VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

May 14 2020

S.C. SUPREME COURT

Certiorari to Calhoun County

Honorable Maite Murphy, Circuit Court Judge

JOHN EDWARD HAYNES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001640

APPENDIX

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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JOHN EDWARD HAYNES, 354464
386-REDEMPTION WAY
MCCORMICK CORRECTIONAL INST.
MCCORMICK, SC 29899

DECEMBER 13TH 2015

RE: STATE V. JOHN EDWARD HAYNES,
2010-GS-09-0069; 0070

FILED
2015 DEC 28 P 2:59
KENNETH HASTY
CLERK OF COURT
COLLETON COUNTY
WALTERBORO, SC

DEAR HON. CLERK.

PLEASE STAMP CLERK AND FILE THIS POST CONVICTION APPLICATION, AND AMENDMENT TO THIS APPLICATION, AND SERVICE COPIES BACK OUT FOR MY FILES.

RESPECTFULLY,

John E. Haynes

STATE of SOUTH CAROLINA

COUNTY of CALHOUN.

IN THE COURT of COMMON PLEAS

CASE No:

JOHN EDWARD HAYNES, 354464
Applicant,

VS.

THE STATE of SOUTH CAROLINA
RESPONDENT.

AMENDMENTS TO
POST CONVICTION
RELIEF APPLICATION.

FILED
2015 DEC 28 P 2:59
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

THE APPLICANT HEREBY AMENDS ANSWER TO NUMBER 9 AND NUMBER 10 of HIS APPLICATION for POST-CONVICTION RELIEF TO STATE THE following.

9. STATE CONCISELY THE GROUNDS ON WHICH you BASE YOUR ALLEGATION THAT you ARE BEING HELD IN Custody UNLAWFULLY.

(A) THE APPLICANT WAS DENIED EFFECTIVE ASSISTANCE of Counsel IN VIOLATION of THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 14 of THE SOUTH CAROLINA CONSTITUTION.

10. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH THE GROUNDS SET OUT IN (9):

(A) THE APPLICANT WAS PROVIDED WITH DEFICIENT REPRESENTATION BY HIS ATTORNEY, IN THAT THE CONDUCT of HIS ATTORNEY WAS OBJECTIVELY UNREASONABLE UNDER THE CIRCUMSTANCES. Strickland V. Washington, 466 U.S. 668 (1984). THE OUTCOME of THE APPLICANT'S PROSECUTION WAS PREJUDICED, AND IT IS REASONABLE probable THAT THE OUTCOME WOULD HAVE BEEN DIFFERENT HAD COUNSEL'S

Performance not been deficient. Strickland, 466 U.S. at 694. Defense Counsel was ineffective based on one or more of the following.

1. Trial Counsel failed to actively investigate the facts surrounding to build defense which could have demonstrated Applicants legal Innocence of the charges against him.

2. Trial Counsel was ineffective, and the Court Errored in not, Granting Relief a Trial, because the Solicitor didn't Disclose Poten Exculpatory material, related to his Criminal Sexual Conduct - 2- Degree and Incest Charges.

This Misconduct was prejudicial.

Simpson V. Moore, 367 SC. 587, 627 SE. 2d. 701 (2006)

3. Trial Counselor was ineffective before and During Trial and After Trial, for not Motioning for Direct Verdict, once Doctor Harari, Stated what victim. told him. See; Psychological Evaluation Report.
Tr. Pg. 314 Lines - 15 - 19

4. Counselor was ineffective, and Court Errored once there was Testemony the victim Seduce the Applicant, the Court should have Dismiss the Charges, and Vacate this Sentence and Conviction. And Counselor should have Motion for Direct Verdict.

5. TRIAL COURT HAD NO JURISDICTION WHERE APPELLANT WAS INDICTED FOR CSC SECOND DEGREE AND INCEST, BUT THE COURT ALLOWED THE STATE TO PROCEED TO TRIAL, KNOWING THE STATEMENTS MADE BY THE VICTIM,

EXHIBIT. WILL BE PRESENTED.
PG. 315 LINES 1-25
PG. 314 LINES - 20-25

6. THE APPELLANT HAYNES CONVICTION SHOULD BE REVERSED BECAUSE THE D.N.A. EVIDENCE WAS COLLECTED, FROM HIM IN VIOLATION OF THE FOURTH AND FOURTEETH AMENDMENTS OF THE UNITH STATES CONSTITUTION ARTICLE 1, SECTION 3 - AND - 10 OF THE SOUTH CAROLINA CONSTITUTION.

7. COUNSELOR FAILURE TO INVESTIGATE, PREPARE FOR TRIAL, OR REQUEST CONTINUANCE.
JACKSON V. STATE, 495 S.E.2d. 768 (1998)

8. TRIAL ATTORNEY FAILURE TO REQUEST ON LESSER INCLUDED OFFENSES. VICTIM INDICATED SITUATION WHERE IN CEST WAS ESTABLISHED. BY HER ACTION. (VICTIMS STATEMENT)
STATE V. FIELDS, 589 S.E. 2d 792 (C. App. 2003)
EXHIBIT(S) TR. PG. 90

9. TRIAL ATTORNEY WAS INEFFECTIVE, FOR NOT MOVING TO HAVE CHARGES DISMISSED, AFTER VICTUM TOLD DSS EMPLOYEE, USEING HER WORDS, WENT IN ON MR HAYES, WHEN HE WAS ASLEEP, HE WAS DRUNK, THAT HE DIDNT KNOW ANYTHING ABOUT IT.

TR. pg. 90 LINES 3-16

10. TRIAL COUNSELOR SHOULD HAVE MOTION TO HAVE "INCEST" CHARGE DISMISSED DO TO WRONG STATUTE IN BODY of INDICTMENT - SECTION 16-3-655, of THE SOUTH CAROLINA CODE of LAWS AS AMENDED.

11. TRIAL COUNSELOR WAS INEFFECTIVE, FOR NOT BRINGING TO THE COURTS ATTENTION, THAT THE APPLICANT WAS ALREADY TRIED AND CONVICTED, IN FAMILY COURT, A AFFORD PLEA WAS EXCEPTED, AND ALSO THE FAMILY COURT WAS ADJUDICATED, THEN APPLICANT WAS INDICTED, FOR GENERAL SESSION COURT, BEFORE ADJUDICATION. IT'S DOUBLE JEOPARDY. DUE PROCESS VIOLATION, 5 AND 14TH AMEND. U.S.C.A. CONST.

STATE V. WARREN, 500 SE 2d 128 (SC. APP. 1998)
STATE V. MAGALINE, 302 SC 55, 393 SE 2d 385 (1990)

12. TRIAL COUNSELOR WAS INEFFECTIVE, AND THE PROSECUTION TEAM, THE SOLICITOR OFFICE, OF CALHOUN COUNTY, VIOLATED THE APPLICANTS 5TH AMENDMENT, AND 14TH AMENDMENT CONSTITUTIONAL RIGHTS BY WITHHOLDING, MATERIAL FAVORABLE EVIDENCE, TO APPLICANT.

THE D.N.A. TESTING, THAT WAS ORDER, BY THE HON. EDGAR DICKSON - JUDGE (CS) of MAY - 18TH 2012

"APPLICANT (NEITHER) RECEIVE A COPY UNTIL THIS DAY"

13. TRIAL COUNSELOR WAS INEFFECTIVE, BECAUSE THE FAMILY COURT "WAS NOT" OVER WHEN THE CALHOUN COUNTY SHERIFF DEPARTMENT, CALLED APPLICANT TO STATION AND SERVED H/WARRANTS WITHOUT PROBABLE CAUSE.

14. COUNSEL WAS INEFFECTIVE FOR NOT MOTIONING TO HAVE CHARGES DISMISS, BEFORE JURY WAS SWORN, BECAUSE AT THAT POINT THE "ONLY EVIDENCE" WAS WHAT VICTIM TASHANE, TOLD D.S.S. AND THE DOCTORS, AND HER EXAMINERS, AND THAT WAS SHE SEDUCE HIM, SHE COMMITTED THE ACT.

DOVE V. STATE, 523 SE 2d 459 (1999)

15. THE ATTORNEYS THAT REPRESENTED ME ON THESE CHARGE IN COURT FAILED TO FUNCTION AS THE COUNSEL THAT THE CONSTITUTION'S SIXTH AMENDMENT GUARANTEES.

FILED
2015 DEC 28 P 259
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
S.C.

HIS COUNSEL'S REPRESENTATION WAS NOT WITHIN THE RANGE AND SCOPE of COMPETENCE DEMANDED by STRICKLAND AND ITS PROGENY.

A CONVICTED defendant CLAIM THAT COUNSEL'S ASSISTANCE WAS SO DEFECTIVE AS TO REQUIRE REVERSAL of A CONVICTION REQUIRES THAT THE defendant SHOW first, THAT THE deficient PERFORMANCE PREJUDICED THE defense SO AS TO deprive THE defendant of A fair TRIAL. SOSEBEE V. LEEKE, S.C. 362 F.2d 221 (1987), CITING STRICKLAND V. WASHINGTON 46 SE 2d 813 (1984), SEE ALSO BUTLER V. STATE 282 SC. 441 334 SE 2d 813 (1985) ALSO, HILL V. COCKHART, 474 US 58 (1985).

RESPECTFULLY SUBMITTED,

JOHN EDWARD HAYES, 354464
386 REDEMPTION WAY
MCCORMICK CORRECTIONAL INST.
MCCORMICK SC 29899

STATE OF SOUTH CAROLINA COUNTY OF CALHOUN	)	IN THE COURT OF COMMON PLEAS IN THE FIRST JUDICIAL CIRCUIT
John Edward Haynes, #354464, Applicant,	)	Case No.: 2015-CP-09-0215
v.	)	**RETURN AND PARTIAL MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

FILED
2017 AUG 2 A 11: 18

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") and the Amendment to the Application, both filed on December 28, 2015, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. In May 2010, the Calhoun County Grand Jury indicted Applicant for incest (2010-GS-09-0069) and criminal sexual conduct with a minor under the age of 16, second degree (2010-GS-09-0070). Mark Wise, Esquire, and Robert Douglas Mellard, Esquire, represented Applicant. Assistant Solicitors Sarah A. Ford, Esquire, and Benjamin Harrison Bell, Jr., Esquire, prosecuted the case. On February 25-28, 2013, Applicant proceeded to trial before the Honorable Diane S. Goodstein. The jury found Applicant guilty as indicted. Judge Goodstein sentenced Applicant to imprisonment for consecutive terms of ten years for incest, provided that upon the service of five years, the balance is suspended with probation for five years and twenty years for criminal sexual conduct.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's

conviction on May 6, 2015. State v. Haynes, Op. No. 2015-UP-228 (S.C. Ct. App. filed May 6, 2015). The remittitur was returned to the circuit court on December 1, 2015.

Attached to this Return and incorporated by reference are the records of the Calhoun County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
    a. "Applicant was provided with deficient representation by his attorney in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of Applicant's proceeding was prejudiced and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694."
    b. "Trial counsel failed to actively investigate the facts surrounding to build defense which could have demonstrated Applicant's legal innocence of the charges against him."
    c. Counsel should have moved for a directed verdict once there was testimony that the victim seduced Applicant.
    d. "Counselor failure to investigate, prepare for trial, or request a continuance"
    e. "Trial attorney failure to request on lesser included offenses. Victim initiated situation which incest was established by her action."
    f. "Trial attorney was ineffective for not moving to have charges dismissed after victim told DSS employee, using her words, 'when in on Mr. Haynes, when he was asleep, he was drunk, that he didn't know anything about it."
    g. "Trial counselor should have motion to have 'incest' charge dismissed due to wrong statute in body of indictment – Section 16-3-655 of the South Carolina Cod of Laws as Amended."
    h. "Trial counselor was ineffective for not bringing to the court's attention that Applicant was already tried and convicted in family court, an Alford plea was excepted, and also the family court was adjudicated, then Applicant was indicted for General Sessions Court before adjudication. It's double jeopardy."
    i. "Counsel was ineffective for not motioning to have charges dismiss before the jury was sworn because at that point 'only evidence' was what victim told DSS

and the doctors and her examiners and that was she seduce him, she committed the act."

j. "The attorneys that represented [Applicant] on these charges in court failed to function as the counsel that the Constitution's Sixth Amendment guarantees."

