STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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S.C. SUPREME COURT

Appeal from Greenville County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEVAROUS S.L. PARKS,

APPELLANT

APPELLATE CASE NO 2015-000953

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) 2013-GS-23-01792
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STATE OF SOUTH CAROLINA,
PLAINTIFF,

vs.) TRANSCRIPT OF RECORD

DEVAROUS PARKS,
DEFENDANT.

April 13 and 14, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE STEVEN H. JOHN, JUDGE

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

L. MARK MOYER, ESQ.
Assistant Solicitor

LARRY COOKE, ESQ.
JAKE ERWIN, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

1 TUESDAY, APRIL 14, 2015

2 THE COURT: All right, gentlemen. I understand you
3 have an issue about school records.

4 MR. MOYER: Yes, we do, Your Honor. I think we both
5 have. We both read through them last night.

6 It's the State's position that the records are --
7 nothing in the records would be admissible. I think
8 Mr. Cooke thinks otherwise. In any case, I'm not sure
9 exactly what he wants to put in, but, I think, maybe if I
10 can hear that, I may be able to respond.

11 THE COURT: All right, Mr. Cooke. What is it that you
12 wish to do with the school records?

13 MR. COOKE: Okay. Well, Judge, as you know, we got
14 these late in the day, so all I have is the records and the
15 parts that I picked out that I think certainly would go to
16 the credibility of this young lady. These are records that
17 are provided from the school, and I had subpoenaed the lady
18 in charge of the records, the records keeper.

19 But anyhow, this is what we have, and this is what I
20 feel like that needs to be pointed out to the jury, Judge,
21 and introduced. Now, there may be more things that are
22 involved here.

23 THE COURT: How about tell me what it is that you want
24 to use the records for. What is it in the records?

25 MR. COOKE: Okay. Her credibility.

1 THE COURT: Okay. I'm not explaining myself to you.
2 Point exactly in the records the exact things you want to
3 use in the records.
4 MR. COOKE: That's what I'm getting ready to do.
5 THE COURT: All right. How about that's what I want
6 you to do. Don't need any explanations. Just get to it.
7 MR. COOKE: Okay. Referring to page 2 of 24 of the
8 records, it says the young lady's behavior at home is
9 similar to how it is at school. Her mother feels that she
10 is lying -- that her lying is a big concern. It goes on to
11 say the young lady, the victim, sometimes talks about
12 hurting herself. It goes on to say she has a great
13 imagination. When she is not telling the truth, her mother
14 can tell because she takes a long time to answer, won't
15 look at you and will play with her fingers. Her mother
16 feels like her behavior changed in the first grade when she
17 started to curse, lie and her attitude became worse. She
18 rarely seems to feel guilty about what she has done.
19 That's page 2 of 24.
20 THE COURT: All right, sir.
21 Solicitor, do you want to respond to that?
22 MR. MOYER: Yes, sir. And I think I'll have pretty
23 much the same response to all of this. There are other
24 sections throughout the records that are fairly similar,
25 talks about maybe some lying at school and some issues like

1 that.

2 I think the Court has to make a two-pronged analysis
3 first, whether the evidence is that type of evidence and
4 deem it admissible. And I think under Rule 608, the
5 specific instances of conduct of a witness for the
6 attacking or supporting the witness's credibility other
7 than conviction of crimes provided by Rule 609 may not be
8 proved by extrinsic evidence. They may, however, in the
9 discretion of the Court if the probative of truthfulness or
10 untruthfulness be inquired into on cross-examination of the
11 witness concerning the witness's character for truthfulness
12 or untruthfulness.

13 So, first off, I would say Your Honor has discretion
14 about whether or not this should come in. And I think
15 issues where a child may have been untruthful in school,
16 I'm not sure what child is not. I don't think that should
17 bleed over into a situation where a jury is being asked to
18 do -- where -- no. Where a child's made sexual assault
19 allegations. So, first, I would say in the Court's
20 discretion, that evidence is not admissible.

21 Secondly, how would that evidence come out? And the
22 way it would -- the way -- I don't think -- I think these
23 records would be inadmissible hearsay, so assuming this
24 testimony were admissible, it would not be admissible
25 through these records.

1 That would be the State's position.

2 THE COURT: Mr. Cooke or Mr. Erwin, do you want to

3 address it about it being rank hearsay and completely

4 inadmissible?

5 MR. ERWIN: Yes, Your Honor. And I'm going to take

6 those one at a time, if I may.

7 THE COURT: All right.

8 MR. ERWIN: As far as the admissibility under the

9 rules, not addressing the hearsay quite yet, I would point

10 the Court to a couple of separate rules here, first

11 starting with Rule 404, character evidence, generally, (A)

12 -- (A)(2), character of the victim. Well, (A) is evidence

13 of a person's character or a trait of character is not

14 admissible for the purpose of proving action in conformity

15 therewith except, (A)(2), character of the victim, evidence

16 of a pertinent trait or character of the victim of a crime

17 offered by the accused, which is exactly what we would be

18 attempting to do here.

19 And, Judge, also, Rule 608(c), that evidence of bias,

20 prejudice or any motive to misrepresent may be shown to

21 impeach the witness either by examination of the witness or

22 by evidence otherwise induced. Some of the stuff in the

23 records talks about lying to get attention, Your Honor, and

24 that -- we would argue that that is the motive to

25 represent, not just that it is a misrepresentation, but

1 that there is a motive to represent ---

2 THE COURT: How do I have any belief, any foundation

3 to show that any of that that occurred, that says it's

4 recorded in the school records, actually occurred?

5 MR. ERWIN: Okay, Judge. And that was sort of more to

6 the hearsay issue that I can go ahead and address now.

7 THE COURT: Okay.

8 MR. ERWIN: Obviously, we've got a problem getting

9 these records in. I think we would argue that they could

10 potentially fall under a business records exception, and we

11 had subpoenaed the appropriate witness for that, although

12 she has not responded to our subpoena.

