

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Thomas L. Hughston, Jr., Circuit Court Judge
2009-GS-24-1246

2223A

RECEIVED
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SC Court of Appeals

APPELLATE CASE NO.: 2014-000980

The StateRespondent

v.

Rodney Lee Rogers, Sr.Appellant.

RECORD ON APPEAL

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Certificate Of Counsel

The undersigned certifies that this Record on Appeal contains all material prepared to be included by any of the parties and not any other material and, further, complies with Supreme Court Order dated August 13, 2007, regarding personal identifiers and sensitive information.

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister (SC Bar # 506)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
STATE VS.

INDICTMENT/CASE#: 09QS24-1246

Rodney Lee Rogers Sr.

A/W#: M075352

AKA: _____

Date of Offense: 2/1/2008

Race: CAU Sex: M Age: 44

S.C. Code §: 16-03-0655(A)

DOB: 10-01-1969 SS#: [REDACTED]-3941

CDR Code #: 0385

Address: 610 Old Shoals Junction Road

City, State, Zip: Ware Shoals, SC

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act on a Minor

In violation of § 16-03-0655(A) 16-15-140 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)

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.

ATTEST:

Sheek, C. Lance
SC Bar# _____ Defendant

65396
SC Bar# _____ Attorney for Defendant

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 15 years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 20 years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on:

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 36-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.70
TOTAL	\$	\$ 133.70

PTUP _____
_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other: _____

GREENWOOD COUNTY

Appointed PD or appointed other counsel.
47.12 requires \$500 be paid to Clerk of Court during probation.

ATTEST A TRUE COPY
ANNE WOODHURST
CLERK AND GS
GREENWOOD COUNTY

Clerk of Court/ Deputy Clerk: Dean R. Wall

Court Reporter: Steph Johnson

Presiding Judge

Judge Code: 2008

Sentence Date: 4/17/14

WITNESSES

Kenny Downing
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

October Term, 2009

Indictment # 09GS24- 1246

WARRANT NUMBER

M075352

THE STATE

vs.

Rodney Lee Rogers Sr.

True Bill

Dean Lomell

Foreman of the Grand Jury

Date: Oct-2, 2009

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT
16-03-0655(A)

VERDICT

GUILTY OF LEWD ACT
ON A CHILD

Foreman SEC. 16-15-140

SEE ATTACHED

Verdict Form

SIGNED BY FOREMAN

T.L. [Signature] 7/17/14
President's Justice

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

2014 APR 17 AM 11 33

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC

STATE OF S.C. AGAINST RODNEY LEE ROGERS
#2009-GS-24-1246

ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

Verdict

WE FIND RODNEY LEE ROGERS, SR.,
NOT GUILTY.

Ereath H. Rudey
FOREMAN.

WE FIND RODNEY LEE ROGERS, SR.,
GUILTY OF CRIMINAL SEXUAL
CONDUCT IN THE FIRST DEGREE.

FOREMAN.

WE FIND RODNEY LEE ROGERS, SR.,
GUILTY OF COMMITTING A LEWD
ACT ON A CHILD.

Ereath H. Rudey
FOREMAN.

CLERK GENERAL SESSIONS
JUDICIAL CIRCUIT
GREENWOOD, SC
APR 17 AM 11:33

1 I don't believe that it's -- the testimony says he
2 inserted himself inside of her. I don't believe the
3 testimony can be interpreted that way.

4 **THE COURT:** Well, I mean, the issue is whether or
5 not the testimony supports anything other than a claim
6 that he had sexual intercourse with her and within the
7 confines of the definition of sexual battery. The
8 definition of sexual battery does include the provision,
9 the -- I haven't gotten exactly the wording of it, but
10 the insertion of anything into the vagina. I mean,
11 the argument is that the testimony supports that he
12 penetrated her with his finger, in addition to
13 penetrating her with his penis, and that's what I'm --
14 I have a hard time seeing that there's clear testimony
15 that he penetrated her with anything other than his
16 penis. There's no question that's what -- in my mind
17 that's what she testified to; that he penetrated her
18 with his penis. There's plenty of testimony to support
19 the idea that he touched her, but whether or not -- the
20 problem is whether or not there's testimony to support
21 beyond a reasonable doubt that he penetrated her with
22 his finger.

