

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN ADAMS,

APPELLANT

RECEIVED

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SC Court of Appeals

APPELLATE CASE NO 2017-001018

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS FROM THE TRIAL HEARING DATED SEPTEMBER
19-21, 2017, ARE ON FILE WITH THIS COURT:**

**STATE’S EXHIBITS #1-2 (VIDEO INTERVIEWS); DEFENDANT’S EXHIBITS #10-13
(PHOTOGRAPHS)**

**THE FOLLOWING EXHIBITS FROM THE POST-TRIAL HEARING DATED MARCH
30, 2017, ARE ON FILE WITH THIS COURT:**

COURT’S EXHIBIT #5 (THUMB DRIVE)

Court should deny Defense Counsel's Motion for a New Trial Based upon Newly Discovered Evidence.

CONCLUSION

Thus, this Court should deny the Defense Motion for a New Trial Based upon Newly Discovered Evidence of Misconduct by A Prosecution Witness.

RESPECTFULLY SUBMITTED BY:



Alex Joseph
Assistant Solicitor
Fourteenth Judicial Circuit

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State of South Carolina)
County of Beaufort) In the Court
Of General Sessions

Indictment No.: 2014-GS-07-00021

State of South Carolina,)
Plaintiff.)
vs.) Transcript of Record
Justin Adams,)
Defendant.)

March 30, 2017
Beaufort, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge.

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

Alexandra Morgan Joseph, Assistant Solicitor
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Brenda J. Sigwald, Circuit Court Reporter
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1 **MOTION TO COMPEL and MOTION FOR NEW TRIAL**

2 MS. JOSEPH: This is defendant's motion, Your
3 Honor; however, I can just style it for the record.

4 This is the State of South Carolina versus Justin
5 Adams. It was Indictment 2014-GS-07-00021.

6 Your Honor, if you remember, sentenced Mr. Adams in
7 September and this is a motion for new trial based upon
8 newly discovered evidence of misconduct by a prosecution
9 witness. Again, this is Mr. Brown, defense attorney's
10 motion.

11 THE COURT: Mr. Brown.

12 MR. BROWN: May it please the Court?

13 THE COURT: Sure.

14 MR. BROWN: And I will be lighthearted and say I'll
15 be short.

16 So I have submitted some things, one of which is a
17 motion to compel. I did just want to put that up there
18 first. After this, or after the trial ended, I received
19 information that a State's witness had been listening at
20 the door during the trial, so we subpoenaed the
21 surveillance video, which is my understanding property of
22 the clerk but maintained by the sheriff, but managed by the
23 County MIS. So I say all that because we served subpoena
24 on the clerk's office and we served a subpoena on the
25 sheriff's department for the record because MIS just claims.

1 that they're the guys that just go service everything.

2 Well, we subpoenaed all of the footage for those
3 two days and the subpoenas are actually attached to the
4 back of the motion to compel, which is marked as Court's
5 Exhibit 1 in the materials and -- short version, somebody
6 called and said, Well, what timeframe are you looking for
7 and we gave them the timeframe we were looking for, which
8 is essentially between 1100 and 1200 hours in Military
9 time, on September 21st, which was that Wednesday, the
10 second day of trial. The jury selection was the first
11 day -- excuse me, Monday, so the trial was on Tuesday and
12 Wednesday.

13 And long story short, we got, for purposes of the
14 motion to compel, we got back a thumb drive that had the
15 two days worth of video, but conspicuously missing that
16 portion. And when I say missing that portion, I learned
17 about that misconduct because my paralegal, Janet O'Brian
18 who's here today told me.

19 Now that misconduct occurred right as we were doing
20 our --

21 MS. JOSEPH: Your Honor, if I could just object.
22 I'm not amenable to this. This is not -- the State does
23 not feel like it is our place to really respond to this
24 motion. We are not in possession of these tapes; however,
25 him characterizing it as misconduct is not appropriate.

1 For the record.

2 MR. BROWN: I'm just trying -- this is only dealing
3 with that portion of the video I don't have, so I don't
4 mind calling it -- the prosecution witness's behavior was
5 brought to my attention --

6 THE COURT: Okay.

7 MR. BROWN: However it's going to be characterized
8 by my paralegal.

9 Now at that point in time, we were in closing. I
10 didn't learn about it until after closing arguments were
11 done, when she told me. And the reason it's important is
12 my paralegal on that time, being the 21st between 1100 and
13 1200 hours, she caught Ms. Jones outside listening at the
14 door. She's not the only one because there was a sheriff's
15 department employee, Sancousky (phonetic), who is actually
16 in the courtroom as well, and my understanding is that he
17 also caught her at the door and chastised her, et cetera,
18 on that.

19 That's how I learned about it. The recording I
20 got, a copy of which has already been entered in the
21 clerk's office and another copy which is marked as, my
22 understanding is Court's Exhibit 5 for purposes of today's
23 hearing and before Your Honor. Conspicuously, it shows my
24 paralegal walking up and then it switches to a segment
25 where my paralegal is walking out of the courtroom. And

1 none of that conduct in that intervening time period is
2 captured. And I filed this motion because the response
3 from the County is that, well, Hey, it's motion activated.

4 But what we know is this, we know that the
5 sheriff's department employee has told me that that
6 happened, or has mentioned that. My paralegal's mentioned
7 it and none of that is on the one we have.