13 Secondly, Your Honor, because of the complications of

14 the disclosure of the records and the fact that we were not

15 able to get them until yesterday afternoon, until you were

16 able to order the school to turn them over to us, we did

17 not have an opportunity to determine which witnesses we

18 needed. It wasn't until we saw the records yesterday

19 afternoon that we would have been able to determine, okay,

20 we need to get this counselor, or we need to get this

21 teacher, or we need to get this specific person here. We

22 haven't had an opportunity to do that.

23 If the Court is not inclined to let them in under a

24 business records exception, I don't think we have much of a

25 choice other than to ask for a continuance and an

1 opportunity to get the proper witnesses here, because given
2 the time to do that, we might be able to do that.
3 THE COURT: What about that, Solicitor?
4 MR. MOYER: Well, Judge, I would argue it would not
5 come in under the --
6 THE COURT: Let's just assume it's not coming in under
7 business records and they would have to call the witnesses.
8 MR. MOYER: Well, Judge, my first response would be as
9 far as getting the records yesterday, I would argue that
10 that is -- that the fault for that lies with the defendant,
11 and so -- for not getting them in advance.
12 THE COURT: Well, didn't the school attorney say
13 yesterday they got the subpoena last week and they, for
14 their own reasons, decided not to respond to it till the
15 Court brought it here yesterday?
16 MR. MOYER: He said he got it Thursday.
17 THE COURT: Right.
18 MR. MOYER: And he said there's a Federal law.
19 THE COURT: That was his opinion. But for their own
20 reasons, whatever they are, they decided not to respond to
21 the subpoena until the Court brought them to court
22 yesterday.
23 MR. MOYER: Yes. And, I think, if I am correct, I
24 believe the subpoena just directed them to bring the
25 records to court. And I may be wrong. I have not seen the

1 subpoena.

2 THE COURT: But he wasn't coming until the Court

3 intervened. You would agree with that.

4 MR. MOYER: Until I -- Mr. Webb said that he got the

5 notice on Friday when the school district came to him, and

6 then he tried to return Mr. Cooke's call but did not get in

7 touch with him.

8 MR. COOKE: No, no, no, no.

9 THE COURT: All right. Mr. Cooke ---

10 MR. COOKE: Sorry. Excuse me.

11 THE COURT: What the school board attorney said

12 yesterday, they got them Thursday. For their own reasons,

13 however they interpret the law, they decided not to respond

14 to the subpoena, okay? That's what he said. That's what

15 we have, okay? And from all indications, they were never

16 going to respond until the Court yesterday made him come.

17 I'm glad for your helpful intervention, but it was not

18 until I'm sure it was made clear to him he was coming one

19 way or the other that he decided to come. So I don't see

20 that being the fault of the defendant. That was the

21 purposeful, for good or whatever reasons they had, delay by

22 the school board.

23 Okay. Go ahead.

24 MR. MOYER: All right. Well, then, my next position

25 would be that we would go back to Rule 608, because I think

1 Rule 608 is what would -- where the determining factor
2 would be about whether that evidence would even be
3 admissible. And as I stated earlier, the only way that
4 could come in would be by reputation or opinion by a
5 witness, and it would have to be in the Court's discretion,
6 if the Court decides it is probative. I would argue that
7 it would not be probative. I would argue that a teacher or
8 a counselor coming into court talking about a child's
9 behavior in school would not have probative value in a case
10 of this nature. They're just too distinct, too dissimilar.
11 THE COURT: All right. So 608 says the credibility of
12 a witness may be attacked or supported by evidence in the
13 form of opinion or reputation subject to these limitations.
14 The evidence may refer only to the character for
15 truthfulness or untruthfulness, and the evidence of
16 truthful character is admissible only after the character
17 of the witness for truthfulness has been attacked by
18 opinion or reputation, evidence or otherwise. It seems
19 kind of a circular argument, statement, but it's,
20 obviously, only as to truthfulness or untruthfulness.
21 But underlying the records and the issue which you
22 rightly brought up about hearsay, how would the defense be
23 able to use them unless they are able to bring the
24 witnesses forth that would comment on their direct
25 experience with her as to her truthfulness or

1 untruthfulness? All right.

2 And as I understand Mr. Cooke and Mr. Erwin to say

3 that, because they were only able to look at the records

4 last night, they were unable to determine who they needed

5 to subpoena or call. So that's the problem. How does the

6 State respond to that? That's the issue. And Mr. Erwin

7 has asked for a continuance. The jury has not been sworn.

8 So that's what I'm asking you to respond to.

9 MR. MOYER: Okay. Well, I guess I would go back to

10 what I stated earlier. I would say that even had the

11 school responded right away, I don't think they would have

12 had that information by Friday at the very earliest ---

13 THE COURT: Okay.

14 MR. MOYER: --- assuming the subpoena did direct them

15 to give the records to them on Friday as opposed to

16 bringing them to court and being in the same position we

17 are right now.

18 THE COURT: Okay.

19 MR. MOYER: And so the case is over two years old. I

20 guess the State's only position on that matter would be the

21 fault for that lies with the defense.

22 THE COURT: All right. Thank you.

23 Mr. Erwin, do you want to say anything?

24 MR. ERWIN: I don't really have much more to add. We

25 did not know that this information existed until yesterday

1 afternoon. We certainly did not know the identities of the
2 folks that we would need to get it in until yesterday
3 afternoon.
4 THE COURT: All right.
5 MR. COOKE: Judge, may I be allowed to say something?
6 THE COURT: Sure.
7 MR. COOKE: I just -- you know, for the record, I just
8 want to -- how important this is. I want to just put this
9 in the record because it's really important to this case.
10 I've already quoted from one page, page 2 of the 24.
11 Page 3 goes on to say that she can be defiant, is an
12 habitual liar, and uses profanity frequently. She was
13 suspended during the course of this evaluation for two days
14 for stealing. Then it goes on to say when confronted
15 either by peers or the teacher regarding inappropriate
16 comments or actions such as taking things that don't belong
17 to her, she denies that she has done so or says she was
18 provoked by others. She also fabricates small and
19 elaborate stories regarding all sorts of activity. It is
20 difficult on a regular basis to determine what is real and
21 what is not for her.
22 And then I go on to page 4 of this same report. She
23 often displays uncooperative, off task, and inappropriate
24 behaviors. She is aggressive toward and annoys other
25 students. That may not be, but I marked that for some

1 reason.