2. "Brady Violation"
   a. "Trial counsel was ineffective, and the court errored in not granting relief at trial, because the solicitor didn't disclose potent exculpatory material, related to his criminal sexual conduct, second degree and incest charges."
   b. "Trial counselor was ineffective and the prosecution team, the Solicitor's Office of Calhoun County, violated Applicant's 5th Amendment and 14th Amendment constitutional rights by withholding material favorable evidence to Applicant."
3. Trial Court Error
   a. "Counselor was ineffective, and court errored once there was testimony the victim seduce Applicant, the court should have dismiss the charges, and vacate this sentence."
   b. "Applicant's conviction should be reversed because the D.N.A. evidence was collected from him in violation of the fourth and fourteenth amendments of the United States Constitution and Article I, Section 3 and 10 of the South Carolina Constitution. The DNA testing that was ordered by the Hon. Edgar Dickson on May 18, 2012. Applicant never received a copy to this day."
4. Lack of Jurisdiction
   a. "Trial Court had no jurisdiction where Applicant was indicted for SCS Second Degree and Incest, but the court allowed the State to proceed to trial, knowing the statements by the victim would be presented."
5. "Double Jeopardy"
   a. "Trial counselor was ineffective for not bringing to the court's attention that Applicant was already tried and convicted in family court, an Alford plea was excepted, and also the family court was adjudicated, then Applicant was indicted for General Sessions Court before adjudication. It's double jeopardy."
   b. "Trial counselor was ineffective because the family court 'was not over' when the Calhoun County Sheriff Department called Applicant to station and served warrants without probable cause."

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having

produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. BRADY VIOLATION

Applicant alleges a Brady v. Maryland, 373 U.S. 83 (1963) violation. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can

demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. Clark, 315 S.C. at 388, 434 S.E.2d at 268 (citing U.S. v. Bagley, 473 U.S. 667 (1985)).

Respondent submits that this ground for relief is without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. TRIAL COURT ERROR

Respondent requests that the claim of trial court error be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss this claim for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VI. LACK OF JURISDICTION

A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

Respondent submits that Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an

offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), *citing* Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, Applicant was indicted by the Calhoun County grand jury. The indictments were true-billed and signed by the foreman of the grand jury. The said indictments contains all the necessary elements of the offenses, and further cites the applicable statutes. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g.*, Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant here cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, Respondent would move to dismiss this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

VII. DOUBLE JEOPARDY VIOLATIONS

Respondent interprets Applicant's "double jeopardy violations" allegation as a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. "The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction and protects against multiple punishments for the same offense." State v. Jolly, 405 S.C. 622, 626, 749 S.E.2d 114, 116 (Ct. App. 2013) (quoting Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999)). "Double Jeopardy Clause does not prohibit the imposition of any additional sanction that could be described as punishment; rather, the clause protects against the imposition of multiple criminal punishments for the same offense, and only then when such occurs in successive pleadings." Jolly, 405 S.C. at 627,

749 S.E.2d at 117 (quoting Hudson v. US, 522 U.S. 93, 98-99 (1997)).

In this case, Applicant had charges brought against him in both Family Court and the Court of General Sessions. As the Double Jeopardy Clause applies to the imposition of criminal punishments, it is not applicable in this case because Family Court issues civil and equitable legal remedies, rather than criminal rulings. Therefore, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing that his protection from double jeopardy and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VIII. AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the

PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

IX. REQUEST FOR EVIDENTIARY HEARING

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and Brady Violations. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

[Signature block on following page]

XI. CONCLUSION

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel and Brady violations.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 26, 2017

STATE OF SOUTH CAROLINA) COUNTY OF CALHOUN)) JOHN E. HAYNES, #354464) Applicant,)) vs)) STATE OF SOUTH CAROLINA,)) Respondent,)	IN THE COURT OF COMMON PLEAS 2015-CP-09-00215 AFFIDAVIT OF SERVICE BY MAIL

FILED
2017 AUG -2 A 11: 18
BETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 26th day of July, 2017.

Deonna Rogers, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF CALHOUN John Edward Haynes, #354464, Applicant, vs. STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT C/A NO.: 2015-CP-09-00215 NOTICE OF MOTION AND MOTION FOR DISCOVERY, FUNDING, AND CONTINUANCE

2018 JUN 29 P 3:

TO: CHRISTIAN SAVILLE, ASSISTANT ATTORNEY GENERAL:

PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney will move before the court on Tuesday, July 10, 2018, or soon thereafter for an order allowing discovery in the above captioned Post Conviction Relief case.

The Applicant was indicted during the May 2010 term of the Calhoun County grand jury for Incest (2010-GS-09-0069) and Criminal Sexual Conduct with a minor under the age of 16, second degree (2010-GS-09-0070). Applicant was represented by Mark Wise, Esquire and Robert Douglas Mellard, Esquire. On February 25-28, 2013, applicant proceeded to trial before the Hon. Diane S. Goodstein, and was ultimately convicted, as indicted. Following his conviction, Judge Goodstein sentenced Applicant to consecutive terms of twenty (20) years for Criminal Sexual Conduct and ten (10) years for Incest, provided that upon the service of five (5) years, the balance would be suspended with probation for five (5) years.

The Applicant was arrested approximately two (2) years following the alleged incident and after the birth of the child the State alleged Applicant fathered. When Applicant was arrested, the arrest warrant indicated that the State was in possession of DNA evidence supporting its allegations. The Applicant contends that the State would not have been in possession of his DNA in order to test against and that he was not provided the pre-arrest DNA evidence the State allegedly had in the discovery process and as such was unable to review and/or challenge the State's pre-arrest DNA evidence.

Due to the discrepancy in what information and discovery was in the possession of law enforcement or the Solicitor's office, and what was actually produced to the defense, the Applicant hereby seeks to conduct discovery in his Post Conviction Relief case to ascertain whether any discovery violations were committed. Applicant requests that he be allowed to subpoena a copy of the Solicitor's file as well as a copy of the defense file so that a comparison of the two can be made. Applicant also requests funding for the above.

Therefore, the Applicant respectfully moves for an order granting discovery in this case, the funding to conduct said discovery, and for the matter to be continued to the next available term of Post Conviction Relief court for the First Judicial Circuit.

Respectfully submitted,

Jonathan D. Waller, Esquire
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, SC 29201
(803) 520-7278
jonathan@wallergroupsc.com
ATTORNEY FOR THE APPLICANT

Columbia, South Carolina
June 28, 2018

FILED
2018 OCT -9 A 10:35
KENNETH J. ASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

STATE OF SOUTH CAROLINA COUNTY OF CALHOUN	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT
John Edward Haynes, #354464, Applicant, VS. State of South Carolina, Respondent.	Case No. 2015-CP-09-00215 ORDER GRANTING LIMITED DISCOVERY

This matter comes before the Court by way of an application for post-conviction relief filed December 20, 2015. By motion dated June 28, 2018, and heard by the Court on July 10, 2018, Applicant, John Edward Haynes, pursuant to S.C. Code Ann. § 17-27-150(A), moved the Court to grant limited discovery and funding for such discovery.

The Applicant argues that he was arrested approximately two (2) years following the alleged incident and after the birth of the child the State alleged Applicant fathered. When Applicant was arrested, the arrest warrant indicated that the State was in possession of DNA evidence supporting its allegations. The Applicant contends that the State would not have been in possession of his DNA in order to test against and that he was not provided the pre-arrest DNA evidence the State allegedly had in the discovery process and as such was unable to review and/or challenge the State's pre-arrest DNA evidence.

Due to the allegations of discrepancies in what information and discovery was in the possession of law enforcement or the Solicitor's office, and what was actually produced to the defense, the Applicant hereby seeks to conduct discovery in his Post Conviction Relief case to ascertain whether any discovery violations were committed. Applicant requests that he be allowed to subpoena a copy of the Solicitor's file, the defense file, as well as a copy of records of

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any DNA testing done in the case so that a comparison of the records can be made. Applicant also requests funding for the above.

Applicant contends these documents are necessary to determine whether Applicant has a valid claim of Ineffective Assistance of Counsel as alleged in his Post Conviction Relief Application as well as to determine any potential allegations of discovery violations. Applicant argued that due to the unusual circumstances in this case, the Applicant should be entitled to the limited discovery of the Solicitor's file, the defense file, as well as a copy of records of any DNA testing done in the case. It is noted that counsel for the State does contest Applicant's request.

By way of the Motion for Limited Discovery, this Court finds that Applicant has shown a sufficient basis for allowing discovery of the following:

1) The Solicitor's file, the defense file, as well as a copy of records of any DNA testing done in the case.

Based upon Applicant's Motion and the rare and unique circumstances involved in this case, this Court finds Applicant has shown good cause for discovery pursuant to S.C. Code Ann. § 17-27-150(A) and the funding to conduct such discovery. Therefore, Applicant's request shall be granted to ensure that Applicant can properly prepare for his Post Conviction Relief hearing.

IT IS THEREFORE ORDERED:

1. Limited discovery is **GRANTED** to Applicant to subpoena, review, and retain a copy of the Solicitor's case file, law enforcement file, the Defense counsel's case file, and documents relating to any medical testing conducted, and the funding to conduct such discovery. Counsel for Applicant is directed to forward any and all relevant materials to Respondent.

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2. The Applicant shall be remanded to the custody of the State.

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

Robin B. Stillwell
Presiding Judge, 1st Circuit

Greenville, South Carolina

State of South Carolina)
)
County of Calhoun)

In the Court of Common Pleas
First Judicial Circuit
2015-CP-09-0215

John Edward Haynes,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

February 26, 2019
St. George, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Jonathan D. Waller, Esquire
Attorney for Applicant

Benjamin H. Limbaugh, Assistant Attorney General
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM, RVR
Circuit Court Reporter
Certified Verbatim Reporter - Master
Certificate of Merit
Realtime Verbatim Reporter

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NO.	DESCRIPTION	I.D.	EVID.

No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:46 a.m.)

MR. LIMBAUGH: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. LIMBAUGH: Ben Limbaugh for the state. This is Mr. John E. Haynes, Case No. 2015-CP-09-0215. He is represented today by Mr. Jonathan Waller.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of Calhoun County clerk of court. In May 2010 the Calhoun County Grand Jury indicted applicant for incest and criminal sexual conduct with a minor under the age of 16, second degree. Mark Wise, Esq., and Robert Douglas Mellard, Esq., represented the applicant. Assistant Solicitors Sarah A. Ford, Esq., and Benjamin Harrison Bell, Esq., prosecuted the case.

On February 25th through the 28th, 2013, applicant proceeded to trial before the Honorable Diane Goodstein. The jury found applicant guilty as indicted. Judge Goodstein sentenced the applicant to imprisonment of consecutive terms of 10 years for incest; provided that upon the service of 5 years, the balance is suspended with probation for 5 years; and 20 years for criminal sexual conduct.

Applicant filed a timely notice of appeal. David

Alexander of the office of appellate defense perfected the appeal. The South Carolina Court of Appeals affirmed applicant's conviction on May 6th, 2015. The remittitur was returned to the circuit court on December 1st, 2015.

In his application for postconviction relief, applicant alleges that he is being held in custody unlawfully for the following reasons. And I do apologize to the Court, Your Honor. (As read): "This is with the -- ineffective assistance of counsel. Applicant was provided with deficient representation by his attorney in that the conduct of his attorney was objectively unreasonable under the circumstances. The outcome of the applicant's proceeding was prejudiced. And it is reasonable -- probable that the outcome would have been different had counsel's performance not been deficient.