23 **MR. SHEEK:** In that case, Your Honor, would the
24 Court be charging the lesser included of CSC-3rd, which
25 would be the lesser --

1 **THE COURT:** Well, I don't know. You haven't -- we
2 haven't talked about that. Do you want me to -- you
3 want me to charge CSC-3rd?

4 **MR. SHEEK:** Yes, sir. I think there's --

5 **THE COURT:** What does that -- let me look and see
6 what that says. I mean, of course, touching on the
7 outside would be lewd act.

8 **MR. SHEEK:** And that's what the third is, a
9 codification of the old lewd act.

10 **THE COURT:** Let me see what that is. What section
11 is it?

12 **MR. SHEEK:** 16-3-65 --

13 **THE COURT:** I think it's 4. It looks to me 64.
14 Well, that's not -- no, that's not -- that's not. I'm
15 looking at 16-3-654. That's not what we're talking
16 about.

17 **MR. SHEEK:** Just one second, Judge. I'm trying
18 to -- I apologize, Your Honor. This is 2008. It would
19 be charged under the lewd act.

20 **THE COURT:** What?

21 **MR. SHEEK:** This was in 2008. It would be
22 charged --

23 **THE COURT:** Well, where is that?

24 **MR. SHEEK:** The old lewd act statute, it's been
25 redone, Judge.

1 **THE COURT:** Well, give me what we're dealing with
2 back in 2008.

3 **MR. SHEEK:** Your Honor, I apologize. It's 16-3-655,
4 Subsection C. Criminal sexual conduct with a minor,
5 third degree, if the actor is over 14, and willfully or
6 lewdly commits or attempts to commit a lewd --

7 **THE COURT:** Wait a minute. Let me -- let me read.
8 Are you reading 16-3-655, Paragraph 3?

9 **MR. SHEEK:** No, sir. Subsection C.

10 **THE COURT:** Do we know when this was adopted?

11 **MR. SHEEK:** This would have been adopted in 2010,
12 Your Honor.

13 **THE COURT:** Let me see here. Actually this -- I'm
14 looking at it again, and it says the 2012 amendment
15 added Subsection C related to criminal sexual conduct in
16 the third degree.

17 **MR. SHEEK:** That's why it's -- it would be under the
18 old lewd act.

19 **THE COURT:** Well, where is that?

20 **MR. SHEEK:** Well, that's no longer on the computer
21 because it's been repealed and replaced with this. I'm
22 having a hard copy brought over of the old lewd act
23 statute.

24 **THE COURT:** Okay. Well, let's -- we've got to wait
25 on that then. So this one doesn't help then because

1 this is 2012 law.

2 **MR. SHEEK:** Let me run and grab that for you, Judge.

3 **THE COURT:** Do you know what -- before this
4 amendment, do you know what the section was for a lewd
5 act?

6 **MR. MORROW:** Your Honor, the amendments took place
7 while I was in law school, so I learned it this way.
8 I'm trying to find it.

9 **THE COURT:** Okay.

10 (Recess was taken.)

11 **BAILIFF:** Remain seated. Court will come to order.

12 **THE COURT:** Are you having any luck?

13 **MR. SHEEK:** They're bringing over the old copy,
14 Judge. I think we're printing off a copy back there.
15 16-15-140 was the old statute number.

16 **THE COURT:** 16 what?

17 **MR. SHEEK:** 15-140.

18 **THE COURT:** All right.

19 **MR. SHEEK:** Do you have it, Your Honor?

20 **THE COURT:** I've got a copy of it here.

21 **MR. SHEEK:** Okay.

22 **THE COURT:** All right. Apparently this is Section
23 16-15-140, committing or attempting a lewd act upon a
24 child under 16, was the law in 2008 when this is alleged
25 to have occurred. And you want me to read it or are

1 you --

2 **MR. BANNISTER:** I'm familiar with it.

3 **THE COURT:** Okay. I think that that -- that the
4 evidence would support a conviction of that charge. I'm
5 not saying that that's what happened. I'm just saying
6 that there is evidence that would support that charge,
7 so if you're requesting that I -- heretofore, I had
8 understood you to be saying that you didn't want
9 anything other than criminal sexual conduct charged to
10 the jury, but you're asking me now to charge lewd act
11 under Section 16-15-140?

12 **MR. SHEEK:** Yes, sir.