2 Page 7 in the report, she called other students by
3 name, refused to complete work and lied to the teacher.
4 While on a field trip, she stole ice cream and gave it to a
5 teacher. She also exhibited uncooperative behavior such as
6 refusing to get materials out, arguing, pouting, rolling
7 her eyes and refusing to do schoolwork. Other examples
8 included she told the examiner she goes to the library
9 every day and takes out books when talking about libraries.
10 On one of the walls was a picture of George Washington.
11 She initially told the examiner that she had been to
12 Washington and then asked if the examiner had been there,
13 and later says she told the examiner she had been to
14 Washington with her cousin and asked the examiner, again,
15 if she had been there.

16 The victim was also seen right after she had been
17 suspended for stealing. She was very upset, adamantly
18 denied that she had done anything wrong.

19 And I go to another, page 12 of this report. When she
20 is confronted about something she has done wrong, even if a
21 teacher was a witness, she will refuse to admit that she
22 has done it. She refuses to accept responsibility or
23 apologize for her action. She will make up stories in the
24 class and refuses to tell the truth when confronted with
25 something she does.

1 I go on to page 14. A review of the teacher's
2 checklist reviewed the following: in classroom, the victim
3 often engages in rule-breaking behavior such as cheating,
4 deception and stealing.
5 Another page, 16, says the victim often engages in
6 rule-breaking behaviors such as cheating, deception and
7 stealing. At home she is easily upset, makes comment about
8 wishing she were dead and seems lonely. Her moods change
9 quickly at home.
10 And this just goes on and on and on with things
11 regarding her character, Judge, that I think is very
12 important. As a matter of fact, I believe if the jurors
13 just read this one report I have right here, which is not
14 very thick, there is no way they can convict my client of
15 this crime. I mean, I just think it's an awful report
16 regarding her character. And that's my opinion.
17 THE COURT: And I appreciate that and understand
18 that's your opinion. Obviously, only the Good Lord knows
19 what 12 men and women do in that jury room and what their
20 verdict is. You've been at this long enough to know you
21 think something's going to come one way and it comes in
22 absolutely the opposite way. So that's a complete and
23 total unknown as to what a jury would do or wouldn't.
24 I'm going to take a short break, and, counsel, I want
25 to talk to you in my chambers. Thank you very much.

1 (WHEREUPON, a recess is taken at 9:44 a.m.)
2 THE COURT: Yes, Solicitor.
3 MR. MOYER: If it pleases, the Court, Your Honor, the
4 State has reached a plea agreement in this case.
5 THE COURT: All right. Very good.
6 MR. MOYER: The defendant will plead guilty to lewd
7 act on a minor.
8 THE COURT: All right.
9 MR. MOYER: The other two charges that are on the
10 docket will be dismissed. The State -- the recommendation
11 from the State is that whatever sentence Your Honor gives,
12 it is not an incarceration.
13 THE COURT: For a probationary sentence then.
14 MR. MOYER: Probation or house arrest or whatever Your
15 Honor deems fit.
16 THE COURT: All right. Very good.
17 THE CLERK: May I publish, sir?
18 THE COURT: Yes, ma'am.
19 THE CLERK: Your Honor, in the case of
20 2013-GS-23-1793, the State versus Devarous Shafun Lageneo
21 Parks, he's indicted for lewd act upon a child. He's
22 pleading to the same. This is true billed.
23 Mr. Parks, would you please raise your right hand.
24 ///
25 ///

1 WHEREUPON,

2 DEVAROUS SHAFUN LAGENEO PARKS,

3 After first having been duly sworn, the following

4 proceedings were had:

5 THE COURT: And is he pleading guilty or plea

6 under ---

7 MR. COOKE: Alford.

8 THE COURT: Under Alford. Okay. I need to indicate

9 that on the sentencing sheet then.

10 All right. Mr. Parks, give me your attention, sir.

11 You're coming before the Court and you're pleading to the

12 offense of lewd act on a minor under North Carolina vs.

13 Alford; is that correct?

14 DEFENDANT PARKS: Yes, sir.

15 THE COURT: All right, sir. Now, regarding this

16 particular matter, lewd act on a minor, the potential

17 sentence or the sentence that -- sentence range has been

18 established for this particular crime is 0 to 15 years; you

19 understand that?

20 DEFENDANT PARKS: Yes, sir.

21 THE COURT: All right, sir. You also understand that

22 regarding this particular matter, as indicated by the

23 clerk, that this matter was presented to the Greenville

24 County grand jury and a true bill was rendered on this

25 matter; you understand that?

1 DEFENDANT PARKS: Yes, sir.

2 THE COURT: All right, sir. And you heard the
3 recommendation of the State that whatever sentence the
4 Court would impose, the State's recommendation is that it
5 be suspended to a non-incarceration sentence, either
6 probation or home arrest or some combination thereof; you
7 understand that?

8 DEFENDANT PARKS: Yes, sir.

9 THE COURT: You also understand that I don't
10 necessarily have to follow the recommendations of the
11 State; you understand that?

12 DEFENDANT PARKS: Yes, sir.

13 THE COURT: All right, sir. And understanding all of
14 these things, do you want to go forward with your plea
15 under North Carolina vs. Alford?

16 DEFENDANT PARKS: Yes, sir.

17 THE COURT: Now, are you currently under the influence
18 of any drugs or intoxicants of any kind or currently have
19 anything like that in your system?