"Trial counsel failed to actively investigate the facts surrounding -- to build defense which could have demonstrated applicant's legal innocence of the charges against him. Counsel should have moved for a directed verdict once there was testimony that the victim seduced applicant.

"Counsel -- counselor failure to investigate, prepare for trial, or request a continuance; trial attorney failure to request on lesser-included offenses. Victim initiated situation, which incest was established by her actions.

"Trial attorney was ineffective for not moving to have charges dismissed after victim told DSS employee, using her words, went in on Mr. Haynes when he was asleep; he was drunk; that he didn't know anything about it. Trial counselor should have motioned to have incest charge dismissed due to wrong statute in body of indictment, Section 16-3-655 of the South Carolina of Laws, as Amended.

"Trial counselor was ineffective for not bringing to the Court's attention that applicant was already tried and convicted in family court. An *Alford* plea was accepted and also the family court was adjudicated. Then applicant was indicted for general-sessions court before adjudication; it's double jeopardy.

"Counsel was ineffective for not motioning to have charges dismissed before the jury was sworn because, at that point, only evidence was what victim told DSS. And the doctors and her examiners in that -- was she was seduce him; she committed the act.

"The attorneys that represented applicant on these charges in court failed to function as the counsel that the Constitution's Sixth Amendment guarantees. *Brady* violation; trial counsel was ineffective and the Court erred in not granting relief at trial because the solicitor didn't disclose potential exculpatory material related to his criminal sexual conduct second-degree and incest

charges.

"Trial counselor was ineffective and the prosecution team, the solicitor's office of Calhoun County violated applicant's Fifth Amendment and Fourteenth Amendment constitutional rights by withholding material, favorable evidence to applicant. Trial-court error; counsel was ineffective and Court erred once there was testimony the victim seduced applicant. The Court should have dismissed the charges and vacate the sentence.

"Applicant's conviction should be reversed because DNA evidence was collected from him, in violation of the Fourth and Fourteenth Amendments of the United States Constitution in Article I, Section 3 and 10 of the South Carolina Constitution. The DNA testing that was ordered by the Honorable Edgar Dickson on May 18th, 2018; applicant never received a copy to this day.

"Lack of jurisdiction; trial court had no jurisdiction where applicant was indicted for SCS, second-degree, and incest. But the Court allowed the state to proceed to trial knowing the statements by the victim would be presented.

"Double jeopardy; the trial counselor was ineffective for not bringing to the Court's attention that applicant was already tried and convicted in family court. An *Alford* plea was accepted. And also, the family court was

adjudicated. Then applicant was indicted for general-sessions court before adjudication. It's double jeopardy.

"Trial counselor was ineffective because the family court was not over when the Calhoun County Sheriff Department called applicant to station and served warrants without probable cause."

I will now hand it over to Mr. Waller, Your Honor.

THE COURT: Mr. Waller?

MR. WALLER: Thank you, Your Honor. The applicant would call John Haynes.

THE COURT: Come on up, Mr. Haynes.

(Whereupon, the applicant came forward.)

DEPUTY CLERK OF COURT: Raise your right hand.

THE APPLICANT: (Complied.)

DEPUTY CLERK OF COURT: State your full name for the record.

THE APPLICANT: John Haynes.

JOHN HAYNES, having been first duly sworn, testified as follows:

DEPUTY CLERK OF COURT: Thank you. Have a seat, please.

THE APPLICANT: (Complied.) Your Honor, I have some exhibits I want to file in court, respectfully. Oh. You're' going ---

THE COURT: Yes, sir. Your attorney can handle the --

your exhibits for you.

THE APPLICANT: Okay.

DIRECT EXAMINATION

BY MR. WALLER:

Q Good morning, Mr. Haynes. How are you today?

A I'm well.

Q All right, Mr. Haynes. All right. I want to -- I want to back up. This whole thing started in family court; is that right?

A Yes, sir.

Q A DSS case?

A Yes, sir.

Q Okay. And it only existed it family court for -- for a while; is that right?

A 2010 to 2011.

Q Okay. And at some point you were arrested and charged in general-sessions court?

A Yes. In 2010.

Q Now, you had an attorney in the family court; is that right?

A Yes, I did.

Q Okay. Who was that?

A His name was Palmer.

Q Okay.

A Derrick Palmer.

Q Derrick Palmer?
A Okay.
Q All right. And he was representing you as a defendant in a DSS case?
A Excuse me. His name is Scott -- Scott Palmer.
Q Scott Palmer.
A By Derrick Felder.
Q Okay.
A Yeah. Those guys.
Q All right. He represented you as a defendant in a DSS case ---
A Yes, sir.
Q --- is that right?
DSS v. John Hayes and probably your wife, Gale Haynes; is that right?
A Right.
Q Okay. At some point you were arrested and charged with -- you had three charges initially; is that correct?
A Correct.
Q And your trial was only on two charges?
A Correct.
Q Okay. Did you have a different lawyer for the criminal charges?
A Yes, I did.
Q Okay. Who was your first lawyer?

A Martin Banks.
Q Okay. You had -- Martin Banks represented you first?
A Right.
Q All right. How long did Mr. Banks represent you?
A Ooh. I think it was from April to -- April 2010 to the beginning of 2011, I believe.
Q Okay. So ---
A In that ---
Q --- you ---
A --- time frame.
Q Okay. So he represented you about nine months, something like that?
A Just about, something like that. Yeah.
Q Okay. And at some point Mr. Banks wasn't your lawyer anymore?
A Right.
Q Okay. How did that -- how did that come to be?
A Well, it come to be he said I was threatening him and threatened to sue him for some type of -- and that I didn't -- he didn't release me on the DNA samples that I was involved in. And I was questioning back and forth, asking him what I was in jail for. But he never could -- he never tell me.

So when he came down for him to prove it to me, he never could. So he write a motion to get off my case.

Q Okay. So there was a -- a DNA sample taken in the DSS case?
A Right.
Q Is that right?
A Right.
Q Okay. What -- at -- at the you were arrested, the -- the arrest warrant referenced that the state had DNA evidence. Is that ---
A Right.
Q --- what they were talking about?
A Yes.
Q Okay. Later on -- and we'll get to this in -- in a little bit. Later on, another DNA sample was taken; is that right?
A Yes.
Q Okay. Mr. Banks didn't represent you at that -- that time ---
A Right, right ---
Q --- the second ---
A --- that time.
Q Okay. After Mr. Banks, who was your attorney?
A Mark Wise.
Q Okay. When did Mr. Wise take over your representation?
A Right after Martin -- Martin Banks got off it.

Q Okay. Was there a time that they overlapped?
A Well, they overlaps in -- in -- I'm thinking in 2000 -- at the beginning of 2011, I believe.
Q Okay. And Mr. Banks is the public defender in Calhoun County where this case was?
A Right.
Q Okay. Mr. Wise is a public defender in Orangeburg County?
A Right.
Q Okay. Is that your understanding why there was the crossover?
A No, I didn't.
Q Okay. You just didn't know?
A I didn't know.
Q Okay. After you got Mr. Wise, did y'all have a chance to sit down and talk about your case?
A Well, from the beginning of it, we -- I -- I was asking the same question that I was asking Martin Banks about -- because him and Martin Banks was interchanging. And I seen them a lot of time together. And I was just asking them what do they have on me. Because when Scott -- when Mark Wise came to me, Martin Banks came the same time and sit down with me together. And I asked both of them what the state have on me for me to be in jail. And ---
Q Okay.

A --- Martin Banks felt some type of way. And I never seen him again. Then Mark Wise took over the case. And I start asking him the -- about it and showing him some of the papers that the family-court lawyer gave my wife and my mom. And it wasn't nothing after. He just keep going on with, you know, we got this, but nobody never could show it to me.

Q Okay. So your -- your lawyer was first Mr. Banks; then Mr. Wise told you the state had certain pieces of evidence, but you never actually got to see it?

A Never.

Q Okay. Have you -- have you seen them to this day?

A No.

Q Okay. Did you have a copy of -- of some discovery in your case?

A The family-court discovery.

Q Okay. So did you ever talk to Mr. Wise about -- about that discovery and why was it family-court discovery and what was the difference ---

A Well ---

Q --- in general sessions and family court?

A When I didn't have no information of that until Martin Banks gave me -- well, he gave me some package of DSS records that he subpoenaed for in 2010.

Q Okay.

A And I been in county. I didn't know what I was looking at. So when I start, you know, looking into it more deeper, when I start seeing -- I called my mom and my wife and they been talked to Scott Palmer about it. And he said that -- that the -- the evidence -- the -- the paperworks that I had that the state don't even supposed to have them, because they don't supposed to have no evidence in family court in the state.

So -- and I start looking and I start asking Mr. Wise about it. But never can tell me, asking me to instead plead guilty, plead guilty. And I'm -- I'm still asking today on what. And I never got no answer what it was, no paperworks or nothing. But the paperworks that he had was DSS.

Q Okay. So everything the solicitor used -- or -- or almost everything the solicitor used came from DSS?

A Yes. Because Mr. Wise motion to have -- the *Brady* motion or the material from the solicitor, David Pascoe.

Q Okay.

A And I mailed the DSS record myself. And I compare them together ---

Q Okay.

A --- with what Martin Banks subpoenaed for from DSS, school records, and my lawyer, Scott Palmer. And all of them the same.

Q Okay. So the solicitor's office basically didn't do any additional investigation; they just adopted what DSS ---

A Right.

Q --- had had? Okay.

A Right.

Q Okay. And -- okay. Did you and Mr. Wise have a chance to talk about could they do that?

A Yes.

Q Okay. What -- what did you ask him?

A I asked him -- I said, "How could" -- well, when I really got the knowledge of the intervention hearing, when he came after the plea was made, and I read -- did some reading in -- in the dictation sheets was telling me about, you know, the evidence from family court. The -- the -- the *Alford* plea prevent any evidence from family court go to general sessions.

Q Okay. And let me back up, just so -- so Judge Murphy is clear. The -- when you say "*Alford* plea," it was a -- an *Alford*-type plea to a stipulation in family court; is that right?

A Right.

Q Okay. Because family court -- family court can't put you in jail?

A Right.

Q Okay.
A I know.
Q All right. So you and Mr. Wise discussed that everything -- everything the solicitor at that time came from -- from DSS?
A Right.
Q Okay. Now, you -- you -- the allegations were that you fathered two different children with your stepdaughter?
A That's what ---
Q Is that right?
A --- it was.
Q Is that right?
A Yes.
Q Okay. And your stepdaughter had made some statements to -- to various people: a -- an expert from the state, an interviewer, as well as a DSS caseworker?
A (No audible response.)
Q Okay. Did you and Mr. Wise have a chance to talk about those inconsistent statements that she had made?
A Well, me and Mr. -- me and Mr. Wise talked about them. But he still was, you know -- he still was coming at me with, you know, I'm a plead guilty. And I'm asking him about -- because I reading some -- like I said, I read -- reading some of it in county, but I didn't -- I wasn't understanding too much, because I didn't have too much

knowledge of what I was reading.

But when I really got the knowledge of what I was reading, I went back and asked Mr. Wise about all this. But he never could tell me about -- about why -- how come the -- why -- why I'm in jail.

Because I was asking, if she said this, why -- why I'm sitting in jail. Why -- why I'm in jail when she said this in family court. The judge ordered -- the judge mentioned it as a -- a -- a -- a order. And she denied the allegation.

Q Okay. Let me -- again, so Judge Murphy is clear ---

A All right.

Q --- at one point your stepdaughter made the statement that you had -- were passed out drunk ---

A Uh-huh.

Q --- and that she basically took advantage of you and you had no knowledge of it; is ---

A Right.

Q --- that right?

A Right.

Q Okay. And that's how she got pregnant?

A Right.