8 Now, that's just on my motion to compel because we
9 have yet to retrieve that missing segment, which
10 coincidentally is the only one I actually verbally asked
11 for. Now, the subpoena asked for two days worth and
12 luckily for Mr. Adams, we didn't mention the other times,
13 because we get four other times of misconduct -- or excuse
14 me, of behavior by the prosecutor's witness that's at issue
15 in this motion. And I didn't know about those times, so I
16 didn't tell anybody I was looking for those times, which is
17 good because we actually got that conduct captured on video
18 on Court's 5.

19 So you may want to hold it for later. We notified
20 the County attorney. They are not here. They've known
21 about this. We wrote them several weeks ago when we had
22 this put on the docket to remind them of it. I don't have
23 access to their server. I did ask them a long time ago to
24 preserve the actual server for analysis down the road,
25 whether it's here or at the PCR. But it's just ironic that

1 the one clip I asked for is the one I don't have. Now,
2 that's for the motion to compel. And, again, I agree, the
3 State doesn't have anything to do with this.

4 THE COURT: Help me understand something.

5 MR. BROWN: Yes, sir.

6 THE COURT: When you say you don't have a clip, you
7 mean a section of --

8 MR. BROWN: Yes, sir.

9 THE COURT: -- of a frame is missing.

10 MR. BROWN: Yes, sir. That's the timeframe we were
11 originally looking for.

12 THE COURT: They complied -- see if I've got this
13 right.

14 MR. BROWN: Yes, sir.

15 THE COURT: They comply with the subpoena, it
16 just --

17 MR. BROWN: Yes, sir, the clip we were looking for
18 is missing.

19 THE COURT: It's missing?

20 MR. BROWN: Yes, sir.

21 THE COURT: And so I assume -- if they were here, I
22 assume they would say, we gave you what we had.

23 MR. BROWN: And I'm going to -- that's what they
24 have been saying, yes, sir.

25 THE COURT: Okay.

1 MR. BROWN: And I can take it at face value, but I
2 think, given my client got a -- with no prior record -- got
3 a real sentence of 30 years for a real crime. And out of
4 an abundance of caution, the State comes back around, like
5 they do on these kind of sentences --

6 THE COURT: Let me ask you this.

7 MR. BROWN: Yes, sir.

8 THE COURT: Specifically what are you asking the
9 Court to do?

10 MR. BROWN: Well, I was hoping because I can't get
11 anybody under oath to say that they actually downloaded the
12 entire thing. I don't even -- MIS would not even give me
13 the name of the person who retrieved the clips.

14 MS. JOSEPH: Your Honor, I suggest that we go
15 forward with the second part of the hearing because I
16 believe Ms. Jones's testimony may provide the coverage that
17 Mr. Brown is looking for.

18 THE COURT: I agree.

19 MR. BROWN: And I'm not going to disagree. I just
20 want to preserve that.

21 THE COURT: Let's move to --

22 MR. BROWN: I wouldn't have done it if I would have
23 asked -- early asked for that one time period, it wouldn't
24 have bothered me so much.

25 THE COURT: Okay.

1 MR. BROWN: But it does beg the question why it
2 shows -- the motion activated shows my paralegal walk up
3 and walk out, but it doesn't show the 20 something minutes
4 in between.

5 Now, for the motion for a new trial based on the
6 misconduct, I don't have access to the transcript, but
7 there was a sequestration order that was entered; and I say
8 that, I don't think that that's in dispute.

9 MS. JOSEPH: It's not in dispute. There was a
10 sequestration order in this case.

11 MR. BROWN: And I would suggest, and I've attached
12 black and white copies to the motion for a new trial; and
13 as I was reflecting, I later went back and put color copies
14 and Your Honor has color copies and I provided color copies
15 to everyone else. I can't help but think there are some
16 judges that would be pretty upset if they saw the witness
17 actually lying on the floor outside with their ear up to
18 the door. There's no way that's in compliance of the
19 sequestration order.

20 MS. JOSEPH: I'm not in charge of Mr. Brown, so --

21 MR. BROWN: And so for purposes of this motion and
22 efficiency, I'm going to go ahead and suggest that we're
23 not in a factual dispute about the witness's conduct. We
24 already know there's a sequestration order.

25 MS. JOSEPH: I agree, Your Honor, we're not.

1 MR. BROWN: Now, assuming that the Court would find
2 that to violate the order, I think we then get to a
3 question of what relief might be available to my client
4 because certainly misconduct by a witness constitutes some
5 type of contempt or some other matter or ruling from the
6 Court because it's actually not my client that would be
7 directed to falling under the Court's matter about a
8 witness in violation of the order.

9 So whether or not there's a contempt proceeding
10 against Tabatha Jones would be something that my client
11 would not have direct interest in. However, because the
12 misconduct relates to a prohibition on his case, I believe
13 that then we have to look at how bad this misconduct was
14 and what the prejudice to my client would be. And I say
15 that because it's hard to do a prejudice analysis on
16 something we don't know everything about.

17 But here's what I do know and it's -- the record
18 will bear it out that I'd like to just tell the Court, for
19 what it's worth, there are four clips that I copied. They
20 have the time on them. For purposes of this hearing, I
21 believe those times to be accurate, the time and dates are
22 accurate, Your Honor. And those four are just segments
23 because the clips last a few minutes. But long story
24 short, at the first clip which we've got, which -- and they
25 may be out of order, but the first clip I got -- well,

1 there's a series of photos here, a 1433, a 1437, 1438,
2 1444, and that's actually one of the incidents, but -- so I
3 can get back out, there are four incidents that are timed
4 in my motion and they occur at -- and this is on page 2 of
5 the motion, which is marked as Court's Exhibit 2 up there,
6 the first one was 11:01 to 11:06; the second 12:11 to
7 12:24; the third is 1433 to 1438 and then a fourth is 1443
8 to 1447.

