my
3 friends. And anyway, I'd come home. It'd be
4 a school day. Taylor would be sitting there
5 sitting on the couch or whatever. And this
6 was around the time she was dating Josh
7 Attaway also.

8 Q. Okay. If I understood you
9 correctly, you're ---

10 A. Yes.

11 Q. --- saying that you would come home
12 during the day when you would have expected
13 her to be at school?

14 A. Yes. When she should have been at
15 school. And also an incident occurred --
16 Courtney Hall was writing her passes to skip
17 school, right. Getting her passes.

18 Q. Okay. How do you know that?

19 A. My mother ---

20 Q. Well, you can't talk about what your
21 mother said.

22 A. Okay.

23 MS. VALENZUELA: But I would object
24 to hearsay because he just indicated that he
25 only has that knowledge based on what someone

1 else ---

2 THE COURT: Yeah. Where is all
3 this going? It sounds like we're retrying a
4 portion of the case or something. I don't
5 know. I mean, ---

6 MR. MILLING: Well -- and, Judge,
7 one of the allegation is that Brandon would
8 have been in a position to be able to testify
9 and/or corroborate some of the evidence, that
10 he would have been -- and I'm getting ready
11 to get into a different ---

12 THE COURT: And I think, even
13 though I've been a little flexible with some
14 of the testimony, ---

15 MR. MILLING: Yes, sir.

16 THE COURT: --- I don't see that
17 a Judge at a trial stage would have probably
18 let about most of this in anyway, but -- I'll
19 let you proceed.

20 MR. MILLING: Yes, sir. And, Judge,
21 I may take this occasion to address probably
22 what I would expect to be a legal issue that
23 the Attorney General's office is going to
24 raise. I would intend to ask Mr. Vanover
25 about his knowledge of a specific sexual

1 encounter that she has had. And the reason
2 being, and I do think that it's outside of
3 the rape shield statute because we're not
4 trying to get into the morality of the victim
5 here. But we've got a scenario, as I
6 understand it, -- and we can ask Mr. Vanover
7 to step out if you want me to.

8 MS. VALENZUELA: I would like for
9 the witness to step out while counsel
10 explains what he would like for him to stay.

11 MR. MILLING: That's fine.

12 THE COURT: Okay. Yeah. Let's do
13 that.

14 Now, you're going to step down but
15 you can't talk about your testimony in any
16 way to anyone. Do you understand that?

17 WITNESS: Yes, sir.

18 (WITNESS STEPS DOWN)

19 (WITNESS EXITS COURTROOM)

20 MR. MILLING: Your Honor, it's my
21 understanding after interviewing this
22 witness, that there is a specific instance
23 and occasion when she was in the eighth
24 grade, which would have been subsequent to
25 when the allegations arose as to her father.

1 She made the allegations that between the
2 ages of eight and ten she was molested by her
3 father.

4 Then an occasion arose when she was
5 in the eighth grade, which would have put her
6 at the ages of thirteen to fourteen, that
7 Taylor told her brother, they were talking,
8 they were siblings -- told her brother that
9 she was in love with an individual by the
10 name of Phillip Mader. Phil Mader, that they
11 had had sex and that he was her first.

12 Brandon, thereafter confronted Mr.
13 Mader and he confirmed that.

14 And that in August of 2011, after
15 the incident charges arose, that he Facebook-
16 messaged Mr. Mader and that during that
17 Facebook chat he asked Mr. Mader whether or
18 not he was her first and that he indicated,
19 ultimately, yes.

20 Judge, we would not be offering it
21 for the truth of the matter but rather we'd
22 be offering it to show that she has told
23 people that her first sexual encounter was in
24 2013 or when she was thirteen, which I
25 believe would have been around 2008, 2009,

1 subsequent to when she alleges that her
2 father molested her. I do not believe that
3 this is protected under the rape shield
4 statute.

5 MS. VALENZUELA: Your Honor, may I
6 approach with the rape shield statute so that
7 we all are ---

8 THE COURT: Yeah.

9 MR. MILLING: And, Judge, there's a
10 case, *State v. Williams* from 2014.

11 MS. VALENZUELA: What's the cite?

12 MR. MILLING: 761 S.E.2d 770, Court
13 of Appeals.

14 THE COURT: What does it say?

15 MR. MILLING: And I'm looking on
16 page 775, 776, "the rape shield statute does
17 not bar evidence of a victim's sexual conduct
18 if the evidence is offered for a purpose
19 other than to attack the victim's morality."
20 It goes on to say in that particular case the
21 rape statute is -- basically, you can use it
22 as long as you're not trying to establish the
23 morality.

24 This was a specific case where they
25 were trying to prove the source of knowledge

1 of a victim from something other than the
2 accused.

3 And I've got that case if you'd like
4 to take a look at it. I just printed up one
5 copy this morning.

6 THE COURT: Yeah.

7 MR. MILLING: (Tenders).

8 MS. VALENZUELA: Your Honor, if I
9 may be heard whenever you're ready.

10 THE COURT: Yeah. Let me look at
11 this. Give me a second.

12 (Upon review), all right. I'll be
13 glad to hear from you.

14 MS. VALENZUELA: Your Honor, the
15 statute 16-3-69.1 -- subsection one (.1) --
16 makes clear that the only exceptions here are
17 with evidence of the victim's sexual conduct
18 with a defendant or evidence of specific
19 instances that would show the source or
20 origin of semen, pregnancy or disease. It
21 does not say virginity. And I think very
22 specifically and because it goes to what
23 opposing counsel believes he wants to be able
24 to present is that -- frankly, he would need
25 a medical doctor to explain how someone who

1 engages in sexual conduct, is aware of whether
2 you're sleeping with a person who is a virgin
3 or not. I think it's a very outdated notion.
4 It's not scientifically correct to present to
5 you that a teenager who engages in sex with
6 another teenager would be able to tell if the
7 person he was sleeping with was a virgin.

8 Additionally, all of that, if this
9 were brought up in a trial court would be
10 sustained on the basis of hearsay. The
11 actual young man or whatever who would have
12 claimed to have the first encounter would be
13 the one who would have to come in. There's
14 nothing even in this synopsis that opposing
15 counsel presented in that case or in the rape
16 shield statute that would say that you are
17 able to go into her sexual history or her
18 sexual decisions to indicate that she had
19 once told someone that she was a virgin.

20 THE COURT: Right. And anyhow, I
21 mean, even if you were able to get past the
22 rape shield statute which in this case seems
23 to -- I mean, you're using that hearsay to
24 prove the truth of that matter; aren't you?

25 MR. MILLING: Judge, I'm not trying

1 to prove whether he was her first or not.

2 I'm trying to prove that what she said that
3 he was her first.

4 It all goes to the credibility of
5 the witness and we know this from Mr.
6 Williams when he testified, that credibility
7 of the witnesses here was key. There was no
8 physical evidence. There was no actual
9 evidence that this encounter occurred between
10 Mr. Vanover and Taylor.

11 And so what I'm suggesting is having
12 her come in and testify or having Brandon
13 come in and testify, interviewing Brandon.
14 Trying to bring in Mr. Mader to testify opens
15 the door for a challenge to her credibility
16 as to whether or not she changes her story
17 constantly.

18 THE COURT: But here you're saying
19 it goes to credibility but it really goes to
20 the actual key matter in the whole case,
21 which is you're trying to go through the back
22 door; that the truth of the matter was that
23 was the first encounter or first sexual
24 encounter.

25 MR. MILLING: Well, ---

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THE COURT: I mean, I'm going to sustain the objection. I guess if you want to proffer the evidence, I'll let you do that. But I'm going to sustain and say that it is hearsay, even if you're able to get past the rape shield statute, I guess. In light of that ruling, I'll let you proffer it.

10

MR. MILLING: Yes, sir, Your Honor.

11

12

THE COURT: Okay, he can come back in.

13

MR. MILLING: Yes, Your Honor.

14

(WITNESS ENTERS COURTROOM)

15

(WITNESS TAKES STAND)

16

PROFFER DIRECT EXAMINATION

17

BY MR. MILLING:

18

19

Q. Mr. Vanover, do you know an individual by the name of Phillip Mader?

20

A. Yes, sir. I do.

21

Q. How long have you known him?

22

23

A. I've known him for about ten years now.

24

25

Q. Has he ever been romantically involved with your sister?

1 A. Yes, sir. He has.

2 Q. To your knowledge or to your
3 understanding has he ever been sexually
4 involved with your sister?

5 A. Yes, sir.

6 MS. VALENZUELA: And, Your Honor,
7 I would make an objection to leading, for the
8 record.

9 THE COURT: Okay.

10 MR. MILLING: And, Judge, I'm trying
11 to proffer to ---

12 THE COURT: Right. And, again,
13 this is subject to your objection which I
14 have sustained.

15 PROFFER DIRECT EXAMINATION CONTINUED

16 BY MR. MILLING:

17 Q. Did Taylor advise you that they had
18 become sexually involved?

19 A. Yes, sir.

20 Q. Did she advise you whether or not he
21 was her first lover?

22 A. She told me she (sic) was.

23 Q. Based upon her advising you of that,
24 did you confront Mr. Mader about this?

25 A. Yes, sir. I did.

1 Q. Did he corroborate or confirm
2 Taylor's statement?

3 A. Yes, sir. He did.

4 Q. Okay. Do you know whether or not he
5 was her first?

6 A. Yes, sir. Taylor told me.

7 Q. Okay. But outside of that, you have
8 no personal knowledge?

9 A. Not besides Phil telling me also.

10 MR. MILLING: Thank you.

11 (PROFFER ENDS)

12 DIRECT EXAMINATION CONTINUED

13 BY MR. MILLING:

14 Q. Okay. What, if anything, did you
15 observe about Taylor's relationship with
16 Alex?

17 A. She, like, uh, she really didn't
18 want to be around him, you know. It was like
19 he was aggravating to her.

20 MS. VALENZUELA: Your Honor, just
21 for clarification is this the -- did the
22 proffer end.

23 MR. MILLING: The proffer has ended,
24 yes.

25 MS. VALENZUELA: So this is now --

1 we're talking about Alex.

2 THE COURT: All right. Back to
3 the record.

4 MR. MILLING: Yes. Yes, sir.

5 MS. VALENZUELA: And then if you'll
6 clarify just -- I know who Alex is but ---

7 DIRECT EXAMINATION CONTINUED

8 BY MR. MILLING:

9 Q. Alex is your younger brother?

10 A. Yes, sir.

11 Q. Did she care for him daily?

12 A. Did she care for him daily?

13 Q. Yes.

14 A. No, sir.

15 Q. Who was his primary caregiver?

16 A. My father was.

17 Q. Okay. Do you recall whether or not
18 when you were living at home if your father
19 was in pain for any reason?

20 A. He had back problems.

21 Q. Okay. Do you recall why he had back
22 problems?

23 A. I can't remember what started it. I
24 think it was the rollerblading incident at
25 Finley Park.

1 Q. Okay.

2 A. When he broke his leg that kind of
3 what trigger it also. And then after that,
4 when we were living in Meredith Square, he
5 moved a stove for a lady and hurt his back
6 also.

7 Q. Do you remember what time period
8 that was?

9 A. Which part?

10 Q. Both.

11 A. Finley Park?

12 Q. Yeah.

13 A. I think I was in fourth grade.

14 Q. Do you recall how old you would have
15 been during that time period?

16 A. (No verbal response).

17 Q. Ten, eleven?

18 A. Probably ten, something like that.

19 Q. Okay.

20 MS. VALENZUELA: Your Honor, I'm
21 going to object to relevance. And I think
22 what we're getting here is to go to the
23 source of the medication. But I think that a
24 much narrower area of questions dealing with
25 the medication is more appropriate. I don't

1 see the length of the back injury factoring
2 into any portion of this PCR hearing.

3 THE COURT: Let me hear it.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. MILLING:

6 Q. When you were in elementary school
7 did your father have any physical
8 limitations?

9 A. Meaning like his back hurting?

10 Q. Yes, sir.

11 A. Yes. Yes.

12 Q. Was he able to get around like a --
13 like you could?

14 A. No, sir.

15 Q. Was he able move like your mother
16 could?

17 A. No, sir.

18 MS. VALENZUELA: Objection to
19 leading. If he's trying to get to physical
20 ability, I think it needs to be a broader
21 question instead of leading and directing him
22 to where he wants to go.

23 THE COURT: Get to the more
24 relevant portion.

25 MR. MILLING: Yes, sir.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. MILLING:

3

4 Q. Did you observe your father -- I
5 guess -- let me rephrase it. What physical
6 limitations or what physical problems did you
7 observe your father to have?

8 A. I seen him walking around on
9 crutches. And then it moved to -- it
10 progressed to a walker. And then it
11 progressed to where, you know, he could get
12 around but he was real slow. And when he
13 would bend down, he wouldn't bend down. He'd
14 -- can I show?

15 Q. Sure?

16 A. He'd do like this (demonstrating)
17 to pick something up, you know, to keep your
18 back straight.

19 Q. Okay. And what time period are you
20 talking about here?

21 A. This is leading up all the way from
22 fourth grade to the lake house.

23 Q. Okay. Okay. So during the same
24 time period that Taylor made these
25 allegations that your father was molesting

1 her?

2 A. Yes, sir. Correct.

3 Q. Okay. Did you want to testify in
4 your dad's trial?

5 A. Yes, sir. I did.

6 Q. Did you tell Mr. Williams that or
7 did you have any contact with him whatsoever?

8 A. Honestly, I think I seen him once
9 but I really didn't get to talk to him.

10 Q. Okay.

11 A. And that was pretty much it. I
12 never seen him again. He never tried to
13 contact me or anything.

14 Q. Okay.

15 MR. MILLING: I beg the Court's
16 indulgence for a moment.

17 (COUNSEL CONFERS WITH APPLICANT)

18 MR. MILLING: Your Honor, I don't
19 have any further questions at this time.

20 THE COURT: All right. Cross-
21 examination.

22 CROSS-EXAMINATION

23 BY MS. VALENZUELA:

24 Q. Understanding that these came after
25 the trial was held for your father, is it

1 true that you have a conviction for
2 contributing to delinquency of a minor?

3 A. Yes, ma'am.

4 Q. And is it true that you have a
5 conviction for burglary second degree?

6 A. Yes, ma'am.

7 Q. And both of those convictions were
8 finalized after your father's trial?

9 A. Yes, ma'am.

10 Q. Were they pending during your
11 father's trial?

12 A. No, ma'am.

13 Q. And talking about how you wanted to
14 testify in your dad's trial and that you only
15 talked to his defense counsel one time?

16 A. Yes, ma'am.

17 Q. But you have elected to have that
18 same defense counsel represent you; correct?

19 A. I don't quite understand.

20 Q. Just do you have a -- does that
21 attorney represent you?

22 MR. MILLING: You want to clarify
23 whether he's talking about me or Mr.
24 Williams?

25 CROSS-EXAMINATION CONTINUED

1 BY MS. VALENZUELA:

2 Q. Does Mr. Williams represent you?

3 A. No.

4 Q. No? He has never represented you?

5 A. No, he has never represented me.

6 Q. Okay. Did you speak to the State,
7 to either law enforcement or the prosecutor's
8 office when these charges were pending
9 against your father?

10 A. No, I didn't.

11 Q. You never spoke to law enforcement?

12 A. I mean, I spoke to them when they
13 came to the door of the house one time
14 because that's when they told me all of this
15 arose, you know; that's one time I talked to
16 them.

17 Q. And did you talk to DSS?

18 A. Once, yeah. That was the time they
19 came for Taylor and Alex, but I had somewhere
20 to be. I didn't know what was going on at
21 the time. So I was -- my friend was waiting
22 on me. And so I said, 'Do I need to be here?
23 Is this about me?' And they said 'no, you
24 can go.' So I just went off. And then I got
25 the call later on what had happened and

1 pretty much that's the way that went.