Q Okay. Do you -- did you understand that she made other statements about wanting a -- about wanting a baby and ---

A I heard ---
Q --- and other ---
A --- that too.
Q --- things like that, that ---
A I heard ---
Q --- her friends ---
A --- that.
Q --- had babies and she wanted one as well?
A I heard that from Scott Palmer when he told me about it in ---
Q Okay.
A --- family-court life.
Q Based on those statements, what did you and Mr. Wise talk about, as -- as far as how that might help you in -- in any defense y'all might come up with?
A Well, he said -- he said to me, you know, that she said it, but he don't think nobody else going believe it, like believe that it was so.
Q Okay.
A So that had me right there thinking, What you mean, it -- nobody believe it, if she said it? I didn't know she said it. I didn't know nothing about it. But, you know, he still -- he was -- in a way, he was trying to tell me we're putting up a defense for me, but he really wasn't.
Q Okay. Do -- he hired an expert to come testify about

that particular issue. Did you and Mr. Wise talk about that?

A Well, I only met her the day at trial. And I only met her for like -- I don't think it was a good 15 minutes.

Q Okay. Okay. There was another expert hired in the case, Dr. Schwartz-Watts. Did you remember -- do you recall talking to her?

A Well, she came to my county jail one time.

Q Okay.

A And she came and -- I know it was kind of funny. She came on a Sunday. And I was asking her what -- what -- what was going on. And she said she come to talk to me to testify me -- on my case.

And I said, "What -- testify on my case for what? I don't even know what's going on, so how can I talk to you about what is going on, and I don't even know?"

Q Okay.

A And she said she -- she came for me to sign papers. I said, "Well, I'm not signing no papers if I don't know what's going on."

And then about -- about a month two -- about a month and a half later, she met me at Orangeburg County Courthouse along with Mr. Wise. And then she was in the table across from me, and Mr. Wise was sitting down to me in -- by -- beside me. And she was saying something about

-- I mean, Mr. Wise was saying something -- Mr. Wise was saying something about taking a DNA test. I said, "I already give them one."

But, you know, out of the -- out of the air, I heard this lady said, "I'm not going to be in no lawsuit with them."

And Wise looked up at her like that. And he went back down and said, "Well, the judge can take DNA from you anyway."

That -- that's -- that's the last time I seen the lady.

Q Okay. Okay. And she did not testify at the trial, that ---

A No, she didn't.

Q --- that -- Dr. Schwartz-Watts did not testify ---

A She didn't.

Q --- at trial?

Okay. All right. You -- you have repeated several times during your testimony here today that you didn't know what was going on.

A Right.

Q Okay. Did you ask Mr. Wise what was going on?

A Going on within my case or whatever?

Q Yes, sir. I mean, that's what you said ---

A Yes. Yes.

Q --- you were ---
A Yes. I asked him.
Q Okay. Well, what was his response?
A Well, his response to me, when I asked him what was going on with my case, he was steady same, you know, that they have a charge on you; that you had two kids by your -- by your stepdaughter. That's all I was hearing from it.
Q Okay.
A But when I asked him how could that happen, "Well -- well, she say this; she say that. But they're not going believe you."
Q Okay.
A So I just said, "Well, I know -- let's go to -- let's go to trial and prove -- and let it -- let it come out in trial."
Q Okay. When y'all were talking about going to trial ---
A Uh-huh.
Q --- what -- what did y'all discuss as far as potential defenses?
A Well, basically, I was asking, "Where is my Rule 5?" I wanted to see -- but he said we was going to trial. And all of a sudden, a trial popped in two -- in two to three days before I ever know about it. I been here in Orangeburg almost three years, county jail three years.

And about three or four day -- about three days, you're going to trial.

So really, he really didn't discuss too much of nothing, but for me to plead guilty and sign some papers. And I told him I wasn't going do it if I didn't know what I've been in jail for and what -- what was going on. So I -- really, he didn't discuss nothing too much with me about nothing.

Q Okay. You've raised some allegations about the sufficiency of the indictments.

A Uh-huh.

Q Did y'all have a chance to discuss those?

A No. Because when I went to court, I got my indictment the day I was in trial. I had warrants, but I never had a indictment.

Q Okay. So you don't have any issue with -- with the warrants. But the indictments -- there were some errors in the indictments ---

A Well, I ---

Q --- that ---

A --- have some issues -- issues in my warrant too. Because in the affidavit of my warrants, the year that the -- the private investigator typed up the warrant was the wrong year. And they had the -- the DNA was in there wasn't -- they're supposed to use that. And he lied and

said that I -- I made the act. And he said hisself that she made the act from the beginning.

Q Okay. The -- the -- the warrants said that they -- that law enforcement had DNA evidence.

A Right.

Q And that was -- it's your understanding that was ---

A It was ---

Q --- from the ---

A --- family court.

Q --- family-court case?

A It was. That's the only one was taken at that time.

Q Okay. And you don't believe they should've been able to use that?

A Well, the -- the judge order them not to use no evidence from there, nothing from family-court records.

Q Okay. All right. Did you -- when did you first meet Mr. Mellard?

A Mr. who?

Q Doug Mellard, that tried your ---

A Oh.

Q --- case?

A I met Mr. -- well, I think a week before my trial. No. About a week before my trial. He came in and set down with me. And we talk about -- well, he did more of a explaining to me and more paperwork, looking into what I

had, than Mr. Wise did.

And he came and said -- you know, I was showing the paperwork. And he looked at them, asking me where did I got them from. I told him Martin Blanks -- Martin Banks.

He looked at me. "Martin Banks gave them to you?"

I said, "Yeah."

And he got up and storm out the room. And everything just got secret in the -- in the -- between the conversations that we had. They -- like they didn't want to meet the papers -- see the papers.

And we had this -- this lady, Ms. Peggy Hind [sic]. So I think it was the chief public defender there. And she came in and talked to me that same day, around that time. Well -- well, I -- I believe it was the same day.

And I show her the papers, what I had that was saying that it wasn't supposed to go this way, you know, from my -- my -- my -- my family-court lawyer. And she look at me and had tears in her eye and saying herself, "I don't think the -- I'm so sorry for what my -- Mr. Martin Banks done to you."

And I asked her what. She just look and shake her head and walk out. And every time I go to -- and I -- and she was walking past the door. And I holler at her. Said, "Ms. -- Ms. Peggy Hinds, what -- what -- can I get results of the paperwork?"

He said, "Well, I'm -- I'm -- I'm let your lawyer handle that."

But he never did. He always asking me to plead guilty and sign papers.

Q Okay. Ultimately, y'all started a trial ---

A Yeah.

Q --- right?

And you -- you were convicted following that trial?

A Yeah.

Q What -- other than the expert we just talked about -- the two experts, what -- what did you and Mr. Wise -- or Mr. Mellard, but mostly Mr. Wise -- what did y'all discuss as defenses that you might have?

A Well, at the time, I'm telling you, it wasn't really no -- they wasn't discussing nothing. Because he said -- only thing he said, he had some paperwork that the girl said that I -- I raped her.

Q Okay.

A That's all he was saying to me. He wasn't nothing he saying that, well, he was going to fight back. I didn't know -- well, I didn't know none of it till I read my transcript, what ---

Q Okay.

A --- he was going do and what he was planning to do.

Q Okay. So ---

A Right.
Q So upon reading your transcript, you've kind of learned what defenses they put up ---
A Well, he ---
Q --- but you didn't know in advance?
A Well, he put up some -- a little defense. But it was -- it's -- it -- the -- the -- the trial was one-sided.
Q Okay.
A He didn't really come at my defense head-on like he's supposed to have. With the -- with the paperworks and -- and information he had, he didn't -- he didn't do it.
Q Okay. All right, Mr. Haynes. You did not believe that the solicitor's office should've been able to use any of the evidence from your DSS case?
A Until I read the -- the DSS records. I didn't know until I read that.
Q Okay.
A And I read it. It said it don't supposed to have no records of the -- I have some exhibit here to prove it. And I'd like to put it on record today, if you don't mind.

But yeah. I have proof to prove that they said, you know, it don't -- nothing from family -- can be used in any general session, even -- not even another family court hearing, it can't be used.

Q Okay. And what you're talking about is judge -- the

judge's order; is that right? The judge's order from your -- from your -- your -- your *Alford* stipulation?

A Yeah. From family court.

Q Okay. All right. Did you and Mr. Wise ever have a chance to discuss why the state believed they could use those -- the -- that evidence?

A No.

Q Okay.

MR. WALLER: And, Your Honor, it's page 68 of the transcript is the -- I think, the key quotations from that -- that order. Judge Goodstein kind of reads it into the record what ---

THE COURT: All right, sir.

MR. WALLER: --- was talked about.

Q All right, Mr. Haynes. What -- what do you think Mr. Wise should've done differently?

A Well ---

Q Leading up to the trial.

A Well, from the beginning, I believe, from beginning of my case, Martin Banks should've did -- have -- have -- Martin Banks should have did some investigating from the beginning. Because he said the DNA was used. It was used, but he didn't investigate to see where it come from. And really, he didn't even write a motion to the solicitor to find out what state had on me. Mark Wise did.

Q Okay.
A So there's a big old jump right there. So if Mark Wise would've had the right information when he got on the case from Martin Bank, the information he had -- they -- they -- that they -- they -- they continued my case, he would -- I believe he would have known to investigate it or -- or see what state had when he subpoenaed everything from -- well, when he write a motion for them from ---
Q So Mark Wise filed a discovery motion with the solicitor's office?
A Right.
Q And -- and you're saying Mr. Banks did not do that?
A Right. But Mr. Banks gave him everything he subpoenaed from family court.
Q Okay.
A But if -- if Mr. Wise -- Mr. Wise would've been investigate it like he's supposed to be, he would've known everything that they had -- the state had against me, they couldn't -- didn't supposed to be used.
Q Okay. All right. Mr. Haynes, I think I've asked you all the questions that I have for you. Is there anything you think I've left out or that the judge needs to be aware of Mr. Wise -- Mr. Wise or Mr. Mellard's representation of you?
A Well, yeah. Is as -- of how they could have me in

general sessions before family court was over.
Q Okay. So you were arrested before the -- the family-court case was resolved; is that right?
A Right. I had a warrant and a -- a warrant and -- and indicted before family court was over. And I'm asking how could they have a warrant and indicted me before family court was over without any probable cause.
Q Okay. Did you ask Mr. Wise about that?
A Well, at that time I didn't know nothing. I wouldn't -- I -- like I said, I was ignorant to it. I didn't know. I had no knowledge of what -- what was going on, what they was doing.
Q Okay. Well, you were arrested before family court was over, though?
A Right.
Q Okay. You -- were you transported back to a family-court hearing from ---
A Yes.
Q --- the detention center?
A Yes. Yes. Because family court was January, and I believe in May -- May the 9th I got lock up. And March the 26th, I believe, I went back to family court for the intervention hearing.
Q Okay.
A But I already had the indictment and the warrants and

everything on me before they had any information that I was locked up.

Q Okay. So you knew you'd been arrested before it was -- before the family-court case was over, though?

A Yes.

Q Okay. Did you ask Mr. Wise why that was?

A No. I asked Mr. Martin Banks at the time because he's my lawyer.

Q Okay. Once Mr. Wise got on your case, did you ask him why -- how you were able to be arrested before the family court case ---

A Well, I ---

Q --- was over?

A --- didn't ask him because I -- I believe -- why -- why I didn't ask him, because I had asked Martin Banks it already. So I thought, you know, with all that been in -- been said, he would've transferred all that back to him about why he didn't do what he supposed to be doing, you know.

But when I got in there, I -- I was thinking for locked up for a general-session charge -- I mean, for a family-court hearing. But it wasn't family-court hearing. It was general session. I keep asking him what I'm doing locked up for. And I'm -- and they never could tell me. And I thought it was family court.

When I went to family-court intervention hearing, my lawyer had told me -- I asked him what I'm doing locked up. He said, "Oh, I don't know. You must've got another charge."