20 DEFENDANT PARKS: No, sir.

21 THE COURT: Okay. And are you suffering from any kind
22 of physical, mental, emotional problem that would keep you
23 from understanding what you're doing here today?

24 DEFENDANT PARKS: No, sir.

25 THE COURT: When you enter a plea, whether it's a plea

1 under North Carolina vs. Alford or a plea of guilty, any
2 plea that you enter, you give up constitutional rights.
3 Now, among those are the right to remain silent. So
4 speaking with me, you're giving that right up; you
5 understand that?
6 DEFENDANT PARKS: Yes, sir.
7 THE COURT: Other rights are the presumption of
8 innocence, the right against self-incrimination at a trial.
9 The State has to prove you guilty beyond a reasonable
10 doubt. You enter your plea, you're giving up those rights;
11 do you understand that?
12 DEFENDANT PARKS: Yes, sir.
13 THE COURT: You're entitled to a jury trial. 12 men
14 and women sitting in a box over there would listen to the
15 facts and evidence presented by the State to see if there
16 are, indeed, enough facts and evidence to prove you guilty
17 beyond a reasonable doubt. You enter your plea, you give
18 up the jury trial; you understand that?
19 DEFENDANT PARKS: Yes, sir.
20 THE COURT: And in that jury trial with your attorney,
21 you could question the witnesses and the evidence presented
22 by the State if you wanted to. You could present a
23 defense, testify, call witnesses on your behalf. You enter
24 your plea, you give up all those rights; you understand
25 that?

1 DEFENDANT PARKS: Yes, sir.

2 THE COURT: Now, you come before the Court and you're

3 pleading under North Carolina vs. Alford to lewd act on a

4 minor. Are you doing so, that is, pleading freely and

5 voluntarily?

6 DEFENDANT PARKS: Yes, sir.

7 THE COURT: It is your decision to enter this plea?

8 DEFENDANT PARKS: Yes, sir.

9 THE COURT: Did anybody promise you anything or

10 threaten you or force you in any way to get you to enter

11 this plea?

12 DEFENDANT PARKS: No, sir.

13 THE COURT: Now, under North Carolina vs. Alford, you

14 are telling the Court a couple things. One of them is,

15 Judge, I may or may not be guilty of this particular crime,

16 but the State is offering me a plea bargain that I think is

17 in my best interest to accept. Is that one of the things

18 you're telling me?

19 DEFENDANT PARKS: Yes, sir.

20 THE COURT: And, also, you're telling me that you have

21 examined all the facts and evidence with your attorneys,

22 you've gone over the facts and the evidence of the case

23 with the attorneys, and that there is a reasonable

24 possibility, should the case go forward to a jury trial,

25 that the jury might convict you in this case; you

1 understand that?

2 DEFENDANT PARKS: Yes, sir.

3 THE COURT: And that's what you're telling me?

4 DEFENDANT PARKS: Yes, sir.

5 THE COURT: All right, sir. You are here today, and

6 you are represented by your attorneys, Mr. Cooke and

7 Mr. Erwin; is that correct?

8 DEFENDANT PARKS: Yes, sir.

9 THE COURT: Did you tell your attorneys everything you

10 wanted to tell them about these particular cases?

11 DEFENDANT PARKS: Yes, sir.

12 THE COURT: And have you had enough time to talk to

13 them?

14 DEFENDANT PARKS: Yes, sir.

15 THE COURT: And do you need any more time to talk to

16 them?

17 DEFENDANT PARKS: No, sir.

18 THE COURT: You're satisfied with the representation

19 that they've given you?

20 DEFENDANT PARKS: Yes, sir.

21 THE COURT: And any complaints about the

22 representation they've given you?

23 DEFENDANT PARKS: No, sir.

24 THE COURT: All right. Mr. Cooke, Mr. Erwin, you all

25 represent the interest of Mr. Parks in this matter; is that

1 correct?

2 MR. COOKE: We do.

3 THE COURT: And he comes before the Court tendering

4 his plea under North Carolina vs. Alford; do you concur?

5 MR. ERWIN: Yes, Your Honor. We do.

6 MR. COOKE: Yes.

7 THE COURT: And do you believe that he is coming

8 before the Court of his own free will and accord?

9 MR. ERWIN: Yes, Your Honor.

10 MR. COOKE: Yes, sir.

11 THE COURT: And have you explained to him

12 his constitutional rights, any defenses he might have as

13 well as the information, the evidence in the possession of

14 the State?

15 MR. ERWIN: We have, Your Honor.

16 MR. COOKE: Yes, sir.

17 THE COURT: Thank you very much.

18 All right. Solicitor, the facts that the State would

19 offer to prove in the case.

20 MR. MOYER: I'll just say very briefly, because I

21 think the record is already full of the facts that would

22 have been presented for the most part in this trial. The

23 forensic interview was seen by the Court. But,

24 essentially, the allegations are that in the summer of

25 2011, the victim went to the home of the defendant along

1 with her cousin, and while she was there, at that time, the
2 defendant did have sexual intercourse with her.
3 THE COURT: All right, sir.
4 Now, Mr. Parks, are those the facts you discussed with
5 your attorney to make your decision to plead under North
6 Carolina vs. Alford?
7 DEFENDANT PARKS: Yes, sir.
8 THE COURT: All right, sir. Have you understood my
9 questions here today?
10 DEFENDANT PARKS: Yes, sir.
11 THE COURT: And have all your answers to me been the
12 truth?
13 DEFENDANT PARKS: Yes, sir.
14 THE COURT: Anybody tell you how to answer my
15 questions?
16 DEFENDANT PARKS: No, sir.
17 THE COURT: And you understand you have the right to
18 appeal your plea within ten days?
19 DEFENDANT PARKS: Yes, sir.
20 THE COURT: I find there's been a substantial factual
21 basis for the plea. I find the defendant's decision to
22 plea has been done freely, voluntarily, knowingly and
23 intelligently made. He has had the advice of competent
24 counsel with whom he's satisfied. Therefore, Mr. Parks'
25 decision to plea under North Carolina vs. Alford to lewd

1 act on a minor is accepted.