2 Q. Okay. And so those were the only
3 times -- and how old were you at this time?

4 A. Seventeen, eighteen, something like
5 that.

6 Q. Okay. And were you still living
7 with your parents at that time?

8 A. Yeah, I was.

9 Q. So you were still living in the
10 home?

11 A. Yes.

12 Q. Okay. And while the charges were
13 pending, were you living with your father?
14 Like, was your father out of jail or was he
15 in jail?

16 A. While they were pending?

17 Q. Uh-huh. So he's arrested but then
18 there's a period of time before he goes to
19 trial. Where was he during that period of
20 time?

21 A. He had went to jail but he had
22 gotten bonded out.

23 Q. And so was he back at home living
24 with you during that time?

25 A. Yeah.

1 Q. Leading up to the trial?

2 A. Leading up to the trial.

3 Q. And who do you live with today?

4 A. Today, I live with my girlfriend.

5 Q. Okay. Are you close to your mother?

6 A. No, not recently.

7 Q. Do you stay in touch with your
8 father?

9 A. Yeah.

10 Q. How often do you communicate with
11 your father?

12 A. I'm busy with work and all kind of
13 school and so it's every once in a while,
14 every couple of months. But I try to get a
15 phone call in, you know, here and there; try
16 to.

17 Q. Do you keep in touch with your
18 sister, the victim in this case?

19 A. I haven't talked to her in a while,
20 no. But last I heard, she moved to Georgia
21 and got married.

22 Q. Do you still keep in touch with
23 Alex?

24 A. Oh, yeah. Definitely.

25 Q. And who does Alex live with now?

1 A. My grandmother.

2 Q. And you never spoke to an
3 investigator from the prosecutor's office?

4 A. I don't believe so.

5 Q. And you never spoke to the
6 prosecutor in the case?

7 A. No.

8 Q. Did you ever reach out to your dad's
9 defense attorney at trial and tell him that
10 you wanted to testify on your dad's behalf?

11 A. No, I didn't.

12 Q. Did you ever reach out to your dad's
13 defense attorney and tell him the things that
14 you told the Court today?

15 A. No, I didn't. But -- I couldn't.

16 Q. You could not?

17 A. I could not.

18 Q. And what was that limitation in
19 communicating with defense counsel?

20 A. Speeding tickets. They locked me up
21 for traffic violation.

22 Q. And how long were you locked up?

23 A. I don't know. I think it was like
24 -- I'm trying to think. A little less than
25 three months or something like that. I can't

1 really remember. That was a long time ago.

2 Q. Were you locked up the entire time
3 from the time your dad was arrested until he
4 went to trial?

5 A. Oh, no, no. Definitely not.

6 Q. And so could you send letters to
7 defense counsel, to your dad's attorney?

8 A. No, I couldn't.

9 Q. Why not?

10 A. I don't know. I didn't know where
11 the defense was or what office to go to, what
12 address to send it to.

13 Q. Okay. And you never tried to find
14 out that information?

15 A. Uh-uh, (negative gesture).

16 Q. And so you did not send any letters
17 to defense counsel?

18 A. No, I didn't.

19 Q. Had you ever tried calling defense
20 counsel to let them know about these
21 allegations?

22 A. No. Honestly, I thought it was
23 already handled. I thought I was going to be
24 there in court, but obviously, I wasn't.

25 Q. And what made you think that you

1 were going to be there in court?

2 A. Because I was into it too. I was
3 part of the family.

4 MS. VALENZUELA: Nothing further,
5 Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. MILLING:

8 Q. When Taylor got in high school, was
9 she following down the same path that you had
10 followed?

11 MS. VALENZUELA: Objection. I
12 don't understand the question because it's
13 very broad so I don't know how the witness
14 would be able to answer that.

15 REDIRECT EXAMINATION CONTINUED

16 BY MR. MILLING:

17 Q. Was she starting to get into similar
18 troubles that you had gotten into in high
19 school?

20 A. Yes, she did.

21 Q. Did she appear concerned to you over
22 how her grades were?

23 A. I don't think she really cared.

24 Q. Did she go out and party?

25 A. Yes. She'd say she's with one

1 person like, 'oh, I'm with Jenny or Michelle'
2 or whoever and it'd end up she would be with
3 someone else. Like once incident -- can I?

4 Q. (Affirmative response)

5 A. Okay. One incident with Katie
6 Sullivan, I don't know where she is now. But
7 anyway, she was hanging out with her and
8 pretty much my parents called her phone. She
9 wouldn't, you know, say where she was at or
10 anything. And so I called. I got her to
11 tell me -- you know, she said 'I'm on the way
12 home now. And so I sat at the top of the
13 driveway.' I had my bike at this time. So I
14 sat up at the top of the driveway and waited.
15 I turned my lights off. It was dark and I
16 was waiting for a car to come by. And pretty
17 much, I guess they saw me and didn't want an
18 altercation or anything. So they just pulled
19 down to the street. They dropped Taylor off.
20 I heard Katie say something to me but I
21 didn't acknowledge her. And I got Taylor and
22 when I seen her, she smelled of alcohol and
23 she was drunk. And I took her on the bike, I
24 rode her back to the house. Took her to my
25 parents and I was like, 'well, Taylor's drunk

1 right now.' And they, you know, did what any
2 parent would do, you know.

3 Q. You're not an angel, are you?

4 A. No, I'm not.

5 Q. You've seen people drinking before;
6 correct?

7 A. Yes, sir.

8 Q. Was there any question in your mind
9 on that occasion that she was under the
10 influence of alcohol?

11 A. At that time?

12 Q. Yes, sir.

13 A. Yes. She was under the influence
14 for sure.

15 Q. Was that the only occasion that you
16 had seen where she had been drinking?

17 A. No. I've came home and she's been
18 drinking.

19 Q. Did she appear to be concerned about
20 how she was doing in school and the path of
21 her life at that time?

22 A. Not at that time, no.

23 Q. Okay.

24 MR. MILLING: Nothing further, Your
25 Honor.

1 THE COURT: All right. You may
2 step down.

3 WITNESS: Yes, sir.

4 (WITNESS STEPS DOWN)

5 MR. MILLING: I beg the Court's
6 indulgence.

7 Judge, could I request just a five-
8 minute recess.

9 THE COURT: Yeah. But what are
10 you looking at, as far as number of witnesses
11 left?

12 MR. MILLING: Probably two and that
13 would be it.

14 THE COURT: All right. We'll take
15 a five-minute break.

16 MR. MILLING: Thank you, Your Honor.

17 (BRIEF RECESS)

18 (APPLICANT PRESENT)

19 THE COURT: All right.

20 MR. MILLING: Judge, our next
21 witness will be Gary Vanover.

22 THE COURT: All right.

23 MR. MILLING: It'll be a brief
24 witness.

25 (WITNESS TAKES STAND)

1 GARY VANOVER, having been duly sworn to
2 tell the truth, and nothing but the truth,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MILLING:

6 Q. If you could state your full name
7 for the record, please?

8 A. Gary L. Vanover.

9 Q. And where do you live?

10 A. 1010 Wildwood Circle, Leesville.

11 Q. Okay. What is your relationship to
12 the defendant in this case?

13 A. He's my brother.

14 Q. Do you have any children about
15 Taylor Vanover's age?

16 A. I have a daughter and a son.

17 Q. Okay. What ages are they?

18 A. Crystal is now thirty. My son is
19 thirty-two.

20 Q. Okay. So a little bit older than
21 Taylor?

22 A. She was.

23 Q. What was their relationship like?
24 That is, your children and Taylor.

25 A. Taylor and my daughter look similar.

1 Blonde hair, good looking kids. Taylor
2 looked to my daughter as more or less like a
3 mentor. You know, do girl things.

4 Q. What ages were they close?

5 A. I want to say Taylor was about ten
6 years younger than Crystal, Crystal being my
7 daughter.

8 Q. Okay.

9 A. Crystal was captain of the cheer-
10 leading squad. She was smart in school.
11 She was into everything. So Taylor kind of
12 looked up to Crystal.

13 Q. When you say Taylor looked up to
14 Crystal, are you talking about when Taylor
15 would have been in elementary school and
16 Crystal in high school?

17 A. Sometimes she was like one or two.
18 You know, we had we had family gatherings
19 together. But, you know, it's like cousins.

20 Q. They would talk?

21 A. Oh, yeah. They would talk.

22 Q. Were they close when Taylor as
23 eight, nine, ten years old?

24 A. Yes, they were. And my thought
25 process would have been 'well, we would have

1 heard about it' because of the relationship
2 between Crystal and Taylor.

3 Q. Okay. When you say 'we would have
4 heard about it', ---

5 A. They were that close. I think
6 Taylor would have confided in my daughter if
7 this was true.

8 Q. Did Taylor ever -- was it your
9 understanding whether or not Taylor ever
10 advised anyone in your immediate family about
11 these allegations about her father?

12 A. I didn't hear about it until twelve,
13 something like that.

14 Q. Twelve? What do you mean?

15 A. Until she was like twelve or
16 thirteen years old, something like that. I
17 heard something of it but a lot of that was
18 kind of kept away.

19 Q. Were you there for your brother
20 during the trial?

21 A. I was.

22 Q. When did you find out about the
23 trial?

24 A. I found about it when they arrested
25 him.

1 Q. Okay. When did you find out when
2 the trial was going to occur?

3 A. I can't honestly say but I was there
4 for my mother and my brother.

5 Q. Were you there for the start of
6 trial?

7 A. I was.

8 Q. What did you observe about your
9 brother during the trial?

10 A. What I observed was he was
11 lethargic. Knowing my brother -- you know,
12 after the first day of trial, he went back to
13 Pelion where he was living. And I asked him,
14 I said, 'What's wrong with you?' He said,
15 'what do you mean?' His words were a little
16 slurred. He was kind of just not there. He
17 said he was real nervous about exactly what
18 happened. And he was taking anxiety pills,
19 whatever that is.

20 MS. VALENZUELA: Objection. To
21 hearsay. I misunderstood. I thought he was
22 saying he appeared nervous, but I missed the
23 word he said that he was nervous.

24 THE COURT: Right. I'm going to
25 sustain the objection.

1 MR. MILLING: Yes, sir.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MILLING:

4 Q. What were your observations of
5 Glenn?

6 A. He wasn't talking as a, what I'm
7 going to say, a normal person talks like or
8 the way that he normally expressed himself.
9 His words were kind of drunk-like, you know.
10 Not drunk but he wasn't there.

11 Q. Was he communicating as you would
12 normally expect him to communicate?

13 A. He communicated but it was very --
14 it's sort of like this. 'I love my kids.
15 Yes, I do. It wasn't like were speaking.
16 I'm kind of nervous so...', you know ---

17 Q. No, I understand. Did you notice
18 anything about his emotions?

19 A. I did.

20 Q. What did you observe?

21 A. He was just wasn't there, in my
22 opinion. You know, I would have thought he
23 would have exploded. He did nothing.

24 Q. Okay.

25 A. He did nothing. He just -- 'I love

1 my kids.' And I thought, you know, there's
2 something missing right there. And I believe
3 it was the anxiety or whatever -- the anxiety
4 pills that he was taking or whatever you call
5 it.

6 Q. Did you bring this concern to Mr.
7 Williams?

8 A. I did.

9 Q. Do you recall when that was? Was it
10 during the trial is my question?

11 A. It was during the trial. It was
12 probably when the jury convened. I can't
13 really remember. I think it was a two-day
14 trial. Theo came out there. We stood down
15 here at the bottom of the courthouse and I
16 said, 'You can't see what's wrong with him?'
17 You know, it was just in his speech. Nothing
18 was ever said. You know, it was more or less
19 he was taking anxiety pills. And I honestly
20 believe Theo knew that, because he was real
21 nervous. He actually said to me, you know,
22 before the jury convened, the day before when
23 he went home ---

24 Q. And you can't testify as to what
25 your brother said. But what observations did

1 you make about his demeanor before the trial,
2 during the trial and after the trial?

3 A. I just wasn't really around Glenn a
4 lot but I knew at that trial there was
5 something different with Glenn. I didn't
6 know what kind of drug; but it was some kind
7 of drug, I assumed.

8 Q. Did you ever talk with Mr. Williams
9 about the allegations in the case?

10 A. He'd never bring us in, any of us,
11 said anything.

12 Q. Okay. So he never talked to you
13 about what knowledge you might have about
14 Taylor?

15 A. I never met the lawyer until we were
16 standing out here and he was fixing to go
17 into Court. He never asked any of us, he
18 never did anything.

19 Q. Did he send an investigator out to
20 talk to you?

21 A. No.

22 Q. Did anyone from his office or his
23 representative ever come out and talk to you?

24 A. Nobody came to us period. Nobody.

25 MR. MILLING: Nothing further from

1 this witness.

2

3 THE COURT: Any cross-examination.

4 MS. VALENZUELA: Yes.

5 CROSS-EXAMINATION

6 BY MS. VALENZUELA:

7 Q. So Mr. Vanover, were you present
8 when your brother -- the victim claims that
9 your brother was doing things to her. Were
10 you present in the room?

11 A. No, ma'am.

12 Q. Did you have any personal knowledge
13 about what happened between your brother and
14 his daughter in terms of their sexual
15 interaction?

16 A. No, ma'am.

17 Q. But you were aware that that there
18 had -- that the victim had already made a
19 complaint against your brother a couple of
20 years ago.

21 A. That had came up when maybe when she
22 was twelve or thirteen, something like that.

23 Q. And then the family kept it real
24 quite I think is what -- are you ---

25 A. Yeah. We're talking like three

1 months or something in between the time that
2 it came up and he got arrested or whatever.
3 But then the first that we have heard of it
4 -- my daughter was close enough to Taylor
5 that we would have known. You know, my
6 daughter was outstanding. I'm one of them
7 dad's that kind of on her head. I know what
8 she's doing, where she's at. And we were
9 just not -- we would have known.

10 Q. I understand. When you say that you
11 indicated to your brother's defense counsel
12 what was wrong with your brother, is it
13 correct to say that that -- what you just --
14 that you were outside the courtroom and the
15 only thing you said to Defense counsel is
16 can't you see what's wrong with him, talking
17 about your brother?

18 A. Yes, ma'am. Because I'm not very
19 familiar with drugs. You know, I could see
20 that, you know, he's not right. And I
21 actually asked Glenn I said what is wrong
22 with you? I've taken the anxiety pills ---

23 MS. VALENZUELA: Your Honor, I'm
24 going to object to that.

25 CROSS-EXAMINATION CONTINUED

1 BY MS. VALENZUELA:

2 A. I'm sorry.

3 Q. I get to object on my own too.

4 A. Yes, ma'am. I'm sorry.

5 Q. I just have to stop you before you
6 say anything that anyone else says. But just
7 going back to that question, the only things
8 that you indicated to defense counsel about
9 what was wrong with your brother was just
10 asking your -- the defense counsel, 'can't
11 you see what's wrong with him?'

12 A. Yes, ma'am.

13 Q. Okay. And that was the extent. You
14 didn't provide any other explanation?

15 A. Nothing else was said.

16 Q. Thank you.

17 THE COURT: Any redirect?

18 MR. MILLING: No, sir, Your Honor.
19 Nothing further of this witness.

20 THE COURT: You may step down.

21 Thank you.

22 (WITNESS STEPS DOWN)

23 MR. MILLING: Your Honor, I'm would
24 call Caroline Lindler very briefly.

25 THE COURT: All right.

1 MR. MILLING: Glenn Vanover will be
2 my last witness.

3 (WITNESS TAKES STAND)

4 CAROLINE LINDLER, having been duly sworn
5 to tell the truth, and nothing but the truth,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MILLING:

9 Q. Ms. Lindler, what is your relation-
10 ship with the Defendant, Glenn Vanover?

11 A. Glenn is my brother.

12 Q. Where do you work?

13 A. I work for Attorney Ken Matthews.

14 Q. You heard Mr. Williams testify
15 earlier that you referred Glenn's case to Mr.
16 Williams?

17 A. I did.

18 Q. Did you participate in any of the
19 meetings with the family and Mr. Williams?

20 A. I did not.

21 Q. Have you ever met with Mr. Williams
22 about this case?

23 A. I have not met with Mr. Williams or
24 had been requested by Mr. Williams to meet
25 with him until the morning of the trial. We

1 went to his office for thirty minutes before
2 we actually came to the courthouse for the
3 trial. We were called that evening around
4 3:00 and made aware that the trial was going
5 to take place and to be in his office at -- I
6 want to say 8:30 or maybe 9:00 that day. And
7 we met with him very briefly, the whole
8 family, very briefly for maybe thirty
9 minutes.

10 Q. Okay. Prior to that meeting, had
11 you ever spoken with him about your brother?

12 A. Had I ever spoken with Mr. Williams?

13 Q. Yes?

14 A. Very briefly. At times, he just --
15 you know, I'm like do you have everything
16 under control. 'Is there anything you need?'
17 He says, 'No, ma'am. I have everything -- I
18 have everything under control.'

19 Q. Did he ever talk to you about your
20 knowledge of Taylor?

21 A. No.

22 Q. You work in a law firm. You know
23 what I say when I say did he do an
24 investigation as to what you might know,
25 rather than sending a private investigator

1 out?

2 A. No, he did not.

3 Q. He didn't ask anyone or have a
4 representative of his office speak with you
5 about it?

6 A. He did not.

7 Q. Okay. Were you aware of the
8 allegations that Taylor had made against Mr.
9 Pace?

10 A. I was aware of those allegations.

11 Q. Okay. Did you bring that to Mr.
12 Williams' attention?

13 A. Mr. Williams did know about that.

14 Q. Okay.

15 MS. VALENZUELA: I'm sorry. I
16 can't hear the answer.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. MILLING:

19 Q. If you'd just restate -- state your
20 answer again so she could hear it?

21 A. Mr. Williams was aware of that.

22 MS. VALENZUELA: Thank you.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. MILLING:

25 Q. From your work in a law firm, do you

1 think that the family should have
2 specifically asked ---

3 MS. VALENZUELA: Objection, Your
4 Honor. This witness is not an expert.

5 THE COURT: All right. I'm going
6 to sustain that. I know she ---

7 MR. MILLING: I'll rephrase it.

8 THE COURT: Yes.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. MILLING:

11 Q. You didn't specifically direct Mr.
12 Williams to go talk to Mr. Pace?

13 A. I did not. He had the information.
14 It wasn't my job to tell him what to do.

15 Q. What did you observe about your
16 brother's demeanor before the trial?

17 A. Before the trial?

18 Q. Yes, ma'am. Immediately prior to
19 the trial?

20 A. Immediately, while we were here at
21 the courthouse?

22 Q. Yes, ma'am.

23 A. My brother was very slow. He was
24 talking very slow. He showed no emotions,
25 which was very, very unusual. He had no

1 emotions. The prosecutor was pretty tough on
2 him and it would just have been something
3 that he would have -- he would have had more
4 emotion. I mean, he actually just sat here
5 and it was like he was in a complete daze.
6 And we were concerned about it. And, as my
7 brother said, it was mentioned.

8 Q. Did you mention it or was it
9 mentioned in your presence to Mr. Williams?

10 A. I was not personally -- I did not
11 personally mention it to him. I was with my
12 mom at the time.

13 MS. VALENZUELA: Objection to
14 hearsay, since the second part of that
15 question called for it.

16 THE COURT: Okay.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. MILLING:

19 Q. To your understanding was Mr.
20 Williams made aware of concerns over your
21 brother's demeanor?

22 A. He was.

23 MS. VALENZUELA: Objection to the
24 exception of hearsay.

25 THE COURT: Yeah, you -- that has

1 been established already.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MILLING:

4 Q. Regarding Taylor growing up, did you
5 observe how she reacted when she didn't get
6 what she wanted?

7 A. I did on many occasions. Taylor was
8 spoiled. If Taylor did not get what she
9 wanted, she would go to any extreme to get
10 what she was going after.

11 Q. Was she someone who shied away from
12 attention?

13 A. No.

14 MS. VALENZUELA: Objection to
15 leading.

16 THE COURT: I overrule that.

17 WITNESS: No.

18 MS. VALENZUELA: Because -- I
19 objected because he said "shied away from
20 attention."

21 DIRECT EXAMINATION CONTINUED

22 BY MR. MILLING:

23 Q. What lengths did you observe her to
24 go to, to try to get what she wanted?

25 A. She would -- as far as how she would

1 act if she didn't get something?

2 Q. Yes, ma'am.

3 A. Well, she really always got what she
4 wanted.

5 Q. Okay. Was she close with your
6 father?

7 A. She was.

8 Q. When did he pass away?

9 A. My dad passed away five years ago in
10 August.

11 Q. What did he die of?

12 A. Dementia.

13 Q. Do you recall when it was that he
14 was diagnosed with dementia?

15 A. He was diagnosed with dementia in, I
16 want to say, in maybe 2008.

17 Q. Okay. Sort in the time that Taylor
18 would have been in the sixth or seventh
19 grade?

20 A. Uh-huh, (affirmative nod).

21 Q. How did that affect your mother's
22 workload?

23 A. How did that affect my ---

24 Q. Your mother's workload and ability
25 to interact with grandchildren?

1 A. Oh, Taylor was ---

2 MS. VALENZUELA: I'm going to
3 object to relevance here. I'm not quite sure
4 ---

5 THE COURT: Yeah. Where are we
6 going with that?

7 MR. MILLING: Judge, there was
8 testimony during the trial that after the
9 initial allegations were made, when Taylor
10 was in the seventh grade, that her
11 grandmother ceased to have a relationship
12 with her. This was during the same time
13 period and that is a justification as to why
14 the relationship wasn't as close as it once
15 was. This is something that ---

16 THE COURT: All right. I'll let
17 you go briefly in it.

18 MR. MILLING: Yes, sir.

19 THE COURT: You know, we don't
20 need to have every detail of every part of
21 the transcript addressed.

22 MR. MILLING: Yes, sir.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. MILLING:

25 Q. Was this around the same time period

1 in 2008 that she would have been in and
2 around the sixth or seventh grade; correct?

3 A. (Affirmative nod).

4 Q. Did that affect your mother and her
5 ability to interact with her grandchildren as
6 much as she previously had?

7 A. It did.

8 Q. Okay. Because she was having to
9 care for her husband?

10 A. Absolutely.

11 Q. You've known your brother for a long
12 time?

13 A. I have four brothers. You're
14 referring to my brother, Glenn, yes.

15 Q. Any reason to believe he did this?

16 A. Absolutely not.

17 MR. MILLING: Nothing further, Your
18 Honor.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. VALENZUELA:

22 Q. Ms. Lindler, I just want to confirm,
23 you never said anything to Defense counsel
24 about the concerns you had about your
25 brother's slow speech?

1 A. At the time of the trial, we all
2 were that he was -- something was -- he was
3 under the -- he was using something because
4 of the emotions ---

5 Q. I'm very sorry, but I have to cut
6 you off. But I need you to answer my
7 question. Did you ever tell defense counsel
8 about your concerns?

9 A. I did not.

10 Q. Okay. Thank you. I'm sorry to
11 interrupt you. I'm just trying to make sure
12 that we stay on track. And then you were not
13 present at any of the times or in the
14 meetings when the victim claims that she was
15 having -- that she was being assaulted by
16 your brother?

17 A. No.

18 Q. Okay.

19 MS. VALENZUELA: Nothing further.

20 THE COURT: Anything further?

21 MR. MILLING: Nothing further from
22 this witness, Your Honor.

23 THE COURT: All right. Thank you,
24 Ms. Linder.

25 (WITNESS STEPS DOWN)

1 MR. MILLING: Your Honor, we would
2 call Glenn Vanover.

3 THE COURT: All right. Come
4 forward.

5 (WITNESS TAKES STAND)

6 GLENN EDWIN VANOVER, having been duly
7 sworn to tell the truth, and nothing but the
8 truth, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MILLING:

11 Q. Mr. Vanover, you're the defendant in
12 this case; correct?

13 A. Am I the defendant?

14 Q. Yes, sir.

15 A. Yes, sir.

16 Q. You've heard all the testimony here
17 today, including the testimony from Mr.
18 Williams?

19 A. Yes, sir.

20 Q. Did you tell Mr. Williams about
21 Kenneth Pace?

22 A. Yes.

23 Q. Did you ask Mr. Williams to talk
24 with Mr. Pace?

25 A. I was under the assumption that that

1 would be part of the investigation that he
2 was doing.

3 Q. And was that the reason why you
4 provided his name to Mr. Williams?

5 A. Correct.

6 MS. VALENZUELA: Objection to
7 leading.

8 MR. MILLING: I'll rephrase.

9 MS. VALENZUELA: Thank you.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. MILLING:

12 Q. What was the reason that you
13 provided Mr. Pace's name to Mr. Williams?

14 A. Taylor was an excellent student from
15 Kindergarten all the way up until about the
16 seventh grade and she started having some
17 issues. She had gotten in trouble in school
18 and she had made these false allegations
19 against him to get him to back off. And I
20 knew that, in my mind, this was one of the
21 first red flags that I'd see that she had a
22 propensity for making up these type stories.

23 Q. Do you recall from a timing
24 standpoint whether or not she made the
25 allegations against Mr. Pace before or after

1 she made the allegations against you?

2 A. The first time she ever said
3 anything about me was on my son's sixteenth
4 birthday. As far as the timing that goes
5 with Mr. Pace, I believe it was before. But
6 I can't absolutely say that a hundred
7 percent.

8 Q. Do you recall what your son's
9 birthday is?

10 A. May 23rd.

11 Q. Of what year?

12 A. 1993.

13 Q. Okay. '93 or '92?

14 A. I believe '93.

15 Q. With regards to the allegations
16 against Mr. Pace, did Taylor subsequently say
17 that she made those allegations up?

18 A. Yes, she did.

19 MS. VALENZUELA: Objection to
20 hearsay, Your Honor.

21 MR. MILLING: All right.

22 THE COURT: Okay.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. MILLING:

25 Q. Did she subsequently provide a ---

1 A. Taylor, once she had made these
2 allegations against Mr. Pace, I actually went
3 to the school and spoke to Vice-Principal
4 Johnson.

5 Q. Okay. And you can't testify as to
6 what Mr. Johnson might have said. Was it
7 your understand that Mr. Johnson or the
8 school took any action against Mr. Pace?

9 A. They took no action against him.
10 She said the allegations ---

11 MS. VALENZUELA: Objection to
12 hearsay?

13 THE COURT: Yeah, I sustain.

14 WITNESS: The allegations were
15 deemed untrue.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. MILLING:

18 Q. Did you ---

19 THE COURT: I sustained the
20 objection.

21 MR. MILLING: Yes, sir.

22 THE COURT: That's been gone over
23 in Mr. Pace's testimony.

24 MR. MILLING: Yes, sir. Yes, sir.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. MILLING:

2 Q. Yes, sir.

3 A. At that time they took her out of
4 the classroom to separate her from him. And
5 that was the first time Taylor was ever
6 failing a grade. Before that, she made A's
7 and B's all the way through school.

8 Q. Okay.

9 A. This is one of the first time she
10 was starting to fail and have an issue in a
11 class.

12 And as has been stated here before,
13 Taylor was spoiled. She never ever did no
14 wrong. And she would do whatever it took to
15 put the blame on anybody else instead of
16 taking the blame for herself.

17 Q. Did you ever hit your wife?

18 A. Never. I've never hit my wife.

19 Q. When Taylor was in the ninth grade,
20 she got in trouble; correct?

21 A. Yes.

22 Q. You went up to the school; correct?

23 A. Correct.

24 MS. VALENZUELA: Objection to
25 leading.

1 THE COURT: Sustained.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. MILLING:

4 Q. Were you shown while you were there
5 anything with regards to her attendance?

6 A. Yes. When these allegations came up
7 in the ninth grade, I went to the school.
8 And what had happened was I was asking Taylor
9 where her report card was, where her report
10 card was. She said they hadn't gotten them
11 yet. And so I received a call from the
12 school that I needed to come down there.
13 When I got to the school, I had met with the
14 vice-principal. I think it was Coach Kerry
15 and another gentleman. And they had showed
16 me Taylor's school records at the time. And
17 I could see on there where she had like
18 almost all F's and had missed like thirty
19 days in a two quarter period. And ---

20 Q. Okay.

21 MR. MILLING: I beg the Court's
22 indulgence for a moment.

23 (TENDERS DOCUMENT TO COURT REPORTER)

24 COURT REPORTER: Applicant's
25 Exhibit 2 for identification.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. MILLING:

3 Q. Mr. Vanover, you testified that when
4 you appeared in the ninth grade, you were
5 shown her attendance records?

6 A. Correct.

7 Q. Let me ask you if you recognize that
8 document, which we've identified ---

9 A. I'd have to put my glasses on. I
10 can't -- I can't see. They're in my top
11 pocket.

12 Q. Top pocket.

13 A. Oh, here they are. Can you restate
14 the question?

15 Q. Do you recognize this document?

16 A. Not right offhand, but let me look
17 at it. (Upon review), okay. Yes.

18 Q. Okay. Does it appear to reflect
19 Taylor's absences during the ninth-grade
20 calendar year?

21 A. Yes, it does.

22 Q. If we go through chronologically,
23 does it appear that there are a significant
24 number of absences?

25 A. Yes.

1 MR. MILLING: Your Honor, we would
2 move to have this admitted as Plaintiff's
3 Exhibit 2. And I don't think there's an
4 objection.

5 MS. VALENZUELA: No objection.

6 THE COURT: Exhibit 2.

7 (SO ENTERED AS APPLICANT'S EXHIBIT 2)

8 MR. MILLING: And, Judge, from a
9 procedural standpoint, we've got an affidavit
10 that's got other -- for the custodian of
11 business records that we've presented to the
12 State earlier. There were some records that
13 she had separate objections to as to hearsay.
14 This was one that she did not have that
15 objection. We can admit that cover affidavit
16 if we need to, but I think ---

17 THE COURT: No, she said without
18 objection. I think it's fine.

19 MR. MILLING: Yes, sir. Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. MILLING:

22 Q. How many days -- not how many total
23 days did she miss, but does that show how
24 many days that she missed at least in one
25 period?

1 A. Can you repeat that question,
2 please?

3 Q. How many calendar days on there are
4 shown where she missed at least one period?

5 A. Whew. A lot. A whole lot.

6 Q. Would it be fair to say that there
7 are thirty days reflected on there where she
8 missed at least one period?

9 A. It looks like it to me.

10 Q. Do you recall what you testified to
11 during the trial?

12 A. As far as?

13 Q. How many days she was missing during
14 that quarter?

15 A. I think I said twenty-five to
16 thirty.

17 Q. Okay. Did you want Brandon to be
18 there for your trial?

19 A. Absolutely.

20 Q. Did you ask Mr. Williams to have
21 Brandon there for trial?

22 A. I was under the assumption that
23 Brandon would be there for the trial. And
24 when I say assumption, let me be really clear
25 about this. Theo wanted -- my conversations

1 with Theo were five, ten, fifteen minutes at
2 best for maybe six or seven different times.
3 He wanted me to get all the evidence I could
4 to him so we could establish a case, my
5 innocence, which I've expressed and I still
6 express here today. All this evidence --
7 after a while, he kept telling me, 'Glenn,
8 you're all right. I've got you. You've got
9 nothing to worry about. Just fall back.'

10 My brother and I, we'd just started a
11 business together, and we were concentrating
12 on that. And I was trying to maneuver
13 between, I guess these different aspects of
14 life and it wasn't very easy. So I kind of
15 fell back.

16 We never discussed any trial strategy.
17 He never once told me, 'oh, we're going to
18 call so and so, so and so.' And as far as
19 not calling anybody, he never discussed that
20 with me. If I would have known Brandon
21 wasn't going to be there, if I would have
22 known Mr. Pace wasn't going to be there, I
23 would have objected -- not objected -- I
24 would have raised a lot of concern about that
25 because I felt, you know, that we needed to

1 establish where she had a propensity for
2 making these allegations.

3 And as far as Mr. Pace went, Taylor, it
4 was assumed that she not just -- he made
5 allegations of a verbal nature but actually
6 had spanked her and her friend on ---

7 MS. VALENZUELA: Objection to
8 hearsay.

9 THE COURT: Yeah. I'm going to
10 sustain that.

11 WITNESS: It wasn't just Taylor.
12 It was also -- there was a friends of hers
13 that was ---

14 THE COURT: I've sustained to any
15 kind of hearsay.

16 MR. MILLING: Yes, sir.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. MILLING:

19 Q. And you've testified that Mr.
20 Williams asked you to bring any information,
21 any evidence that you had?

22 A. Yes.

23 Q. What types of information did you
24 bring?

25 A. A lot of stuff off of the internet.

1 She was very, very keen with the internet.
2 So we brung all -- any statements that we
3 could see that involved anything that would
4 be opposite of these allegations she had
5 made. And one of those was Brandon's friend,
6 Phil Mader. And I felt once that come out
7 then, you know, everybody would know that she
8 was lying.

9 Q. Did Mr. Williams ever get back with
10 you about how that information might have
11 been helpful?

12 A. No.

13 Q. Did he ever tell you that it wasn't
14 helpful?

15 A. No.

16 Q. Did he ever tell you he wasn't going
17 to try and explore some of the information?

18 A. No. I thought he -- his whole thing
19 to me was 'Glenn, I got you. Don't worry
20 about it. Go on with your life. You're good
21 to go.'

22 Next thing I knew, I got a call of when
23 we're going to trial. 'I've got you.'

24 As far as any trial strategy went, was
25 when we met at his office that morning and

1 that was that we could not discuss anything
2 of her sexual past.

3 Q. Okay. And that was it?

4 A. That was it.

5 Q. During this time period, were you
6 having any type of physical or mental or
7 psychological problems?

8 A. Yes.

9 Q. Tell me what those were?

10 A. Well, I had a lot of anxiety issues
11 over this. As far as physical issues, I've
12 had several of those. I've had back issues
13 all my life. I've got a bad spine. And I've
14 been in and out the hospital several times.
15 I've had surgery. I was actually in the
16 process of seeing a neurosurgeon when these
17 allegations were brought up. I was on lots
18 of different medications. I was under a pain
19 management program where I was on morphine
20 and Xanax for many, many years.

21 Q. Who was your primary care physician?

22 A. At the time when these allegations
23 were made would have been Dr. Dunbar.

24 Q. Did Dr. Dunbar as a part of his
25 services to you write any prescriptions?

1 A. Yes, he did.

2 Q. Did you take the prescriptions that
3 were written?

4 A. Did I what?

5 Q. Did you take the prescriptions?

6 A. Yes.

7 Q. Okay.

8 MR. MILLING: I beg the Court's
9 indulgence for one moment.

10 (TENDERS DOCUMENT TO COURT REPORTER)

11 COURT REPORTER: Applicant's
12 Exhibit 3 for identification.

13 MR. MILLING: Your Honor, we've got
14 another affidavit that goes along with this
15 one.

16 THE COURT: All right. Is there
17 any objection to this exhibit?

18 MS. VALENZUELA: No, Your Honor.

19 THE COURT: All right. It's in
20 without objection.

21 MR. MILLING: Thank you.

22 (SO ENTERED AS APPLICANT'S EXHIBIT 3)

23 DIRECT EXAMINATION CONTINUED

24 BY MR. MILLING:

25 Q. I'm going to show you Exhibit --

1 take a moment and look through those records
2 and see if you can identify whose medical
3 records those are?

4 A. They look like they're all mine.

5 Q. Yes, sir. Do you see on here where
6 there are any prescriptions that were written
7 for you?

8 A. Yes, I do.

9 Q. Okay. Does it appear from this that
10 in early -- I guess -- let me take a step
11 back. Do you recall when it was that you
12 went to trial on this case?

13 A. August 28, 2012.

14 Q. Okay. Looking on page, where it
15 says seven of nine, down at the bottom, are
16 there prescription medications which were
17 prescribed for you on August the 13th of 2012?

18 A. Yes.

19 Q. Does it appear that you had a new
20 prescription for Paxil on that date?

21 A. Yes.

22 Q. How about Klonopin?

23 A. Yes.

24 Q. Norco?

25 A. Yes.

1 Q. Amlodipine?

2 A. Amlodipine, (affirmative nod).

3 Q. Okay. Does it appear that on that
4 same date that there were three medications
5 which were discontinued?

6 A. Yes.

7 Q. And what were those?

8 A. Xanax, MS Contin, and Celebrex.

9 Q. Was it your understanding that these
10 medications that you had just been prescribed
11 could have side effects?

12 A. Yes.

13 Q. What was your understanding those
14 side effects could be?

15 A. Whew. Drowsiness -- drowsiness and
16 I guess not being totally coherent. You
17 know, not being sharp.

18 Q. Did you experience either of those
19 two side effects during the trial?

20 A. Yes.

21 Q. How did you feel during the trial?

22 A. Like I was in another world.

23 Q. Did you notice yourself having any
24 emotion?

25 A. No, I was flat.

1 Q. Okay.

2 A. I was flat.

3 Q. Did you advise Mr. Williams that you
4 didn't feel okay?

5 A. I had mentioned to him that I was on
6 the medications and would that be an issue.
7 And he never really said anything about it.

8 Q. Okay.

9 A. I think he was more concerned about
10 closing arguments.

11 Q. Did you feel like Mr. Williams was
12 prepared for your trial?

13 A. Absolutely not.

14 Q. Other than what you've testified to
15 already, what do you think he should have
16 done or should not have done?

17 A. In my opinion, he failed to properly
18 prepare for my case. He failed to take the
19 information that I, my wife, and everyone had
20 given him and to do a thorough investigation,
21 which should have been done. At least half
22 of an investigation. I believe that a whole
23 lot more would have come out if he would have
24 done that, even what's here today.

25 MR. MILLING: Nothing further, Your

1 Honor.

2 THE COURT: Cross Examination.

3 CROSS-EXAMINATION

4 BY MS. VALENZUELA:

5 Q. Do you recall reviewing discovery
6 with your attorney?

7 A. I never reviewed it with him
8 personally. He sent it to me in the mail and
9 I read it.

10 Q. Do you recall discussing possible
11 defenses with your attorney?

12 A. Never did.

13 Q. Did you consider hiring new counsel
14 before you went to trial?

15 A. No, because he told me he had me and
16 I didn't have nothing to worry about.

17 Q. So you never even considered it?

18 A. No.

19 Q. Other than Mr. Pace, is there any
20 witness that you claim you asked your
21 attorney to speak to that he didn't?

22 A. My son, and Phil Mader. The
23 teachers at the school for the high school,
24 that brung me in when she had the issues on
25 her report card in ninth grade. Also a

1 neighbor that lived beside us at the lake
2 that she had accused of -- he was ---

3 MS. VALENZUELA: Objection to
4 hearsay.

5 CROSS-EXAMINATION CONTINUED

6 BY MS. VALENZUELA:

7 Q. I've got to stop you.

8 A. Well, this isn't hearsay. This is
9 actually something that happened.

10 MS. VALENZUELA: So I'm making the
11 objection for the Judge to rule on it.

12 THE COURT: Sustained. You can't
13 talk about what somebody else said.

14 WITNESS: Okay. Can I talk
15 about what I observed?

16 CROSS-EXAMINATION CONTINUED

17 BY MS. VALENZUELA:

18 Q. Well, perhaps your counsel can
19 clarify anything whenever he gets up.

20 A. All right. Thank you.

21 Q. So the allegations that you claim
22 were made against Mr. Pace, those were a
23 different nature than the allegations that
24 your daughter made against you?

25 A. They were in the same line. Those

1 allegations were about the color of the
2 underwear and actually smacking on their
3 behind.

4 Q. So the allegations against Mr. Pace
5 involved the color of your daughter's
6 underwear and the allegations made against
7 you involved penetration and oral sex;
8 correct?

9 A. That's the allegations she made.
10 But I'd like to clarify that with Mr. Pace.
11 The whole issue with that was that was one of
12 the first times ---

13 Q. Were you present?

14 A. --- she had got in trouble in school
15 and she fabricated these allegations against
16 him to get out of the class and they removed
17 her out of the class. I mean, she got her
18 way once again.

19 Q. Okay. Aside from mentioning to your
20 counsel that you were on medications, did you
21 indicate to him any other problem with how
22 you were feeling?

23 A. I was concerned with having to sit
24 in the chair so long with my back.

25 Q. Okay. Did you ever ask your

1 attorney during trial to seek a continuance?

2 A. No, I didn't know we could do that.

3 Q. Did your attorney ever tell you that
4 Brandon would be testifying at trial?

5 A. I was under the assumption that
6 Brandon was going to be at trial.

7 Q. But your attorney didn't say that to
8 you?

9 A. I don't recall that.

10 Q. Okay. And did your attorney ever
11 tell you that he was going to have Mr. Pace
12 at the trial?

13 A. I don't recall that either.

14 MS. VALENZUELA: Your Honor, may I
15 just have a moment?

16 THE COURT: Yeah.

17 MS. VALENZUELA: Nothing further,
18 Your Honor.

19 THE COURT: All right. Any
20 redirect?

21 MR. MILLING: Very briefly, Your
22 Honor.

23 REDIRECT EXAMINATION

24 BY MR. MILLING:

25 Q. Mr. Vanover, the Attorney General's

1 Office asked you whether or not you had ever
2 considered hiring a new counsel. Did you
3 realize before trial that Mr. Williams hadn't
4 investigated the information that you
5 provided?

6 A. No, I did not. He told me he had
7 me. That I had nothing to worry about.
8 'Glenn, I got you. You go on with your
9 life.' Because I thought with all the
10 information we had given, we were good to go
11 and I took his word as being gold.

12 Q. An objection was made when you were
13 trying to say something about a neighbor. I
14 wanted to give you an opportunity to testify,
15 as long as you don't testify as to what
16 somebody else told you, if there was
17 something else that you wanted to mention
18 about that.

19 A. Right. We had a neighbor at the
20 lake, the Jacobs. And on the other side of
21 us we had Lois and Bill and they had a
22 granddaughter. I can't remember her name
23 right off-hand. But Taylor had got off the
24 bus and confided in Sue. She had claimed
25 that the ---

1 MS. VALENZUELA: Objection to
2 hearsay.

3 RECRIECT EXAMINATION COTNINUED
4 BY MR. MILLING:

5 Q. You can say what anyone said.

6 A. What I had observed that day was the
7 neighbors, Bill, Lois and the Jacobs, along
8 with Bill and Lois' granddaughter, fighting
9 with my daughter after the bus had dropped
10 them off. There was a lot of things being
11 said and done. And when Taylor came down to
12 the house or as I was going up, this broke up
13 and everybody left. And when Taylor come
14 down I said, 'Taylor what happened with
15 this?' And she had accused Mr. Jacobs of
16 actually pushing her into the fight. And she
17 said she was trying -- I had observed her
18 trying to -- I don't know. I guess -- I
19 don't know how to say it without it being
20 hearsay, I guess.

21 Q. Glenn, you can only testify as to
22 what you observed.

23 A. Right. I never observed Mr. Jacobs
24 pushing her or doing anything like that. But
25 she had accused him of making her stand and

1 fight.

2 Q. Okay. And then was something that
3 the Attorney General's Office asked you about
4 with regards to the difference between the
5 allegations made against Mr. Pace and made
6 against you. In the seventh grade when
7 Taylor first made the allegations against
8 you, was she specific as to what the acts
9 were or did she just generally make an
10 allegation?

11 A. No, it was just a general thing.
12 She was mad at me. She wanted to get her
13 mom, you know, aggravated with me.

14 Q. Based upon your observations of
15 Taylor, had she become sexually active by the
16 time she made the second allegation?

17 A. Yes.

18 Q. You indicated that Mr. Williams did
19 not tell you that Brandon was going to
20 testify. Did he tell you that he wasn't
21 going to testify?

22 A. Absolutely not.

23 Q. How about Mr. Pace?

24 A. Absolutely not.

25 Q. Did Mr. Williams talk to you about

1 any of the witnesses who were going to
2 testify?

3 A. The only one he ever told me was
4 going to testify was my mother, my wife, and
5 me.

6 Q. Okay. Did you ever ask him about
7 what other witnesses would you have?

8 A. No, I didn't at the time.

9 Q. When was it that he told you that
10 those three ---

11 A. That was right before the trial.

12 Q. Prior to the -- I'm going to say
13 that week, did he talk to you about what
14 witnesses would be called?

15 A. No.

16 Q. Okay.

17 MR. MILLING: Nothing further, Your
18 Honor.

19 THE COURT: All right. You may
20 step down.

21 (WITNESS STEPS DOWN)

22 THE COURT: All right. Anything
23 else from the Applicant?

24 MR. MILLING: No, sir, Your Honor.

25 THE COURT: Anything from the

1 State?

2

3 MS. VALENZUELA: No, just argument.

4 THE COURT: All right. I'll be
5 glad to hear from you.

6 MR. MILLING: Judge, I'm not going
7 to go through the different standards for
8 *Strickland* as far as the deficiencies and
9 prejudice requirement.

10 I would submit that based upon the
11 application and the evidence and testimony,
12 which has been introduced in this case, that
13 there were several areas of deficiencies,
14 areas of deficiency by Mr. Williams.

15 I think if we look at the beginning
16 -- and this is more of a legal argument than
17 a true factual argument. If we look at the
18 beginning, an extra allegation that we've
19 raised is failure to object or preserve the
20 issue. That goes specifically to the
21 allegation that Taylor raised during the
22 trial that the reason she kept everything
23 quiet was because 'I've seen how he treated
24 my mother. How he hit her.' Judge, those
25 were very well briefed with the Court of

1 Appeals on direct appeal, that this is
2 classic 404(b) evidence, that this is a prior
3 bad act that is being improperly admitted
4 during the initial trial of this case. I
5 think that Mr. Williams, while he noted an
6 objection, did not properly object and that's
7 specifically what the Court of Appeals said
8 that this issue has not been preserved. So I
9 think that if we look to begin with as to
10 whether or not there was a deficiency, I
11 think clearly it was.

12 And then we move into the prejudice
13 here. Which essentially asks us to go
14 through whether or not, one, it should have
15 been excluded; and, two, whether or not it
16 would have made a difference. We do have
17 testimony from Mr. Williams and I think that
18 it's clear from the trial transcript that
19 this was a case where credibility of the
20 witnesses was key. It was Taylor's
21 allegations against her family, her mother,
22 her father and her grandmother.

23 It was a delayed reporting so we
24 have no physical evidence whatsoever. And
25 yet we've got Mr. Vanover's character being

1 impugned by his daughter saying 'well, he hit
2 me.' Sex crimes are crimes of domination,
3 crimes of force, crimes of control. And if
4 we look at an allegation of physical abuse
5 and sexual abuse, they are very similarly
6 situated, Judge, similar motives. And,
7 Judge, that's where we get into really the
8 404(b) analysis, 403 analysis here.

9 I do submit consistent with the
10 arguments that were presented in the
11 appellate briefs that this is prior bad act
12 evidence that should not have come in. When
13 we're dealing with prior bad act evidence
14 that's not the subject of a conviction,
15 you've got to establish by clear and
16 convincing evidence that the act occurred
17 before you can even get beyond that. It's
18 clear that my client was never convicted of
19 this. We've heard testimony -- didn't hear
20 it back in the original trial in 2012, but
21 we've heard testimony today, that there was
22 no abuse. That there were no -- no one
23 observed any abuse. We don't have anyone who
24 observed any bruising, cuts, scrapes;
25 anything like that, anything that would have

1 been consistent with abuse here. And so one,
2 the initial problem that the State had during
3 the trial was that there was no evidence to
4 support this bear allegation. So it should
5 have been kept out on its face.