And I said, "What other charge? There ain't no other -- I ain't got no other charge."

He said, "Got to be. You're locked up. You weren't supposed" ---

Q That ---

A --- "to be locked" ---

Q That was your family-court lawyer that ---

A Right.

Q --- said that?

A He said ---

Q Okay.

A --- "You weren't supposed to be locked up for this. You're supposed to go to parenting class and continue these counseling and report back to your -- your -- your -- your family." He said, "I don't know why you're locked up."

And I was asking the -- all of them. And I -- and I -- I believe I did ask Mr. Wise why I was locked up. He said because the charges.

Q Okay. Let me -- let me back you up just a little bit.

A Uh-huh.

Q So the -- when the DSS case started, it started based

on these allegations, right?
A Right.
Q It wasn't -- it didn't start for something else; it started for specifically this?
A On the allegation. Right.
Q Okay. And DSS asked you to parenting classes?
A Not -- yeah.
Q Okay. Did they -- what else did they ask you to do?
A They just -- to do parenting classes and I'll take a sexual-abuse assessment ---
Q Okay.
A --- and that the kids not supposed to be in my -- my -- my present [sic] until ---
Q Until that ---
A --- I take the classes.
Q Until that was done?
A Right.
Q But -- so they -- they just asked you to take some classes and -- and after -- assuming you had completed those, everything would've been fine?
A That's what -- that what the record -- that's what the record said.
Q That's what you understood?
A No, no. That's what the paperwork said.
Q Okay.

A That's what intervention ---
Q Okay. So ---
A --- hearing said.
Q So they didn't try to say, "Mr. Haynes can't be around these children forever"?
A No. They didn't say that.
Q They said, "If you do these -- do these things and -- and" ---
A Then I can return back.
Q Okay.
A I was judge ordered -- the judge ordered that.
Q Okay.
A Yeah.
Q All right. Other than that, what we just went over, is there anything else you think Mr. Wise -- that the judge needs to be aware of ---
A Yeah.
Q --- about Mr. Wise's representation?
A Well, as Mr. Wise, he's -- I'm -- I'm going back -- back to Mr. Banks again because ---
Q Hold on, now. I -- Mr. Wise is the one that did your trial?
A Yeah.
Q So I want ---
A But ---

Q --- to focus on Mr. Wise.
A I'm going ask why -- well, I didn't have time to ask Mr. Wise this, because I didn't know at the time until I start studying my case.
Q Okay.
A And that's -- and -- and I believe this is very important because I want to know how can I get indicted and then go back to appearing in a hearing again. That's not right.
Q Okay. You had a -- you had preliminary hearing after you were indicted?
A Yes. I -- I was -- I was indicted, I believe, May the 14th.
Q Okay.
A The warrant was April. And May the 14th I was indicted. In August I went back to court. I went back to preliminary hearing in August. That's a big jump for me to be indicted and then go back to preliminary hearing. And the law say I shouldn't be indicted -- I mean, go to preliminary hearing once I been indicted.
Q Okay. Did you ask Mr. -- Mr. Wise ---
A Well, like I said, I didn't knew that until I start studying my case and put it in the PCR.
Q Okay. That would've been Mr. Banks representing you at the time; is that right?

A Yes.
Q Okay. When Mr. Wise came onto your case, did you ask him about that?
A Like I say, I didn't know about it until I ---
Q Okay.
A --- went to prison and I started studying my case.
Q Okay. Anything else you can think of that the judge needs to be aware of?
A Yeah. Fraud of the -- fraud of the officer in the affidavit and all that ---
Q Okay.
A --- and the ---
Q Did ---
A --- warrant ---
Q --- did you talk to Mr. Wise about those ---
A Excuse me?
Q Did you talk to Mr. Wise ---
A I didn't knew that until I came to prison and studied my case.
Q Okay. All right. Anything else that you talked to Mr. Wise about that he -- he didn't do that you wanted him to do?
A Well, frankly, I'm have to look over my -- my issues I'm raising in court today. Because really, me and Mr. Wise didn't talk about really too much of nothing in my

case. If ---

Q Okay.

A --- you're asking me of what we all talked -- what me and him really had a conversation about, really, we didn't really have a conversation about nothing.

Q Okay.

A So if I can look back over in my -- my -- on my -- on my application and refresh my memory as about anything you leave out, I be glad to do it.

Q Well, let me ask you this: Did you -- is there information that you gave to Mr. Wise that he was supposed to investigate or follow up on?

A Not to my recollection. No.

Q Okay. All right. All right, Mr. Haynes. That's all I have for you. Please answer any questions Mr. Limbaugh has.

THE COURT: Cross-examination?

MR. LIMBAUGH: The state has no questions for this witness, Your Honor.

Mr. Waller and I had spoke before we started this hearing. But if he doesn't mind, I would like him to do it now.

If you could clarify the allegations that Mr. Haynes is moving forward on, just for the record and for me to have an idea of where I'm going to forward with the state's

case?

THE COURT: Mr. Waller?

MR. WALLER: Judge, Mr. Haynes filed his application. I think he was very specific about the issues he wanted to raise and -- and -- and very detailed in those issues. Certainly, he does not wish to -- to waive any of those.

I did talk to Mr. Limbaugh about some -- some issues during the trial that I think that -- that I'll ask Mr. Wise about or Mr. Mellard, just -- just a few things that had occurred during the trial that I -- I -- I guess I can -- I can put on the record now. It's just a few, I thought, missed objections or things from the actual trial itself that are in record.

THE COURT: Mr. Limbaugh?

MR. LIMBAUGH: We can clarify at the end the allegations, Your Honor.

THE COURT: Pardon me?

MR. LIMBAUGH: So we can -- we can have Mr. Waller clarify at the -- at the end of the hearing what the allegations are that we -- he's proceeded forward on.

THE COURT: Okay.

MR. WALLER: And I -- I think that might be better, Your Honor. I understand what he's asking. I think some of this stuff is -- will come out in the transcript.

THE APPLICANT: Excuse ---

THE COURT: All right.

THE APPLICANT: Excuse me, Your Honor. I did miss -- when I look back, well -- well, I did miss -- I did miss something.

MR. WALLER: Okay.

THE COURT: What did you miss, Mr. Haynes?

THE APPLICANT: I miss -- here when I -- I -- I did ask Mr. Wise about this DNA they took from me. When I volunteer, they tell him no. And the DNA that they used, I asked him about it. And the judge asked him any objection. And he said no, but he argued that they didn't have change [sic] of custody ---

MR. WALLER: Okay. I'll -- I'll ---

THE APPLICANT: --- for that.

MR. WALLER: --- let -- let me clarify.

Q Which time are you talking about when you took the DNA?

A The last time.

Q The ---

A But it ---

Q The second time?

A The -- this time right here they got me, they said I -- well, they said I'm -- I'm jail for that. Well, that's why I wanted to read my issues, so I can come out and tell you exactly like it was.

Q Okay.
A Because I'm kind of a little -- throwing around here a little bit. But ---
Q So -- all right. So ---
A What I'm in -- what I'm jail for, they said, was the DNA they took from me in 2012, not 2010.
Q Okay. Let me -- let me clarify so that Judge Murphy understands ---
A Okay.
Q --- what's going on. So your DNA was taken in 2010 as part of the DSS case?
A Right.
Q Okay. There was a motion made by the state to retake your DNA in general sessions; is that right?
A Yeah. Without a warrant too. Yeah.
Q Okay. And they had a hearing in front of Judge Dickson ---
A Right.
Q --- in May of 2012?
A Right.
Q And Judge Dickson ordered that your DNA be taken again?
A Right.
Q Okay. What you're saying is that during the trial, those results weren't objected to?

A Right.
Q Okay.
A No. They -- they -- the hearing we had and Judge -- Judge Dickson asked ---
Q Okay.
A --- Mr. Wise the ---
Q I -- I apologize. So judge -- Mr. Wise didn't object to the first set of results being entered into evidence in -- during that hearing?
A No, no, no. He didn't -- right. No, no, no. He didn't object to the second one. But he used the first one for a probable cause ---
Q Right. He used ---
A --- to get ---
Q --- the first ---
A --- the second one.
Q For probable cause to get the second ---
A The second one.
Q Okay.
A And he knew that the evidence that they used for a probable cause didn't supposed to be used, because he argued it early in the trial -- the trial transcript that it was -- they didn't have change [sic] of custody to use the evidence.
Q Okay.

A But it -- the judge asked him did he object. He said no. But at the time he didn't represent me right to start off with, because how can you argue change [sic] of custody for anything out of family court. And you say you're not -- he say he's not waiving my right for my right of not having another test and then went over there and let them take it anyway for a probable cause to get the other DNA from me.

Q Okay. So you're saying -- so he argued against them taking the DNA?

A Right.

Q He just didn't object to it when it was introduced?

A He argued for them not using the other DNA ---

Q Okay.

A --- to get that DNA. And he didn't object for them using that DNA.

Q Okay.

A And -- and it's come to a -- a question today. If you had family court DNA, why do you unlawfully take my DNA the last time?

Q Okay.

A Because, I mean, why would you take another DNA if you use the one in family court?

Q Right.

A Then you come back and take another one from me, using

the family court as -- as exhibit to take that.
Q The family-court DNA was used as -- or that report was used ---
A For a probable ---
Q --- as an ---
A --- cause ---
Q --- exhibit ---
A --- to take it that ---
Q --- in ---
A --- Dickson said.
Q --- in the *Schmerber* hearing in front of Judge Dickson?
A Right. Because the solicitor asked for the probable cause.
Q Okay.
A And Dickson said family court. But my attorney was arguing it, saying that they didn't have no chain of custody to even use it in family court or even take it from me.
Q Okay.
A And they violate my constitutional right about taking another one. And I told them I didn't want to take it since the one already been done. And Mr. Wise quote that in the transcript, in the swabbing transcript, that he not waiving my rights or nothing like that. But then, he

allowed them to do it anyway and didn't object to it. Because he would -- if he would object to it, it would been a -- it -- it -- it would've -- it would've came out different.

Q Okay.

A And I -- and right now today I don't have that DNA result. And I don't understand which -- which -- what DNA analysis they said in the warrant that -- that I'm locked up for.

Q Okay.

A But it -- what -- what -- what -- what it -- I don't see it.

Q Okay.

A Right.

Q Okay. Have you ever been provided with any DNA reports?

A Well, sir, I wouldn't even -- I ain't -- haven't been provided with a family court/general sessions Rule 5 yet.

Q Okay. Okay. All right, Mr. Haynes. That's all the questions I have for you, okay?

THE COURT: Anything?

MR. LIMBAUGH: Nothing, Your Honor.

THE COURT: All right. You may step down, Mr. Haynes.

(Whereupon, the witness exited the witness stand.)

THE COURT: You may call your next witness.

MR. WALLER: Your Honor, the applicant would call Mark Wise.

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: Please raise your right hand.

THE WITNESS: (Complied.)

DEPUTY CLERK OF COURT: State your full name for the record.

THE WITNESS: Mark Wise, W-i-s-e.

MARK WISE, having been first duly sworn, testified as follows:

THE WITNESS: Thank you.

THE COURT: Your witness.

MR. WALLER: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

MR. WALLER: Mr. Wise.

THE WITNESS: Thank you.

MR. WALLER: All right. May it please the Court.

DIRECT EXAMINATION

BY MR. WALLER:

Q Mr. Wise, how did you come to represent Mr. Haynes?

A I was appointed to represent him by Judge Dickson.

Q Okay. Were you his first attorney?

A No.

Q Okay. And do you recall who his first attorney was?

A Martin Banks.

Q Okay. What -- if you know, what was the reason Mr. Banks no longer represented him and you were appointed?
A They -- there was some conflict between the two of them.
Q Okay. If you could, what were the -- generally, what were the allegations against Mr. Haynes?
A That he -- generally, he fathered two children with his stepdaughter.
Q Okay. And they weren't -- we're not talking twins; is ---
A No.
Q --- that right?
It was two separate pregnancies?
A Yes.
Q Okay. The case initiated in -- in family court, the DSS case; is that your recollection?
A Yes.
Q Okay. A lot of that evidence was used in the general-sessions case; is that right?
A Some of the -- I -- I don't know in detail what happened in family court. But the complaining witness, what -- I assume testified in family court, she testified at the trial. I -- I don't know who else from family court testified at the trial. I just don't remember.
Q Okay. Statements and things like that would've been

taken in family court prior to coming to the general-sessions case; is that ---

A Yeah. I would imagine so.

Q Do you recall?

A Yeah.

Q Okay. Did you have a chance to discuss with Mr. Haynes whether or not he -- the evidence from family court could be used against him in the general-sessions case?

A I tried to.

Q Okay. What do you mean by that?

A Mr. Haynes has indicated -- and he is correct -- he has steadfastly believed that he could not face prosecution in general sessions because of what happened in family court. So as he has indicated and he's said, "What am I doing here? Why am I facing these charges?"

So it was -- we -- we had an ongoing fundamental problem with communication. Because I -- we would have to -- he couldn't grasp why he could be in family court and also in general sessions.

Q Okay. So the fact that they were both existing at the same time, he did not understand that?

A He had a -- he -- he understood that they -- he had family court and then general sessions. He did not believe that he should be in general sessions.

Q Okay. What were -- what was your defense in the case

as you got ready to go to trial?
A The complaining witness in the case had indicated that -- and -- and she did on more than one occasion -- she had engaged in acts of sexual intercourse with Mr. Haynes while he was asleep; that he didn't know anything about it; that he would come home; he would drink; he would fall asleep; and she would, to use her words as Mr. Haynes said, she would go in on him. And that -- this is -- he didn't know anything about it; it was all her activity.
Q Okay. And she had actually told multiple that; is that right?
A She did.
Q Okay. And her mother, Mr. Haynes' wife, worked night shift; is that right?
A I think so, but I'm not 100 percent sure.
Q Okay.
A I think that's right, though.
Q The testimony from everyone was pretty consistent that they didn't have any indication that these things were going on; is ---
A That's ---
Q --- that right?
A --- correct.
Q Okay.
A Yes.

Q All right. So that was your main defense; is that right?
A I -- I also didn't believe the complaining witness was credible, based on some of the other things. So I -- I tried to discredit the things she was saying, based on the -- some of the other fabrications, if you will, that she had offered ---
Q Okay.
A --- previously.
Q So other -- essentially, her telling law enforcement or DSS that -- that giving two -- at least two other names of who the father of these children were prior to Mr. Haynes?
A Exactly so.
Q Including one that was completely fictitious?
A I don't remember.
Q Okay.
A I -- I just don't remember.
Q Okay. As y'all were preparing, what was the -- what was your role and what was Mr. Mellard's role?
A We worked as a team. I don't know we -- I -- I -- I don't think we divided up roles. I'm sure we divided up witnesses. But ---
Q Okay.
A --- we kind of approached it together.

Q Okay. You hired an expert in this case -- or at -- at least one expert?

A (No audible response.)

Q What was the purpose of hiring Dr. Schwartz-Watts, or Dr. Maddox now?

A The -- the issue that I thought I had to make the jury understand was how something like this can happen: that somebody could father -- Mr. Haynes could father a child and not know it; that this could happen; that this is a real thing that can happen; and also, to lay a foundation to get a jury charge for that this could happen.

Q Okay. You retained Dr. Amanda Salas?

A Yes.

Q Okay. And you -- you -- she was going to testify about automatism? Am I saying that correctly?

A You are. You are.

Q And essentially, that a person can do something subconsciously or unconsciously and not have any recollection of it.

A (No audible response.)

Q Okay. The state argued that you were making a diminished-capacity or voluntary-intoxication argument. How -- how is that different?

A Totally different. The issue is this: With automatism it's a -- well, the -- the defense you'll see in

other states is unconsciousness; that in order for there to be criminal liability, you have to have a voluntary act. What was happening with Mr. Haynes, the -- the things that had to happen to his body for him to impregnate his stepdaughter, was involuntary, unknown to him, uncontrolled by him.

Q Okay. So it's not some -- not a situation where he's trying to use that he was passed out from drinking as -- as a defense; it's that -- or that the decisions he made while he was intoxicated, he wasn't trying to use that as a defense; it was that he is incapacitated, essentially, and that someone else has the intent to commit an act?

A I guess that's one way to look at it.

Q Okay.

A Incapacitated in the sense that he is not conscious, but he is not incapacitated in the sense that his body can still respond.

Q Okay. You attempted to -- to call -- you -- you proffered Dr. Salas, who is a psychiatrist.

A Yes.

Q Why did you -- how -- how did you settle on a psychiatrist as the -- the expert for that?

A Well, we had a -- we had a psychologist -- there was another psychologist -- I believe she's a psychologist -- who saw doctor -- Mr. Haynes earlier.

Q Okay.
A Mr. Haynes did not want me to use her at the trial.
Q Okay.
A So I had to find somebody else. So that's -- you know, I can't remember -- was it Dr. Maddox? Dr. Salas? I can't remember.
But that's what I was looking for. I needed an expert to be able to make the jury understand -- make the Court understand that what I'm talking about is a real, recognized defense.
Q Okay. Was the -- was the child's statement that -- that this occurred both times?
A Yes.
Q Okay. All right. What did you do to prepare -- I -- I guess to -- to defend against the state's witnesses?
A My preparation focused on reviewing the information from family court, Mr. Palmer's file; talking to experts to give me a -- a grounding, what I need to -- how I needed to approach this.
Q Okay. If I could -- do you have a copy of the transcript there in front of you?
A Yes.
Q Okay. If I could get you to turn to page 65. This is some pretrial matters. I believe it's at the very, very -- the top paragraph ---

A Yes.
Q --- the first -- first part out of -- the -- the very first part. Did you ever have any -- any concerns that Judge Goodstein maybe had prejudged the case?
A (No audible response.)
Q And I ask that because during pretrial ---
MR. WALLER: And for the record, it's page 65, line 1.
Q --- the Court says: "It's a slam-dunk. It's very clear."
A This is -- I don't know I went into the trial thinking she was -- she had prejudged the case. I will -- yeah. I don't -- I didn't ---
Q Okay.
A --- I -- I thought she -- if your question is did I thought she'd be able to be fair and impartial, the answer is: Yes, I -- I did.
Q Okay. All right. And you made -- you made a motion to -- you made a motion to -- to quash the indictment on incest, based on constitutional grounds. Do you recall that?
A I do.
Q Okay. Do you -- did you and Mr. Haynes have a chance to discuss that before you made it, or -- or was it just something that you made as preparing for the trial?
A I -- I don't think we talked about that.

Q Okay.
A I -- I -- I might have mentioned to him I was going to do it.
Q Okay.
A But I certainly didn't ask him if it was okay if I did it.
Q Okay. Did you have any -- well, I -- I -- that's not my -- that wasn't exactly what I was asking, but I -- I understand what you're saying.

Did you have any other concerns about the indictment? I know the state amended -- moved to amend on two different grounds. I think there was -- they said it was a scrivener's error, and they also expanded the -- the date significantly on -- on one of the -- the counts.

A Mr. Waller, I -- I just don't remember.
Q Okay. I know it's been -- it has been some ---
A Yeah. I'm ---
Q --- some time.
A --- I -- I apologize.
Q All right. The -- the issue with DNA, Mr. Haynes' DNA was taken as part of the -- the DSS case?
A Yes.
Q Is that right?
A Yes.
Q What was the problem with that sample or that -- the

way that it had been taken?
A In the -- the family court?
Q Yes, sir.
A I don't know I gave a great deal of thought to the problem, as much as I did the fact that I don't think they could establish a chain of custody. The way they do the family court, I think, is inconsistent with how it should be done in a -- in a criminal matter.
Q Okay.
A Just ---
Q So it's ---
A --- my recollection of the process.
Q Okay. Is that they reason they filed a motion to -- to take another sample, to your -- your understanding?
A I -- that I -- or if your question is did they file the -- the motion for the *Schmerber* hearing because I said I wasn't going to stipulate to the family court, that I don't know.
Q Okay. Did you have any -- any call to -- to question the chain of custody of the second sample taken pursuant to the *Schmerber* order?
A I -- I know we had a -- I know we looked at the chain of custody. If the record doesn't reflect I objected to it, then I probably didn't. If -- if there was an issue, I -- I -- I didn't raise it.

Q Okay.

MR. WALLER: And -- and, Judge, it's talked about several times. Page 266, lines 19 and 20, I believe, is -- is a bit of gap. There's another bit of a gap, as far as when they got to SLED. You know, as -- as an officer of the Court, I don't -- I -- I did not see where Mr. Wise objected to the -- the chain of custody. I'm sure Mr. Limbaugh will correct me if I'm -- if I'm wrong about that.

Q You made the decision, I guess, to put up a defense after the state rested and called two witnesses and attempted to call a third. Do you recall?

A Yes.

Q Okay. One of the witnesses that you called was Dr. Mark Harari, a psychologist who did a -- a forensic interview of the child in this case.

A Yes.

Q All right. During -- and the reason you called Dr. Harari was because he had heard the child say that Mr. Haynes was passed out and -- and she went in on him, as -- as has been said; is that right?

A I don't remember, as I sit here, what I was -- if that was what I was looking for. There was -- there were obvious issues with the complaining witness in this case. And he had information I thought was helpful to Mr. Haynes.

Q Okay. All right. During Dr. Harari's testimony, he

was asked on page 317, lines 14 to -- and I apologize -- line -- excuse me -- page 318, line ---

MR. WALLER: I'm sorry, Your Honor. Beg the Court's indulgence, please.

(Off the record briefly.)

Q During the cross-examination of Dr. Harari, the state asked several things about whether he believed her story or if he believed what she was telling. Did you -- what was the strategy behind not objecting to that?

A If you point -- I don't know that there was. But if you point me to the -- the spot, I could tell you if there was something in my mind that I can ---

Q Okay.

A --- recall now.

Q I guess the answer -- page 317, just beginning on line 21, it -- it goes on to page 318 through line 10.

A I look at that. And your question is why didn't I object to that?

Q Correct.

A Okay. All right. The -- looking at it now, I think there is -- if I were going to do it again, there would only be one part that I think I would've objected to. And that would've been that portion of his testimony where, I guess -- his -- his testimony, beginning at the sentence -- the sentence that begins on line 6 to the end.

Q Okay. Was there a strategy behind not objecting to that?
A No.
Q Okay.
A No.
Q During the closing argument -- and I'm going to jump around just a little bit.
A That's fine.
Q Page 408, line 8, during the state's closing argument, the quote is, about Dr. Harari: "He testified that he didn't believe her." Did you have any -- was there any strategy behind not objecting to that?
A Oh, okay. I see it here. On line 8 -- I -- I see it now.
Q Yes, sir.
A No.
Q Okay.
A No. No.
Q The -- when you called the DSS caseworker to testify, you asked her some questions about an individual named Marcus House. And that was the person who the child in this case had told DSS or law enforcement was the -- the second person she had named as the father after her, I guess, boyfriend at the time -- the DNA that was done on him was found to not be the father -- she named this other

person. You attempted to ask DSS -- the DSS caseworker some questions about what investigation she did to find this person. And ultimately, Judge Goodstein struck -- struck all that from the record and -- and -- or -- or instructed the jury to disregard that entire line of questioning. Was there a strategy behind not objecting to that charge to the jury?

A Her ---

Q Correct.

A --- in telling the jury not to ---

Q Correct.

A No.

Q Okay. Do you recall the -- the charge conference in this case?

A No.

Q Okay. The state asked for -- and it was ultimately charged -- diminished capacity as well as voluntary intoxication. You -- you did object to it. But you don't recall anything about how those came to be?

A How they raised those?

Q Yes, sir.

A Why -- I -- I don't know why they wanted those charged.

Q Okay.

MR. WALLER: Beg the Court's indulgence, please.

THE COURT: Yes, sir.

(Off the record briefly.)

Q Mr. Wise, was there a different -- was there a different discovery produced to you from general sessions versus what you got from the family-court case?

A You mean did the discovery from the solicitor's office have different information?

Q Yes, sir. Was it -- was it different? Was it -- did they conduct additional investigation?

A I don't recall them doing any additional investigation.

Q Okay.

A But ---

Q So they ---

A --- I just -- I just don't recall that.

Q Okay. But you don't remember anything extraordinarily different?

A No.

Q Okay. Did you ever provide Mr. Haynes with a copy of discovery materials?

A When you were questioning him, I looked at my file. And I don't see a record that I did.

Q Okay.

A We had several -- by way of -- the only thing I can think of, we -- we really had a hard time connecting in

this case because of his steadfast belief he should've -- he should've never had me or needed me as a lawyer.

Q Okay.

A So I -- I -- I cannot look him in the eye and say, "Oh, yeah, everything I had I gave to him."

Q Okay. Was there, at some point, a motion for you to be relieved as well?

A Yes.

Q Okay. Do you recall why that was -- why that was made?

A I think -- I think -- I filed a -- I don't think Mr. Haynes went -- I think I filed a motion. We were not working. We were not working together. And I -- I -- if I -- he wasn't going to connect with me and work with me, he needed somebody he felt comfortable with.

Q Okay.

A That would have been -- I certainly didn't feel threatened by him or any of that. But the -- our -- our history was not the most harmonious.

Q Okay. Did you -- you mentioned that you filed a motion to -- to quash the indictment based on the constitutionality of the -- of the incest statute. Did you have any -- any other constitutional concerns with the -- with either of the statutes, other than the way the incest statute is written?

A Constitutional concerns?
Q Yes.
A No. I -- I don't think I did.
Q Okay.
A If I had them, Mr. Waller, I would've raised them.
Q Okay. Did you have any other issues that you had about the charges against Mr. Haynes that you did not raise to the Court?
A No. Everything I thought of, I -- I tried to do.
Q Okay. Thank you, Mr. Wise. Please answer any question Mr. Limbaugh has.

THE COURT: Cross-examination?

MR. LIMBAUGH: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LIMBAUGH:

Q How you doing, Mr. Wise?
A Thank you. I am well. Thank you.
Q I'm going to do my best to try and hit on what I think the allegations are. Is there -- is there any reason that you know of that the DNA from the family-court case could not be used?
A I would not -- I would object. If I -- if I just walked in the room and they said they wanted to use DNA from another court proceeding in -- in this case, I would've said, "I object to that." I would. Yeah.

You know, I -- from what I know of family court, I don't think the process in family court is consistent with what you would do in general sessions. So yeah. I would have issues with that. I would. I would want them to start all over again.

Q Okay. I guess I should clarify.

A Okay.

Q Is the order that was issued for the family court ---

A Yes.

Q --- that Mr. Haynes has these issues with, saying that nothing can be used from the ---

A Oh.

Q --- family-court case ---

A Okay. Okay.

Q --- is -- do you have any reason to believe that that specifically precludes the solicitor's office from using the DNA from the -- the family-court hearing?

A I -- I don't think the -- my recollection of the family-court order was that they couldn't use anything that Mr. Haynes said in general sessions. I would have opposed them using the DNA. And I hope I did and -- from the family-court case in the general-sessions case.

Q Okay.

A But I don't know that was in the family-court order, "Oh, no, you can't use this DNA in a general-sessions

case." I just don't remember.

Q Okay. But there was DNA taken from Mr. Haynes on two separate occasions; is that correct?

A Yes.

Q And on both of those occasions, it showed that he was the father of those children?

A It did.

Q Okay. And you said you had a -- I'll say interesting relationship with Mr. Haynes during your representation with him?

A I wouldn't say interesting. We -- you know, Mr. Haynes was adamant. From the first time I met him, he was adamant. I -- he shouldn't be here; shouldn't be having this case. He shouldn't be in general sessions.

And I -- it -- it was a hurdle that I was, you know, trying to overcome in convincing him I'm the -- I'm -- I'm on your side. I'm -- I'm with you.

Q Did you attempt to explain to him why he was in general sessions and family court?

A Yes.

Q Okay. Do you recall the judge also attempting to explain it to him on a number of occasions?

A I don't recall.

Q Okay.

MR. LIMBAUGH: The record will reflect, Your Honor.

Q I believe it was Harari that you questioned about speaking to the victim witness; is that correct?
A I -- I would defer to the transcript.
Q Okay. But there was some testimony regarding why trial witnesses can recant or why they might recant their testimony; is that correct?
A I -- I -- I -- probably. I just don't recall.
Q Okay. Did you ever see the appeal in this case where automatism was raised on direct ---
A Yeah.
Q --- appeal?
A I did see some of the appeal.
Q Okay.
A Yes.
Q And I know that you can't recall specifically giving Mr. Haynes his discovery. But do you recall reviewing his discovery with him?
A We -- we -- I -- we had many discussions about what his case was going to be and how they were going to go about it and what the evidence they had -- or what the evidence they were going to try to use. We did do that. We -- as -- as best we -- as best I could.
Q Okay. Do you believe he understood those conversations with you?
A That I don't know.

Q Okay. And I might need to ask this of Mr. Mellard -- or Mellard. But Mr. Waller on direct said that you -- you didn't object to the chain of custody, which I believe is correct.

MR. LIMBAUGH: But for the Court's attention, I believe it's on page 293, lines 5, and the ruling would be on line 15. There was an objection made to the line of custody by Mr. Mellard. I just want to keep the record consistent.

Q Mr. Waller brought up that you didn't have a strategy for -- or not objecting to when ---

MR. LIMBAUGH: Pardon me. Let me rephrase, Your Honor.

Q I believe it was page 317 where it was questioned about him not believing what the witness said.

A Yeah.

Q You didn't have a strategy for not objecting there?

A No. Looks -- I -- no. No. I -- no, I didn't.

Q Okay. Would it have been that witness's practice to try and evaluate the credibility of a witness -- or of the victim that he was talking to?

A Dr. Harari?

Q Yes.

A Would that have been his practice? It's a good question. I don't know the answer.

Q Okay.
A It's a good question, though.
MR. LIMBAUGH: Moment's indulgence, Your Honor.
(Off the record briefly.)
Q And you said you didn't recall different discovery from the solicitor's office to the family court. But -- but you also stated earlier that you don't have extensive knowledge of the family-court case; is that right?
A I don't have extensive knowledge of what happened in the family court. But I think I have -- I think I have the records from family court.
Q Okay.
A Yeah. I think I have all of them.
Q You just can't specifically remember if the -- they were different than what the solicitor gave you?
A Right. Yeah. I -- and -- and that's true also. I was thinking more of actually what happened in the courtroom ---
Q Okay.
A --- in family court.
Q Thank you.
MR. LIMBAUGH: That's all I have for this witness, Your Honor.
THE COURT: All right. Any redirect?
MR. WALLER: Just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. WALLER:

Q Mr. Wise, you testified that you would've liked the solicitor's office or law enforcement to have done their independent investigation outside of the -- the family court or redone everything. Why -- why would -- why is that? Why would you like to see them do everything fresh?

A No. I'm sorry. If I said that, I miscommunicated. I -- I was referring to the DNA test.

Q Okay.

A I -- I would've not -- I would've wanted them to conduct -- to start the process anew ---

Q Okay.

A --- for DNA.

Q So -- so the DNA ---

A Yes.

Q --- is what you're talking about? Okay. Thank you, Mr. Wise.

A Okay.

Q Nothing further.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you, Your Honor.

(Whereupon, the witness exited the witness stand.)

THE COURT: You may call your next witness.

MR. WALLER: No further witnesses from the applicant

THE COURT: All right.

MR. WALLER: --- Your Honor.

THE COURT: Any witnesses from the state?

MR. LIMBAUGH: Just one, Your Honor: Mr. Robert Mellard.

THE COURT: All right. Come on up, Mr. Mellard.

(Off the record briefly.)

(Whereupon, the witness came forward.)

DEPUTY CLERK OF COURT: All right. Stop right there for me.

THE WITNESS: Sure.

DEPUTY CLERK OF COURT: Please raise your right hand.

THE WITNESS: (Complied.)

DEPUTY CLERK OF COURT: State your full name for the record.

THE WITNESS: Robert Douglas Simms Mellard.

DOUGLAS MELLARD, having been first duly sworn, testified as follows:

THE COURT: Your witness.

MR. LIMBAUGH: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LIMBAUGH:

Q Good -- I guess afternoon now, Mr. Mellard.

A Yep.

Q I'm going to run through a few of the same things that I just went through with Mr. Wise. Do you recall reviewing the discovery with Mr. Haynes?

A I'm sure I did. But I can't, off the top of my head, say I -- I'm sure I did.

Q Okay. And do you agree with Mr. Wise's characterization of your division of the case, that it was basically a team effort?

A Well, let -- let me just -- let me just go back and say this. I was brought in to talk to Mr. Haynes. And him and Mr. Wise were having kind of a -- not -- not the -- the best communication. So I don't know that I necessarily went page by page over the discovery with him. But I probably did talk to him about the -- the case.

And now, how much -- what pages we went over, I don't know. But I was kind of brought in to see if I could talk to him and just kind of see if maybe I -- I would have a better relationship. So that was my -- that was my purpose.

Q What is your recollection of what could or could not have been used from the family-court proceeding?

A My recollection of DNA is this: I don't care where the DNA comes from. The solicitor's going to want a good chain of custody. And they're going to make -- establish that chain of custody in the general-sessions realm, I

guess, is the best way to put it.

Q Okay. There was a *Schmerber* hearing, right, on the DNA?

A I believe so. I think that was before my time. I think Mr. Haynes is right. I came last couple of weeks.

Q Okay. And so back to the chain-of-custody with the DNA, you were in the courtroom a few minutes ago; is that correct?

A That's correct.

Q And do you recall hearing my question to Mr. Wise regarding your objection to the chain of custody?

A I -- I remember you saying something about it. Yeah.

Q Do you recall doing that?

A No, I -- I do not.

Q Okay. But would the record reflect ---

A Whatever's in the record is what happened. Yes.

Q Okay. And the DNA in this case did show that Mr. Haynes was the father of both of those children; is that correct?

A I believe so.

Q Okay. Did you and Mr. Wise think this was going to be a tough case to try?

A It was going to be a -- it was going to be a tough -- tough case. Yes.

Q Okay. Largely because of the DNA evidence?

A The DNA evidence was -- it -- we had to -- we had to get around the DNA evidence that -- that showed that he was the father of the children. Yes.

Q Okay. Did you have any reason for not objecting to the two statements that I was questioning Mr. Wise about earlier, about the validity of the victim?

A I -- I don't even remember, to tell you ---

Q All right.

A --- the truth.

MR. LIMBAUGH: Moment's indulgence, Your Honor.

(Off the record briefly.)

Q Do you believe Mr. Haynes understood all of the conversations that you had with him once you were on the case?

A I -- I don't know. I -- I know I tried to explain what I could. If he had a question, I'm sure I tried to answer it.

Q Uh-huh.

A But as Mr. Wise said, there was that issue of the family court -- I don't want to say the admission in family court, but the finding in family court, whether it could be used in the -- whether it precluded the general-sessions charge. And that was always the sticking point. And I don't think Mr. Haynes ever satisfactorily -- I don't think he ever agreed with what our assessment was ---

Q Okay.
A --- on that.
Q Do you recall the judge trying to go over that with him as well in the pretrial hearing?
A I vaguely recall that. But I couldn't tell you what was said or -- or anything of that matter.
Q Okay.
MR. LIMBAUGH: That's all I have for this witness, Your Honor.
THE COURT: Any cross-examination?
MR. WALLER: Just very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. WALLER:
Q Mr. Mellard, were you involved in locating the experts in this case?
A No.
Q Okay.
MR. WALLER: Beg the Court's indulgence.