2 All right. Mr. Erwin? Mr. Cooke?

3 MR. ERWIN: Thank you, Your Honor. Ultimately, just

4 ask you to -- encourage you to accept the State's

5 recommendation for sentencing in this case.

6 Just by way of giving you a little background on

7 Mr. Parks, he is a lifelong resident of Greenville County.

8 He has a tenth-grade education. He works at McDonald's,

9 and, Judge, interestingly he was receiving benefits from

10 the State. He has a learning disability that qualifies him

11 to receive benefits from the State and not work. He

12 actually decided that he wanted to go back to work because

13 he could. And I think that's commendable. And he's

14 working at McDonald's these days. So if you were to

15 consider either a probationary sentence, I'll say that

16 because he's working, he'd be able to afford the fees and

17 that he does have the motivation to get through. He has

18 completed probation successfully in the past.

19 And, again, as the Court is well aware, he is on the

20 sex offender registry, which means he will be supervised

21 for the rest of his life. And, Judge, I think that he's

22 gotten the motivation to do what he needs to do to get

23 through this, and I think he's a good candidate for it.

24 All that being said, I just ask you to please consider

25 the State's recommendation, and we encourage you to go

1 along with it.

2 SENTENCE

3 THE COURT: All right, sir. Thank you very much.

4 2013-GS-23-1793, State of South Carolina, County of

5 Greenville vs. Devarous Shafun Lageneo Parks, regarding

6 lewd act on a minor, sentence of the Court is the defendant

7 is committed to the State Department of Corrections for a

8 term of six years, suspended, placed on probation for

9 30 months. And a special term and condition of probation

10 that he undergo random drug and alcohol testing.

11 Thank you very much.

12 MR. COOKE: Thank you, Judge.

13 **********END OF TRANSCRIPT OF RECORD**********

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) 2013-GS-23-01792
COUNTY OF GREENVILLE) 2013-GS-23-01793

STATE OF SOUTH CAROLINA,
PLAINTIFF,

vs.) TRANSCRIPT OF RECORD

DEVAROUS PARKS,
DEFENDANT.

April 15, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE STEVEN H. JOHN, JUDGE

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

L. MARK MOYER, ESQ.
Assistant Solicitor

JAKE ERWIN, ESQ.
CHRISTOPHER D. SCALZO, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

1 INDEX

2 PAGE

3 There were no witnesses called.

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8 EXHIBITS

9	NO	DESCRIPTION	ID	EVD
10		(State's Exhibits)		
11	S-1	CD of Interview of Minor	4	
12		(Exhibit was premarked at the trial on April 13, 2015)		

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1 P R O C E E D I N G S

2 THE COURT: This is 2013-GS-23-1793, State of South

3 Carolina, County of Greenville, vs. Devarous Shafun Lageneo

4 Parks. Earlier this week, Mr. Parks was before the Court

5 and pled under North Carolina vs. Alford to lewd act on a

6 minor. As a result of that plea, the Court sentenced

7 Mr. Parks to a six-year sentence suspended to probation for

8 30 months based upon -- and it's reflected on the

9 sentencing sheet. I noted that he was already on the sex

10 offender registry because of a prior crime, and he had to

11 be placed on the central registry of child abuse and

12 neglect pursuant to the mandatory terms of 17-25-135.

13 The matter is now before the Court based upon a

14 request for, I guess, clarification or statement by the

15 Court as to whether or not the mandatory GPS is proper in

16 this case based upon the parameters set forth in

17 Section 23-3-540, Electronic Monitoring, and whether or not

18 it should be ordered in this particular case. And it's the

19 Court's determination that not only based upon the recent

20 United States Supreme Court decision of Grady vs. North

21 Carolina that's found at 135 S.Ct. 1368 83 US law week

22 3758, as indicated, a March 30, 2015, decision of the

23 Supreme Court of the United States, but also it's the State

24 vs. Dykes case from May 22, 2013, found at 744 S.E.2d 505,

25 that it is necessary that the Court conduct a hearing to

1 determine whether or not the mandatory GPS is proper in
2 this matter or not.
3 So, Solicitor, I'd be glad to hear from you.
4 MR. MOYER: Thank you, Your Honor. May it please the
5 Court.
6 First, just for the record, I wanted to state that the
7 State's first position would be that a hearing would not be
8 necessary in that Section 23-3-540 of the South Carolina
9 code makes being placed on the electronic monitoring
10 mandatory. So the State's first position would be that a
11 hearing is not necessary. However, to the extent a hearing
12 is required to establish the reasonableness of this mandate
13 by the Court, I would state very briefly, first I would
14 rely on the record that was established in the pretrial
15 hearings that were held on April the 13th and the morning
16 of April the 14th of this year, including the forensic
17 interview.
18 And at this point, the State would seek to have what
19 was marked as State's Exhibit No. 1 for the pretrial
20 hearing on Monday, I would like to introduce that into the
21 record for ---
22 THE COURT: Any objection to that?
23 MR. SCALZO: No objection, Your Honor.
24 THE COURT: All right. Very good. It's part of the
25 record.

1 MR. MOYER: And Your Honor did view that videotape ---
2 THE COURT: Yes, sir.
3 MR. MOYER: --- which was about 45 minutes long. And,
4 really, I think the main issue or the main factor to be
5 taken from that would be the age of the victim at the time
6 of the incident, which was 10 years of age, and the age of
7 the defendant, which is 25 years of age, all the other
8 circumstances of the incident, which I know the Court is
9 aware of including the amount of force and other factors.
10 I would also state that our legislature had made clear
11 its position on the matter in this statute that it
12 considers this type of monitoring to be of extreme
13 importance by passing the law that it did.
14 And then I would finally want to rely on the
15 defendant's criminal record, which was actually not placed
16 into the record yesterday. And I would like to have that
17 placed on the record at this time. The defendant's
18 criminal history includes in 2004 disturbing schools; in
19 2005 threatening the life of a public official; 2006 simple
20 assault and battery times two. In 2007 the defendant was
21 convicted of assault and battery of a high and aggravated
22 nature. That charge was reduced from criminal sexual
23 conduct, and that is the charge for which the defendant was
24 placed on the sex offender registry. The victim was a
25 minor in that case. In 2009 a violation of the sex

1 offender registry and petty larceny; 2011 assault and
2 battery third degree, unlawful use of a telephone.
3 I would finally just state to the Court that defendant
4 showed an inability to follow the child sex laws of this
5 state, despite having a previous conviction, and he's shown
6 an inability to abide by attempts at monitoring him. He
7 has two probation violations, one in 2008 and one in 2009.
8 He also has a sex offender registry violation, 2009. And I
9 think that would add -- even though it's not necessary,
10 that would add further incentive to this court to have the
11 extra monitoring that an ankle bracelet would provide.
12 Thank you, Your Honor.
13 THE COURT: All right. Thank you.
14 All right. Mr. Scalzo?
15 MR. SCALZO: May it please the Court, Your Honor.
16 Chris Scalzo. I realize I wasn't part of the trial, but I
17 came in to make the argument on the record for this issue.
18 Judge, first thing I would say is ---
19 THE COURT: Since you did State vs. Dykes, I guess you
20 ought to be making the argument.
21 MR. SCALZO: The first thing I would say, Judge, is on
22 Grady vs. North Carolina, clearly the United States Supreme
23 Court is saying that an electronic monitor is a search, and
24 it seems to me that the task of the Court now is to
25 determine whether or not such a search would be reasonable,

1 given the circumstances. Based on what Mr. Moyer put on
2 the record for the State as those reasons, I guess a couple
3 things I would point out, Judge. One, there's no crime. I
4 mean, there is a crime that he pled guilty to and there's a
5 crime that's already taken place, but there is no crime as
6 of right now that they're either investigating or that is
7 even about to happen or has happened. And I think that is
8 a very important factor to consider, particularly when the
9 United States Supreme Court and other courts, when you're
10 looking at evaluating a search and whether you have
11 probable cause and you can get a warrant and whether or not
12 there's even a warrant requirement, it's always within the
13 context of a crime that already had been committed or
14 investigating a crime. You don't have that. What you have
15 is essentially the State waiting for a potential crime to
16 take place. I think that makes it unreasonable.
17 I think if you look at the Fourth Amendment cases,
18 particularly at the United States Supreme Court, one of the
19 things they're saying is it is unreasonable when you don't
20 have a particularized set of circumstances that you can
21 point to. "Individualized" is another word they used. So
22 that while Mr. Moyer did put on the record his history, the
23 one thing that was not put on the record is some basis to
24 say some crime has been committed and we need to
25 investigate that, and here's some things to support the

1 investigation of that crime. There is no crime that's been
2 committed.
3 The other thing I would point out, Judge, the statute
4 23-3-400, which is -- for the sex offender registry which
5 is where the article that the electronic monitoring falls
6 under, it says that part of the purpose -- and I have a
7 copy if Your Honor needs it. Part of ---
8 THE COURT: I'm sorry. You said 24-3-100?
9 MR. SCALZO: 23-3-400. I can give you a copy.
10 THE COURT: I've got it right here. I just need to
11 get the correct one. I'm sorry. Go ahead.
12 MR. SCALZO: What it's saying, Judge, is that the
13 purpose of the entire article which the electronic
14 monitoring falls under, that the purpose of it is to help
15 law enforcement to protect communities by doing
16 investigations and being able to apprehend offenders.
17 That's the second paragraph of that section on the purpose.
18 And I think that dovetails into what they're saying in
19 Grady and what they say in opinions like City of Edmonds,
20 which is a United States Supreme Court case about
21 checkpoints in which that -- and I have a copy here, if you
22 want to see it -- which they're basically saying the Fourth
23 Amendment was not meant to be this some kind of generalized
24 crime investigation. If you've got something specific and
25 you've got the evidence, you can go after. But you can't

1 just like stop people randomly. You can't just set up a
2 checkpoint and stop every car that comes by because that's
3 for the purpose of a general crime interdiction sort of
4 thing.
5 If you take those two things, the statute's purpose
6 and what City of Edmonds says, based on the evidence that
7 the State has put in, what they're asking for is a
8 generalized potential investigation that hasn't even come
9 -- there's no crime that's been reported. And I think
10 that's exactly what the Fourth Amendment says, it is
11 unreasonable and you can't do. That's what the English
12 used to do before we had the Fourth Amendment. They'd just
13 come in and search everybody, and that's part of where the
14 Fourth Amendment comes from.
15 So I think those two things are important in terms of
16 laying out the issue that the Court has to work through and
17 what the Court should require the State to establish. And
18 I'm happy to answer anything else that the Court may need
19 from me, Judge.
20 THE COURT: In Grady vs. North Carolina, the US
21 Supreme Court says -- and I just want to make sure that
22 you're not indicating this -- that the Fourth Amendment
23 prohibits only unreasonable searches, correct?
24 MR. SCALZO: Yes. I agree with you, Judge.
25 THE COURT: All right. So with that, would not be the

1 question here would be is the mandatory monitoring program
2 reasonable, is the program -- that would be the question.
3 MR. SCALZO: Yes, sir. I agree with the question.
4 THE COURT: All right. And your position is, with its
5 scope and breadth as it is set forth in the code, that it
6 allows an unreasonable intrusion into a person's activities
7 when there is not a particular matter involved or a
8 potential -- or crime involved.
9 MR. SCALZO: Yes, sir. There's a crime that has been
10 committed. They're not actively investigating an
11 already-committed crime.
12 THE COURT: All right. Solicitor, would you like to
13 respond?
14 MR. MOYER: Not really, Your Honor. I think all I
15 would add is -- just clarify is that I think it's certainly
16 reasonable in light of the danger that is posed or is
17 potential based on the defendant's criminal act for this
18 particular matter and for what he has shown in the past
19 with regard to the conviction from 2007 and also the
20 violations of his probation in the sex offender registry.
21 THE COURT: All right. In looking at this matter, as
22 I just pointed out, the US Supreme Court in Grady vs.
23 North Carolina did state that the Fourth Amendment
24 prohibits only unreasonable searches. The reasonableness
25 of a search depends on the totality of the circumstances,

1 including the nature and purpose of the search, and the
2 extent to which the search intrudes upon reasonable privacy
3 expectations and leading to the question, is the mandatory
4 monitoring program reasonable.
5 Now, part of this, I think, has -- certainly the
6 purpose of the legislation and whether or not it is
7 reasonable has been addressed by our State Supreme Court in
8 State vs. Dykes. Now, they did indicate in that case that,
9 notwithstanding the absence of a fundamental right, they
10 found that a lifetime imposition of satellite monitoring
11 implicates a protected liberty interest to be free from
12 permanent and warranted government interference. And they
13 go on to say that the courts must ensure that legislation
14 which deprives a person of life, liberty or property rights
15 have, at a minimum, a rational basis and not be arbitrary.
16 And they went on to quote that the General Assembly
17 expressly outlined the purpose of the state sex offender
18 registration and the electronic monitoring provisions.
19 I think it's, you know, part and parcel of what we're
20 here about, and no need for me to repeat what the South
21 Carolina Supreme Court has said about the purpose as set
22 forth in 23-3-400 as argued by defense counsel. The South
23 Carolina Supreme Court stated that it examined this
24 language, and it held in that case that it is clear that
25 the General Assembly did not intend to punish sex

1 offenders, but instead intended to protect the public from
2 those sex offenders who may re-offend and to aid law
3 enforcement -- that they didn't intend to punish sex
4 offenders, but instead intended to protect the public from
5 those sex offenders who may re-offend and aid law
6 enforcement in solving sex crimes, thus the likelihood of
7 re-offending lies at the core of the State's civil
8 statutory scheme.
9 And they went on to say in light of the General
10 Assembly's stated purpose of protecting the public from sex
11 offenders and aiding law enforcement, we find that the
12 initial mandatory imposition of satellite monitoring for
13 certain child sex crimes satisfies the rational
14 relationship test, and accordingly they find constitutional
15 the baseline requirement that individuals convicted of CSC
16 first or lewd act on a minor mandatorily submit to
17 electronic monitoring upon their release from incarceration
18 for violation of their probation or parole as a condition
19 of their conviction.
20 Now, obviously, they did go on to indicate that this
21 cannot be a lifetime imposition without recourse, and they
22 did find that the lifetime imposition was unconstitutional,
23 and they -- and I think it has been changed or made
24 applicable in the statute that there is avenue and recourse
25 of the defendant or the person subject to the monitoring to

1 come back to the Court for release from these requirements.
2 So taking all that into consideration, I had to look
3 at the facts and circumstances of this particular matter
4 and the history of Mr. Devarous Parks, which I have done,
5 and not only his past record, but the record that was
6 established in this particular case before he pled guilty,
7 including but not limited to the evidence submitted here
8 today, but also the testimony that the Court heard
9 regarding the matter before the plea. I find that there is
10 -- under the facts and circumstances of this particular
11 case, first, that there is a rational relationship, and it
12 is reasonable to attach the mandatory GPS monitoring to
13 Mr. Parks. And this is based upon his prior record which
14 involves matters of sexual crimes, violations that he has
15 had while on monitoring thereafter, whether it was the sex
16 offender registry or other monitoring, the facts of this
17 particular case, which is a lewd act on a minor.
18 And I understand that he pled under North Carolina vs.
19 Alford, but I find that that does not impact the Court's
20 decision. It is a conviction under lewd act on a minor.
21 And I also take into consideration what the South Carolina
22 Supreme Court said regarding -- in the Dykes case as to the
23 purpose of the legislation and what the US Supreme Court
24 was saying about the reasonableness of the State's
25 monitoring program.

1 And I find that the State's monitoring program has a
2 reasonable and a rational basis, and when applied to the
3 facts and circumstances of this case, it is rational and
4 reasonable that Mr. Parks be required to have this
5 mandatory GPS monitoring. That is, of course, in
6 accordance with the South Carolina Supreme Court's decision
7 that this is subject to review at a later date by the then
8 -- whoever it might be -- chief administrative judge for
9 General Sessions in this circuit or the circuit in which
10 Mr. Parks may be residing at that point in time. It is not
11 a lifetime imposition. It is one that can be revisited,
12 depending upon the facts and circumstances existing then
13 and there at that time. But the facts as they exist now,
14 the Court believes, do mandate that he have this mandatory
15 GPS monitoring. And that so is the finding of the Court.
16 MR. SCALZO: And, Your Honor ---
17 THE COURT: Yes, sir, Mr. Scalzo. Please.
18 MR. SCALZO: Simply for the purpose of putting the
19 issues on the record --
20 THE COURT: No. I understand that. Go ahead.
21 MR. SCALZO: --- a couple of things, Judge. I want to
22 make clear for the record's standpoint, I do think there
23 are two -- well, one, let me start with Dykes. Dykes did
24 not deal with the -- well, there was a Fourth Amendment
25 claim, but the ruling from the Court, the analysis is all a

1 due process analysis. It is not a Fourth Amendment
2 analysis.
3 THE COURT: I understand.
4 MR. SCALZO: They basically summarily dismiss the
5 Fourth Amendment claim. And that obviously took place
6 prior to Grady.
7 THE COURT: Yes.
8 MR. SCALZO: But the way Your Honor issued his ruling,
9 and if you combine Dykes, there are two different ways a
10 Fourth Amendment search kind of gets analyzed. One is from
11 a criminal investigation standpoint ---
12 THE COURT: Yes.
13 MR. SCALZO: --- and one is from I guess what they
14 term a special-needs standpoint ---
15 THE COURT: Yes.
16 MR. SCALZO: --- basically when there's no criminal
17 investigation, but the State does a search in some other
18 manner. Our position is that this falls under the first
19 category of it is a criminal investigation to the extent
20 that it is that. That's why I was arguing that there is no
21 crime that's taken place.
22 THE COURT: All right.
23 MR. SCALZO: And to the extent that it is looked at as
24 a special-needs scenario, that's where the balancing would
25 come in. I just want to make clear ---

1 THE COURT: And I guess I should make it clear that
2 I'm falling on the side of the special-needs exception, if
3 you want to call it that, because that seems to be how the
4 facts of this case seem best to be analyzed. It does not
5 appear to fall in the other category. And so just to be
6 clear, that's -- I am working under that scenario,
7 special-needs scenario.
8 MR. SCALZO: Yes, sir. And because of that I want to
9 make sure I did -- what I did not say in my initial
10 argument was one thing that has not taken place is there
11 was no evaluation by the State of Mr. Parks' potential for
12 re-offending, something that took place in Dykes, none of
13 the analysis by professionals to determine whether or not
14 he actually does pose a risk to the community that would,
15 again, go towards the weight of whether or not there is
16 evidence to support that. And the other issue being that
17 when the goal is sort of this crime -- general crime
18 prevention, that is different than special needs. Special
19 needs has to do with we have an entirely different purpose,
20 and it just so happens that we uncover evidence that
21 constitute a crime or that could prove a crime. And our
22 position is just that the whole point of this is to prevent
23 a crime or investigate a crime. It's not to do some other
24 secondary thing and they happen to find evidence. I just
25 want to make that clear on the record.

1 THE COURT: And I appreciate you doing so.
2 And also, in conjunction with that, I think that's why
3 it's also important for the Court to look at Mr. Parks'
4 past history as well as the facts underlying this
5 particular case and to analyze it in that fashion to see if
6 the mandatory GPS monitoring was -- should be ordered in
7 this case since the -- you know, it might have been a
8 different argument if this was the only matter in his
9 history. But it's not. And there's been some period of
10 time since the first occasion that caused it to come before
11 the Court of General Sessions and what has occurred in the
12 interim and in this particular matter. So I reemphasize
13 that was certain a part of the Court's analysis in this
14 matter.
15 Solicitor, you wanted to say something?
16 MR. MOYER: Just put one other matter on the record.
17 THE COURT: Yes, sir.
18 MR. MOYER: I think the State would also want to add
19 that it would be our position that the fact this was a
20 guilty plea and not a conviction by a trial has some
21 significance in that whenever a person pleads guilty, they
22 accept all ramifications of the plea, and electronic
23 monitoring, we would argue, would be a ramification.
24 THE COURT: I understand that's the State's position.
25 You can place it on the record, for whatever purpose that

1 may be at a later date for further review down the road.

2 MR. MOYER: Thank you.

3 THE COURT: All right. Anything else, Mr. Scalzo?

4 MR. SCALZO: No. Only that remember that the posture

5 of the case is that the issue of electronic monitoring did

6 not come up until after the plea was accepted and we had to

7 deal with it. So I don't want it to appear that he, in

8 essence, was waiving it or somehow giving up the challenge

9 to it.

10 THE COURT: Understand. That's fine. No problem.

11 MR. SCALZO: Nothing else, Judge. Thank you.

12 THE COURT: All right. Thank y'all very much.

13 And so, obviously, you know, I'm placing on the record

14 that as part of the sentencing sheet, that mandatory GPS is

15 necessary.

16 All right. Thank you.

17 **********END OF TRANSCRIPT OF RECORD**********

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1 CERTIFICATE OF REPORTER

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3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

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7 I, CHERYL A. SMITH, Official Court Reporter for the

8 Thirteenth Judicial Circuit of the State of South Carolina,

9 do hereby certify that the foregoing is a true, accurate

10 and complete Transcript of Record of the proceedings had

11 and evidence introduced in the trial of the captioned case,

12 relative to appeal, in the Court of General Sessions for

13 Greenville County, South Carolina, on the 15th day of

14 April, 2015.

15 I do further certify that I am neither of kin,

16 counsel, nor interest to any party hereto.

17

18 October 22, 2015

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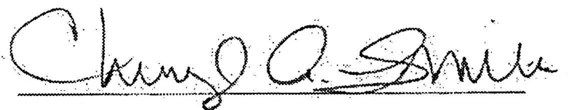
22 

23 Cheryl A. Smith, CVR-M

24 Court Reporter

25

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

7/19/2012

ARREST WARRANT NUMBER
N201631

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit-Jury
Date:

AMENDED INDICTMENT
DOCKET NO. 2013-GS-23-001793
LMM

The State of South Carolina

County of Greenville

RECEIVED
APR 27 2015
SC Court of Appeals

COURT OF GENERAL SESSIONS

December TERM 2014

THE STATE

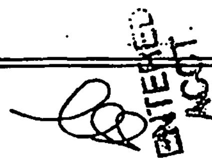
vs.

DEVAROUS SHAFUN LAGENEO PARKS

2468 Amended Indictment for

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140



ENTERED ACCT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on [illegible] the Grand Jurors of Greenville County present upon their oath:

That DEVAROUS SHAFUN LAGENEO PARKS did in Greenville County, between April 1, 2011 and September 30, 2011, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of Minor a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-0140 of the South Carolina Code of Laws (1976) as amended.

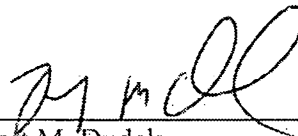
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 19th day of September, 2016.