9 Now, the first violation, come one that occurs at
10 1101 to 1106, that listening at the door occurs during the
11 testimony of Ms. Jones's mother. And if you're -- if you
12 will recall, the mother testified to statements and was
13 allowed to some substance of some statement is that she
14 heard from the minor child at question in this case. And
15 so during the child's grandmother's testimony, the child's
16 mother's listening at the door. And again, that's on the
17 video that we've submitted on that thumb drive.

18 And so she's privy to the testimony regarding the
19 child's complaint and that was obviously our defense, Your
20 Honor, was that there were inconsistencies with the reports
21 and statements throughout; and that there had been some
22 coercion, manipulation and suggestibility. And so that was
23 sort of the theme that ran through this whole thing and so
24 the idea that we have one witness listening to another
25 witness that she's prohibited to be listening to, Your

1 Honor, and this witness was the second witness, Ms. Brian
2 if you'll remember. This was before Ms. Jones testified
3 she's listening to her mother's testimony.

4 Then the next clip, which is the 1211 to 1224 clip
5 depicts Ms. Jones listening at the door during Detective
6 Backawhitz (phonetic) testimony. And then they break for
7 lunch.

8 And on that video, the breaking at lunch occurs
9 about 1307 and the minor child leaves with Ms. Jones, the
10 witness who's been listening at the door through two prior
11 witnesses' testimonies. And then Officer Backawhitz was
12 allowed to testify about statements the child immediate
13 through his introduction of a video interview of him. So
14 again, what we've got, is we've got two witnesses are
15 talking about prior statements of the minor child. We have
16 another witness who has not testified, who is listening in
17 to their testimony and then at lunch, she's going with the
18 minor child.

19 Then after lunch, we have listening in that occurs
20 at 1433 to 1438. And at 1443 to 1447 and that is during
21 testimony of the minor child, but again, you've got mother
22 listening up at the door and then we subsequently have
23 testimony from the mother. So she's now got -- she's privy
24 to everybody else's story.

25 And, Your Honor, that's what -- that's how we tie

1 this in.

2 Now, what could have happened if I'd have known
3 about it? Well, I would have asked Your Honor to strike
4 her testimony or to bar her from testifying. And I do
5 think she was a powerful witness in the sense that she
6 offered, I guess, a way of kind of filling in the blanks
7 between what was told to the grandmother and what the child
8 himself was able to say.

9 But I also would ask at least for some type of way
10 to tell the jury about that because that is evidence of the
11 very thing that I suggested was occurring in the case; that
12 there had been manipulation, coercion through the
13 suggestibility of the child and I would like to have told
14 the jury that.

15 And so, Your Honor, at this point in time, I think
16 the only time we can do is ask for a new trial. I don't
17 think that you have the power to do anything else as far as
18 relief to my client. Because there's no more evidence that
19 can be submitted, and I can't make an argument to the jury,
20 and you can't go back and strike her testimony because the
21 verdict's already come in.

22 So we would ask for a new trial. And I'm going to
23 keep it short. I am going to reference two affidavits that
24 were originally introduced for a different -- for a new
25 trial; and one's the affidavit of my client, Justin Adams

1 and the other is an affidavit of a juror.

2 Now, the pertinent part of these is that both of
3 those affidavits talking other testimony of Ms. Jones that
4 is at issue regarding the limitation on impeachment or
5 limitation of specific instances or prove a specific -- of
6 an untruthfulness on the stand, I guess.

7 And if Your Honor will recall, there was a question
8 that was asked about whether or not she'd had any contact
9 with Mr. Adams and she says only for diapers and we had
10 submitted some photos, Your Honor, to show that they had
11 had some social time together, like a birthday party for
12 the child, et cetera, that were not just for diapers.

13 Now, I bring these affidavits in here because --
14 especially the juror's affidavit. She mentioned that if
15 she'd have known that the witness, Ms. Jones, would have
16 misrepresented that information about meeting only for
17 diapers, if she'd found out that was a lie, she said she
18 would have held out for a not guilty.

19 And I bring that in here because I would suggest,
20 likewise, if the jury had known of this, we would -- we may
21 well be in the same situation. And that's why I put those
22 affidavits. They're not directly related to this, but I do
23 think it shows that the jurors did -- well, A, it's our
24 understanding that she was misrepresenting the truth,
25 Ms. Jones was. And the jurors affidavit indicates that

1 they did put some weight into the credibility of Ms. Jones.
2 And I believe listening at the door would have undermined
3 any credibility that the jury would have had in that.

4 And, Your Honor, that's what I've got. I don't
5 have anything else to argue. I have case law, each case is
6 unique on their facts and quite frankly -- the last thing
7 that I would say, I did isolate those segments. Those
8 segments of time are broken down on that video player. I
9 would suggest -- and I'm going to put it on the record
10 because it's always hard to go through it, you actually,
11 when you click on that, you have to pull up this -- it's
12 called a video reviewer --

13 MS. JOSEPH: Player.

14 MR. BROWN: -- and when you pull up -- there's a
15 special one that has a pull up and then when you pull that
16 up, you have to hit audio player on the little drive and it
17 will pull up a split screen and then you have to go click
18 on the actual file folder and then it breaks down every
19 motion activated clip. And they actually are on there by
20 date and time, very organized, but they're running out of
21 numbers, so it would be like 201609201101 and however many
22 seconds and then it will say space and have 201670920 -- so
23 once you figure it out, it's very easy to go to those four
24 clips and play them. They're not very long, but you do
25 have to kind of decipher that chain of numbers because it

1 does have all of the correct -- it looks like it's correct
2 in dated times according to my trial notes, when we break
3 for lunch and things like that.

4 So I would just suggest that if Your Honor at the
5 right time would like to take a look at that and again,
6 that's number -- the video thumb drive is Number 5. I
7 believe the affidavits are Court's 3 and 4, Your Honor.

8 And nothing further from Mr. Adams.

9 THE COURT: Okay. From the State?

10 MS. JOSEPH: Thank you, may it please the Court.
11 The first thing I'd like to point out is that under the
12 South Carolina Victim's Bill of Rights, Tabatha Jones is
13 the mother of the victim in the case has the absolute right
14 to be in the courtroom during the entirety of the trial.

15 Honestly, I think I could sit down after that, but
16 I'm not going to.

17 Second of all, Mr. Brown argues that Tabatha
18 Jones's behavior, if presented to the jury
19 contemporaneously with when it occurred, so if he'd been
20 allowed to present to the jury the fact that she was
21 listening through the door, would have cast doubts or
22 aspersions on her credibility. I have two sub points to
23 that.

24 First, I do not think that Tabatha Jones listening
25 through the door is a sign that she is not credible. I

1 think it's evidence of the fact that she can't follow the
2 rules, evidence perhaps that she cares too much about her
3 child and the outcome of the case. I don't think it shows
4 a deceitful behavior. She's clearly listening out in the
5 open, people are walking by. She's, you know, doing it out
6 in the opening. It's not like she's got a walkie talkie
7 system set up, Your Honor.

8 If, however, Your Honor finds that it does, in
9 fact, go to credibility, I would argue that there was no
10 prejudice done to the defendant in this case because
11 Mr. Brown was fully able to argue credibility and in fact
12 did so throughout the trial. And so that issue was, in
13 fact, presented in full to the jury.

14 Finally, Your Honor, we have not heard from
15 Ms. Jones during this proceeding. She is here and if Your
16 Honor would allow, I would like to ask her some brief
17 questions.

18 MR. BROWN: Without opposition, because actually I
19 subpoenaed her here in case there was a question for her.
20 I did it out of an abundance of caution because I hate to
21 have a hearing four month's later when Your Honor came back
22 to town and she not be here, so I did bring her here under
23 my subpoena.

24 THE COURT: All right. If you wish to call her.

25 MS. JOSEPH: Thank you.

Tabatha Jones - Examination by Ms. Joseph

1 Ms. Jones, if you would take the stand briefly.

2 TABATHA JONES,

3 having been duly sworn, testified as follows:

4 THE CLERK: Have a seat right up here and pull the
5 mic close to you. Thank you.

6 EXAMINATION

7 BY MS. JOSEPH:

8 Q Hi, Ms. Jones. You are the mother of [Minor

9 [redacted]; is that correct?

10 A Yes.

11 Q And he is the victim in the case we had, the State
12 versus Justin Adams?

13 A Yes.

14 Q Okay. Did you listen at the door during this
15 trial?

16 A I did.

17 Q Okay. How much of the trial were you able to hear
18 from the door?

19 A Not really much of it. Honestly I could hear what
20 the judge was saying, but I couldn't really hear most of
21 what was said --

22 Q All right.

23 A -- by whoever was on the stand.

24 Q What you could hear, did that influence you in any
25 way?

Tabatha Jones - Examination by Mr. Brown

1 A No.

2 Q After the allegations came to light, the
3 allegations, and by that I mean what Justin did to

4 **Minor**. Did you live with your son?

5 A Yes.

6 Q And did you interact with your mom?

7 A Yes.

8 Q And how long between the allegations and the trial?
9 Do you remember about how long?

10 A Three years.

11 Q Three years. And did you -- how often did you
12 interact with your son and your mom?

13 A Every day.

14 Q Okay. Well, did you talk about the case at all
15 with your son and your mom?

16 A Yes.

17 Q Okay.

18 MS. JOSEPH: I have no other questions.

19 MR. BROWN: May it please the Court?

20 THE COURT: Certainly.

21 **EXAMINATION**

22 BY MR. BROWN:

23 Q I'm going to ask it because I think it deserves to
24 be asked. Ms. Jones, did you lie in the trial when you
25 said that you only met with Mr. Adams to get diapers from

Tabatha Jones - Examination by Mr. Brown

1 him?

2 MS. JOSEPH: Your Honor, objection, I think this is
3 well outside the scope of this hearing.

4 MR. BROWN: She's put her credibility at issue
5 right here today. I didn't call her, but they opened the
6 can of worms. They're asking you to believe what she just
7 said and prior lie is admissible under the rules. The
8 rules don't apply the same in a hearing that's not in front
9 of a jury.

10 THE COURT: Overruled. Go ahead.

11 BY MR. BROWN:

12 Q Did you lie in trial when you said that you only
13 met him for diaper money?

14 A In the beginning, yes, I did meet him for other
15 reasons than just diapers. After a while, after Minor
16 had been to the psychiatrist more and more and more details
17 about the trial was brought to light, I dropped contact
18 with him except for diapers.

19 Q Tell me about the Station 300 birthday party then.
20 Excuse me, Wild Wings birthday party.

21 A I don't recall a Wild Wings birthday party.

22 MR. BROWN: Beg the Court's indulgence.

23 If I may have a moment to mark some photos.

24 (Defendant's Exhibit Number 1, Number 2, Number 3,
25 and Number 4 was marked for evidence.)

Tabatha Jones - Examination by Mr. Brown

1 MS. JOSEPH: Your Honor, just for the record, I
2 have seen the photos. The photos are not dated. There's a
3 child in the photos. I believe Mr. Brown is going to argue
4 that the child's age indicates a time period, but I just
5 wanted that noted for the record that they're not
6 authenticated in any way. There's no date. If the State
7 ever tried to enter these photos, defense counsel would
8 jump up and down a million times and burst into flames, so
9 just for the record.

10 MR. BROWN: Okay.

11 BY MR. BROWN:

12 Q And Ms. Jones, I'm going to hand you what's been
13 marked as Defendant's 1. It is a one page photo. Do you
14 recognize that photo as a photo being taken at Station 300?

15 A Yes.

16 Q Okay. And do you dispute Mr. Adam's statement
17 which is marked as Court's 3 when he indicated that that
18 was taken in the year 2015?

19 A I just agree to what you just said about having
20 relations with him after the incident, so I don't see how
21 this means anything.

22 Q Okay. But do you dispute that was a photo taken at
23 Station 300 Bowling Alley?

24 A I don't remember exactly when it was.

25 Q Okay. But is that -- does that look like Station

Tabatha Jones - Examination by Mr. Brown

1 300 Bowling Alley?

2 A Really, I can't tell. All I see is a back door.

3 Q You see in the background worker's rights if you've
4 been injured on the job, worker's rights?

5 MS. JOSEPH: Your Honor, this question has been
6 asked and answered unless Mr. Brown wants her to crawl into
7 the photo.

8 THE COURT: She said she doesn't remember when it
9 was taken. She wasn't aware of that.

10 BY MR. BROWN:

11 Q Do you remember working at Station 300?

12 A Yes.

13 Q Do you remember what year that was?

14 A No.

15 Q Okay. And if you'll take a look at what's been
16 marked as Defendant's 2, which was Defendant's Exhibit 11
17 at trial.

18 A (Looking.)

19 Q Okay. And do you recognize that being in a car
20 with Justin? It's a series of three photos.

21 A It doesn't look like it's in a car.

22 Q Excuse me in a hotel? I apologize.

23 A It could have been.

24 Q Okay. And so were you in a hotel room with Justin
25 at some point in time?

Tabatha Jones - Examination by Mr. Brown

1 A At some point in time, yes.

2 Q Okay. That was after the allegations but before
3 his trial?

4 A Yes.

5 Q And would you take a look at what's been marked as
6 Defendant's Exhibit 3, which was Defendant's Exhibit 12 at
7 trial and it's a series of 4 photos.

8 MS. JOSEPH: Your Honor, at this time I would
9 object to this line of questioning. It's redundant that
10 the victim -- I'm sorry, Ms. Jones, the victim's mother has
11 testified that she had contact with the defendant after the
12 allegations came forward. At this point, I'm not sure what
13 Mr. Brown is searching for.

14 MR. BROWN: Well, she qualified it. She said only
15 up until the time when he went to see the psychologist,
16 which was --

17 MS. JOSEPH: And none of these are dated, I mean --

18 MR. BROWN: And I'm going to --

19 MS. JOSEPH: And also we don't have the
20 psychiatrist here, so the idea that he's going to be able
21 to pin her down on that is pretty serious.

22 MR. BROWN: Your Honor heard all that. I have no
23 idea -- this was three years between allegations and trial.

24 THE COURT: The purpose of this line of questioning
25 is what?

Tabatha Jones - Examination by Mr. Brown

1 MR. BROWN: To under cut her credibility that she
2 lied in court.

3 THE COURT: Well, let me ask you this.

4 MR. BROWN: Yes.

5 THE COURT: It's impeaching her testimony?

6 MR. BROWN: Her credibility here today. Because
7 she said she didn't hear very much and couldn't hear what
8 the witness was saying. I didn't put that up there --

9 THE COURT: Then that's collateral isn't it.

10 MR. BROWN: Which part?

11 THE COURT: You're trying to impeach her about that
12 testimony that was offered a minute ago.

13 MR. BROWN: I'm sorry. I'll let her argue her part
14 of the case.

15 MS. JOSEPH: I'm agreeing with the judge, I don't
16 have to argue.

17 MR. BROWN: I only have one photo left, Your Honor,
18 if I may..

19 THE COURT: All right.

20 MR. BROWN: Thank you. And if I may approach with
21 Defendant's Exhibit 4, which was marked Exhibit 13. It's a
22 single photo.

23 BY MR. BROWN:

24 Q Do you recognize the people in that photo?

25 A Uh-huh.

Tabatha Jones - Examination by Mr. Brown

1 Q Is that a yes?

2 THE COURT: You've got to speak up, please.

3 THE WITNESS: Yes.

4 BY MR. BROWN:

5 Q Would you tell the Court who is in that photo?

6 A Me, him, and our son.

7 Q Him being --

8 A Justin.

9 Q -- Justin. And which son?

10 A **Brother**.

11 Q Okay. And who are the two people kissing?

12 A Us.

13 Q Us being you and Justin?

14 A Justin.

15 Q Okay. And does that look like a Wild Wings
16 birthday party in the Fall of 2015 when **Brother** --

17 A I don't know.

18 Q -- turned 3 years old?

19 A Possibly.

20 Q And that would be one year to the day before his
21 trial, which is almost two years after the allegations
22 began, correct?

23 A Yeah.

24 MR. BROWN: I don't have any other questions now,
25 Your Honor. But I do now have -- I believe we have direct

1 proof of perjury during his trial.

2 THE COURT: Any other questions of the witness?

3 MS. JOSEPH: No other questions for this witness.

4 MR. BROWN: And we would ask that these be entered
5 for purposes of this hearing, those four photos.

6 MS. JOSEPH: No objections.

7 THE COURT: Okay. Without objection.

8 MS. JOSEPH: Your Honor, or really, Mr. Brown are
9 you okay with this witness being excused?

10 MR. BROWN: As long as the Court doesn't have any
11 other questions of her. I don't have any questions for
12 her.

13 THE COURT: I don't have any questions for her.

14 MS. JOSEPH: Okay. So Ms. Jones you are excused if
15 you want to leave.

16 THE WITNESS: Okay.

17 MS. JOSEPH: You don't have to be here..

18 The State has no other argument or answers to
19 Mr. Brown's motions. I would just say -- do you want me to
20 speak up?

21 THE COURT: Sure.

22 MS. JOSEPH: Thanks. It is the State's position
23 that the State has nothing do with his first motion.

24 THE COURT: Right.

25 MS. JOSEPH: However, I believe that the first

1 motion is basically moot because she has admitted that she
2 was listening. I know that he wants further proof that she
3 was listening, but I don't want us dragged back in here
4 every two weeks because of a motion to compel. I mean, she
5 admits she was listening. There are photos of her
6 listening. I know he wants twelve more photos of her
7 listening, but I feel like that's been resolved.

8 THE COURT: Okay. All right.

9 MS. JOSEPH: If we could get rid of this motion, I
10 would really appreciate it.

11 THE COURT: All right. Let me hear what Mr. Brown
12 has to say about that.

13 MR. BROWN: Well, I'm sure there is some special
14 sanction that would fit the clerk of court or the sheriff.

15 THE COURT: I'm sorry. Say that again.

16 MR. BROWN: Well, I served a subpoena and there's a
17 missing piece of --

18 THE COURT: Well the composite is there.

19 MR. BROWN: But we disagree because they did not
20 give us the one thing we asked for although that part was
21 asked over the phone when they said which clip are you
22 looking for. I'll be honest. What really bothers me is
23 that nobody will come here and take the stand and swear
24 that they copied the whole thing, even though I've
25 subpoenaed them and noticed them. And in my line of work,

1 when you won't swear to it, there's sometimes reason.

2 And for what it's worth, I also told them to
3 preserve that server and I want to put this in the record
4 because there may come a day when Mr. Adams has a post
5 conviction attorney out there who wants access to that
6 server to find out whether this was everything.

7 Now, I will concede my prejudice argument related
8 to that is much less because at that point in time all of
9 the evidence has been received. So I would tell Your Honor
10 that at that point in time, there's a lot less I could do,
11 even if I could prove that part.

12 THE COURT: Okay.

13 MR. BROWN: But it does -- I think it's -- when I
14 was a brand new lawyer somebody told me in the public
15 defender's office, you never have cumulative evidence if
16 you're a defense attorney, so I put that out there.
17 Otherwise, I don't think we need another hearing either. I
18 do find it a little disconcerting that they didn't even
19 show up. I mean, I don't know what else -- I served
20 subpoenas and tell them what I want. I would have never
21 not shown up for court, Your Honor. That's --

22 So for that point, I won't argue anymore on that,
23 Your Honor.

24 THE COURT: All right.

25 MR. BROWN: I mean I do think it's kind of

1 flaunting the Court not to show up.

2 Maybe they can give an affidavit of what they
3 downloaded or where the server is or -- because they've
4 given me an affidavit saying it's motion activated, but it
5 doesn't show her walking in and out. It doesn't show her
6 walking in the courtroom at all. It shows her walking up
7 and then walking out.

8 THE COURT: But what you really want is proof that
9 the witness listened.

10 MR. BROWN: That's correct.

11 THE COURT: That she admitted.

12 MR. BROWN: And I agree that she listened.

13 THE COURT: So why are we spending all this time
14 arguing about it?

15 MR. BROWN: I'll be honest again, I don't have the
16 same prejudice argument on that clip as well. But at the
17 time this came up, I did not have her admitting that.

18 THE COURT: I understand.

19 MR. BROWN: So yes, sir, yes, I understand. I
20 don't want --

21 THE COURT: So I will deny your motion to compel.

22 MR. BROWN: I understand that. That's not -- I
23 would waive that to get a new trial.

24 THE COURT: All right. Now, let's talk about the
25 motion for a new trial.

1 MR. BROWN: Yes, sir. I've kind of given it to
2 you. The only relief that you can give -- you know I
3 could -- Your Honor, the closing argument would go along
4 the lines, Ms. Jones lied on the stand and lied on the
5 floor. I mean -- if she's going to do it in front of the
6 Court and while the jury is listening to it, that's pretty
7 compelling about her credibility. Especially dovetailed
8 with the fact that she's now lied in the trial. I mean she
9 is at the birthday party one year before.

10 THE COURT: I don't know -- I don't know if they're
11 lying or not.

12 MR. BROWN: Well, she said she only met my client
13 for diapers.

14 THE COURT: What says the State?

15 MS. JOSEPH: Thank you, Your Honor. May it please
16 the Court, Your Honor.

17 The State feels that the motion -- or the State
18 knows that the motion for a new trial should be denied for
19 several reasons. First, the victim's mother had a right
20 under the South Carolina Bill of Rights to be in the
21 courtroom as the mother of the victim. It was not brought
22 to my attention specifically that Tabatha Jones was
23 listening through the door at the trial.

24 If it had been and if I had known that she so
25 strongly wanted to be in the courtroom, Your Honor, I would

1 have just ask for her to be in the courtroom. I mean this
2 is -- I do it all the time. I did it for the case I tried
3 yesterday.

4 In addition, Your Honor, and I regret not bringing
5 this up earlier. The general issue of witnesses talking to
6 each other influencing each other was brought up at the
7 trial and I believe that the spirit of this issue was
8 brought up. You, yourself, decided in a side bar that your
9 compromise or your ruling was going be that you would
10 caution each witness as they left the stand you are not to
11 talk about this case with other witnesses. You are not to
12 talk about this case with other witnesses, which you did.

13 Frankly, I find the rule of sequestration -- this
14 is the victim's mother, she's the one that, you know,
15 talked to him every day, got him dressed, took him to
16 therapy; however, I don't think -- to Mr. Brown's credit, I
17 don't think that's his point. I think his point she was
18 given a direct ruling by the Court and she disobeyed it and
19 that is a her not being credible. I strongly disagree with
20 that. I believe that is a sign and an indicator that she's
21 a mom who cares and that she can't follow the rules.

22 However, if Your Honor were to agree with Mr. Brown
23 that this is an indicator of her lack of credibility, I
24 would say that it's a very small one and that Mr. Brown at
25 trial was allowed to argue credibility, coaching, those

1 type of issues to the jury; and therefore, the amount of
2 prejudice, if there were to be any would be incredibly
3 small or nonexistent since he was able to argue that to the
4 jury in full.

5 For those reasons, Your Honor, I would ask the
6 motion be denied. Thank you.

7 MR. BROWN: Evidence of actual misconduct during
8 trials would be kind of unique. You don't see a bunch of
9 that. And when the evidence is similar to what you're
10 arguing, I would actually argue the State's -- the
11 statement about the lack of prejudice is the opposite, that
12 if I can show she's actually breaking a court order during
13 the trial, hiding from the jurors outside the door, I think
14 that's very strong, Your Honor.

15 MS. JOSEPH: But just to clarify, the point of
16 sequestration is to stay away from other witnesses and not
17 talk about the case. I mean, don't get me wrong, what is
18 the spirit of the rule of sequestration, certainly
19 listening at the door is not really allowed, but I mean, I
20 even question if she violated the rule of sequestration.
21 And again, she's doing it out in the open. She's like
22 lying on the ground listening. It's cartoonish. So I feel
23 that -- I have a hard time with this.

24 MR. BROWN: I absolutely agree. It's cartoonish.
25 It's something that would get someone locked up. There's

1 no question about it. That's not my doctor. I always tell
2 people I don't prosecute owe.

3 THE COURT: I don't know if it gets somebody locked
4 up or not.

5 MR. BROWN: I think that would be up to the judge
6 to decide whether it's contemptuous or not. I don't think
7 it's in dispute that she was ordered out and then --

8 THE COURT: Well, for her to have been held in
9 contempt, it would have had to have been a clear order
10 issued. Not a violation of the spirit of an order.

11 MR. BROWN: I think it clearly violates the order.

12 THE COURT: Does anybody know what the order was?

13 MR. BROWN: That they be sequestered outside of the
14 courtroom.

15 MS. JOSEPH: But for example, Mr. Brown knew that
16 the child was sitting with his mom, knew the child was
17 sitting with the grandparents and has no issue with that.
18 And it is common place for witnesses that are families to
19 sit together and it is understood that they won't talk
20 about the case.

21 My understanding, because we actually -- we did
22 clarify this at trial and the additional information you
23 gave was don't talk about the case with the other
24 witnesses.

25 MR. BROWN: That's -- we agree. And don't be in

1 the courtroom. That's right. We actually had that issue
2 which, for what it's worth, that's all in the -- I'm sorry.
3 Let me know when it's my turn.

4 We actually had that -- I had that in an appellate
5 case where the judge said, well y'all want them
6 sequestered, but you didn't say they couldn't talk to each
7 other. You just wanted them out of the courtroom and so
8 actually we gave that at some point in time. That means
9 not only can you be in the courtroom, but you can't talk to
10 each other about the testimony.

11 Now that's in -- I agree with Ms. Joseph. That's
12 in the record and that tightens it. Because surely the
13 idea you can't be in the courtroom and the idea that you
14 can't talk to another witness is that you cannot hear the
15 testimony at all.

16 THE COURT: But that wasn't said though, was it?

17 MR. BROWN: Your Honor, if I could put that many
18 angels on the head of a pin --

19 THE COURT: That's right.

20 MR. BROWN: -- I'd probably never lose a case, Your
21 Honor. If over -- I mean certainly it's a way to
22 rationalize it back out, but there's no question -- and,
23 Your Honor, it's in the clips that I put in my motion. The
24 State knows about this. The State's own employee catches
25 her over and over. It's on the video. It speaks for

1 itself. A State employee tells her get away, shakes her
2 finger.

3 THE COURT: Had the State asked the Court --

4 MR. BROWN: Yes, sir.

5 THE COURT: -- for permission --

6 MR. BROWN: Yes, sir.

7 THE COURT: -- for the witness --

8 MR. BROWN: Yes, sir.

9 THE COURT: -- to be --

10 MR. BROWN: Yes, sir.

11 THE COURT: -- to be here and listen to the

12 testimony --

13 MR. BROWN: Yes, sir.

14 THE COURT: -- the State would have prevailed.

15 MR. BROWN: Because of the victim's bill of rights.

16 THE COURT: Yeah.

17 MR. BROWN: But you can have a bench trial for my
18 client. We waive the jury trial right and he then can't
19 come back later and say, well, he could have had a jury if
20 he had asked for it because they consented to the
21 sequestration. That's the rules of the game. I mean they
22 did. I mean that's why I brought that out first. They did
23 agree with that and I just wanted it out because even if
24 the Court -- and again, whatever her misconduct goes to
25 her -- her conduct, whatever that amounts to, it would have

1 been evidence that was shielded from me, but I could have
2 argued. I think there's no question I could have called a
3 witness, maybe a security person that's running the video,
4 to say whether or not she was laying down in the courtroom
5 floor. I mean 20 something years I've been in courthouses
6 and I've never seen a witness laying in a floor. I mean,
7 at least she didn't have a gun or something else outside
8 because we'd all be in trouble. You know, I'm assuming
9 nobody was watching those four or five times on the
10 security video of her laying down on the floor because
11 that's -- I can't tell you if I've ever seen anybody laying
12 down in the floor with her head up against the door
13 listening through before she gets to take the stand or have
14 her son take the stand.

15 THE COURT: All right. I understand your motion.

16 MR. BROWN: Yes, sir.

17 THE COURT: I agree with the position argued by the
18 State in this case and deny your motion.

19 MR. BROWN: Thank you, Your Honor.

20 MS. JOSEPH: Thank you very much, Your Honor.

21 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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I, THE UNDERSIGNED, Brenda J. Sigwald, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the captioned case in the Court of General Sessions in and for the State of South Carolina on the 30th day of March, 2013.

I FURTHER CERTIFY that the foregoing pages constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 25th day of July, 2017.

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

Danyov--Bluffton P.D.

DOCKET NO. 2014GS0700021

The State of South Carolina

County of Beaufort

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

Defendant

COURT OF GENERAL SESSIONS

January Term 2014

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

2013A0720200339

THE STATE

vs.

Justin Adams

ACTION OF GRAND JURY

True Bill

Jennifer Smidtz
Foreperson of Grand Jury

Date: JAN 28 2014

VERDICT

Guilty

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

Defendant

Witness:

SC Code: 16-03-0655(1)
CDR Code: 0385

George B. Brayton
Foreperson of Petit Jury
Date: September 21, 2016

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2014GS0700021

At a Court of General Sessions, convened on January 23, 2014, the Grand Jurors of Beaufort County present upon their oath:

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

That in Beaufort County, South Carolina, During the year of 2013, the Defendant, Justin Adams, date of birth [REDACTED], did commit a sexual battery upon a minor who was less than eleven years of age, to wit: fellatio and digital ^{OR} intrusion of the victim's anal opening upon [REDACTED] Minor, date of birth [REDACTED], in violation of Section 16-3-655, 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.



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS. Justin Adams

INDICTMENT/CASE#: 2014GS0700021

AKA:

A/W#: 2013A0720200339

Race: CAUCASIAN Sex: M Age: 25

Date of Offense: 11/30/2013

DOB: [REDACTED]

S.C. Code: § 16-03-0655(1)

Address: [REDACTED]

CDR Code #: 0385

City, State: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [] PLEADS

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [X] Mandatory GPS(CSC [] §17-25-45

The charge is: [X] As indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Joseph, Alex SC Bar# 101710 Defendant Attorney for Defendant SC Bar# 12203

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

for a determinate term of 25 days/months/years or [] under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment

of \$ plus costs and assessments as applicable*; the balance is suspended with probation for

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

[] CONCURRENT or [] CONSECUTIVE to sentence on:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections. 1018 Days

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

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

[] Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$3.75.

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk W. Collins Phelan

Court Reporter: Gordon, Heather

SCCA217 (07/2016)

PTUP days/hours Public Service Employment

Obtain GED []

Attend Voc. Rehab. or Job Corp. []

May serve W/E beginning []

Substance Abuse Counseling []

Random Drug/Alcohol testing []

Fine may be pd. in equal, consecutive weekly/monthly

prms. of \$ beginning

\$ paid to Public Defender Fund

Other:

[] Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge 2139

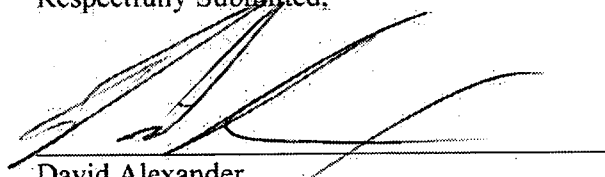
Judge Code: 2139

Sentence Date: September 21, 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 15th day of July, 2019.

RECEIVED
JUL 22 2019
SC Court of Appeals