13 **THE COURT:** Okay. I'll charge that then. So what
14 I'm gonna charge the jury is, as far as the criminal
15 sexual conduct with a minor, that requires a sexual
16 battery, and in this case that means sexual intercourse.
17 That's what I think the testimony supports. I'm not
18 saying that that's what happened, again, but that's what
19 her testimony would support; either sexual intercourse
20 took place or that he lewdly -- he committed a lewd act
21 on her as defined in Section 16-15-140.

22 **MR. SHEEK:** Yes, sir.

23 **THE COURT:** So both of those will be submitted to
24 the jury in that fashion.

25 **MR. BANNISTER:** And, Judge, I take it you are

1 implicitly finding then that it is -- I take it you are
2 finding that is a lesser included offense?

3 **THE COURT:** Yes.

4 **MR. BANNISTER:** Okay.

5 **THE COURT:** I guess that's the way I should say it.
6 It's an offense for which I think the evidence --
7 there's testimony that would support a conviction for
8 that, as I said, and that under this indictment charging
9 criminal sexual conduct with a minor as it has and all,
10 I think that I'm permitted to also submit a charge of
11 lewd act under that Section 16-15-140.

12 All right. Now so as far as arguments are concerned
13 then, are you gonna open on the law?

14 **MR. SHEEK:** I won't -- I will not request to unless
15 the defense wants me to, Your Honor.

16 **MR. BANNISTER:** I do not request him to, Your Honor.

17 **THE COURT:** All right. So you're gonna argue first
18 then completely and then you'll argue completely after
19 that?

20 **MR. SHEEK:** Yes, sir.

21 **THE COURT:** All right. Bring the jury in.

22 **MR. BANNISTER:** Judge, can I have just five minutes
23 before you do that?

24 **THE COURT:** Sure.

25 (Recess taken.)

1 deliberations. If I've overlooked something, I'll bring
2 you back out and tell you what I've overlooked before I
3 let you start your deliberations. So if you would go to
4 the jury room, please.

5 (Whereupon, the jury retires to the jury room.)

6 **THE COURT:** All right. We have the jury out. Any
7 exceptions to the charge from the State?

8 **MR. SHEEK:** Nothing from the State, Your Honor.

9 **THE COURT:** From the Defendant?

10 **MR. BANNISTER:** No, sir.

11 **THE COURT:** All right. And let me tell y'all --
12 come up here just a second and let me show you what --
13 why in particular. I do a verdict form like this a lot,
14 but in this case I think it particularly applicable, and
15 I'll tell you why, and I want the Clerk to see this.

16 (Proceedings held at the bench; not reported.)

17 **THE COURT:** I'll take it in there and bring the
18 alternate out.

19 (Whereupon, the jury commenced its deliberations at
20 3:49 PM.)

21 **THE COURT:** All right. We'll be at ease for a while
22 until we hear from the jury.

23 (Recess taken.)

24 **BAILIFF:** Remain seated. Court come to order.

25 **THE COURT:** All right. Bring the jury in. Well,

WITNESSES

Kenny Downing
Greenwood County Sheriff

WARRANT NUMBER

M075352

Dean Powell

Foreman of the Grand Jury

Date: *Oct. 2, 2009*

VERDICT

True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

October Term, 2009

Indictment # 09GS24- *1246*

THE STATE

vs.

Rodney Lee Rogers Sr.

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT

16-03-0655(A)

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

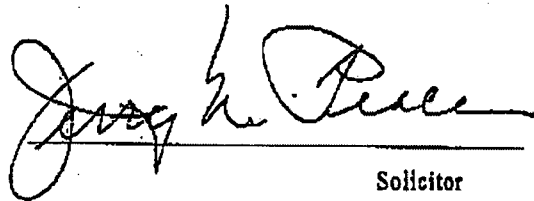
COUNTY OF GREENWOOD

**CRIMINAL SEXUAL CONDUCT
16-03-0655(A)**

At a Court of General Sessions, convened on the 2nd day of October, 2009 the Grand Jurors of Greenwood County present upon their oath:

That Rodney Lee Rogers Sr., did in Greenwood County, state aforesaid, on or about the 1st day of February, 2008 being older than the victim; willfully and unlawfully commit criminal sexual conduct with a minor in the first degree, to wit: that the said defendant did engage in sexual battery upon a person under the age of eleven (11) years, to wit: one Madysen Alexis Anderson, date of birth: November 11, 2003, in violation of Section 16-3-655(A) (1) of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor