

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Dillon County

Honorable Larry B. Hyman, Circuit Court Judge

SAMMY LEE SCARBOROUGH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001898

APPENDIX

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INDEX

INDEX i

TRIAL TRANSCRIPT DATED NOV. 4-6, 2013 1

APPLICATION FOR POST-CONVICTION RELIEF479

FIRST AMENDMENT TO PRIOR POST-CONVICTION RELIEF APPLICATION487

SECOND AMENDMENT TO PRIOR POST-CONVICTION RELIEF APPLICATION489

RETURN AND PARTIAL MOTION TO DISMISS491

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 23, 2018500

ORDER OF DISMISSAL553

INDICTMENTS577

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Colloquy	4
SAMMY SCARBOROUGH	
Direct By Mr. Boozer	4
Cross By Mr. James	15
KYLE HOBBS	
Direct By Mr. Boozer	16
Cross By Mr. James	39
Certificate of Reporter	53

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPELLATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Videos [SEALED]	27	27
	Exhibit Unsealed		52

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COLLOQUY

THE COURT: All right. All right, Mr. James.

MR. JAMES: If it may please the Court, Your Honor, this is the matter of Sammy Lee Scarborough v. State of South Carolina. Docket Number 2017-CP-17 00561. My understanding is that the Court is already familiar with the procedural history of this case, and with that the stated I will seat the floor over to Mr. Boozer.

THE COURT: All right. Mr. Boozer.

MR. BOOZER: Thank you, Your Honor. If it pleases the Court I will go ahead and call Mr. Scarborough to the stand.

THE COURT: All right.

SAMMY SCARBOROUGH, after being duly sworn, testified as follows:

MR. BOOZER: May I approach the witness with these legal materials?

THE COURT: Yes. You may.

DIRECT EXAMINATION

BY MR. BOOZER:

Q. Mr. Scarborough, how are you doing today?

A. I'm doing good.

Q. Do you know what you're here doing today?

A. A little bit.

Q. Okay. Where you filed, obviously, a P.C.R.

1 application?

2 A. Yes, sir.

3 Q. And you understand that we're here to have your
4 P.C.R. hearing?

5 A. Yes, sir.

6 Q. All right. And you're asking this Court for a new
7 trial?

8 A. Yes, sir.

9 Q. What type of sentence are you currently serving?

10 A. I'm doing two life sentences. Fifteen years to run
11 concurrent. One life sentence of five years.

12 Q. All right. What were you convicted of?

13 A. I was convicted of C.S.C. with a minor. I think like
14 three counts of that, and three counts of obscene
15 material. Five years apiece.

16 Q. All right. And did you have a trial in your case?

17 A. Yes, sir.

18 Q. All right. Who represented you at your trial?

19 A. Mr. Kyle Hobbs.

20 Q. And was Mr. Hobbs appointed or retained? Did you
21 hire him or was he ---

22 A. He was.

23 Q. All right. You hired him?

24 A. I hired him, yes, sir.

25 Q. Okay. Prior to Mr. Hobbs did you have any other

1 lawyers who represented you for this case?

2 A. I had one started. One named Marcus, but when I had
3 got my bond Mr. Marcus asked for a leg monitor for me. So
4 I had told him -- I relieved him.

5 Q. All right. How long did Mr. Hobbs represent you for
6 this?

7 A. Well, I saw Mr. Hobbs about two or three times out
8 the whole situation.

9 Q. Do you know about when you hired him?

10 A. I hired him somewhere -- after when I -- I hired
11 him -- let me see. April, May. Probably around,
12 basically, around somewhere in May or in that area. It
13 wasn't long.

14 Q. In May of 2013.

15 A. Yes, it wasn't much.

16 Q. And your trial was in November of 2013?

17 A. Yes, sir.

18 Q. All right. Now, when you filed an application for
19 post conviction relief, and you and I have discussed this,
20 you had a number of allegations that you're raising today.
21 And, of course, through my amendment are things that don't
22 really concern any of your things with your lawyer. We're
23 going to be talking with him when he's a witness. Do you
24 understand that?

25 A. Yes, sir.

1 Q. Okay. So let's talk a little bit about some of the
2 allegations that you've raised, and a lot of them we'll
3 leave out because they will be addressed with Mr. Hobbs.
4 Do you understand that?

5 A. Yes, sir, Your Honor.

6 Q. Okay. You don't call me Your Honor.

7 A. Your Honor.

8 Q. He's needs to be addressed as Your Honor.

9 A. Sorry about that.

10 Q. In your original application you indicated that you
11 feel like your lawyer was ineffective when he failed to
12 object to the prosecution trying to introduce prior
13 charges that were never prosecuted?

14 MR. BOOZER: And, Judge, this will be Page Number 127
15 on the record of appeal.

16 BY MR. BOOZER:

17 Q. Is that one of your allegations?

18 A. Yes, sir, Your Honor. Yes, sir.

19 Q. And you recall your lawyer he was asking one of the
20 officers if that officer had told one of the victim's
21 mothers if you ever been charged with C.S.C. before. You
22 remember that?

23 A. Yes.

24 Q. All right. Did you have, and this was brought out
25 throughout the trial, there were some allegations against

1 you for a prior C.S.C.?

2 A. Yes. Yes. Well, this recently happened when --
3 well, I got married to Barbara Jones. She was Barbara
4 Jones, but I married her. She became Barbara Scarborough,
5 and she had a niece named Latasha Conners, and she
6 previously got married, too. Her name is changed to
7 Funderburk.

8 But she told -- one day we were at the laundry in New
9 Town.

10 Q. Let me stop you there before you go down that road.
11 There were some testimony. It was brought out by your own
12 lawyer that you had previously been accused of sexual
13 misconduct. Do you recall that?

14 A. Yes, sir.

15 Q. Okay. Did you have -- and these were things that
16 otherwise would not have been coming into Court. Did you
17 have any discussion with your lawyer about him bringing up
18 this prior incident?

19 A. No. I never discussed none of that with him.

20 Q. Okay. But it came out at trial. Again, this is
21 something we can get in with your lawyer, but when it came
22 out at trial. Were you surprised by that?

23 A. Not really because the -- it was a great surprise.
24 What I'm saying when -- what's his name? Mr. Jason
25 Turner, when I called Dillon County -- I called Dillon

1 County. I called them to talk to Mr. Hulon and told him
2 that one of his officers, Jason Turner, made a claim on me
3 that wasn't true. And he had told the whole community
4 that I had some prior charges. And so the whole community
5 knew things that I didn't even know, but friends in the
6 community came and told me that Jason Turner put out
7 there. He said I had prior charges as C.S.C. with a
8 minor.

9 Q. Okay. Like I said a lot this stuff we're going to
10 get into with your lawyer. One of your other allegations
11 is you think your lawyer was ineffective for failing to
12 object to some questioning by the prosecution during
13 examinations of a witness by the name after Valerie
14 Williams and Gaye Allen Cooke. Each of the questions were
15 asked and answered. What do you feel like he should have
16 objected to?

17 A. Well, I just thought that it was wrong for them to be
18 vouching for the witness. They were vouching for the
19 witness. Doing more vouching for the witness than
20 anything. And then I thought I -- she said she was there
21 to help Chip McDaniel, and I didn't understand why she was
22 there to help Chip McDaniel and he was the Solicitor.

23 Q. Let's talk about another allegation. You've got an
24 allegation that you lawyer was ineffective when he failed
25 to present videos of the interview of the victims. And

1 let's get a little bit of background. Prior to the trial
2 had you ever seen any DVDs or recordings of the interviews
3 of the alleged victims?

4 A. No, sir.

5 Q. At trial on Page 76 the State and your lawyer
6 essentially entered into an agreement where no one was
7 going to introduce these videos. You remember that?

8 A. Yes, sir.

9 Q. Did have you any discussions with your lawyer about
10 introducing the videos or not?

11 A. No, sir.

12 Q. Is that something that you wanted to have introduced?
13 I know you said you haven't seen them, but did you want
14 those introduced?

15 A. Yes, sir, I wanted them to be introduced because it
16 was, for what my understanding here, it was hereby said
17 that all of them was claiming my innocence. And that
18 distracted because they also said in their part that it
19 would be very dangerous for their part. It's also in the
20 transcript as well.

21 Q. Okay. And do you recall that at the trial in the
22 closing argument that your lawyer actually referenced the
23 State. "They had the ability to introduce those videos
24 and didn't," Judge got mad at your lawyer. Do you
25 remember that?

1 A. Yes, sir.

2 Q. Okay. How about that your lawyer was ineffective for
3 allowing the introduction of what you call pornographic
4 material even after the investigation introduced no
5 evidence of such material. Talk about that. What do you
6 mean by that?

7 A. Well, they never did have no evidence on me.
8 basically, everything that they had on me was hearsay,
9 basically. And they -- I don't know. I don't really
10 understand why it went on like it did because they never
11 had no evidence to show the Court. They just said things
12 that wasn't even true. It was fabricated.

13 Q. Let's talk about some other things. I obviously
14 filed an amendment for you capturing some claims I believe
15 you have we'll address with your lawyer, but let's skip
16 down. You asked that I file an amendment for you here
17 recently on some claims your thought you had. Let's go
18 through those.

19 One of them is you believe that your lawyer failed to
20 investigate the facts, witnesses and the evidence in this
21 case. Do you know what your lawyer did to investigate the
22 case?

23 A. He did nothing.

24 Q. Okay. When you say, 'he did nothing' you mean ---

25 A. Because ---

1 Q. --- really did nothing?

2 A. Cause he told me that they ain't ready for to go to
3 no trial.

4 Q. Let me ask you this. Were there any plea offers in
5 the case?

6 A. It was.

7 Q. What were they?

8 A. It was -- the first time was I had Marcus. He told
9 me they offered me 20 years.

10 Q. All right. And did you decline that?

11 A. Yes, sir.

12 Q. All right. What were the other offers?

13 A. And the second offer they offered me and Mr. Kyle
14 Hobbs was 25 years.

15 Q. Okay. Did you decline that?

16 A. Yes, sir.

17 Q. All right. Were there any other offers?

18 A. No, sir.

19 Q. And you were facing some significant time, you found
20 out, right?

21 A. Yes, sir.

22 Q. All right. Why were you reject those offers? Were
23 you always wanting a trial?

24 A. I wanted to go to trial so I could prove the fact
25 that I was an innocent person.

1 Q. Okay. What sort of trial strategy did y'all talk
2 about going into the case?

3 A. He never mentioned it.

4 Q. Did you know how y'all would attack the case or
5 attempt, as you say, to prove your innocence?

6 A. He never mentioned it.

7 Q. All right. And you've got, and I think this goes
8 along the same line that you feel like your lawyer didn't
9 have a proper defense for the physical evidence. Is that
10 the same line you're talking about?

11 A. He didn't.

12 Q. And your lawyer didn't have a valid trial strategy.
13 Are you saying that your lawyer had no trial strategy that
14 you know of?

15 A. That's right.

16 Q. All right. Now, you also believe that your lawyer
17 should have moved to quash the indictment before the was
18 sworn. You believe they were insufficient and the Court
19 lacked subject matter jurisdiction. Explain why you think
20 that?

21 A. Because after I was trying to get my motion discovery
22 from Mr. Hobbs, Mr. Hobbs, he would never really answer
23 back to me. But, anyway, I was trying to get another
24 lawyer in between that time was name O-Leonard, and my
25 wife knew O-Leonard. So I had my wife to get in touch

1 with O-Leonard and he sent me a copy after I got my
2 sentence.

3 And when they give me my motion, my Rule Five rather,
4 I got these. This what I got, and that's why I
5 challenged. They gave me something that wasn't signed.
6 ain't got nothing on it. Ain't no name. Nothing on it.
7 It ain't got nothing on it. So when I did that I wrote
8 back to the Clerk of Court of Dillon County, and I told
9 her about what was going on in the situation.

10 So then they wrote me a -- they turn around and send
11 me another copy with a true billed indictment and all this
12 on it and everything. But still, that is not the person
13 handwriting. You can see that it -- it ain't right.

14 Q. So you believe that the indictments or what not in
15 part of the Court's record are in fact not legitimate?

16 A. Right.

17 Q. Okay. Did you have any discussion about that with
18 your lawyer?

19 A. Well, I never had no kind of discussion with him
20 because I didn't get this until after I was sentenced.

21 Q. Let's move forward to another claim that sort of
22 encompasses one we've already talked about. We've already
23 covered -- excuse me. We've already covered that you
24 think that your lawyer should have played DVDs and
25 admitted those in evidence?

1 A. Right.

2 Q. Okay. Now, Mr. Scarborough, I know that talking with
3 you that you're a man of many words?

4 A. Yes, sir.

5 Q. You've got a lot to say, but you understand the focus
6 of your hearing is on some legal issues that your
7 lawyer -- that I'm going to discuss with your lawyer. So
8 I don't have any other questions for you. Is there
9 anything else that you -- that we have not addressed in
10 regards to your application that you want to bring to the
11 Court's attention?

12 A. Well ---

13 Q. Knowing that I will be addresses those with your
14 lawyer here in a few minutes?

15 A. No, sir.

16 Q. Okay. That's all the questions I have for you.
17 Please answer any questions the State may have for you.

18 THE COURT: Mr. James.

19 CROSS-EXAMINATION

20 BY MR. JAMES:

21 Q. Mr. Scarborough?

22 A. Yes, sir.

23 Q. You indicated that you wished to go to trial to prove
24 your innocence?

25 A. Yes, sir.

1 Q. You recall at the end of the State's case in chief
2 the opportunity either take the stand and testify or not?

3 A. I didn't quite understand what you just said.

4 Q. Do you recall having the opportunity to either
5 testify at trial or choose not to?

6 A. Well, he didn't tell me to.

7 Q. He didn't tell you to testify?

8 A. He knew I wasn't going to take the stand. He already
9 knew that already.

10 Q. You weren't going to take the stand at all?

11 A. Right because I had told him that they done shot my
12 credibility when they made accusations on me.

13 MR. JAMES: Your Honor, I have no further questions
14 for this witness.

15 THE COURT: All right. You may step down, Mr.
16 Scarborough.

17 MR. SCARBOROUGH: Thank you.

18 MR. BOOZER: Your Honor, we'll go ahead and call Mr.
19 Kyle Hobbs to the stand?

20 THE COURT: Okay.

21 KYLE HOBBS, after being duly sworn, testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MR. BOOZER:

25 Q. Mr. Hobbs. How are you doing today?

1 A. Doing well. Thank you.

2 Q. Did you represent Mr. Sam Scarborough?

3 A. I did.

4 Q. And were you retained in that case?

5 A. I was.

6 Q. About how long did have I represent him?

7 A. I believe that he retained me five or six weeks
8 before his date certain trial.

9 Q. Okay. Did you feel you were fully prepared to go to
10 trial?

11 A. I did.

12 Q. Let's jump -- let's dive right into some of those
13 allegations. Are you familiar with the transcript in this
14 case?

15 A. I am.

16 Q. If you would on Page 127 of the record on appeal flip
17 to that for me?

18 A. When you say -- you mean the transcript page
19 numbering or?

20 MR. JAMES: Transcript page number I believe would be
21 148.

22 THE WITNESS: Okay.

23 BY MR. BOOZER:

24 Q. Let me see what I mean. I may have to do some math.

25 A. Okay. I think I found the part you're referring to

1 127 of the appellate record. 148 of the transcript.

2 Q. All right. On Page 127 of the transcript, this is
3 during the testimony of Jason Turner -- was he one of the
4 officers or investigators in the case?

5 A. He was the lead investigator.

6 Q. All right. There, beginning at Line Three,
7 essentially, you asked, "Did you ever tell the forensic
8 interviewer that Sammy was charged with prior C.S.C.s and
9 he denied it?" And then you asked -- but you told Queen
10 he was charged with prior C.S.C.s; is that correct. He
11 said he doesn't know, but he may have prior knowledge of
12 it.

13 And then flip it over to Page 130 of the record on
14 appeal. At Line Seven you get him to admit, "Yeah, you
15 say you told Queen about these prior accusations and
16 talking to him about C.S.C.s?"

17 A. Um hum.

18 Q. And you said, "Yeah, we talked about it. We talked
19 about it," and then you asked him, "Tell her. Talked
20 about it? Yes, sir. Was there any concern that this
21 information might be passed around the community," and he
22 indicates that it has already been passed around the
23 community. It wasn't a secret.

24 And you asked what happened to secret?" And he says
25 "His accusations from the past, it wasn't a secret." Why

1 are you eliciting this testimony from this investigator?

2 A. We had previously dealt with Lyle Evidence, pretrial
3 motion, and as I told Mr. Scarborough when we were
4 preparing for the trial I felt that the Lyle Evidence that
5 was admitted of his prior occurrence was probably the most
6 damning piece of evidence that was going to be presented
7 against him.

8 So once that Lyle Evidence was admitted and the Court
9 admitted -- I'm sorry. The Court stated that they were
10 going to allow that testimony to come in the only way that
11 we could negate or soften the blow of that Lyle testimony
12 was to reiterate that he was never actually prosecuted for
13 that charge.

14 Again, kind of or attempting to strike at the
15 strength of that testimony in that it was never actually
16 brought as a C.S.C. charge to him and that he was never
17 charged.

18 Secondly, there were issues about Detective Turner
19 introducing falsely that Mr. Scarborough had been charged
20 with a C.S.C. So in looking at that I was trying to set
21 up a defense and trial strategy to say that the notion of
22 him committing this criminal sexual conduct was rooted in
23 Detective Turner wrongfully stating and spreading
24 throughout the community that Mr. Scarborough had been
25 charged with a C.S.C. when in fact he hadn't.

1 Q. Did you have that specific discussion with Mr.
2 Scarborough prior to trial?

3 A. I did.

4 Q. And what was his position to all that?

5 A. He completely agreed. I think he brought it up on
6 the stand. That was one of his primary concerns is that
7 this accusation, the notion that he had been charged with
8 C.S.C. before, was told throughout the community. And
9 that that was the source of these children making up these
10 lies against him.

11 Q. When you're talking about Lyle Evidence I know you
12 went through a big motion before the trial.

13 A. Um hum.

14 Q. Was it with regard to one of the minors who was going
15 to testify and saying that this happened to him before?

16 A. Absolutely.

17 Q. Okay. So was it one instance with that minor?

18 A. I don't recall if it was -- if the minor had multiple
19 instances, but I do recall one in particular.

20 Q. Okay, but looking back at the transcript would you
21 agree with me that as is testified to it was already
22 passed around the community. It wasn't a secret. These
23 accusations from the past, it wasn't a secret. Can you
24 see how that would extend beyond just once. It could be
25 numerous people?

1 A. I don't because he told specifically the forensic
2 interviewer, and I believe that came out in testimony
3 later on that he had been charged twice with C.S.C. So
4 the notion was that he had told the forensic interview,
5 the victim of the parents -- the parents of the victim and
6 the victims themselves that he had been charged with
7 multiple prior C.S.C.s.

8 Q. All right. Who were Valerie Williams and Cook, those
9 two witnesses? Do you recall those witnesses?

10 A. I'm trying to recall Valerie Williams, was she -- I
11 apologize.

12 Q. Begin on Pages 316 and 342.

13 A. I would -- I believe Ms. Williams -- Ms. Williams is
14 a S.L.E.D. investigator.

15 Q. Okay.

16 A. For the Attorney General's Office investigator.

17 Q. For the A.G.?

18 A. That's right.

19 Q. What was her purpose of being there?

20 A. She really -- I didn't think she really brought a
21 whole lot of substance other than having met with the
22 victims in the case and having an opportunity to talk to
23 them.

24 Q. Okay. Did you make any sort of objection to her
25 testimony or purpose that she was there? She wasn't an

1 actually a witness in the case? And she didn't interview
2 the children? Did she or didn't she?

3 A. I think that she says -- yeah, I do believe that she
4 did meet with the minors for the first time on
5 October 31st which was last week before the trial.

6 Q. Okay. Did you feel that there was any reason to try
7 to limit her testimony together with any of her
8 statements?

9 A. No, because she also reiterates denial by these
10 victims that they were ever sexually abused.

11 Q. All right. Let's talk about -- I think that one of
12 the most contingent parts of the trial was the video?

13 A. Um hum.

14 Q. Tell me about, on Page 76, where you had entered into
15 an agreement with the State to not introduce the video,
16 and of course, the State wouldn't do the same. Tell me a
17 little bit about how that came about?

18 A. So in pretrial motions I made extensive motions to
19 the Court to exclude the forensic videos. The basis of
20 excluding the forensic videos would probably be the same
21 for anybody who is facing this sort of charge in that the
22 children are in an isolated video taping circumstance
23 where the forensic interviewer is asking the same
24 questions over and over again where I feel that the
25 children are being kind of coaxed into an answer.

1 And I'm not able to cross-examine them on the record.
2 In the forensic interview. I can't go back in time and
3 challenge what they're saying. Now, one thing that I can
4 say in Mr. Scarborough's defense here is that all of these
5 children denied sexual batteries being committed on
6 themselves. Okay.

7 So none of these forensic interviews contain someone
8 saying, "Yeah, I was sexually battered." However, they
9 did all contain mention of pornographic material and also
10 mention of witnessing other people, other victims, being
11 sexually battered.

12 So the one thing that I think the videos could have
13 had value for would be that they are denying any sexual
14 battery upon themselves. However, I believe, based on my
15 trial strategy, that I could get out that denial in the
16 record without showing the rest of the videotape which
17 again would bolster the accusations of other victims that
18 were in the case.

19 Q. When you're talking about the others, when others had
20 been abused, was it that Mr. Scarborough had abused
21 others?

22 A. Yes, that's correct.

23 Q. Okay. Would there be any way to -- because that was
24 unrelated to this case, right?

25 A. No. The forensic interviewers for the three minor

1 victims in this case all of them denied being sexually
2 battered in the forensic interview. However, they all in
3 the forensic interview stated that they witnessed Mr.
4 Scarborough sexually battering the other victims. So it
5 wasn't -- it was one of those circumstances where it
6 wasn't me. It was him who was sexually abused.

7 Q. But the others who are saying that they were sexually
8 abused are those being interviewed at that time?

9 A. No, they were not present for it. So -- and when you
10 read ---

11 THE COURT: As I understand it it was a group of
12 children?

13 THE WITNESS: Yes, sir.

14 THE COURT: And no children wanted to admit that they
15 were battered, but they all testified that if others had
16 been?

17 THE WITNESS: In the forensic interviews, yes, Your
18 Honor.

19 THE COURT: Right. So say there are four kids and
20 each one says, "It didn't happen to me, but I saw it
21 happen to those three, "and that's the way it went around?"

22 THE WITNESS: Yes, sir. There is three different
23 victims.

24 THE COURT: Okay. I understand.

25 THE WITNESS: None admitted to sexual battery

1 themselves.

2 BY MR. BOOZER:

3 Q. Okay. Was there any way you could have made any sort
4 of motion to redact or edit the tape that was played for
5 the jury to not have that part of it?

6 A. I don't think so. I think that their witnessing and
7 not being told -- I think we have to differentiate being
8 told about sexual battery from actually witnessing it.

9 I don't believe that there would be any basis for
10 excluding their statement saying that they witnessed
11 sexual battery or that they witnessed pornography.

12 Q. Did you have any discussion with Sammy about that
13 strategy?

14 A. Yeah, we talked about the videos. Okay. The
15 question was posed to me whether I physically reviewed. I
16 believe that I played the videos for Mr. Scarborough, but
17 I don't know for certain. So I don't want to say that in
18 open Court.

19 I can say that I understood him to have seen the
20 videos and that we thoroughly reviewed the contents of the
21 videos and talked about that being the strategy for me to
22 exclude them.

23 Q. Okay. You have the video? You and I have had
24 discussions about the videos before. Do you have them
25 with you?

1 A. I do. I do have them with me.

2 Q. How many are there?

3 A. There are three.

4 Q. There are three videos. These are fairly lengthy
5 interviews?

6 A. I'd say about an hour or so apiece each.

7 Q. You have those videos on the stand?

8 A. I do. Yes, sir. I've got them in my notebook right
9 here.

10 MR. BOOZER: Your Honor, just for purposes of the
11 record, since these are rather lengthy, I go ahead and
12 move to mark these as Applicant's Exhibit One?

13 THE COURT: I think the question is whether or not
14 this was part of a reasonable trial strategy, you know.
15 And let's admit them and in ruling on this matter if I
16 need to actually review them I will. Okay.

17 MR. BOOZER: Okay.

18 THE COURT: Go ahead.

19 MR. BOOZER: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 MR. BOOZER: It should be all three of them. And my
22 understanding needs to be the tapes of the forensic
23 interview pulled directly from defense counsel's file and
24 be relied upon. The State has no objection to them. The
25 State just respectfully reminds everyone that these tapes

1 are of minor children and to take precaution with them.

2 THE COURT: All right. Thank you.

3 MR. BOOZER: Your Honor, may we approach, please.

4 (WHEREUPON, a bench conference was held off the
5 record, but out of the presence of the jury.)

6 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
7 identification and received into evidence.)

8 THE COURT: All right. We will have these sealed.

9 And if I find it necessary to review them for -- prior to
10 ruling I will do it myself and I will reseal them. All
11 right. Thank you.

12 BY MR. BOOZER:

13 Q. Mr. Hobbs, now, with these videos, flipping forward
14 to Page 402 of the transcript, you got into a little bit
15 of discussion with the Court where you had referenced
16 these videos and sort of indicated that, "Hey, the State
17 could have introduced these videos" in your closing ---

18 A. Right.

19 Q. -- but they didn't." What were you trying to do
20 there?

21 A. Logically, I still have trouble removing myself from
22 my position that I took with the Court. A Defendant in a
23 case has no burden of proof. He had no burden to produce
24 anything. So when the State comes to me and says that,
25 "We won't introduce this video as long as you don't

1 introduce it into evidence," and this was after
2 substantial motions that I made to keep it out, that I
3 should still be able to speak about how the State did not
4 bring in those videos and did not show the videos because
5 I don't have the burden of producing evidence.

6 So, of course, any consent that I bring to not bring
7 into evidence I think I should be able to address to the
8 jury to say that the State made the decision not to show
9 the videos to the jury.

10 Q. Okay. But even though you were still making that
11 argument you were still standing by your position that you
12 didn't want them to come in?

13 A. Absolutely. The point of bringing that up to the
14 jury was to notion that this was a piece of evidence that
15 they did not want the jury to see. And, again, I was just
16 leaning on reasonable doubt and the lack of competent
17 evidence against my client.

18 So I was trying to do everything I could do for him,
19 and part of that strategy, I believe, was to try to
20 emphasize the lack of confident evidence that the State
21 introduced.

22 Q. Did the minors, when they testified, did they ever
23 say, "I saw Sammy do this to this minor?"

24 A. No. They ended up saying that they were actually
25 sexually assaulted.

1 Q. Okay. But your strategy in introducing -- not
2 introducing the videos at first was because the witnesses
3 were going to say, "Well, they didn't do it to me, but he
4 it to the -- he did it to them?"

5 A. I would be very clear that we don't know what these
6 minors were going to say. I thought that the best
7 opportunity we would have would be to require these
8 victims, and I'm not trying to be cold, to come up and
9 actually testify on stand and make these accusations.

10 I felt that the forensic interview is a very
11 comfortable space where, again, I think they're being
12 coaxed into an answer. On the actual stand I was very
13 hopeful that none of them would either admit to having
14 being sexually battered or having seen a sexual battery
15 occur.

16 I was still able to get their previous denial of
17 sexual battery on the record in several different
18 junctures throughout the trial. So I believe in doing
19 that I got the one good piece of information that could
20 have come out of those forensic interviews which was their
21 initial denial of sexual battery.

22 THE COURT: In that there was a forensic interview I
23 assume that these victims were under 12?

24 THE WITNESS: Yes, sir, well under 12.

25 BY MR. BOOZER:

1 Q. The denials that you elicited at trial were they from
2 the victims themselves or from others?

3 A. Actually, from others, from the victims themselves
4 and from the forensic interviewer herself.

5 Q. Okay. Let's flip to Page 304 and, this is going back
6 sort of to the allegation about introducing his prior
7 C.S.C. charge. There was a witness, Sally Williamson, who
8 testified. Do you recall her?

9 A. I do.

10 Q. All right. And one of your first questions on
11 cross-examination is, "We're talking about Minor Two.
12 What was his criminal history that you wrote down you
13 received as far as the offender?" And she said, "Two
14 prior charges of C.S.C. with a minor. Never prosecuted."

15 Again, you're going back to these prior C.S.C.s that
16 Sammy had been allegedly involved in. You're bringing
17 those out again?

18 A. Okay. By the time the trial starts I'm living in a
19 world where the Lyle Evidence is coming in. So there is
20 going to be an accusation of prior sexual battery and
21 sexual abuse. So the questions become how do I negate
22 that. How do I defend that.

23 And one of the big things that I tried to emphasize
24 throughout the trial was that Mr. Scarborough had never
25 been charged with criminal sexual conduct and that the

1 whole time this matter was being investigated it was being
2 disseminated to the forensic interviewers, to the victim's
3 family and maybe to the victims themselves that he was
4 previously charged with criminal sexual conduct.

5 Since that accusation the prior bad acts, the Lyle
6 Evidence, was coming in regardless. I felt that it would
7 be worth emphasizing that, first of all, there was a
8 source for this belief that he was a sexual predator and
9 that came from false statements from the detective stating
10 that he had been previously charged.

11 And then, secondly, emphasizing that he was never
12 actually prosecuted for this accusation that was going t
13 to come into the trial.

14 THE COURT: Was it -- I'm just curious. Was the
15 trial judge who ruled on your motion was his theory of the
16 Lyle Evidence that it was common scheme and design?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay.

19 BY MR. BOOZER:

20 Q. Let's move on to another allegation that dealt with
21 hearsay?

22 A. Um hum.

23 Q. What's your understanding sort of of what a witness
24 can testify to about sexual abuse disclosure? There is
25 limitations? What is your understanding?

1 A. Absolutely. And we actually, in a pre-trial motion,
2 that's discussed at length. So I know it was very much on
3 the minds of the Solicitor and myself that it was more of
4 a time and place statement and not the nature of the
5 accusation or even the identification of who was the
6 assailant.

7 Q. So they can only disclose that a minor told me he was
8 abused at -- on such and such a date and such and such a
9 place?

10 A. That's the limitation of that evidence. Now, this is
11 also the notion of our removal of the forensic interviews
12 and also the initial denial by these victims. So that was
13 also came into play when I was looking at how that rule
14 would unfold during trial as to whether or not more
15 damaging evidence might come in if we didn't allow a
16 little bit of leeway there.

17 Q. On Page 143 a person -- a witness by the name of
18 Maggie Moore testified. And, specifically, they kind of
19 go through at some point did Minor Two disclose to you
20 touching inappropriately? Yes, ma'am. Without telling me
21 what he said did he tell you he was abused? Yes, ma'am.
22 Where did he tell you this occurred. He said, Mr. Sammy's
23 house."

24 Was there any way for you to try and even limit
25 further Mr. Sammy's house while making it the address or

1 something to that effect? Can you see how this kind of
2 getting around who did it but say it was at his house

3 A. I don't believe so. I think that that's the location
4 of where it happened, and that's how they described the
5 location of where it happened.

6 Q. But, certainly, you could have made a request to the
7 Court, "Hey, Judge, I know this is what they're going on
8 saying, but I was that such and such street. Not Mr.
9 Sammy's house?"

10 A. I guess in theory I could have done that.

11 Q. Okay. On Page 209.

12 A. And can I go back to that question. I don't know
13 that the children would have known what address. I think
14 that that would be the identifier for the location. And I
15 don't know if I could have asked them to identify it a
16 different way.

17 Q. Certainly. And that's fair, but did you know those
18 witnesses were going to say what they were going to say
19 about disclosure? Did you know essentially, yeah, they
20 told me it happened at Mr. Sammy's house?

21 A. I think that that was the phrase that the children
22 used to describe the location. So I think I would have
23 known that they were going to describe it as Sammy's
24 house.

25 Q. So you know that's how it's going to be described?

1 A. I might have seen that before. Yes.

2 Q. Okay. Going to Page 209, and this is where Minor
3 Three is testifying. Beginning at Line Seven Minor Three
4 begins to testify that he actually saw the Defendant make
5 Minor Two perform fellatio on him. That he actually saw
6 it, but then in Line 12 he kind of backtracks and
7 essentially says that he didn't see it; that Minor Two
8 told him about it.

9 Would you agree with me to the portion where told me
10 about it that that is hearsay? It would not be
11 admissible?

12 A. I would agree, but then again, he is backtracking on
13 him witnessing a sexual battery. So I didn't -- I felt
14 that the -- him not seeing it was more important than him
15 alleging that somebody told him about it.

16 Q. Could you have asked for a curative or mistrial at
17 that point?

18 A. I think I could have made an objection to hearsay,
19 but again, I thought that that was a beneficial statement
20 on him backtracking on having actually seen it and that he
21 had a different source for that belief.

22 Q. I'll flip forward to Page 220, and this is the
23 examination of Owens. And, essentially, this goes back to
24 the same issue which was brought back before which is she
25 essentially says, well, you know, Minor One told me it

1 happened in the backyard at Mr. Sammy's. And, again, sort
2 of going back to the address limitation that's another
3 instance where you possibly could have used that?

4 A. I don't think that I can limit the way that a
5 location is disclosed as long as it's a candid disclosure.
6 Yeah, I don't think that I can limit the way that a
7 location is disclosed.

8 Q. All right. Let's, while we're on that, flip over to
9 221, and look at Questions Two through Three where the
10 same witness says, "What happened to make you go to the
11 police?" She says, "I found out what happened to
12 Queenea's two kids, **Minor 2** and Minor One." Do you recall
13 if there is any objection to hearsay there?

14 A. I don't believe so.

15 Q. Okay. Wouldn't the notion be that she found out that
16 her two kids had also been abused?

17 A. I -- it said, "I found out what happened to Queenea's
18 two kids, Minor One and Minor Two, but without stating
19 what she found out I don't know if that would qualify as
20 hearsay. That may be why I didn't jump on that.

21 Q. Okay. Do you recall in closing the State using the
22 term, coining the term or using the phrase, 'Sammy is a
23 predator'?

24 A. I did.

25 Q. Okay. Did you make any sort of objection to that?

1 A. I did not. I am not aware of any case law or any
2 precedent regarding the word, 'predator'. The word,
3 'predator' in my mind describes the nature and the
4 circumstances of the accused' behavior in that he was
5 someone who was in a position of authority or an elder
6 above these children. And that there was a predatory
7 nature to what he was doing; that it wasn't consensual and
8 that these children were more vulnerable.

9 So I think that the word, 'predator' describes the
10 nature of their accusation about what they were saying
11 what Mr. Scarborough did. But I didn't think the word in
12 and of itself is impermissible.

13 Q. On page 399, of the State's closing and at the top
14 beginning at Line Two, the closing remarks are made,
15 "Don't fall for the Defense Lawyer 101. Must be real.
16 Five, six, seven, eight year olds don't make this stuff
17 up. They just don't." Are you familiar with the rule
18 where the Solicitor cannot vouch for the credibility of a
19 witness?

20 A. I am, yes.

21 Q. Okay. Do you believe that that -- that these remarks
22 from the Solicitor are vouching for the victims?

23 A. I could see where your position is that it would.
24 Again, there is, from my research and preparation for the
25 case, one of the big considerations that you have with

1 minor children is source information. So where does a
2 child come up with the idea of making an accusation about
3 a sexual battery or a sexual assault. It is probably the
4 consensus of anyone who listens to a five, six, seven or
5 eight year old that there would need to be some sort of
6 source for this information.

7 Around that they wouldn't just come up with it out of
8 thin air. So I did not view that as vouching. Again, I
9 think that it was something that's inherent to the nature
10 and the age of the children for there to be some source
11 for their accusations.

12 Q. Did you review prior to trial the indictments with --
13 or did you review them on your own or with Mr.
14 Scarborough?

15 A. I did. I made substantial objections to the
16 indictments prior to trial especially regarding the time
17 periods in which the accused's behavior was alleged to
18 have happened. I think it created maybe a two and a half
19 year window. That was my primary focus.

20 There was also a secondary motion to squash the
21 indictments based on the lack of any sort of pornography,
22 any short of physical evidence, that was ever obtained and
23 it was my belief that they couldn't move forward. At
24 least it was my assertion that they couldn't move forward
25 on the disseminating obscene materials charge without some

1 obscene material. I did make motions to quash these
2 indictments.

3 Q. Did you ever see any indictments that were not signed
4 and not true billed?

5 A. I never saw anything that not true billed.

6 Q. What type of investigation did you do in this case?

7 A. I did meet with Mr. Scarborough a few more times than
8 I think he might recall. Went over any sort of secondary
9 evidence, alibi witnesses that he might have given me. He
10 did give me a short list of family members who and people
11 for me to contact. I did attempt to contact them.

12 Also made a supplemental request to law enforcement
13 for any sort of incident reports relating to any of the
14 addresses where there minor victims lived. Actually, was
15 able to get something that I tried to bring into Court
16 which was a prior accusation sexual assault with one of
17 the gentlemen who was living with the minor children.

18 And always I did go to the scene to see what the
19 layout was of where Mr. Scarborough was living, where this
20 barn was located and just kind of make sure that I
21 understood the proximity of these children to Mr.
22 Scarborough's house.

23 Q. What discussion about trial strategy and defenses did
24 you and Mr. Scarborough have?

25 A. Okay. The biggest issue that I had and I spoke to

1 Mr. Scarborough about was the Lyle Evidence. I sincerely
2 believed that the admittance of the Lyle Evidence was the
3 strongest and most damning evidence they came into the
4 trial against him. So my priority was to keep that Lyle
5 Evidence out. Then to keep the forensic interviews out.

6 And then from that point on require these children,
7 subject to cross-examination, to get on the stand and
8 actually admit that a sexual battery had happened. So I
9 had talked to them about those issues on several different
10 occasions and he was aware of them.

11 MR. BOOZER: Beg the Court's indulgence, Your Honor.
12 Mr. Hobbs, that's all the questions I have.

13 THE COURT: Mr. James.

14 CROSS-EXAMINATION

15 BY MR. JAMES:

16 Q. Mr. Hobbs, you indicated that there was a pretrial
17 hearing on the Lyle Evidence; is that correct?

18 A. Yes, sir.

19 Q. Did you secure a finding or ruling from the Judge on
20 that issue?

21 A. I did. I did try to reiterate my position to the
22 Court every time it was about to come in and for mistrial
23 after it did come in.

24 Q. That issue was preserved for appeal?

25 A. That is correct.

1 Q. All right. The Court of Appeals upheld the Court's
2 decision on the Lyle evidence?

3 A. That's right.

4 Q. During the testimony of Valerie Williams and Gaye
5 Allen Cook did it ever appear to you that the questioning
6 was repetitive or went to issues that were already asked
7 and answered?

8 A. I did make at least one objection that I saw to asked
9 and answered. However, given the ruling regarding the
10 limitation on the testimony that can be admitted I believe
11 those questions are very specific in nuance. And so I
12 think that some questions that sound very similar to
13 previously asked questions are in fact a little bit
14 different.

15 So I did think that the State was going to have some
16 leeway in the phrasing of their questions and the specific
17 nature of their questions. I didn't think that they had
18 been asked and answered.

19 Q. And as you indicated before there was no physical
20 evidence recovered? Any obscene or pornographic
21 materials?

22 A. There was not.

23 Q. But they never searched Sammy's house, is that
24 correct?

25 A. They didn't. They only went there to try to arrest

1 him. I did try to emphasize the lack of the search. Kind
2 of a insufficient investigation was what I kept trying to
3 draw it back to. They never searched his house. Never
4 took any sort of physical evidence. So there wasn't any
5 forensic evidence.

6 So I think when Mr. Scarborough says that it was a
7 hearsay -- hearsay accusations against him it was only
8 accusations which was going to be the basis of everything
9 that they brought against him.

10 Q. Did you feel that you needed more time before
11 proceeding to trial?

12 A. I do not. I think that given the amount of time that
13 I spent on the case I did ask judge Burch for more time
14 and for a continuance. However, it was a date certain
15 trial, and the Court was not going to move off of the
16 trial date. And the date certain trial was set before
17 Mr. Scarborough retained me.

18 I think that that was part of the reason he retained
19 me is cause he knew the case was going to be tried within,
20 and I think probably about a month and a half of my
21 retention.

22 Q. But regardless of that short timeframe you felt that
23 you had adequate time to prepare for trial?

24 A. I did.

25 Q. And you had a specific trial strategy and sufficient

1 preparation?

2 A. That is correct.

3 Q. And you indicated before that it was somewhat
4 multi-pronged on the outcome of the Lyle Evidence motion
5 and the forensic interview tapes coming in and what the
6 children stated in their testimony on the stand?

7 A. Absolutely.

8 Q. So it was accurate to say it was a trident approach?

9 A. That's right. There was going to be a different way
10 that I approached the prior accusations against Mr.
11 Scarborough. I would have never mentioned him having a
12 prior accusation of a C.S.C. except for that Lyle Evidence
13 coming in. And at that time, once that old accusation was
14 coming in, the best I could do with it was to use it as
15 the source for this false memory for the children, first
16 of all.

17 And then second of all, emphasize that he was never
18 charged or tried with that crime.

19 Q. Two of the indictments were withdrawn after the
20 State's case in chief; is that correct?

21 A. That is correct.

22 Q. That was because there was not adequate evidence
23 presented from one of the victims; is that correct?

24 A. That's correct. And that was the focus that this
25 would fall apart once the victims actually got on the

1 stand. And, again, without the forensic interview coming
2 in all that we would have is their previous denial of this
3 and now potentially coming on the stand and saying it
4 happened.

5 So, again, that would go into this theme of them
6 being coached and told what to say and this having roots
7 in a hasty investigation. And that's what I was try to
8 steer the jury to.

9 THE COURT: Mr. Hobbs, let me be clear?

10 THE WITNESS: Yes, sir.

11 THE COURT: In the tapes there were personal denials,
12 and you and I've discussed this already, but during the
13 trial of the case you were able to have these victims,
14 without entering the tapes, admit that there was a prior
15 denial?

16 THE WITNESS: Yes, sir. I was also able to do it
17 though -- I mean that the family of the victims said that
18 they denied it when they first spoke to them, and even the
19 forensic interviewer was able to -- when you boil down the
20 question to say, 'did this minor child say that he was
21 sexually battered. No'. And so that was -- I believe
22 that the beneficial part of those tapes came in by being
23 able to show the jury the denial.

24 BY MR. JAMES:

25 Q. And in fact you were able to get some of those

1 denials in after proceeding testimony that indicated that
2 the adults who were approaching the children about their
3 disclosure were affirming to them that they needed to tell
4 the truth, to be truthful, and then they denied or failed
5 to disclose any contact with the Applicant?

6 A. That is correct.

7 Q. You filed for a directed verdict on the indictments,
8 correct?

9 A. That is correct, yes.

10 Q. And that issue was preserved for appeal of any new
11 evidence?

12 A. Yes, sir.

13 Q. And it was affirmed on appeal?

14 A. Yes, sir.

15 MR. JAMES: Beg the Court's indulgence just one
16 moment.

17 BY MR. JAMES:

18 Q. You indicated that you investigated the scene of the
19 alleged crimes, correct?

20 A. Yes, sir.

21 Q. Can you describe it for us?

22 A. I went to the neighborhood in Dillon where Mr.
23 Scarborough lived. And just made sure I understood I
24 proximity of the homes to each other. Also where this
25 alleged -- there was like a small shack where some of the

1 sexual abuse was alleged to have occurred. So after going
2 to the scene I then talked to Mr. Scarborough and had him
3 kind of paint a better picture of where things use to be
4 situated because I wanted to make sure that visibility,
5 and if somebody is making an accusation of a sexual
6 battery, that I understood the visibility from the road or
7 visibility from other points of reference. So I did go
8 and look at the scene.

9 Q. Was Mr. Scarborough a hermit or was his house often
10 open to other individuals?

11 A. Seems like he had a very open kind of friendly
12 attitude about having people over and having people in and
13 around his yard.

14 Q. So many people coming and going?

15 A. It seemed like there was -- I don't know if I could
16 say many people coming and going, but it did seem like Mr.
17 Scarborough was welcoming to his neighbors and that he
18 allowed people to come into his yard. Things like that.

19 Q. As opposed to the point that I'm getting at is that
20 earlier there was a remark that perhaps you could have
21 more narrowly tailored the testimony of the witnesses on
22 the stand to not be Mr. Sammy's house but the address or
23 something else. Mr. Sammy's house is not Mr. Sammy
24 himself, isn't that correct?

25 A. Yes, that's correct. I believe that was a genuine

1 description of the way the kids would associate the
2 location. That's what they called it, Mr. Sammy's House.

3 Q. And even though these things, where sex occurred, to
4 Mr. Sammy's house it could have been somebody other than
5 Mr. Sammy?

6 A. That is correct.

7 Q. And you indicated that you gave some leeway on
8 hearsay to ensure that you were able to facilitate all of
9 the denials coming in?

10 A. That's right.

11 Q. And in some instances coming in repeatedly?

12 A. That's right.

13 Q. When you went to argue the absence of the forensic
14 interview tapes in closing arguments did the Judge send
15 the jury out?

16 A. He did.

17 Q. And noting that the trial judge was clearly upset
18 with you and the entire circumstance, he communicated that
19 to you off the record outside the presence of the jury?

20 A. That's correct.

21 Q. As well as off the record? There are a couple bench
22 conferences?

23 A. That is correct.

24 Q. When you continued with the argument back in the
25 presence of the jury the scope of his admonition is

1 limited to that there was an agreement between you and the
2 State to keep those tapes out, correct?

3 A. That is correct. And I did try to reiterate an
4 objection at that time for burden shifting, and I'll be
5 honest with you. I still logically think that I am
6 correct, but the Judge did not agree with me.

7 Q. You indicated that you learned of another actor? In
8 the course of your investigation you were able to
9 specifically identify that potential third party guilt
10 individual in the course of trial, correct?

11 A. That is right. That was probably one of the better
12 parts of my investigation for Mr. Scarborough was in a
13 stack of incident reports locating a cousin of the victims
14 who was alleged to have sexually assaulted some other
15 members of the family.

16 And I think that one of the minor children actually
17 states that he saw his cousin, I believe it was Stephen,
18 sexually assault someone. And as I mentioned previously
19 when you're dealing with minor children finding a source
20 for the knowledge regarding the sexual battery or sexual
21 assault became a very important issue that I wanted to
22 bring up so the jury could understand that these children,
23 perhaps, didn't just make this up out of thin air; that
24 they had seen things in their life that lead them to make
25 this up and also they were directed and coach by

1 individuals to make this accusation.

2 Q. And Stephen was a person approximate to the
3 neighborhood in which these offense relationship occurred?

4 A. Yes. One of the minors actually said that he saw
5 Stephen sexually abuse someone or sexually assault
6 someone.

7 Q. Overall question, Mr. Hobbs. How long have you been
8 licensed to practice law?

9 A. Either seven or eight years now. Eight years.

10 Q. They catch up on you, don't they?

11 A. They did.

12 Q. How much of that has been criminal?

13 A. I would say that most all of it has been a focus in
14 criminal. In law school I worked at the Public Defender's
15 Office. Then I clerked for Judge Harrington down in the
16 Ninth Circuit. She was a Chief Administrative Judge for
17 the criminal -- I'm sorry. General Sessions at that time.

18 So I've got a lot of General Sessions coming through
19 and then since that time I've been -- I wouldn't say maybe
20 it's 50/50, but most of my practice has been criminal
21 defense.

22 Q. Is that the Richland County Public Defender's Office
23 during law school?

24 A. No, that was down in Charleston.

25 Q. Okay.

1 A. That was the Ninth Circuit.

2 Q. When you say you have seven or eight years is that as
3 of now or as of the time of trial?

4 A. As of the time of trial I would have been three and a
5 half -- no. Close to four years of trial practice at that
6 point.

7 Q. You indicated a considerable number of meetings with
8 Mr. Scarborough. You remember a specific number? A
9 specific count of meetings?

10 A. I was thinking about that. I think either six or
11 seven. I think six would be fair.

12 Q. And you went over the indictment with him during
13 those meetings?

14 A. Yes. And I will reiterate that I have never seen any
15 problematic indictment for its form, more for its
16 substance, and that was the basis of my motion to quash.
17 I never saw anything that wasn't true billed or that was
18 wrongly presented.

19 Q. And he appeared to understand in the course of your
20 conversations with him?

21 A. I believe he did.

22 MR. JAMES: No further questions for the witness,
23 Your Honor.

24 THE COURT: Mr. Boozer.

25 MR. BOOZER: Nothing further, Your Honor.

1 THE COURT: All right. You may step down, Mr. Hobbs.
2 Thank you.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Mr. James, I believe you had another
5 witness listed or did you?

6 MR. JAMES: He's the only one, Your Honor.

7 THE COURT: All right. Let me pose this. Is there
8 anything on these forensic interview tapes that you think
9 I need to see or has the testimony of your client, Mr.
10 Hobbs, addressed the issues involved?

11 As I understand and from our conversations, with you
12 and Mr. James present pretrying this case, it's my
13 understanding that the issue is that in the forensic
14 interview just as I have heard the children made personal
15 denials, but then they -- accusations of having witnessed
16 other assaults.

17 All right. That doesn't seem to be a matter of
18 contention here. Now, is that the information that your
19 client says should have been presented during trial?

20 MR. BOOZER: That is correct, Your Honor.

21 THE COURT: That's it. I mean so is there any need
22 for me to spend three and a half hours watching these
23 tapes to hear that? From what I gather everybody agrees
24 what's on the tapes.

25 MR. BOOZER: Correct.

1 THE COURT: And the probative part -- of the part
2 that has probative value as from the defendant -- I mean
3 the Applicant's standpoint as well as from the State.
4 Okay. So we understand that. We understand clearly.
5 Okay. So what I'd like to do then is to remove that tape
6 from the record and return it to Mr. Hobbs rather than
7 that sealed interview floating and those forensic
8 interviews floating around.

9 MR. BOOZER: And just so I'm clear you're taking, for
10 lack of a better word, judicial notice as to what's on ---

11 THE COURT: Agreed. That's the significant material
12 on the tape. We agree. We stipulate that that's what's
13 there, and that's what the bone of contention arises from,
14 correct?

15 MR. BOOZER: Correct, Your Honor.

16 MR. JAMES: I can stipulate to that, Your Honor.
17 Yes.

18 THE COURT: Then why can we then not return to the
19 tapes to Mr. Hobbs and let him have them?

20 MR. BOOZER: Yes, sir. That's fine with me.

21 THE COURT: Okay. All right. Hattie, if we can
22 withdraw them from evidence and return them to Mr. Hobbs
23 rather than have those forensic interviews with those
24 children floating around wherever. We just don't -- if
25 it's not necessary we don't need to do it. Okay. So,

1 Hattie, could you give them -- Mr. Hobbs before you leave
2 if you would retrieve your ---

3 COURT REPORTER: Okay. I'm going to take my label
4 off of it. I'm on the record.

5 THE COURT: Okay.

6 COURT REPORTER: I'm unsealing them. I'm removing my
7 exhibit sticker. I am tearing up the exhibit form.

8 THE COURT: All right.

9 COURT REPORTER: And I am returning the exhibit to
10 Mr. Boozer.

11 (WHEREUPON, Applicant's Exhibit No. 1 was REMOVED
12 from evidence.)

13 THE COURT: All right. Mr. Boozer and Mr. James,
14 again, within 30 days. Submit me your orders on these,
15 okay, and giving me your best position on that. Each of
16 you give me one in 30 days, okay. Thank you.

17 END OF TRANSCRIPT OF RECORD

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON)	
Sammy Lee Scarborough,)	Case No.: 2017-CP-17-00561
S.C.D.C. No. 141397,)	
)	
Applicant,)	ORDER OF DISMISSAL
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

This matter comes before the Court by way of an application for post-conviction relief filed by Sammy Lee Scarborough ("Applicant") on November 2, 2017. Respondent made its return on or about January 31, 2018. The Court convened an evidentiary hearing into the matter on Tuesday, July 24, 2018, at the Darlington County Courthouse in Darlington, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Kyle M. Hobbs, Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Dillon County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dillon County Clerk of Court. Applicant was indicted at the June 2013 term of the Dillon County Grand Jury for two counts of criminal sexual conduct with a minor

(2013-GS-17-00290, -00292), and three counts of disseminating harmful material to minors (2013-GS-17-00291, -00293, -00294). Kyle M. Hobbs, Esq. represented Applicant. W. Shipp Daniel, Esq., of the Fourth Circuit Solicitor's Office, and Kelly W. Hall, Esq., of the South Carolina Attorney General's Office, prosecuted the case. On November 4, 2013, Applicant proceeded to trial before the Honorable Paul M. Burch and a jury. The jury found Applicant guilty of the above five indictments on November 6, 2013. Judge Burch sentenced Applicant to imprisonment for concurrent terms of life for each CSC, and five years for each count of disseminating harmful material.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins, Esq., who raised the following issues:

1. Did the trial judge abuse his discretion in refusing to sever seven different indictments naming three different child victims when the State failed to demonstrate that the three groups of alleged offenses were of the same general nature, failed to prove that the offenses arose out of a single chain of circumstances and were provable by the same evidence and the Applicant was prejudiced by the improper joint trial?
2. Did the trial judge err in admitting Rule 404(b) evidence when the State failed to prove that the prior act was relevant and the prior act did not meet the common scheme or plan exception to Rule 404(b)?
3. Did the trial [judge] abuse his discretion in refusing to declare a mistrial after [Victim 2] denied the allegations in one of the indictments and later in the trial the forensic interviewer and the investigator from the Attorney General's Office confirmed that [Victim 2] had denied the allegation contained in the indictment?
4. Did the trial judge err in refusing to direct a verdict of acquittal on the three [counts of] dissemination of obscene material charges when the State did not introduce in evidence any purported obscene material and relied only on the testimony of the child witnesses?

The parties proceeded to oral arguments before the South Carolina Court of Appeals on October 14, 2015. Applicant was represented by Ms. Hudgins. Jennifer Ellis Roberts, of the South

Carolina Attorney General's Office, represented the State. By opinion decided February 24, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions by unpublished opinion. State v. Scarborough, Op. No. 2016-UP-074 (S.C. Ct. App. filed Feb. 24, 2016). Applicant petitioned the Supreme Court of South Carolina for a writ of certiorari, which was denied by order dated May 30, 2017. The Remittitur was issued on June 2, 2017.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Denial of Effective Assistance of Counsel"
 - a. "Counsel was ineffective when failing to object to the Prosecution's attempt to introduce prior charges that were never prosecuted by introducing the testimony of Officer Jason Turner and Interviewer Sally Williamson, of which was clearly prejudice to the Applicant and should not have been allowed."
 - b. "Counsel was ineffective when failing to object to the repetitive use of questioning by the Prosecution during Direct Examinations of Valerie Williams and Gaye Allen Cook, even though the questions were asked and answered."
 - c. "Counsel was ineffective when failing to present the video containing the interviews of the victims [where] the victims admitted that the Applicant had never assaulted them. When counsel agreed to the exclusion of the audio/video, precluding him from mentioning the interviews, violating the Applicant's right to the Effective Assistance of Competent Counsel, even after the Prosecution admitted that the video/audio tapes would be 'damning' to its case."
 - d. "Counsel was ineffective for allowing the presentation of pornographic material, even after the investigation revealed no evidence of pornographic material. The allowance of this material is prejudicial to the Applicant and that allowance during Examinations that would determine guilt or innocence, was highly detrimental to the Applicant. Proper Examinations could have resulted in counsel rendering Effective Assistance in accordance with the Rules of Professional Conduct."
2. "Actual Innocence"
 - a. "Applicant has maintained his innocence as there does not exist any Direct Evidence and the Circumstantial Evidence that were presented before a

Jury, could be clearly refuted and contradicted, such as the audio/video interview of the alleged victims, were the victims admitted to Law Enforcement that no one had assaulted them, proving the innocence of the Applicant."

Filing by and through counsel on May 24, 2018, Applicant amended his application to allege the following additional grounds for relief:

1. Ineffective assistance of counsel, in that:
 - a. "Counsel improperly introduced Applicant's prior charge for CSC.
 - b. "Counsel failed to properly object to hearsay."
 - c. "Counsel failed to object to testimony that victim was abused at Applicant's home."
 - d. "Counsel failed to object to improper vouching for witnesses by the State during closing arguments and inflammatory language calling Applicant a 'predator.'"

Filing by and through counsel on July 11, 2018, Applicant further amended his application to allege the following additional grounds for relief:

1. Ineffective assistance of counsel, in that:
 - a. "Applicant believes counsel failed to discharge his duty of due diligence and investigate the facts, witnesses, and evidence in the case."
 - b. "Applicant believes counsel failed to have a proper defense for physical evidence in the case."
 - c. "Applicant believes counsel failed to have a valid strategy for trial."
 - d. "Applicant believes counsel failed to challenge or move to quash the indictments before the jury was sworn; that the indictments were insufficient and the trial court lacked subject matter jurisdiction."
 - e. "Applicant believes counsel failed to obtain and show the jury recordings of the victims that provided voluntary statements indicating Petitioner's innocence."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the

legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). “Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Object to Prior Bad Acts and Improper Introduction by Counsel

Applicant alleges Counsel was ineffective in failing to object to the prosecution's efforts to introduce evidence of prior, unprosecuted allegations of child molestation, and was thereafter further ineffective by introducing the prior allegations himself. "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(b), SCRE; see also State v. Lyle, 125 S.C. 406, 118 S.E. 803, 807 (1923); State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). "In order to admit evidence of bad acts not resulting in conviction, the trial court must, as a threshold matter, determine whether the proffered evidence is relevant."

State v. Scott, 405 S.C. 489, 497, 748 S.E.2d 236, 241 (Ct. App. 2013) (quotations and formatting omitted). "If the trial judge finds evidence to be relevant, the judge must then determine whether the bad act evidence is admissible under the terms of Rule 404(b) to show, *inter alia*, the existence of a common scheme or plan." Id., 405 S.C. at 497-98, 748 S.E.2d at 241 (quoting State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009)) (formatting omitted). "If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it." Id., 405 S.C. at 498, 748 S.E.2d at 241 (citing State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (20007); Rule 403, SCRE). Nonetheless, as noted above, in a PCR action "when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith, 386 S.C. at 567, 689 S.E.2d at 632.

The parties took up the matter of Lyle evidence pre-trial. (Tr. 17-48). The State sought to introduce the testimony of a fourth victim, aged eight at the time of Applicant's trial, ("Minor") who in 2009 reported to his mother that he had been abused by Applicant. (Tr. 17, ll. 20-23). The matter was not then prosecuted because Minor was only three or four years old at the time. (Tr. 17-18). The trial court then heard Minor's testimony *in camera*, and Minor testified Applicant made him fellate Applicant while in a truck outside of a store. (Tr. 24-28). After Minor finished testifying, the State indicated that although Applicant was not convicted for the allegation, that the Family Court found it occurred by a preponderance of the evidence and had Applicant placed on the sex offender registry. (Tr. 30, ll. 13-21). The State argued Minor's abuse was part of a common scheme or plan and emphasized (a) the oral sex, (b) the extremely young age of the victims, (c) that all the victims were little boys, and (d) that Applicant was in a

position of some authority or control over each of the victims. (Tr. 31-32). Counsel, in reply, provided the trial court a memorandum in opposition to the evidence, argued Minor was not competent to testify, the Minor gave conflicting information during a contemporaneous forensic interview, the State hadn't proven the allegations by clear and convincing evidence, and that Minor's allegation was dissimilar from the charges under at least four of the five factors to weigh. (Tr. 33-41). The trial court found Minor competent, found Minor's testimony clear, concise, and convincing, agreed with the similarities advanced by the State, and granted the State's motion to permit the Lyle evidence. (Tr.46-48). The ruling was final, and later raised to the Court of Appeals, where it was affirmed.

During cross-examination of Investigator Jason Turner, of the Dillon County Police Department, Counsel himself raised the subject of the prior allegations, confronting Turner as to whether he told the forensic interviewer or Queena Murphy about the prior allegations. (Tr. 148-56). Counsel contended to Turner that bringing that information to the attention of the forensic interviewer and a victim's mother tainted their viewpoint and the investigation. (Tr. 150, ll. 6-14; Tr. 152, ll. 3-15; Tr. 154). Counsel maintained the argument through questioning throughout trial that the investigation was tainted from the outset by the prior allegation, and lambasted the investigation in his closing arguments.

At the evidentiary hearing, Applicant testified Counsel never discussed with him his intention to bring out the prior allegations. Applicant claimed he was greatly surprised during Turner's cross-examination when Counsel grilled the investigator on the subject. Counsel testified that since the Lyle evidence was coming in, and since the issue was preserved for appeal, he made the strategic decision to strike at a point of strength in the State's case against Applicant. Counsel explained he wanted to emphasize that Applicant was never charged after

the allegations by Minor. Counsel offered his theory of the case as to the Lyle evidence, as reflected in his questioning above summarized: the allegations were known in the community, led the children to making the allegations against Applicant, and tainted every part of the investigative process. Counsel noted that, but for the Court's final ruling to permit the Lyle evidence, he never would have mentioned the prior allegations, and had different strategies planned out depending on whether the Lyle evidence and whether the forensic interviews were admitted.

The Court finds Counsel's conduct on this issue neither deficient nor prejudicial to Applicant. First, Counsel very clearly and vociferously objected to the admission of the Lyle evidence, such that Applicant's allegation that he failed to do so is factually without merit. Second, Counsel articulated his reasoning for bringing up the Lyle evidence himself as a strategy of attempting to reframe harmful evidence into something potentially beneficial to Applicant; as such, this Court will not deem his conduct ineffective. Third, as the Lyle evidence firmly admitted by the trial court, and its admission has been confirmed as appropriate by the appellate courts, the Court is constrained to find any prejudice against Applicant—Counsel didn't bring it in and there does not appear to have been a means by which he could have kept it out. For all of these reasons, the Court finds Counsel very effectively dealt with the Lyle evidence, and Applicant's request for relief by way of this allegation is DENIED.

2. Failure to Object to Repetitive Questioning

Applicant alleges Counsel was ineffective in failing to object to repetitive questioning by the State of witnesses Valerie Williams and Gaye Allen Cook. At trial, Investigator Valerie Williams, of the South Carolina Attorney General's Office, testified that she met with the victims in preparation for trial, and that two of the victims disclosed abuse to her and one of the victims

did not so disclose. (Tr. 341-43). Gaye Allen Cook, a clinical child and family therapist in private practice in Florence, South Carolina, testified as an expert in child abuse assessment. (Tr. 363-87). Cook explained how extremely minor victims of sexual abuse can feed out details of their experiences over time, and reasons why they might give conflicting information about their experiences.

At the evidentiary hearing, Counsel explained that he did not object to questioning of Williams' interviews with the victims because the testimony included a nondisclosure by one of the witnesses, which Counsel prioritized. Counsel generally did not find the questioning by the State to be repetitive, but noted that it frequently could have appeared as much to Applicant and other lay observers because the State had to so narrowly and specifically question witnesses to avoid running afoul of hearsay restrictions.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. The Court agrees with Counsel's judgment of the questioning in that it was not repetitive, but merely seemed as much due to the nature of the questioning and number of witnesses. As such, objections on that basis would not have been appropriate. The Court recognizes Counsel's articulated strategic reasoning for permitting Williams to again report disclosures and nondisclosures by the victims, and therefore cannot find him ineffective in that regard. The Court also can find no evidence in the record to show how anything at trial would have changed had Counsel objected on this basis at any point. Accordingly, Applicant has failed to satisfy either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

3. Failure to Introduce Forensic Interview Video

Applicant alleges Counsel was ineffective in failing to introduce and display the video recordings of each victim's forensic interview. South Carolina law provides that in a criminal

proceeding, an out-of-court statement made by a child under the age of twelve is admissible if four requirements are met:

- (1) The statement was given in response to questioning conducted during an investigative interview of the child;
- (2) An audio and visual recording of the statement is preserved on film, videotape, or other electronic means, except [as otherwise provided];
- (3) The child testified at the proceeding and is subject to cross-examination on the elements of the offense and the making of the out-of-court statement; and
- (4) The court finds, in a hearing conducted outside the presence of the jury, that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness.

S.C. Code ann. 17-23-175(A); see also State v. Anderson, 413 S.C. 212, 776 S.E.2d 76 (2015)

(affirming constitutionality of statute permitting admission of tape).

At trial, after an aborted plea colloquy, Counsel and the prosecution informed the trial court that the parties had agreed to not introduce the videos of the forensic interviews, but rather the parties would question the forensic interviewer and the victims as to their involvement in the forensic interview. (Tr. 93-94). Accordingly, forensic interviewer Sally Williamson, of the Care House of the Pee Dee, testified to the disclosures and non-disclosures of the victims at length. (Tr. 304-36). During closing arguments, Counsel provocatively began to reference the existence of the forensic interview video, only to be promptly cut off by an objection from the State, after which the jury was sent to the back. (Tr. 423, ll. 10-25). Judge Burch expressed his *considerable* displeasure about the possibility of Counsel arguing the absence of the video after consenting to its exclusion, but concluded he had no means of enforcing the agreement within the confines of the trial. (Tr. 424, ll. 1-8). After extended dispute between the parties as to the contours of their agreement, Judge Burch indicated his intent to speak with the Chief Public Defender "about who gets appointed cases, conflict cases[,]” otherwise permitted the argument, and called the jury back in. (Tr. 425-28). Shortly after Counsel resumed his argument, the Court

interrupted and informed the jury that "[t]here was an agreement that [the videos] would not come in, and that's all I'm going to say." (Tr. 428, ll. 7-22). Counsel's objection to the interruption was overruled.

At the evidentiary hearing, Applicant attested he never saw the forensic interviews, but understood they included denials on the part of the victims. Applicant denied Counsel ever mentioned what his trial strategy was.

Counsel testified that his decision to agree to the exclusion of the forensic interview tapes was a strategic decision: Counsel believed examining the interviewer instead of admitting the tapes would permit him to get the victim's denials on the record without also admitting damning remarks and conduct captured on the videos. For example, Counsel reported that each of the victims mentioned being exposed to pornography, and each of the victims reported seeing other children be sexually battered. Counsel noted that though he could cross-examine the forensic interviewer, he could not cross-examine the interview itself. Counsel recalled talking to Applicant about the videos, reviewing their content with Applicant, and understood Applicant to have seen the videos, but could not specifically recall watching the videos with Applicant.¹ Counsel additionally recalled wishing to grill the prosecution for not bringing in the tapes and recalled the heated colloquy outside of the jury's presence with the solicitor and Judge Burch. Counsel noted that he successfully emphasized the prior denials by the victims through the testimony of the victims, the State's other witnesses, and through the forensic interviewer.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. Counsel articulated an extraordinarily well thought out strategic reason to favor the testimony of the forensic interviewer over admission of the forensic interview tapes. But for Counsel's strategic

¹ The videos were initially admitted as Applicant's Exhibit #1, but were stricken from the record at the end of the hearing by consent of the parties and stipulation to their contents.

approach, the forensic interview tapes, and the full extent of their damage, would have fallen upon Applicant. The Court will not disturb the valid tactical considerations of Counsel, and his reasoning articulated, cannot find him ineffective. See Smith, 386 S.C. at 567, 689 S.E.2d at 632. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

4. Failure to Object to Presentation of Pornographic Materials

Applicant alleges Counsel was ineffective in failing to object to the presentation of pornographic material. The Court will not belabor this allegation—no pornographic materials were presented at trial. Indeed, the lack of pornographic materials formed the basis of Counsel's motion for a directed verdict on the obscene dissemination indictment. (Tr. 389-95). Applicant has failed to meet his burden of proving either prong of Strickland by way of this allegation, and his request for relief thereto is **DENIED**.

5. Failure to Object to Hearsay – Minor 3's Report on Minor 2's Abuse

Applicant alleges Counsel was ineffective in failing to object to hearsay on the part of Minor 3 during his testimony that he heard about Minor 2's abuse. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter of asserted." Rule 801(c), SCRE; Thompson v. State, 423 S.C. 235, 240, 814 S.E.2d 487, 489-90 (2018). Hearsay is not admissible except where provided the South Carolina Rules of Evidence or by statute. Rule 802, SCRE.

At trial, the State examined Minor 3 as to whether he had ever seen Applicant's genitals, which, Minor 3 initially confirmed before shifting his testimony:

Q. Have you ever seen a grown ups private parts?

A. Yes.

Q. Whose private parts have you seen?

A. Sammy.

Q. Sammy's: When did you see Mr. Sammy's private parts?

A. Suck it – made [Minor 2] suck his wee wee.

Q. Did you see him make [Minor 2] suck his wee wee?

A. Yes, ma'am.

Q. Can you tell me about that?

A. It was when we were living in the other house. [Minor 2] came in and said that.

Q. Did you see it with your eyes? Yes. Where were you?

A. Home.

Q. You were at home. Where was [Minor 2] when that happened?

A. At his house.

Q. Whose house?

A. Sammy.

Q. So you didn't see it. Did you hear about it?

A. Um hum.

(Tr. 230, ll. 2-22). Counsel did not object.

At the evidentiary hearing, Applicant asserted all of the evidence against him was hearsay and entirely fabricated. Counsel conceded the testimony was hearsay, but noted that Minor 3's testimony backtracked on his prior assertion of having personally seen Applicant perform fellatio on Minor 2, which he deemed beneficial to Applicant, so he did not object. Counsel noted that he wanted denials and nondisclosures to come in to evidence, and as such granted some leeway to otherwise objectionable material with that goal in mind. Counsel explained his overarching strategy, after his unsuccessful effort to keep out the Lyle evidence, was to show and argue the victims' allegations and investigation were tainted by the commonly known prior allegations made against Applicant.

The Court finds no ineffectiveness on the part of Counsel. Counsel articulated a valid specific tactical decision as to the testimony at issue, finding the value of Minor 3's denials and recantation outweighed the cost of his hearsay testimony. Counsel additionally articulated a broader strategy in dealing with hearsay testimony aimed to maximize the jury's exposure to denials in exchange for permitting arguably objectionable testimony. Counsel further articulated an overarching theory of the case that the allegations against Applicant were not true, but the result of the children (and law enforcement) hearing talk of other allegations; Minor 3's testimony that he merely heard of abuse would go to support that theory. Each of these strategic explanations independently, let alone altogether, foreclose any finding of ineffectiveness. See Smith, 386 S.C. at 567, 689 S.E.2d at 632.- Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

6. Failure to Object to Hearsay – “Found out what happened”

Applicant alleges Counsel was ineffective in failing to object to alleged hearsay on the part of witness Hope Owens. At trial, Owens, mother to Minor 1, testified to his disclosure of abuse in Applicant's backyard, but explained she did not immediately go to law enforcement. (Tr. 241, ll. 10-25). The State asked Owens what prompted her to finally go to law enforcement, to which she replied: “I found out what happened to Quinae's two kids, [Minor 3] and [Minor 2].” (Tr. 242, ll. 1-4). Counsel did not object.

At the evidentiary hearing, Counsel explained he did not object because Owens did not state precisely what it was she found out about “what happened.” Counsel opined that without saying what it was she found out, Owens' testimony was therefore not hearsay.

The Court finds no deficiency on the part of Counsel, nor prejudice therefrom. The Court agrees with Counsel's read of the testimony—it asserts no truth and reports no out-of-court

statement, but rather vaguely refers to other allegations as the motivation for Owens' decision to report Minor 1's disclosure of abuse. It is, accordingly, not hearsay. Furthermore, the Court does not perceive a reasonable probability that the exclusion of this vague and fleeting testimony would have resulted in a different outcome. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

7. Failure to Object to Hearsay – "Mr. Sammy's House"

Applicant alleges Counsel was ineffective in failing to object to alleged instances of hearsay where witnesses, recalling disclosures of the time and place of abuse, indicated the children identified the location of abuse as "Mr. Sammy's House." A statement is not hearsay if:

The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident[.]

Rule 801(d)(1)(D), SCRE. The rule limits corroborating testimony to the time and place of the assault(s), and any other details or particulars, including the perpetrator's identity, must be excluded. Thompson v. State, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (citing Watson v. State, 370 S.C. 68, 71-72, 634 S.E.2d 642, 644 (2006)).

At trial, numerous witnesses testified to disclosures by the victims of sexual abuse, usually unclear on time, but consistent that the location of the abuse was "Mr. Sammy's house," "Mr. Sammy's backyard," "Mr. Sammy's barn," or some permutation thereof. (Tr. 123-24; Tr. 124-25; Tr. 128-29; Tr. 164, ll. 14-23; Tr. 241, ll. 10-17; Tr. 323, ll. 3-13; Tr. 341-42; Tr. 342-43). One witness, Natasha Funderburk, recalled her child disclosed abuse occurring in "Uncle Sammy's truck." (Tr. 280, ll. 13-23).

At the evidentiary hearing, as previously noted, Applicant asserted all of the evidence against him was hearsay and entirely fabricated. Counsel testified that the "place" testimony could not be presented more narrowly than "Mr. Sammy's house," and that he did not object to the limited testimony. On cross-examination, Counsel explained Applicant had an open, friendly, and welcoming home. Counsel agreed that "Mr. Sammy's house" was not tantamount to "Mr. Sammy" and that although the location was identified as Applicant's home, it was possible somebody else could have abused the children at that location.

The Court finds no deficiency on the part of Counsel. As indicated by Counsel, corroborative testimony to the location of abuse could not reasonably be more limited. The identity of the owner of the location where abuse occurs is not tantamount to identity of the perpetrator. Importantly, this case pertains to the disclosures of abuse made by extremely minor children, whose conceptions of the surrounding world are still developing. It would be entirely unreasonable, and all but eliminate the applicability of Rule 801(d)(1)(D), to hold a child's disclosure of location must invariably be excluded where the child could only associate the location of abuse with the person in dominion and control of that location, where said person is the alleged perpetrator. Put another way, one cannot expect a three or four year old to disclose the location of their abuse in a particular, narrow form, such as an address or GPS coordinate. Accordingly, Applicant has not met his burden of showing a deficiency on the part of Counsel, and his request for relief by way of this allegation is **DENIED**.

8. Failure to Object to State's Closing Argument – "Predator"

Applicant alleges Counsel was ineffective in failing to object to the State's description of him as a "predator" in its closing argument. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Brown v. State, 383 S.C. 506,

515, 680 S.E.2d 909, 914 (2009) (quoting Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). “The argument must not be calculated to arouse the jurors’ passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” *Id.* (quoting Von Dohlen, 360 S.C. at 609-10, 602 S.E.2d at 744). However, a solicitor should prosecute vigorously, and the argument must be reviewed in the context of the entire record. State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). “The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Id.* (citing Donnelly v. DeChristoforo, 416 U.S. 637 (1974)).

At trial, the State invoked the term “predator” in bookends to its opening statement. (Tr. 110, ll. 17-21; Tr. 115, ll. 2-7). The State again turned to the term in to begin its closing argument, defining it in the context of the case:

The word predator is defined as one who preys, destroys or [devours]. For [Minor 2], [Minor 3], and [Minor 1], Sammy Scarborough wasn’t just a neighbor. He was a predator. He preyed on these little children. He destroyed their chance at a normal life, and he devoured their innocence.

The evidence, the true, tough, raw evidence that you heard from that witness stand screamed that Sammy Scarborough is a predator.

(Tr. 402-03). The State described Applicant as a predator once more in the midst of its closing argument, and substantially repeated the start of its closing argument at the end. (Tr. 410, ll. 20-22; Tr. 420, ll. 4-8). The State described Applicant as a predator one final time during sentencing, in arguing the court should sentence Applicant to life in prison. (Tr. 474, ll. 18-22).

At the evidentiary hearing, Counsel expressed his opinion that the use of the word “predator” was not objectionable. Counsel testified the word described the nature and circumstances of the conduct alleged.

The Court finds no deficiency on the part of Counsel. The Court agrees that the term "predator," if it is suitable for use in any argument in any case, is suitable here. The State's use of it was powerful, impassioned, compelling, and entirely supported by the facts in the record. The rules which define the limits of appropriate argument do not foreclose aggressive and rhetorically potent argument, but rather are intended to ensure arguments do not unfairly go beyond the trial record, or otherwise call on the jury to perform some duty other than impose justice on a defendant based on the evidence appropriately admitted through the trial process. See, e.g. State v. Rice, 375 S.C. 302, 335-36, 652 S.E.2d 409, 426 (Ct. App. 2007) (overturned on other grounds by State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011)) (affirming argument that asked jury to give the victim's wife peace and the victim justice); Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010) (reversing imposition of death sentence where solicitor described a Muslim defendant as a "domestic terrorist" and referred to the September 11th attacks was without support in a case that had nothing to do with terrorism); Brown, *supra* (finding defense counsel should have objected to solicitor's argument calling upon jury to "speak up" for the child victim, but finding no prejudice). The State is entitled to argue in favor of guilt, and to condemn contemptible conduct. As such, there was no basis for Counsel to object, Applicant cannot meet his burden of showing deficiency on the part of counsel, and his request for relief by way of this allegation is **DENIED**.

9. Failure to Object to State's Closing Argument – Vouching

Applicant alleges Counsel was ineffective in failing to object to alleged vouching in the State's closing argument. "Generally, the assessment of witness credibility is within the exclusive province of the jury." Tappeiner v. State, 416 S.C. 239, 250, 785 S.E.2d 471, 476 (2016) (quoting State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012)).

Thus, solicitors may not make explicit personal assurances or indicate there is information not presented which supports the testimony, i.e. vouch, as doing so improperly invades the province of the jury and places the government's prestige behind the witness. Id., 416 S.C. at 250, 785 S.E.2d at 477 (citing Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004)); Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002)). "Thus, solicitors must confine their closing remarks to the record and the reasonable inferences that may be drawn therefrom." Id. (citing Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)).

At trial, near the end of the State's closing argument, the solicitor asserted: "Let's be real. Five, six, seven and eight year olds don't make this stuff up. They just don't." (Tr. 420, ll. 2-4). Counsel did not object. At the evidentiary hearing, Counsel testified he did not view the argument as vouching, but rather an argument that the young age of the victims meant there must be some basis or source for their claims.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. Counsel is correct in his determination that the argument did not constitute vouching. Prohibitions against vouching in closing argument do not foreclose any arguments for or against the credibility of witnesses. The remark offered no explicit personal assurance, or information beyond the record, but reasonably argued from the age of the victims that the victims should be afforded credibility. As such, there was no basis for objection. Even if the remark was objectionable, the single line at the end of closing argument does not give this Court cause to believe there is a reasonable probability that if the remark were excluded the outcome of trial would have been different. Accordingly, Applicant has failed to meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

10. Failure to Investigate

Applicant alleges Counsel was ineffective in failing to adequately investigate the facts, witnesses, and evidence in this case. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

The Court will not belabor this allegation—Applicant did not present what, if anything, Counsel would have discovered had he more thoroughly investigated the case. To the contrary, review of the complete trial record reveals Counsel developed theories of 3rd party guilt based on prior allegations against another individual in the neighborhood by the name of Stefan, and impeached witness Natasha Funderburk with her own prior claims of abuse which went unprosecuted, tactics which could have only been developed upon considerable independent investigation. Furthermore, Counsel testified briefly to his investigation of the above, and to his investigation of the scene of the crime. For all of these reasons, the Court finds no deficiency on the part of counsel, nor prejudice therefrom, and Applicant's request for relief by way of this allegation is **DENIED**.

11. Failure to Prepare Defense for Physical Evidence

Applicant alleges Counsel was ineffective in failing to have a proper defense for the physical evidence in the case. The Court will not belabor this allegation—a complete review of the trial record reveals there was no physical evidence in the case, as is unfortunately often the case in CSC minor trials. Accordingly, Applicant cannot meet his burden as to either prong of Strickland by way of this allegation, and his request for relief thereby is **DENIED**.

12. Failure to Prepare Strategy for Trial

Applicant alleges Counsel was ineffective in failing to prepare a valid strategy for trial. Applicant claimed at the evidentiary hearing that Counsel never mentioned to him a trial strategy. Applicant did not offer what strategy Counsel should have taken, other than his insistence that Counsel should have introduced the forensic interview videos, previously addressed. Counsel testified he had a long talk with Applicant about the strategies they would pursue at trial, and described a three-goal approach: (1) keep out the Lyle evidence, (2) keep out the forensic interview videos, and (3) get as many of the victims' denials and nondisclosures into evidence as possible. Counsel also articulated an overarching theory of the case, previously noted—the children and law enforcement were tainted by the prior allegations against Applicant. Counsel asserted he enjoyed enough time to adequately prepare for trial.

This Court closely observed each of the witnesses, and has considered their testimony in light of the entire record. The Court affords great credibility to Counsel's testimony and affords no credibility to Applicant. The trial record reflects the strategy Counsel presented at the evidentiary hearing and reflects thorough preparation and strategic consideration. Applicant's allegation is entirely without merit, meets neither prong of Strickland, and his request for relief thereto is **DENIED**.

13. Failure to Quash Indictments for Lack of Subject-Matter Jurisdiction

Applicant alleges Counsel was ineffective for failing to quash the indictments against him for want of subject-matter jurisdiction. The Court will not belabor this ground—Applicant's allegation is without merit. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). As such, Applicant's request for relief by way of this allegation is **DENIED**.

B. Actual Innocence

Applicant alleges he is actually innocent, and that the evidence against him was clearly refuted at trial. Claims by an Applicant that he or she is actually innocent, is not guilty, or that the evidence against him or her was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act); Dickson v. State, 247 S.C. 153, 156, 146 S.E.2d 257, 258 (1966) ("The allegation that petitioner is not guilty does not raise a matter for consideration by habeas corpus."). Accordingly, Applicant's request for relief on grounds that he is actually innocent is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

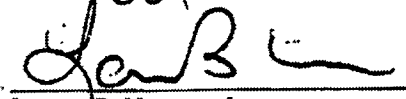
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 1 day of Oct, 2018.


 LARRY B. HYMAN, JR.
 Presiding Judge
 Fourth Judicial Circuit

Coway, South Carolina

WITNESSES

Sgt. Turner

Dillon Police Department

Law Enforcement Case #: 2012-05352

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J009956

ARRESTED ON: 2013-03-27

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Guilty

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-17-0290

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
June 2013

THE STATE

vs.

Sammy Lee Scarborough

INDICTMENT FOR

Sex / Criminal sexual conduct with minor -
victim under 11 years of age

§16-03-0655(1)

CDR Code: 0385

William B. Rogers, Jr., Solicitor

WITNESSES

Sgt. Turner

Dillon Police Department

Law Enforcement Case #: 2012-05352

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J009957

ARRESTED ON: 2013-03-27

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Guilty

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-17-0291

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
June 2013

THE STATE

vs.

Sammy Lee Scarborough

INDICTMENT FOR

Obscene / Dissemination, procuring or promoting obscenity unlawful

§16-15-0305; 16-15-0305(H)

CDR Code: 0372

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

INDICTMENT FOR

Obscene / Dissemination, procuring or promoting
obscenity unlawful

§16-15-0305; 16-15-0305(H)

At a Court of General Sessions, convened on June 20, 2013, the Grand Jurors of Dillon
County present upon their oath:

DISSEMINATING HARMFUL MATERIAL TO MINORS

CDR: 0372 16-15-0305; 16-15-0305(H)

That Sammy Lee Scarborough did in Dillon County on or about November 1, 2011 through May 25, 2012, knowing
the character or content of the material, sell, furnish, present or distribute to a minor, Minor 3 material that is
harmful to minors, or that the defendant did allow the minor to review or peruse material that is harmful to minors,
in violation of Section 16-15-0305; 16-15-0385(H), S. C. Code of Laws, 1976, as amended.

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


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Sgt. Turner

Dillon Police Department

Law Enforcement Case #: 2012-05316

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J009952

ARRESTED ON: 2013-03-27

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Guilty

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-17-0292

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
June 2013

THE STATE

vs.

Sammy Lee Scarborough

INDICTMENT FOR

Sex / Criminal sexual conduct with minor -
victim under 11 years of age

§16-03-0655(1)

CDR Code: 0385

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

INDICTMENT FOR

Sex / Criminal sexual conduct with minor - victim
under 11 years of age

§16-03-0655(1)

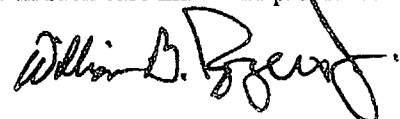
At a Court of General Sessions, convened on June 20, 2013, the Grand Jurors of Dillon County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Sammy Lee Scarborough did in Dillon County, State of South Carolina, on or about January 1, 2010 through May 25, 2012, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: **Minor 1** whose date of birth is **██████████**, in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Sgt. Turner

Dillon Police Department

Law Enforcement Case #: 2012-05316

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J009953

ARRESTED ON: 2013-03-27

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Guilty

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-17-0293

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
June 2013

THE STATE

vs.

Sammy Lee Scarborough

INDICTMENT FOR

Obscene / Dissemination, procuring or promoting obscenity unlawful

§16-15-0305; 16-15-0305(H)

CDR Code: 0372

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	
COUNTY OF DILLON)	Obscene / Dissemination, procuring or promoting obscenity unlawful

§16-15-0305; 16-15-0305(H)

At a Court of General Sessions, convened on June 20, 2013, the Grand Jurors of Dillon County present upon their oath:

DISSEMINATING HARMFUL MATERIAL TO MINORS

CDR: 0372 16-15-0305; 16-15-0305(H)

That Sammy Lee Scarborough did in Dillon County on or about January 1, 2010 through May 25, 2012, knowing the character or content of the material, sell, furnish, present or distribute to a minor, **Minor 1**, material that is harmful to minors, or that the defendant did allow the minor to review or peruse material that is harmful to minors, in violation of Section 16-15-0305; 16-15-0305(H), S. C. Code of Laws, 1976, as amended.

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


 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Sgt. Turner

Dillon Police Department

Law Enforcement Case #: 2012-05316

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J009955

ARRESTED ON: 2013-03-27

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Guilty

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-17-0294

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
June 2013

THE STATE

vs.

Sammy Lee Scarborough

INDICTMENT FOR

Obscene / Dissemination, procuring or promoting obscenity unlawful

§16-15-0305; 16-15-0305(H)

CDR Code: 0372

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	
COUNTY OF DILLON)	Obscene / Dissemination, procuring or promoting obscenity unlawful

§16-15-0305; 16-15-0305(H)

At a Court of General Sessions, convened on June 20, 2013, the Grand Jurors of Dillon County present upon their oath:

DISSEMINATING HARMFUL MATERIAL TO MINORS

CDR: 0372 16-15-0305; 16-15-0305(H)

That Sammy Lee Scarborough did in Dillon County on or about January 1, 2010 through May 25, 2012, knowing the character or content of the material, sell, furnish, present or distribute to a minor, **Minor 2** material that is harmful to minors, or that the defendant did allow the minor to review or peruse material that is harmful to minors, in violation of Section 16-15-0305; 16-15-0305(H), S. C. Code of Laws, 1976, as amended.

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



 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Sgt. Turner

Dillon Police Department

Law Enforcement Case #:

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DIL0637

ARRESTED ON: 2013-03-27

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-17-0710

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
October 2013

THE STATE

vs.

Sammy Lee Scarborough

INDICTMENT FOR

Sex / Engaging child under 18 for sexual performance

§16-03-0810

CDR Code: 0399

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)	INDICTMENT FOR
)	
COUNTY OF DILLON)	Sex / Criminal sexual conduct with minor - victim under 11 years of age

§16-03-0655(1)

At a Court of General Sessions, convened on June 20, 2013, the Grand Jurors of Dillon County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

CDR: 0385 16-03-0655(A)(1)

That Sammy Lee Scarborough did in Dillon County, State of South Carolina, on or about January 1, 2010 through May 25, 2012, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: **Minor 2** whose date of birth is [REDACTED], in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

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


 WILLIAM B. ROGERS, JR.
 SOLICITOR

WITNESSES

Sgt. Turner

Dillon Police Department

Law Enforcement Case #: 2012-05316

085

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J009954

ARRESTED ON: 2013-03-27

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Pettit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-17-0328

The State of South Carolina

County of Dillon

COURT OF GENERAL SESSIONS

Term:
June 2013

THE STATE

vs.

Sammy Lee Scarborough

INDICTMENT FOR

Sex / Criminal sexual conduct with minor -
victim under 11 years of age

§16-03-0655(1)

CDR Code: 0385

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

INDICTMENT FOR

Sex / Engaging child under 18 for sexual performance

§16-03-0810

At a Court of General Sessions, convened on October 24, 2013, the Grand Jurors of Dillon County present upon their oath:

SEX/ ENGAGING CHILD UNDER 18 FOR SEXUAL PERFORMANCE

CDR: 0399 16-03-0810

That Sammy Lee Scarborough did in Dillon County during the period of November 1, 2011 and May 25, 2012, unlawfully employ, authorize, and/or induce a child younger than eighteen years of age to engage in a sexual performance, to wit: **Minor 1** (DOB [REDACTED]), and/or **Minor 2** (DOB [REDACTED]), and/or **Minor 3** (DOB [REDACTED]) were directed by Sammy Lee Scarborough to participate in actual or simulated sexual intercourse, and/or masturbation, and/or lewd exhibition of the genitals, in violation of Section 16-03-0810, THE 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.


WILLIAM B. ROGERS, JR.
SOLICITOR