6 If you look at the 403 analysis as
7 to whether or not the probative value is
8 substantially outweighed by the prejudice,
9 it's clear in a case like this where we've
10 got a client or when we've got an individual
11 who was accused without any corroboration,
12 any physical evidence, any substantiation of
13 an abuse, that other evidence of abuse is
14 going to weigh heavily in the jurors' minds,
15 especially when they're evaluating
16 credibility.

17 Based upon this, Judge, we submit:
18 one, Mr. Williams was deficient as a matter
19 of law in failing to properly object to it;
20 and, two, Mr. Vanover was prejudiced as a
21 result of that because this evidence never
22 should have come in. And it's impossible to
23 say that the jury would not have found this,
24 the absence of this, important in their
25 decision.

1 Judge, if we move into the second
2 argument, which was the failure to
3 investigate the school records and the
4 medical records. Specifically the school
5 records -- I heard Mr. Williams' testimony
6 that from a strategic standpoint he didn't
7 want to have the records. Well, it's got to
8 be a reasonable strategic decision. And
9 while he wanted to lay-up, if you will, and
10 try and make the argument that the State was
11 hiding something, he didn't know what was
12 included in there. He didn't know what might
13 have been available, that he could have
14 challenged or anything like that.

15 THE COURT: Well, in looking at
16 his cross-examination of her, he gets into a
17 lot of the fact that she was not in school,
18 missed numerous classes. So how ---

19 MR. MILLING: She denied that she
20 was missing days like that. She denied she
21 ---

22 THE COURT: Well, she admitted
23 some of it, though.

24 MR. MILLING: Well, she admitted
25 some of them but she says that there's

1 nowhere near what, the thirty that he was
2 alleging. And because she denied it, he
3 could have introduced extraneous or
4 corroborating evidence to substantiate 'yes,
5 you did.' And impeach her and challenge her
6 credibility that way.

7 There was -- this was another issue
8 that we raised in the PCR application. There
9 was cross-examination wherein she -- Mr.
10 Williams got into whether or not she wrote
11 reports and things like that about how she
12 loved her father and things like that.
13 Because she ultimately admitted it, I don't
14 think he would have been in a position where
15 he could have cross-examined her on the
16 document itself. And so that's not really an
17 argument that I'm going to be arguing as we
18 get into because procedurally, I think that
19 he did probably as much as he could have
20 based upon her admission that 'I probably did
21 because I wanted to have, make everything
22 appear rosy to the outside world.' But when
23 we deal with the school records, "I did not
24 miss that many days." That's what she says.
25 But the documents show something different.

1 The documents show the problems that she
2 denied and that's what Mr. Williams should
3 have gotten into.

4 Judge, the third claim is failure to
5 investigate as it relates to Brandon Vanover.
6 I realize and recognize that there were a lot
7 of objections raised as to what Mr. Vanover
8 could have testified, and we proffered some
9 of that into the record. But I submit that
10 Mr. Williams failing to even talk to Brandon
11 foreclosed the opportunity for him to talk
12 with the other witnesses. It foreclosed the
13 opportunity for him to cross-examine Taylor
14 on the witness stand about some of these
15 allegations. It foreclosed the opportunity
16 for the jury to hear about her reputation for
17 dishonesty and things like that, which they
18 should have been able to hear, especially in
19 the situation where credibility again was
20 key. Mr. Williams didn't even talk to him.
21 And his reason for not talking to him was
22 because he was afraid of the ADHD issues and
23 him not being on his medication. Judge, I
24 don't think that that substantiates or
25 justifies failing to even talk to a witness.

1 That may go into, you know, the decision as
2 to whether or not to call him as a witness to
3 testify, but not the decision not to even
4 interview them. As Brandon Vanover was able
5 to testify, there were a lot -- there was a
6 lot of information because they were similar
7 age, they were close, they had similar
8 friends.

9 THE COURT: Well, didn't Mr.
10 Williams testify that also that his client
11 told him they didn't want to use him as a
12 witness, something along those lines?

13 MR. MILLING: I'd have to go back
14 and look at the transcript. I know that most
15 recently we heard Mr. Vanover indicate that
16 he absolutely wanted him to be there to
17 testify. We've been here a good while this
18 morning so I don't recall specifically what
19 Mr. Williams may have testified to in that
20 regard. But I do recall him testifying that
21 as it relates to a decision not to call him,
22 he was primarily concerned with ADHD and him
23 not taking his medication, which I don't
24 think justifies not even interviewing a
25 witness. I don't think -- when you've got

1 children that close in age, even if a family
2 member says 'I don't really want him on the
3 witness stand', it justifies not even trying
4 to talk to them to find out what other
5 information could have been gleaned from that
6 witness. Who their friends were; who else I
7 might be able to talk to; who can help
8 further demonstrate that this child is lying
9 about her father. Judge, I don't think that
10 there's any legitimate reasonable strategy in
11 failing to investigate or quite frankly,
12 calling him as a witness. But certainly in
13 failing to investigate and determine the
14 information that we were able to bring to the
15 Court today.

16 Judge, the fourth one deals with
17 failing to impeach Taylor regarding her prior
18 statements about her father being her hero,
19 things like that. And as I alluded to a few
20 moments ago, she did, in fact, admit to that
21 during the trial. So there was some cross-
22 examination of that.

23 We heard testimony from Mr.
24 Williams that, as relates to the fifth claim,
25 'Mr. Vanover was fine.' That he didn't

1 observe anything in his mind that caused him
2 to believe that Mr. Vanover should have
3 gotten the case continued or shouldn't have
4 testified, things along that line. We got
5 the medical records showing what he was on.
6 We've got testimony from Mr. Vanover that he
7 felt like he was in a fog and out of it,
8 which is a side effect of the drug or the
9 drugs. We've got testimony from his sister
10 and his brother, who testified as to those
11 same observations, an emotionless, dazed
12 state. And, Judge, you might be asking
13 'well, where's the prejudice even at that?'
14 But if we go back and look at the closing
15 argument of the prosecutor, she says 'don't
16 you think if somebody was accused of this and
17 they didn't do it they would show some
18 emotion?' That's when she points to Mr.
19 Vanover and says there was no emotion.

20 And, Judge, if you give me a moment,
21 I can probably point you to that specific
22 reference. If we look on Page 245 of the
23 transcript beginning on page (sic) 11,
24 (reading): "And you surely didn't think that
25 he was going to get up here and just admit to

1 *what he did. But you saw his demeanor. You*
2 *saw, having just sat up there -- I mean, he*
3 *really had no reaction."*

4 THE COURT: But isn't the standard
5 not only that he showed emotion, but that he
6 was -- didn't have the capacity to assist
7 with his defense?

8 MR. MILLING: Well, I think they
9 were talking about potentially two different
10 things. Because I think that when you look
11 at calling witnesses, if you look at an error
12 of counsel failing to ask for a continuance,
13 if you look at an attorney evaluating the
14 situation as a whole, and you look at whether
15 or not the witness -- the case should have
16 proceeded because of an external circumstance
17 such as this, you've got to evaluate whether
18 or not counsel was deficient in failing to
19 address the situation, failing to handle it.
20 And then whether or not there was a prejudice
21 which was suffered as a result of that. And
22 I think that the prejudice that we're looking
23 at is him appearing during the trial in that
24 foggy state, in the slowed state, the slurred
25 state, the emotionless state, which we heard

1 testimony from the Defendant himself and two
2 of his siblings regarding that state. And we
3 hear it from the trial. It's not just their
4 observations, it's Ms. Patterson's
5 observations as well as to what she brought
6 out to the jury. So I do think that that's
7 really what we're looking at in that type of
8 analysis is whether or not counsel was
9 deficient in how he handled a situation and
10 whether or not he Defendant was prejudiced as
11 a result of that.

12 Judge, our seventh allegation deals
13 specifically with Mr. Pace. And while that's
14 seventh on the list, I think that that -- and
15 probably most troubling to me, Mr. Williams
16 testified that he didn't think anything of it
17 when he saw that, the name. He didn't think
18 that it really offered any help but how can
19 you make that evaluation or that
20 determination if you don't even talk to the
21 witness?

22 Judge, we've heard what Mr. Pace was
23 able to testify to regarding the unfounded
24 allegations, which were made against him by
25 Taylor. We're not talking about something

1 that's very remote in time. We're talking
2 about an allegation that arose within two
3 years, seventh grade versus the ninth grade
4 when these allegations were made against
5 Glenn, which give rise to this charge. Are
6 they exactly the same? No. But if we look
7 at a chronological standpoint, I believe that
8 the allegations, if they occurred during the
9 school year, which I believe we have to
10 assume based upon what Mr. Pace testified to,
11 that they occurred during the school year, it
12 would have been prior to Brandon's sixteenth
13 birthday, which occurs in May. Judge, I
14 would submit this shows a pattern of
15 progression as to how specific her
16 allegations get. But they're all of a sexual
17 nature.

18 THE COURT: You don't think he'd
19 have had a problem getting that evidence in?

20 MR. MILLING: I think it comes in,
21 Judge. I think that a presiding judge has a
22 very hard time saying that prior allegations
23 of a sexual nature by a student against a
24 teacher should (phonetic) be admitted. I
25 think probably the best way that that would

1 have come in during the trial back in August
2 of 2012 would have been to cross-examine
3 Taylor on it. See what she says then you can
4 offer Mr. Pace in your case in chief. That's
5 what pops into my mind as to what was the
6 most logical way to admit that. But because
7 Mr. Williams didn't bother to talk to Mr.
8 Pace, he didn't know what he was going to
9 say. But I think it is directly relevant to
10 the issue of her truthfulness and veracity.
11 If Taylor stands up there and says, 'I did
12 make these false allegations against Mr. Pace
13 and I'm sorry for doing that', Mr. Pace
14 doesn't come in and testify, but the jury's
15 heard at that point that Taylor in the
16 seventh grade, two years before this, has
17 made a false allegation of a sexual nature
18 against a teacher. If she denies it, that's
19 when Mr. Pace can come in and respond to it.

20 In this type of a setting, it's a
21 little more difficult, but we are still
22 looking at whether or not there was a failure
23 to investigate. Whether that was reasonable,
24 whether there could have been some sort of a
25 strategic decision that Mr. Williams had as

1 far as not interviewing a witness whose name
2 appeared in the discovery and a factual
3 scenario appeared in other information that
4 he said he received from Melanie Vanover. So
5 he clearly had the information. He just
6 chose not to follow-up on it. And I think
7 that was clearly error. And I think it's
8 clearly prejudicial if you look at whether or
9 not -- again, credibility is key -- whether
10 or not a jury having heard -- I mean, let's
11 face it -- allegations in the seventh grade.

12 THE COURT: All right. Okay.

13 MR. MILLING: Yes, sir. Regarding
14 the final allegation of the claim we raised
15 in here, number eight, calling Mike Horn as a
16 witness, as the last witness, just for the
17 purpose of showing who would have had the
18 school records. He testified that it was a
19 strategic decision as the last hoorah. I
20 understand counsel is given latitude as far
21 as strategic decisions, but I think that when
22 you look at the totality of this case, it was
23 an unreasonable decision, strategic decision,
24 to call that as the last witness before the
25 case is adjourned.

1 Judge, that would be our position.

2 We submit that based upon the
3 deficiencies of Mr. Williams in the original
4 trial, that my client should get a fair trial
5 and he should get a retrial and his
6 conviction vacated in this case.

7 THE COURT: Ms. Valenzuela?

8 MS. VALENZUELA: Your Honor, may I
9 approach with case law?

10 THE COURT: Yes.

11 MS. VALENZUELA: Your Honor, going
12 through the allegations one at a time and
13 starting with the first one, the failure to
14 object or preserve and objection for appeal.
15 One of the cases that I handed you and I
16 handed a copy to opposing counsel is *Foye v.*
17 *State*, 335 SC 586. It's a Supreme Court of
18 South Carolina case. In that case you had a
19 similar issue where the issue had not been
20 preserved for appeal and the Court of Appeals
21 in its affirming of the lower court or
22 dismissing the appeal noted that the issue
23 had not been preserved on appeal. Those are
24 the facts before you today. That is the
25 Court of Appeals basically said the issue was

1 not preserved. But you'll see, if you look
2 down on Pin Cite, right above Pin Cite 268 it
3 goes into saying "without any evidence the
4 Petitioner's claim is not supported by an
5 probative evidence and is based on pure
6 speculation." And that's addressing the
7 point that you still have to show that there
8 would be some prejudice, that there would be
9 some change if that issue had been preserved.
10 And so I would draw the Court's attention --
11 It's part of the record so I'm not going to
12 go through and outline everything. But what
13 you have is you have the brief that was
14 submitted on behalf of the Attorney General's
15 Office when we handled the appeal. And
16 there's two specific sections that I would
17 ask you to look at and those are C and D.
18 One where there's an argument as to this
19 being allowed in, even if it had been
20 objected to at trial because it informed the
21 jury on the basis of the victim's fear. And
22 in addition an argument that this does not
23 even -- is not barred by Rule 404 because
24 character evidence is evidence that is
25 produced for the purpose of proving action

1 and conformity, which no one was arguing that
2 the testimony was elicited to show that he
3 was more likely to assault his daughter
4 because he beat his wife. It was put in to
5 explain why his daughter would be scared for
6 two years to report it. And so we think that
7 the appellate briefs that are before the
8 Court address that issue, show that there
9 would be -- that there would not have been a
10 different result, even if trial counsel had
11 made -- had preserved that issue for appeal.
12 And so we think that that should be denied.

13 Moving on to the second one, failure
14 to investigate with the medical and the
15 school records. It says here victim's school
16 and medical records. We just note there were
17 no victim's medical records before you. As
18 to the school records, you know, we would
19 argue that it's very hard to see how a one
20 sheet showing attendance would have made the
21 jury decide that in fact, the victim was not
22 telling the truth here, especially because
23 Defense counsel crossed the victim on exactly
24 that issue. And also elicited testimony from
25 the Defendant and the Defendant's wife in

1 front of the jury on the victim's absences.
2 And so this would just be duplicative
3 information that would not lead the jury to a
4 different conclusion had those victim's
5 school records been put in.

6 Additionally, and this is going to
7 incorporate the last bullet point. I'm just
8 going to argue those at the same time. The
9 failure to not elicit further testimony on
10 the school records is the last one. These
11 two are linked together because counsel did
12 testify, Defense counsel did testify that
13 this was part of his strategy, was to
14 basically make it look like the State was
15 trying to hide something. But in addition to
16 that, he not only said that that was his
17 strategy, he wanted to kind of leave it as a
18 last area to suggest there was something
19 missing there and it was really the State.
20 But he also said that the jury could
21 interpret records in different ways. So if
22 he'd put in something that emphasized that
23 she had missed a lot of school, that might
24 leave the jury sitting there thinking 'well,
25 maybe she's missing school because she's, you

1 know, being assault by her dad at home.' But
2 then he said and, of course, they could look
3 at it a different way, like 'maybe she's
4 skipping school.' But clearly he had thought
5 and weighed 'hey, there's different ways that
6 the jury sees this different information.'

7 And he though instead of putting that out
8 there for the jury to kind of decide, 'Maybe
9 she's missing school. This makes me feel
10 more sorry for her, that he would leave it as
11 hey, we don't even have to go into whether
12 she missed school or not. Why don't we make
13 it look like the State isn't proving their
14 burden.' And so not only is this a strategic
15 decision that does deserve some deference, it
16 probably was an effective -- we think it, you
17 know, was an effective strategic decision.

18 Moving on to the third point, a
19 failure to call the witness Brandon Vanover,
20 you've heard the testimony today. We would,
21 you know, renew or objection that the
22 information that was proffered before you on
23 the brother's testimony would not come in due
24 to the rape shield statute. And,
25 additionally, based on hearsay and then --

1 and frankly the substance of it did not seem
2 like it would kind of pass the, you know, the
3 lab test in front of the jury. But what
4 Brandon, the victim's brother testified
5 before you was that he talked to you about
6 the televisions in the room. He told you
7 that while there's a reputation for untruth
8 when asked what that was, he said that it was
9 sibling stuff like 'hey, he hit me' or 'he
10 did this.' This does not rise to the level
11 of having a jury say 'if only I had heard the
12 brother tell me that they had sibling fights,
13 I would have known that the victim was making
14 this up.' And so there was nothing that the
15 brother was presenting to include the
16 information that was proffered about, you
17 know, whether she claimed to have, you know,
18 lost her virginity with someone or not that
19 would come in. And we think that the trial
20 judge would not have allowed that in to begin
21 with. Additionally, you know, Brandon
22 testified that he was in jail for a large
23 portion of the time that they were preparing.
24 He wasn't quite clear but he felt like he had
25 barriers to his ability to speak with Defense

1 counsel leading up to the trial. And we
2 heard Defense counsel say that he had
3 concerns after speaking with the Defendant
4 and the Defendant's wife, that indicated to
5 him that he did not think he should call
6 Brandon to the stand. And he emphasized that
7 that had to deal with Brandon not taking his
8 ADHD medication. And that possibly going in
9 the wrong direction.

10 You know, PCR counsel makes a big
11 point of saying that Defense counsel did not
12 even speak to Brandon. 'How could he have
13 not have spoken to him?' But neither did law
14 enforcement and neither did the prosecutor.
15 So clearly this is because the allegations in
16 this case have never been that Brandon was in
17 the room, that Brandon was in position where
18 he would be able to see whether the rape was
19 going on or not. And so, I mean, to the
20 point that law enforcement and prosecution
21 also did not feel like he was a witness worth
22 speaking to. So we don't think that
23 prejudice has been established there and we
24 think that that count should be dismissed as
25 well.

1 I believe opposing counsel has been
2 clear that he's, you know, essentially
3 withdrawn the allegation about counsel not
4 crossing the victim on the poem from middle
5 school because that was, in fact, done.

6 So moving on to failure of the
7 Applicant to testify, Defendant was under the
8 influence of morphine and Xanax. The two
9 cases that I handed up that address that are
10 *Hall v. Catoe*, which is C-A-T-O-E, 360 SC
11 353. And the *McLaughlin*, M-C-L-A-U-G-H-L-I-N
12 *v. State* 352 SC 476. Both of those deal with
13 competency standards and they actually deal
14 with it in the context of PCR hearings. And
15 in both of those, the test that is laid out
16 is "whether the defendant has a sufficient
17 and present ability to consult with his
18 lawyer with a reasonable degree of rational
19 understanding and whether he has a rational
20 as well as a factual understanding of the
21 proceedings against him." And that's under
22 *McLaughlin*, Pin Cite 481. And then
23 separately, the *Catoe* case lays out in Pin
24 Cite 338 that the Defendant has to prove his
25 incompetence to stand trial by a

1 preponderance of the evidence. And it has to
2 be -- I'm sorry -- and the judge's order
3 should have been amended exclude clear and
4 convincing language, but it should have been
5 preponderance of the evidence. And then
6 moving on Pin Cite 360 it says that counsel
7 -- that the applicant would have to prove
8 that he was not capable of understanding and
9 participating in his defense and was not
10 capable of understanding the charges against
11 him. All of these questions were discussed
12 with defense counsel today. And defense
13 counsel said that he had no problem
14 communicating with the Defendant, that the
15 Defendant appeared to understand. And
16 additionally no one raised this concern to
17 him. The only testimony that was before the
18 Court today was the Defendant's brother
19 saying you know, something to the degree of
20 like, 'hey, what do you think is wrong with
21 him' or 'have you seen what's wrong with
22 him', which is certainly not enough to put
23 anyone on notice that anything is going on.
24 The trial court also was observing the
25 Defendant and nothing seemed to indicate the

1 Defendant was acting so irrationally or so
2 differently or unable to understand that the
3 proceedings needed to be halted. And then,
4 of course, as Your Honor noted, the fact that
5 the Defendant does not show emotion and is a
6 person who is, you know, slightly different
7 in how he comes across, does not have
8 anything to do with his ability to understand
9 the nature of the charges and participate in
10 his defense. So we think that that one
11 should be dismissed as well.

12 The failure to investigate with the
13 professor, the instructor, Mr. Pace, comes
14 down to whether that would have come in at
15 all. And even under the claims that PCR
16 counsel says that he would have cross the
17 victim, if only we could go back in time, he
18 would have crossed the victim on these
19 issues, and then he would have used Mr. Pace
20 to impeach her, in the end, Mr. Pace never
21 heard these allegations from the victim.
22 And, in fact, one of the considerations with
23 that, if it didn't look like this was
24 additional actions on the part of the
25 Defendant to cover up his own behavior,

1 because it was around the same time. And Mr.
2 Pace and the Defendant were not able to
3 clarify how close in time these situations
4 were, that the victim first went to her
5 family and said 'I am being molested by my
6 father.' And it's around the same time that
7 the Defendant chooses to call Mr. Pace and
8 say -- and claim these allegations were made.
9 Mr. Pace testified he never heard this come
10 out of the victim's mouth. He never had any
11 indications that she was the one who made
12 this allegation.

13 It's also -- it doesn't, you know,
14 really rise to believability that if someone
15 -- you know, if someone's daughter came and
16 said a teacher is acting sexually
17 inappropriately with me in school, that I
18 wouldn't call administration or call law
19 enforcement or do something like that. There
20 was no indication that administration knew
21 about it until Mr. Pace went to
22 administration and talked to them himself
23 because he had been contacted directly. And
24 then further, this was not something that was
25 completely ignored by counsel. Counsel said

1 that yes, he thought about it and he made a
2 decision that frankly with the information
3 that he had about this being a question about
4 color of the underwear, it was going to be a
5 completely different nature. It's a
6 different issue. A teacher saying 'what
7 color is your underwear' or 'pull up your
8 pants so I don't see your underwear', it's
9 different than the allegations that were made
10 here, which is that he was taking his
11 daughter into a room and doing physical
12 things with his daughter. And counsel said,
13 'I considered and thought this is not going
14 to be something that we need to spend our
15 time on. It doesn't rise to anything. He
16 didn't do anything and it's not going to end
17 up helping us.'

18 And then counsel spent -- and the
19 transcript is littered with examples of how
20 counsel crossed the victim and made numerous
21 examples, most importantly got her to confirm
22 that at one point she's telling the jury that
23 she's been molested seventy-six times and, in
24 fact, she had told law enforcement it was
25 only six to seven times over that two years

1 and then confirms that it's only six to seven
2 times. And so he accurately put the
3 attention on the, you know, the meat and
4 substance of the allegations versus what
5 would have been a red herring that could have
6 been used strategically against his own
7 client.

8 And so for all of these reasons,
9 Your Honor, we would ask that you deny the
10 applicant's petition.

11 THE COURT: All right. I have all
12 the issues properly before me. I'm going to
13 review the cases submitted. I'm going to
14 review the transcript a little more carefully
15 and I'll take it under advisement. Make sure
16 we have your email addresses -- I have Ms.
17 Valenzuela's. Your email address?

18 MR. MILLING: I'll give you a card,
19 Your Honor.

20 MS. VALENZUELA: Thank you, Your
21 Honor.

22 (TRANSCRIPT CONCLUDED)
23
24
25

1

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Glenn E. Vanover, S.C.D.C. No. 352164

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE ELEVENTH JUDICIAL CIRCUIT

2016 JUN 22 AM 11:08
BETH A. CATHCOTT
CLERK OF COURT
LEXINGTON, SC

C.A. No. 2014-CP-32-04479

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 10, 2014. Respondent made its return and motion to dismiss on or about March 20, 2015. An evidentiary hearing was held on April 19, 2016, at the Lexington County Courthouse. Applicant was present and represented by Jonathan M. Milling, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant; Applicant's sister, Caroline Lindler; Applicant's brother, Gary Vanover; Applicant's son, Brandon Vanover; Applicant's trial counsel, Theo Williams, Esquire; and Kenneth Pace, a former teacher to the victim in the underlying case, testified at the hearing. The Court had before it Applicant's trial transcript, the Lexington County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders from the Lexington County Clerk of Court. Applicant was indicted for two counts of criminal sexual conduct with a minor under the age of eleven (CSC), first-degree (2011-GS-32-2356; -2357) at

P KZ

prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case."). Further, to show prejudice, Applicant "must show that, but for counsel's errors, there is a reasonable probability the result of the trial would have been different." McLaughlin v. State, 352 S.C. 476, 483, 575 S.E.2d 841, 844 (2003) (citing Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997)). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. (internal citations omitted).

In response, trial counsel can present "a valid reason for consciously deciding" to take some action, or fail to take some action, at trial. McLaughlin, 352 S.C. at 483, 575 S.E.2d at 845 (holding counsel was not deficient for failing to ask specific questions allowed by the trial court where counsel gave a valid reason for "consciously deciding not to ask those questions"). The burden to show that the result of the trial would have been different is a very difficult burden for Applicant, and this Court does not feel that this burden has been met.

something from the jury (pp. 239-40), which was seen as more valuable a point than introducing records that could have been interpreted in different, and perhaps harmful, ways by the jurors.

Applicant has failed to show that had the records been introduced at trial, the records would have led to a different result and has therefore failed to show any prejudice to Applicant.

III. Failure to interview and call Applicant's son, Brandon Vanover, as a witness

Applicant alleges trial counsel failed to interview and call his son, Brandon Vanover, as a witness. Applicant testified he expected his son to be called to testify and was surprised to arrive at trial and not have his son called as a witness. Brandon Vanover testified at the PCR hearing that, had he been called to testify, his testimony would have consisted of statements made to him by a former boyfriend of the victim,¹ claims that there were additional televisions in the home than victim claimed, that he had never observed unusual sounds or seen his father exit the room sweating, that the victim was not truthful because she had made up "sibling stuff" such as claiming he hit her when he did not, that he had seen the victim at home during school hours, that he recalled the victim leaving to stay with a friend for several days after hearing she had accused their father of sexually abusing her, and that Applicant had back pain from an injury. Brandon Vanover testified that he did want to testify at the trial. He also testified that at the time of the trial he was about seventeen to eighteen years old and still living with Applicant, that he did not tell defense counsel he wanted to testify or tell him about any of the above stated things, that he did not send any letters or try to call defense counsel, and that it would have been hard to meet with defense counsel because he was in jail prior to Applicant's trial due to some speeding

¹ Brandon Vanover was allowed to testify to these statements through a proffer after the Court sustained the State's hearsay objection.

PHK

Applicant's brother and sister testified at the PCR hearing that Applicant was on serious medication and that during trial they observed his speech pattern was slower and that he did not seem to be showing appropriate emotions. Applicant did not offer any expert testimony about the effect of any medications he was taking or about how that medication would affect his capacity to stand trial. Further, trial counsel testified that based on his observations and discussions with Applicant, he did not feel Applicant suffered from any issues regarding his capacity to stand trial and was fully capable of assisting with the trial and testifying.

Applicant failed to offer any evidence that he did not have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and offered no evidence of "whether he [lacked] . . . a rational, as well as a factual, understanding of the proceedings against him." McLaughlin, 352 S.C at 481, 575 S.E.2d at 843 (citing State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998)).

VI. Failure to object to testimony about victim's mother's attempted suicide

Little evidence was presented on this issue during the PCR hearing. The Court finds Applicant failed to meet his burden to establish trial counsel was deficient on this issue.

VII. Failure to investigate and provide evidence of prior recanted allegations by the victim

Applicant alleges trial counsel was deficient in failing to interview a teacher whom, Applicant alleges, the victim accused of making sexually harassing statements that were later recanted. During the PCR hearing, Kenneth Pace, the victim's former teacher, testified that Applicant and Applicant's wife called him and stated the victim had claimed he made comments about the color of her underwear. Mr. Pace testified he had not said these things to the victim.

PNP

Mr. Pace testified he never heard directly from the victim about this allegation and did not speak with the victim again after receiving that phone call from Applicant.

Applicant states the witness should have been used at trial to show the character of the victim and previous false statements. However, this Court finds Applicant did not establish the testimony would have been admissible. Further, this Court finds Applicant failed to show that the failure to introduce this testimony prejudiced Applicant.

VIII. Failure in calling State's witness as last defense witness in Applicant's trial

Applicant claims trial counsel was deficient for calling one of the State's witnesses as his last witness. Trial counsel testified he made a strategic decision to call this witness last because of his position that the prosecution was hiding something by not presenting the school records.

Applicant has failed to show that not calling this witness would have resulted in a different ruling or that this action actually prejudiced Applicant.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Applicant was not prejudiced by counsel's representation; therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203 and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

DHG

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 17th day of June, 2016.



Perry H. Gravelly
Presiding Judge
Eleventh Judicial Circuit

Grandly, South Carolina.

FILED
2016 JUN 22 A 11:06
BETH A. CARRING
CLERK OF COURT
LEXINGTON, SC

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on June 27, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan McKey Milling 1614 Taylor St., Ste. C Columbia,
SC 29201

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29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/kpk

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

GLENN E. VANOVER, #352164

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

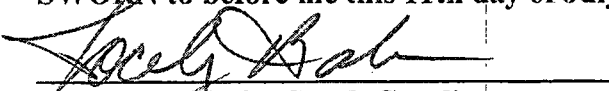
Jonathan McKey Milling, Esquire
Milling Law Firm, LLC
1614 Taylor St., Ste. C
Columbia, SC 29201

This 11th day of July, 2016.



Deonna Rogers
Legal Assistant for Respondent

SWORN to before me this 11th day of July, 2016.


Notary Public for South Carolina.
My Commission Expires: 12/16/2024

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Glenn E. Vanover, S.C.D.C. No. 352164

☒ Plaintiff

v.

State of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2014-CP-32-04479

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Jonathan M. Milling, Bar No. 15628
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1614 Taylor Street, Suite C
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Defendant's Attorney:
Johanna Catalina Valenzuela, Bar No.
Address:
PO Box 11549
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phone: fax:
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- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 30 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant

Date submitted 7/7/16

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Glenn E. Vanover, S.C.D.C. No. 352164,	)	C.A. No. 2014-CP-32-04479
	)	
Applicant,	)	
	)	
v.	)	MOTION TO RECONSIDER
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Glenn E. Vanover ("Vanover"), having received the Order of Dismissal issued by this Court on June 17, 2016 ("Order"),¹ hereby timely move this Honorable Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, requesting reconsideration of the Order of Dismissal. For the reasons set forth herein, the undersigned submits that this Court should reconsider its decision in this Orders, and thereafter Vacate Vanover's convictions.

BACKGROUND and PROCEDURAL HISTORY

Vanover filed his application for post-conviction relief (PCR) filed on December 10, 2014, and Respondent made its return and motion to dismiss on or about March 20, 2015. An evidentiary hearing was held on April 19, 2016, at the Lexington County Courthouse. Applicant was present and represented by Jonathan M. Milling, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Present and testifying at the Hearing were Applicant; Applicant's sister, Caroline Lindler;

¹ The Order of Dismissal was filed on June 22, 2016, and the Form 4 Judgment entered on June 27, 2016, with a copy of the Order of Dismissal and Form 4 Judgment being mailed to counsel that same day.

Applicant's brother, Gary Vanover; Applicant's son, Brandon Vanover; Applicant's trial counsel, Theo Williams, Esquire; and Kenneth Pace, a former teacher to the victim in the underlying case. The Court also had before it Applicant's trial transcript, the Lexington County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the Return.

For the reasons set forth herein, Vanover respectfully requests this Court reconsider its earlier decision on the following grounds, and vacate Vanover's convictions, remanding the case for a new trial.

I. Failure to properly object and preserve issue regarding prior bad acts

In the Order, the Court denied Vanover's challenge that his trial counsel's failed to properly object to the victim's testimony about Applicant's alleged abuse of victim's mother and thereby failed to preserve the issue for appeal. The Order succinctly concludes:

Applicant has not shown whether a different objection would have resulted in a different ruling or whether this actually prejudiced Applicant. To further object could have brought more attention to the statement when there had only been a passing reference to the statement in front of the jury thus far. The Court finds Applicant has not proved any prejudice.

For the reasons set forth herein, trial counsel was ineffective, and that "but for counsel's errors, there is a reasonable probability the result of the trial would have been different." *See McLaughlin v. State*, 575 S.E.2d 841, 844 (2003).

The specific excerpt at issue is found on page 118 of the trial transcript and is as follows:

[Victim:]	I seen [sic] the way he treated my mom and how he hit her.
Mr. Williams:	Objection, Your Honor.
The Court:	Grounds?
Mr. Williams:	It's prejudicial and it has nothing to do with the charge.

The Court:
Mr. Williams:

I believe she can testify to what she said, counsel.
All right, sir.

...
The Court:

Tell you just what you said and now what someone else said. Do you understand?

(Tr. p. 118).

Trial counsel's non-specific objection appears to possibly make challenges pursuant to Rules 402 or 403 of the South Carolina Rules of Evidence. The Court's response, however, seems to address the issue as one of hearsay. See SCRE Rules 801-804. The proper challenge, however, was pursuant to Rule 404 of the South Carolina Rules of Evidence, as the testimony regarding "how he hit her" is clearly inadmissible bad character evidence (SCRE Rule 404(a)) and inadmissible prior bad act testimony (SCRE Rule 404(b)). The inadmissibility of this evidence was raised by Vanover in his appeal, and in response, the State unequivocally states "[Vanover]'s argument regarding Rule 404(a) & (b), SCRE is not preserved because he never objected on those grounds." See Final Brief of Respondent, p. 7.

"A party must state the specific ground of objection, if the specific ground was not apparent from the context." Rule 103(a)(1), SCRE. However, "[a] party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003). "The objection should be sufficiently specific to bring into focus the precise nature of the alleged error so that it [could] be reasonably understood by the trial [court]." *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 344, 479 S.E.2d 67, 75 (Cl.App.1996)." See *State v. King*, 784 S.E.2d 252, 260-61 (S.C. Ct. App. 2016). Trial counsel's failure to so object was deficient under prevailing standards, and Vanover was prejudiced thereby.

Rule 404(a)

In evaluating Rule 404(a), our Supreme Court has defined prohibited "character evidence" as "a generalized description of a person's disposition or a general trait such as honesty, temperance, or peacefulness." *See State v. Brown*, 543 S.E.2d 552, 554 (S.C. 2001)(citing *State v. Nelson*, 331 S.C. 1, 7, 501 S.E.2d 716, 718 (1998)). In *Brown*, a murder prosecution where the defendant raised self defense in response, the defendant's wife, a witness to the crime, was asked why she fled the scene and she responded, "I know the moods of my husband and I knew I had to get out." The Solicitor asked what mood appellant was in that night and Mrs. Brown stated that he had become "very angry and agitated." The Solicitor then asked, "What happens when he becomes angry and agitated?" Over appellant's objection, Mrs. Brown stated, "He gets violent." *See Brown*, at 554. Similar to the query posed to the witness in *Brown* of why she fled the scene, the question posed to the victim in the instant case was why wasn't the crime timely reported. Just as the response improperly introduced character evidence in *Brown*, so too was the admission in the instant case improper.²

While the instant matter involves a purported character of physical assault against the mother, and the prosecution was for sexual assault of the daughter, the improper statement introduced alleged the criminal character of the defendant, and a lack of regard for the sanctity of his family. "Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime with which he is charged." *See Brown*, at 554. (citing *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998)). The victim's statement clearly is one

of criminal character, and suggests to the jury that one who is likely to so disregard another family member is more likely to disregard the family member in the instant case by committing the alleged crime. Admission of this evidence was improper, trial counsel erred in not properly objecting to the evidence, and Vanover was prejudiced by his deficiency.

Rule 404(b)

Similar to the inadmissibility of the statement under Rule 404(a), evaluating the testimony under Rule 404(b), admission was also improper. “The process of analyzing [prior] bad act evidence begins with Rule 401, SCRE.” *State v. Wallace*, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009); *see also* Rule 401, SCRE (defining “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence”). If the circuit court determines the prior bad acts evidence is relevant, it “must then determine whether the bad act evidence fits within an exception of Rule 404(b).” *Wallace*, 384 S.C. at 433, 683 S.E.2d at 277.” *See King*, at 261.

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Rule 404(b), SCRE. Such evidence “may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” *King*, at 261 (*citing* Rule 404(b), SCRE)

To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing.

² In *Brown*, such admission was harmless because other evidence of another violent encounter between the defendant and victim the previous day was properly admitted. No such proper admission saves the improper admission of evidence against Vanover.

Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant.

King, at 261 (citing *State v. Pagan*, 369 S.C. 201, 211, 631 S.E.2d 262, 267 (2006) (citations omitted)).

“Once bad act evidence is found admissible under Rule 404(b), the [circuit] court must then conduct the prejudice analysis required by Rule 403, SCRE.” *State v. Wallace*, 384 S.C. at 435, 683 S.E.2d at 278 (footnote omitted); *see also* Rule 403, SCRE (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice....”). “Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis.” *State v. Stokes*, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009) (quoting *State v. Dickerson*, 341 S.C. 391, 400, 535 S.E.2d 119, 123 (2000)). “Finally, the determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case.” *Id.* at 404–05, 673 S.E.2d at 441.” *See id.*

Going through the analysis prescribed in *King*, as an initial matter, it is clear that the evidence is that of prior bad acts. Arguably, the evidence is relevant under Rule 401, as it shows the reason why the victim did not report the offense immediately. Rule 401, defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Evidence tending to explain why the reporting was delayed could fall within this definition.

While the evidence may have some arguable relevance, the inquiry does not end there. “If the circuit court determines the prior bad acts evidence is relevant, it ‘must then determine

whether the bad act evidence fits within an exception of Rule 404(b).” *See King* at 261 (*citing Wallace*, 384 S.C. at 433, 683 S.E.2d at 277). Furthermore, “the bad act must logically relate to the crime with which the defendant has been charged.” *See Pagan*, at 267. In the instant case, there is no evidence that prior alleged assault “logically relates” to the instant allegations, and no evidence that the alleged domestic violence falls within any of the exceptions noted in Rule 404(b). Furthermore, there is no evidence to corroborate the unfounded allegations to demonstrate their existence by clear and convincing evidence. *See Pagan* at 267. In short, analyzing the prior bad act under Rule 404(b) demonstrates its inadmissibility.

The foregoing demonstrates the inadmissibility of the testimony under Rule 404. However, to the extent the Court invites analysis under Rule 403, and if the Court determines some exception not addressed herein, even under Rule 403, the evidence is inadmissible because the prejudicial value of admission of such evidence substantially outweighs any possible probative value. As noted, the statement possibly has some relevance as explaining the delay in reporting. However, the statement could have been stopped at “I seen [sic] the way he treated my mom . . .” without inclusion of the “how he hit her.” Similarly, the victim testified that Vanover told her not to tell anyone “[a]nd if I did, I would be in a lot of trouble.” *See Trial Transcript* p. 113. Those statements provide the same probative value without the prejudice imparted by accusing Vanover of domestic violence. Furthermore, the victim does not indicate that she observed domestic abuse against her mother prior to the initial encounter. For the allegations to demonstrate that the victim delayed reporting the initial encounter as a result of observations of domestic abuse, and thereby have probative value to the instant allegations, she would have had to observe the abuse prior to the sexual assault.

Converse to the minimal probative value of the prejudice associated with such an unfounded allegation, the prejudice associated with allegations of domestic violence is great. While the allegations of domestic violence and sexual assault are two different offenses, they are both crimes of violence, assaults against women, and assaults against family members. Introduction of the allegations of domestic violence reveals the lack of regard for ones' family, and makes it more likely that the accused would commit other crimes of violence against other family members. Additionally, considering Vanover's wife testified on behalf of Vanover, her testimony could easily have been discredited in the minds of jurors as being coaxed by her abuser. The prejudice associated with such an unfounded allegation is extreme, and admission is improper under Rule 403.

The allegations against Vanover had no physical proof. Ultimately, the jury's verdict was determined as a result of credibility of the witnesses. From the verdict, the jury believed the victim, and disbelieved Vanover and his wife, the alleged victim of domestic abuse. It is clear that the proper objection was not made. It is also clear that, had the proper objection been made and a complete analysis conducted, the evidence would not have been admitted. The improper admission of the testimony that, in addition to the allegations of sexual assault, Vanover also abused his wife, are "sufficient to undermine the confidence in the outcome of the trial." See *McLaughlin v. State*, 575 S.E.2d 841, 844 (S.C. 2003). Vanover's convictions should be vacated, and a new trial ordered.

II. Failure to investigate and provide evidence of prior recanted allegations by the victim

Vanover alleges trial counsel was deficient in failing to interview a teacher whom, the

victim accused of making sexually harassing statements that were later recanted. During the PCR hearing, Kenneth Pace, the victim's former teacher, testified that Vanover and Vanover's wife called him and stated the victim had claimed he made comments about the color of her underwear. Mr. Pace testified he had not said these things to the victim. Mr. Pace testified he never heard directly from the victim about this allegation and did not speak with the victim again after receiving that phone call from Applicant. Mr. Pace indicated during the hearing that after speaking with school administrators about the allegations, no adverse action was taken against him as a result of these allegations, and that the victim was removed from his class.

The Court, in denying Vanover's petition on this ground, concludes that Vanover did not establish the testimony would have been admissible. Further, this Court finds Applicant failed to show that the failure to introduce this testimony prejudiced Applicant.

"A criminal defense attorney has a duty to perform a reasonable investigation." *Lounds v. State*, 670 S.E.2d 646, 649 (S.C. 2008) (citing *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 597. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Id.* (citing *Ard*, 642 S.E.2d at 597). In this instance, Vanover testified that he made trial counsel aware of the allegations levied by the victim against Mr. Pace. Trial counsel testified that he was vaguely familiar with some sort of an allegation, but didn't interview the potential witness. Mr. Pace testified that he was never contacted by trial counsel, or anyone on behalf of trial counsel. Such a failure was in error.

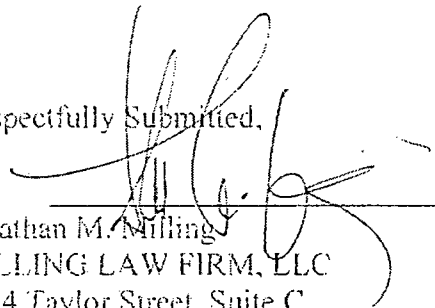
Regarding the admissibility of evidence of the allegations levied against Mr. Pace, had trial counsel interviewed Mr. Pace prior to trial, Mr. Pace could have confirmed the allegations.

and trial counsel could have utilized such in cross examination to impeach the victim. If the victim denied making the allegations, Mr. Pace could have been called in Vanover's case to present his testimony. Vanover and Vanover's wife could have also testified about the allegations had trial counsel investigated the matter prior to trial. The circumstances Mr. Pace testified to are remarkably similar to those allegations made against Vanover: victim gets in trouble, and makes allegations of a sexual nature in an effort to avoid discipline. The testimony is clearly relevant to the instant situation, and hardly can it be said that had allegations as similar as these been admitted during Vanover's trial, that the verdict would be the same. Thus, are this ground is "sufficient to undermine the confidence in the outcome of the trial." *See McLaughlin v. State*, 575 S.E.2d 841, 844 (S.C. 2003). Vanover's convictions should be vacated, and a new trial ordered.

CONCLUSION

Based on all the foregoing, Vanover respectfully requests this Court reconsider its denial of the foregoing grounds, and confirm that Vanover suffered constitutional violations or deprivations before or during his trial, and that Vanover was prejudiced by counsel's representation.

Respectfully Submitted,

By: 

Jonathan M. Milling
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1614 Taylor Street, Suite C
Columbia, South Carolina 29201
(803) 451-7700

July 7, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Glenn E. Vanover, S.C.D.C. No. 352164,	)	C.A. No. 2014-CP-32-04479
	)	
Applicant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
State of South Carolina,	)	
	)	
Respondent,	)	
	)	

I, the undersigned employee of Milling Law Firm, attorneys for Glenn E. Vanover, do hereby certify that I have served upon the following parties in this action a copy of the motion herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Motion: Motion to Reconsider

Parties Served: The Honorable Perry H. Gravely
Post Office Box 219
Pickens, SC 29671

Johanna Catalina Valenzuela
P.O. Box 11549
Columbia, SC 29211

Mya Green
Mya Green

July 7, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	2014-CP-32-04479
Glenn E. Vanover,	)	
S.C.D.C. No. 352164,	)	
	)	
Applicant,	)	
	)	RETURN TO APPLICANT'S
v.	)	MOTION TO RECONSIDER
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

In response to Applicant's Motion to Reconsider dated July 7, 2016, Respondent would show this Court:

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 10, 2014. Respondent made its return and motion to dismiss on or about March 20, 2015. An evidentiary hearing was held on April 19, 2016, at the Lexington County Courthouse. Applicant was present and represented by Jonathan M. Milling, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent. The Final Order denying Applicant's relief was filed on June 22, 2016.

ARGUMENT

As an initial matter, Respondent submits the Final Order signed by the Court contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). This Court properly ruled on all issues, and Applicant's motion should be denied.

I. Alleged Failure to Object and Preserve Issue Regarding Prior Bad Acts

Applicant's argument on this issue fails because the testimony was relevant and admissible under Rules 401, 402, and 403 SCRE, and, even assuming there was error, the Applicant failed to establish prejudice.

A. SCRE Rule 401 and 402

Generally, all relevant evidence is admissible under Rule 402, SCRE. "Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. But evidence does not have to be "necessary' to the State's case in order to be admitted." State v. Sweat, 362 S.C. 117, 127, 606 S.E.2d 508, 513 (Ct. App. 2004). "While the State may not attack a criminal defendant's character unless he has placed it in issue, relevant evidence admissible for other purposes need not be excluded merely because it incidentally reflects upon the defendant's reputation." State v. Faulkner, 274 S.C. 619, 621, 266 S.E.2d 420, 421 (1980).

Here, Victim testified that the reason she waited two years to tell anyone about the sexual abuse was because she was scared of Appellant. (Trial Tr. p. 149, ll. 19-22; p. 150, ll. 7-9.) In an attempt to explain why she was afraid of Appellant, and therefore waited two years to disclose the sexual abuse—in fact in response to the question "And why did you hold it in so long?" (Trial Tr. p. 118, l. 4)—Victim stated, "I seen the way he treated my mom and how he hit her." (Trial Tr. p. 118, ll 4-5.) This testimony was relevant because it explained why Victim waited so long to disclose the sexual abuse and the basis of her fear. See e.g., State v. Myers, 359 N.W.2d 604, 609-610 (Minn. 1984) (holding that the expert's testimony regarding delayed disclosure was

admissible and stating the following: "The nature, however, of the sexual abuse of children places lay jurors at a disadvantage. . . If the victim of a burglary failed to report the crime promptly, a jury would have good reason to doubt that person's credibility. A young child subjected to sexual abuse, however, may for some time be either unaware or uncertain of the criminality of the abuser's conduct. . . [U]ncertainty becomes confusion when an abuser who fulfills a caring-parenting role in the child's life tells the child that what seems wrong to the child is, in fact, all right. Because of the child's confusion, shame, guilt, and fear, disclosure of the abuse is often long delayed."); State v. Cook, 972 A.2d 1059, 1063 (N.H. 2009) ("The State may introduce evidence to explain a sexual assault victim's behavior. 'We have recognized in recent years that victims of sexual assaults may not immediately disclose them.' 'When children are victims, they may not be aware of the wrongful nature of the conduct; other victims may wish to forget the assault, or fear reprisals or disbelief if they report.'") (internal citations omitted).

B. Rule 403

Applicant's argument also fails because the danger of unfair prejudice did not substantially outweigh the probative value.

Under South Carolina's Rules of Evidence, evidence that is relevant "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE; see also State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006). A trial court's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App.2004). Determination of

relevancy is largely within the discretion of the trial court and will not be reversed absent an abuse of that discretion. Sweat, 362 S.C. at 127, 606 S.E.2d at 513.

“However, although evidence is relevant, it should be excluded where the danger of unfair prejudice substantially outweighs its probative value.” State v. Cooley, 342 S.C. 63, 69, 536 S.E.2d 666, 669 (2000). “Unfair prejudice means an undue tendency to suggest decision on an improper basis.” State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009). “Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis.” State v. Dennis, 402 S.C. 627, 636, 742 S.E.2d 21, 26 (Ct. App. 2013) (internal quotation marks omitted). “All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided.” State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (internal quotation marks omitted).

Here, the probative value of admitting the testimony was high. The jury needed to know why Victim waited so long to disclose the sexual abuse. Although Victim testified that the reason she waited two years to disclose the sexual abuse was because she was afraid of Applicant, the testimony regarding Applicant’s treatment towards Victim’s mother explained the basis of Victim’s fear. Thus, the testimony was highly probative.

In arguing that the testimony was highly prejudicial, Applicant claims that there was a strong probability that the jury relied on the testimony in order to find Applicant guilty. To the contrary, the testimony was not admitted as propensity evidence (see Section C below). The fact that Applicant hit his wife in the past does not make him more likely to commit criminal sexual conduct with a minor. Further, Applicant argues the “jury’s verdict was determined as a result of credibility of the witnesses.” (Motion, p. 8.) But Victim’s testimony that Applicant hit her

mother in the past did not make Victim more credible. Notably, Victim was the only witness that testified regarding Applicant's treatment towards her mother, and Victim only mentioned Applicant's treatment towards her mother one time during trial. Even if this single reference to Applicant's prior act of hitting Victim's mother was prejudicial to Applicant, it was not so prejudicial that it substantially outweighed the probative value. So, assuming *arguendo* that trial counsel should have objected differently, an appellate court reviewing this issue for abuse of discretion would not have reversed and Applicant has failed to establish prejudice.

C. Rule 404

Applicant's argument fails because the State did not offer the testimony for the purpose of proving Applicant acted in conformity with his treatment of Victim's mother. Rather, the testimony was offered for the purpose of explaining to the jury the reason why Victim waited so long to disclose the sexual abuse. Simply put, the testimony was not admitted as character evidence under Rule 404, SCRE.

Rule 404, SCRE provides the following:

(a) **Character Evidence Generally.** Evidence of a person's character or a trait of character is not admissible *for the purpose of proving action in conformity* therewith on a particular occasion[.]

...
(b) **Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts is not admissible *to prove the character of a person in order to show action in conformity therewith*. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

Rule 404, SCRE (emphasizes added).

Here, Victim's testimony was not admitted to suggest Applicant was a bad person or committed the sexual assault because he had hit his wife in the past. Rather, the testimony was

offered in order to inform the jury the reason why the victim waited two years to disclose the sexual abuse.

D. *No Prejudice*

Finally, even if trial counsel erred in failing to object *differently* to the testimony, any error failed to create prejudice because it could not have reasonably contributed to the verdict.

Here, Victim was the only witness that testified regarding Applicant's treatment towards Victim's mother. Notably, Victim only mentioned Applicant's treatment towards Victim's mother one time during trial. Victim's single reference to Applicant hitting Victim's mother in the past did not constitute sufficient prejudice to justify a new trial. See e.g., State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) (finding that the police officer's single reference to the defendant's arrest warrants did not constitute sufficient prejudice to justify a mistrial). As Applicant pointed out, the main issue in the case was Victim's credibility. Victim's testimony regarding the fact that Applicant hit Victim's mother in the past does not have any bearing on Victim's credibility. Rather, the testimony gave the jury an explanation of why Victim waited so long to disclose the abuse.

Thus, even if trial counsel erred, any error was insubstantial and did not affect the result, and therefore cannot establish prejudice in this case.

II. *Alleged failure to investigate and provide evidence of statements made by Applicant to one of Victim's prior teachers*

Applicant's second argument fails as well. Not only did trial counsel testify he had considered the allegations involving Victim's prior teacher, he also stated he rejected the value of those statements because they were presented to him as a teacher saying something along the

lines of "pull up your pants, no one wants to see your underwear," which had no similarity to the molestation accusations involved in this case. Had counsel interviewed Mr. Pace prior to trial, he would have discovered the same thing the PCR Court discovered when Mr. Pace testified: the only knowledge Mr. Pace had that an accusation was made and the content of that allegation was limited to what Mr. Pace heard *from the Applicant*. Mr. Pace never heard the Victim make the accusation and he had no knowledge of the nature of the Victim's alleged accusation. Mr. Pace's knowledge was limited to a telephone conference with Applicant and his wife within the timeframe that the Victim was first making an accusation of molestation against Applicant. Applicant was therefore motivated to suggest the Victim was making unfounded accusations against others. Further, the argument that if plea counsel investigated this issue, Applicant and his wife "could have also testified about the allegations" fails to actually explain how plea counsel's "failure to investigate" limited Applicant and his wife's ability to testify about their own supposed knowledge of this incident at the trial.

Trial counsel offered a strategic reason for his decision not to track down and interview Mr. Pace and because Mr. Pace's testimony would not have been admitted at the trial, no prejudice has been established.

CONCLUSION

WHEREFORE, having made its Return to the Motion, Respondent requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

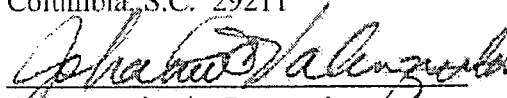
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

Columbia, South Carolina
21 July, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2014-CP-32-04479
	)	
GLENN E. VANOVER, #352164	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

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

Jonathan McKey Milling, Esquire
Milling Law Firm, LLC
1614 Taylor St., Ste. C
Columbia, SC 29201

DATED this the 21st day of July, 2016.


Deonna Rogers, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Glenn E. Vanover,
S.C.D.C. #352164

Applicant,

vs.

State of South Carolina,

Respondent.

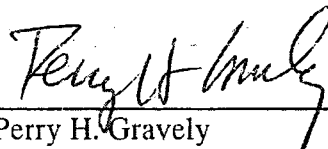
IN THE COURT OF COMMON PLEAS
Case No. 2014-CP-32-04479

ORIGINAL

ORDER

This matter comes before the Court upon Applicant's Motion to Reconsider the Order dismissing his Post-Conviction Relief claim, filed by and through counsel on July 7, 2016. The State, through its counsel Johanna C. Valenzuela, submitted its Return to Applicant's Motion to Reconsider July 21, 2016. The Court has reviewed the materials submitted in this matter. After fully considering Applicant's Motion, this Court finds no need for oral argument in this matter, and the Motion to Reconsider is DENIED;

AND IT IS SO ORDERED!


Perry H. Gravely
Presiding Judge

Pickens, South Carolina

July 28, 2016

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2016 AUG 12 A 11:01

FILED

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP3204479**

Glenn E Vanover

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:
ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

8/12/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **15th of August 2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Jonathan McKey Milling
1614 Taylor St., Ste. C Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Johanna Catalina Valenzuela
PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ARREST WARRANT

M-302261

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

11012826

against

Glenn Edwin Vanover

Address: 1010 Wildwood Cir

Leesville, SC 29070-7993

Phone: SSN: 248-37-1825

Sex: M Race: W Height: 5 8 Weight: 185

DL State: SC DL #: 008259162

DOB: 3/20/1963 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: M. L. Longshore - 1886

Offense: Sex / Criminal sexual conduct with minor or
Attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Glenn Vanover

on 03/07/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant M. L. Longshore who

being duly sworn deposes and says that defendant Glenn Edwin Vanover

did within this county and state on or about 01/01/2004 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That between 2004 and 2007, the defendant, Glenn Edwin Vanover engaged in sexual battery with the victim, who is his biological
daughter while she was under the age of 11 years old. The defendant rubbed his penis with the victim's hand while both were
unclothed. Afterwards the defendant stuck his penis inside the victim's vagina while lying on top of her. The victim did provide a
detailed written statement. This occurred while both parties lived at 1010 Wildwood Cr., which is in the Leesville area of Lexington
County, SC. Case # 11012826

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address P O Box 639
Lexington, SC 29071-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2004 defendant Glenn Edwin Vanover

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 02/26/2011

Signature of Issuing Judge

Scott D. Whittle

Judge Code: 5886

Judge's Address 650 Knox Abbott Drive

Cayce, SC 29033-

Judge's Telephone (803)796-7100

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

ARREST WARRANT

M-302262

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

THE STATE

11012826

against

Glenn Edwin Vanover

Address: 1010 Wildwood Cir

Leesville, SC 29070-7993

Phone: SSN: 248-37-1825

Sex: M Race: W Height: 5 8 Weight: 185

DL State: SC DL #: 008259162

DOB: 3/20/1963 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: M. L. Longshore - 1886

Offense: Sex / Criminal sexual conduct with minor or
Attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Glenn Vanover
on 03/03/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Personally appeared before me the affiant M. L. Longshore whobeing duly sworn deposes and says that defendant Glenn Edwin Vanoverdid within this county and state on or about 01/01/2004 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Lexington)
in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That between 2004 and 2007, the defendant, Glenn Edwin Vanover engaged in sexual battery with the victim, who is his biological
daughter while she was under the age of 11 years old. The defendant rubbed his penis with the victim's hand while both were
unclothed. Afterwards the defendant stuck his penis inside the victim's vagina while lying on top of her. The victim did provide a
detailed written statement. This occurred while both parties lived at 1129 Sandpit Rd. which is in the Leesville area of Lexington
County, SC. Case # 11012826

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Lexington

Affiant's Address P O Box 639
Lexington, SC 29071-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2004 defendant Glenn Edwin Vanover

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Lexington) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before meon 02/26/2011

Signature of Issuing Judge

Scott D. Whittle

Judge Code: 5886

(L.S.)

Judge's Address 650 Knox Abbott Drive
Cayce, SC 29033-Judge's Telephone (803)796-7100Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

JNTY OF _____
 ATE _____
 VS.
 Glenn Edwin Vanover

INDICTMENT/CASE#: 2011GS3202356

A/W#: M302261

Date of Offense: 1/1/2004

S.C. Code § 16-03-0655(A)(1)

CDR Code #: 0385

KA:

ace: White Sex: M Age: 49

OB: 03-20-1963 SS#: 248-37-1825

address: 1010 Wildwood Cir

ty, State, Zip: Leesville, SC 29070-7993

L#: 008259162 SID#:

DL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45

w/minor 1st or Lewd Act)

charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,a determinate term of 26 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-32-2357

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

he State Department of Corrections.

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

pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

restric Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

ESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

1: \$ _____ plus 20% fee: \$ _____

ment Terms:

Set by SCDPPPS

patient:

1-206 (Assessments 107.5 %)	\$	
1-211 (A)(1) (Conv. Surcharge)	\$100	\$ 100
1-211 (A)(2) (DUI Surcharge)	\$100	\$
1-211 (A)(3) (DUI Assessment)	\$12	\$
1-211 (A)(4) (DUI Breath Test)	\$25	\$
1-211 (A)(5) (Public Def/Prob)	\$500	\$
1-211 (A)(6) (Law Enforce. Funding)	\$25	\$ 25
1-211 (A)(7) (Drug Court Surcharge)	\$150	\$
1-211 (A)(8) (BUI Breath Test Fee)	\$50	\$
1-211 (A)(9) (Vehicle Assessment)	\$40/ea	\$
1-211 (A)(10) (SCC Surcharge)	\$5	\$ 5
County (if paid in installments)	\$	
L.C.	\$130	\$

of Court/ Deputy Clerk

Reporter:

117 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 0122

Sentence Date: 8/29/12

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 VS.
Glenn Edwin Vanover

AKA: _____
 Race: White Sex: M Age: 49
 DOB: 03-20-1963 SS#: 248-37-1825
 Address: 1010 Wildwood Cir
 City, State, Zip: Leesville, SC 29070-7993
 DL#: 008259162 SID#: _____
 CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3202357
 A/W#: M302262
 Date of Offense: 1/1/2004
 S.C. Code §: 16-03-0655(A)(1)
 CDR Code #: 0385

SENTENCE SHEET

Disposition of the said indictment comes now the Defendant who was
 O: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree ☒ CONVICTED OF or ☐ PLEADS
 1 violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 TEST: _____

Solicitor 13969 Defendant _____ Attorney for Defendant _____ SC Bar# _____
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 a determinate term of 26 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.
 CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-32-2356
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 The State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Client: _____
 Test: _____
 1-2106 (Assessments 107.5%) \$ _____
 1-2111(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 1-2111(A)(2) (UI Surcharge) \$100 \$ _____
 1-2105 (DUI Assessment) \$12 \$ _____
 1-2105 (DUI Breath Test) \$25 \$ _____
 1-2109 (Public Def/Prob) \$500 \$ _____
 1-2112 (Law Enforce. Funding) \$25 \$ 25.00
 1-2113 (Drug Court Surcharge) \$150 \$ _____
 1-2114 (DUI Breath Test Fee) \$50 \$ _____
 1-2112(J) (Vehicle Assessment) \$40/ea \$ _____
 1-2115 (SCCLT Surcharge) \$5 \$ 5.00
 County (if paid in installments) \$ _____
 \$ 130

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Court/Deputy Clerk Beth Carney
 Reporter: Mike Watts
 17 (03/2011)

Presiding Judge _____
 Judge Code: 0122
 Sentence Date: 8/29/12

WITNESSES

Lexington County Sheriffs Department

Marty L. Longshore

Law Enforcement Case #: 11012826

RWP

ARREST WARRANT NUMBER

W302261

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 8/2/11

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS3202356

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE

vs.

Glenn Edwin Vanover

CDR #: 0385

Indictment for

**Criminal Sexual Conduct w/Minor
under 11- First Degree**

§ 16-03-0855(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF LEXINGTON) Criminal Sexual Conduct w/Minor under 11- First
) Degree
)
 § 16-03-0655(1)

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That Glenn Edwin Vanover date of birth March 20, 1963, did in Lexington County, South Carolina on or between January 1, 2004 and December 31, 2007, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: defendant had vaginal sex with the victim Taylor Vanover, date of birth October 11, 1995, in violation of Section 16-3-655(1), Code of Laws of South Carolina, 1976, as amended.

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



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Marty L. Longshore

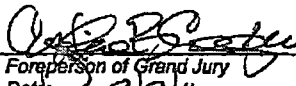
Law Enforcement Case #: 11012826

RWP

ARREST WARRANT NUMBER

M302262

ACTION OF GRAND JURY


Foreperson of Grand Jury

Date: 8/8/11

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS3202357

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2011

THE STATE

vs.

Glenn Edwin Vanover

CDR #: 0385

Indictment for

**Criminal Sexual Conduct w/Minor under
11- First Degree**

§ 16-03-0655(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Criminal Sexual Conduct w/Minor under 11- First
Degree

§ 16-03-0655(1)

At a Court of General Sessions, convened on AUGUST 2011, the Grand Jurors of Lexington County present upon their oath:

That Glenn Edwin Vanover date of birth March 20, 1963, did in Lexington County, South Carolina on or between January 1, 2004 and December 31, 2007, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: defendant had vaginal sex with the victim Taylor Vanover, date of birth October 11, 1995, in violation of Section 16-3-655(1), Code of Laws of South Carolina, 1976, as amended.

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



ASSISTANT SOLICITOR