(Off the record briefly.)

Q Mr. Mellard, did you -- did you -- was -- was there any difference in the discovery from the solicitor's office versus what was provided to you from the family court?
A I couldn't tell you.
Q Okay. Thank you, Mr. Mellard.
A All right.

THE COURT: You may step down, sir. Thank you.

(Whereupon, the witness exited the witness stand.)

THE COURT: Any other witnesses?

MR. LIMBAUGH: The state rests, Your Honor.

(Off the record briefly.)

MR. LIMBAUGH: But, Your Honor, on this -- on Haynes, I would like Mr. Waller to clarify the allegations for the record.

THE COURT: Yes, sir ---

MR. WALLER: And ---

THE COURT: --- Mr. Waller.

MR. WALLER: --- and, Judge, I would just -- I -- I would make a motion to amend the application to include an allegation that counsel was ineffective for failure to object to the vouching during the testimony of Dr. Harari, as well as ineffective in the -- in the locating of a proper expert. Judge, I -- I don't want to waive any of the issues that Mr. Haynes raised in his application. As I said before, he was very specific about it. If -- if Your Honor finds that he has failed to meet his burden in those issues, then -- then so be it. But I don't want to waive any of those. And -- and I would just ask to amend the other two issues.

THE COURT: Mr. Limbaugh?

MR. LIMBAUGH: The state would object to any

amendments at this point. We are -- are required to be given prior notice of these allegations. We were not given notice of those and so were not able to prepare.

The state would also move to dismiss summarily allegations of -- if there are any, of the appellate issues that have been previously raised and any trial-court-error issues as having not been raised on appeal and the lack of subject-matter -- subject-matter -- or lack of jurisdiction, as the indictments should be seen as primarily sound on their face, according to *Tate v. State* and *Pringle v. State*. And that is all, Your Honor.

THE COURT: All right.

MR. WALLER: Judge, my only argument about the -- the amendments: There was no objection during the -- the testimony to -- to things that might've been outside of the -- of the transcript; that Rule 15(b) allows to conform the pleadings to the evidence presented. So I would -- I would move to amend under that.

There was -- or as far as dismissing the other allegations -- and there wasn't a motion beforehand, evidence has been -- been taken. I -- you know, I think that certainly if -- if there are issues that are not able to be corrected in -- in a PCR hearing, that those issues were not properly before the Court anyway. But as -- outside of those, you know, evidence was -- was presented.

If -- if evidence touches on one of those issues, I think it -- it's properly before you now and should not be dismissed.

THE COURT: I'll allow the -- the amendment based upon the evidence that was presented. I'll take the other matters under advisement.

MR. WALLER: Thank you, Your Honor.

MR. LIMBAUGH: Thank you, Your Honor.

(Whereupon, the proceeding was concluded at 12:10 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Calhoun County, South Carolina, on the 26th day of February, 2019.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Maryann S. Nevers, CVR-M-CM, RVR
Official Court Reporter

Columbia, South Carolina
November 22, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

2019 AUG 15 P 4:51

John Edward Haynes, #354464,
Applicant,

v.

State of South Carolina,
Respondent.

Case No.: 2015-CP-09-0215

ORDER OF DISMISSAL

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. In May 2010, the Calhoun County Grand Jury indicted Applicant for incest (2010-GS-09-0069) and criminal sexual conduct with a minor under the age of 16, second degree (2010-GS-09-0070). Mark Wise, Esquire, and Robert Douglas Mellard, Esquire, represented Applicant. Assistant Solicitors Sarah A. Ford, Esquire, and Benjamin Harrison Bell, Jr., Esquire, prosecuted the case. On February 25-28, 2013, Applicant proceeded to trial before the Honorable Diane S. Goodstein. The jury found Applicant guilty as indicted. Judge Goodstein sentenced Applicant to imprisonment for consecutive terms of ten years for incest, provided that upon the service of five years, the balance is suspended with probation for five years and twenty years for criminal sexual conduct.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on May 6, 2015. State v. Haynes, Op. No. 2015-UP-228 (S.C. Ct. App. filed May 6, 2015). The remittitur was returned to the circuit court on December 1, 2015.

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

1. "Ineffective Assistance of Counsel"

a. "Applicant was provided with deficient representation by his attorney in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of Applicant's proceeding was prejudiced and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694."
b. "Trial counsel failed to actively investigate the facts surrounding to build defense which could have demonstrated Applicant's legal innocence of the charges against him." (Counsel testimony)
c. Counsel should have moved for a directed verdict once there was testimony that the victim seduced Applicant. (He did. ROA 302, 303)
d. "Counselor failure to investigate, prepare for trial, or request a continuance" (Counsel testimony)
e. "Trial attorney failure to request on lesser included offenses. Victim initiated situation which incest was established by her action." (Requested Automatism charge)
f. "Trial attorney was ineffective for not moving to have charges dismissed after victim told DSS employee, using her words, 'when in on Mr. Haynes, when he was asleep, he was drunk, that he didn't know anything about it." (Directed verdict motion)
g. "Trial counselor should have motion to have 'incest' charge dismissed due to wrong statute in body of indictment – Section 16-3-655 of the South Carolina Cod of Laws as Amended." (Indictment facially valid)
h. "Trial counselor was ineffective for not bringing to the court's attention that Applicant was already tried and convicted in family court, an Alford plea was excepted, and also the family court was adjudicated, then Applicant was indicted for General Sessions Court before adjudication. It's double jeopardy." (Counsel testimony)
i. "Counsel was ineffective for not motioning to have charges dismiss before the jury was sworn because at that point 'only evidence' was what victim told DSS and the doctors and her examiners and that was she seduce him, she committed the act." (Directed Verdict Motion)
j. "The attorneys that represented [Applicant] on these charges in court failed to function as the counsel that the Constitution's Sixth Amendment guarantees."

2. "Brady Violation"
   a. "Trial counsel was ineffective, and the court errored in not granting relief at trial, because the solicitor didn't disclose potent exculpatory material, related to his criminal sexual conduct, second degree and incest charges." (Got all discovery)
   b. "Trial counselor was ineffective and the prosecution team, the Solicitor's Office of Calhoun County, violated Applicant's 5th Amendment and 14th Amendment constitutional rights by withholding material favorable evidence to Applicant."
3. Trial Court Error
   a. "Counselor was ineffective, and court errored once there was testimony the victim seduce Applicant, the court should have dismiss the charges, and vacate this sentence."
   b. "Applicant's conviction should be reversed because the D.N.A. evidence was

collected from him in violation of the fourth and fourteenth amendments of the United States Constitution and Article I, Section 3 and 10 of the South Carolina Constitution. The DNA testing that was ordered by the Hon. Edgar Dickson on May 18, 2012. Applicant never received a copy to this day."

4. Lack of Jurisdiction
    a. "Trial Court had no jurisdiction where Applicant was indicted for SCS Second Degree and Incest, but the court allowed the State to proceed to trial, knowing the statements by the victim would be presented." (What?)
5. "Double Jeopardy"
    a. "Trial counselor was ineffective for not bringing to the court's attention that Applicant was already tried and convicted in family court, an Alford plea was excepted, and also the family court was adjudicated, then Applicant was indicted for General Sessions Court before adjudication. It's double jeopardy."
    b. "Trial counselor was ineffective because the family court 'was not over' when the Calhoun County Sheriff Department called Applicant to station and served warrants without probable cause."

Statement of Facts

Complainant was fifteen when she gave birth to her first child and seventeen when she gave birth to her second. R. 34, 11. 1-8. R. 35, 11. 1-7. Appellant John Haynes ("Haynes") is complainant's stepfather. R. 30, 11. 11 - 12. The State's DNA expert testified that the chances that Haynes was the father of these two children were 99.9%. R. 93, 1.8 -95, 1.24.

At trial, complainant claimed that Haynes began sexually abusing her when she was approximately twelve or thirteen, eventually forcing her to have intercourse and impregnating her. R. 31, 1. 1 1 - 35, 1. 10. After complainant denied or said she did not remember making multiple statements regarding Haynes to a psychologist and to a DSS worker, Haynes called both of these witnesses in his case. R. 51, 1. 1 - 60, 1. 2.

Dr. Marc Harari ("Harari") performed a psychological evaluation of complainant. R. Ill, 11. 19-22. Harari testified that complainant told him that she had sex with Haynes when he was drunk and "entirely unaware that he had sexual relations." R. 113, 1. 20 - 114, 1. 5. She told Harari that she loved her stepfather and wanted to have his children. R. 114, 11. 15 - 19.

The DSS worker, Eula Clark ("Clark") testified that complainant told her all of her friends were having babies and she wanted a baby, too. R. 124, 11. 21 - 25. She said she loved Haynes and had sex with him because she wanted a baby. R. 125, 11. 5-16. Complainant also told Clark that Haynes did nothing wrong and did not know what happened because Haynes was drunk and unaware of what was happening. R. 126, 1. 5 - 127, 1. 20. Complainant told Clark that she only claimed Haynes raped her because she thought that was what everybody wanted to hear. R. 127, 11. 21 - 25. Clark told her a judge would not believe her story and complainant then claimed Haynes raped her. R. 132,11. 1-25.

Following the testimony of these two witnesses, the defense called a psychiatrist, Dr. Amanda Salas. R. 143, 11. 2-4. The defense intended to offer Dr. Salas to educate the jury on whether it is possible to have sex and remain totally unconscious. R. 147, 1. 24 - 152, 1. 5. The State objected on relevance and that Dr. Salas had not performed any tests on Haynes to determine whether he had what the solicitor termed "sex somnia." R. 144, 1. 17 - 346, 1. 8. Judge Goodstein told the defense to proffer Dr. Salas' testimony and then she would rule. R. 151, 1. 3 - 152, 1. 6.

Dr. Salas was board certified in general psychiatry, child adolescent psychiatry, and forensic psychiatry. R. 154, 11. 20 - 22. She had previously been qualified to testify in court as an expert witness. R. 156, 11. 6-10. She explained that "the term automatism relates to involuntary behavior that occurs in a state of unconsciousness." R. 156, 11. 14 - 20. She researched medical literature on automatism. R. 157, 11. 9-19. She testified that people can engage in activities while they are unconscious and have no awareness of what they are doing. R. 157, 1. 20 - 359, 1. 18. When defense counsel asked about automatism and sexual performance,

the State objected on the grounds that Dr. Salas had "no background in urology or the medical side of male physiology. R. 158, 11. 19 - 25.

After discussion, the court agreed that Dr. Salas was an expert in psychiatry, but did not "know that she is an expert in the field of automatism." R. 159, 1. 23 - 160, 1. 1. Defense counsel asked Dr. Salas further questions about her knowledge of automatism. R. 160, 1. 10 - 167, 1. 5. She researched automatism in PubMed, a scientific database. R. 160, 1. 15 - 162, 1. 1 1. She read the abstracts of articles she found concerning automatism and said that any physician, not just a psychiatrist, would have the knowledge to interpret them. R. 161, 1. 8 - 162, 1. 11. She explained that males can have erections while unconscious. R. 164, 1. 21 - 166, 1. 19. She explained the "parasympathetic nervous system" and that erections can occur while unconscious and are controlled by this part of the nervous system. R. 164, 1. 21 - 166, 1. 19. The State again objected that Dr. Salas was not an expert in this area. R. 166, 11. 21 - 25. Defense counsel then moved to have Dr. Salas qualified as an expert in psychiatry and automatism and the court allowed voir dire. R. 167, 11. 1-16.

On voir dire, Dr. Salas testified that she learned about automatism in medical school and during both neurology and psychiatry rotations. R. 168, 11. 1-12. She admitted she was not an automatism researcher, but when the State asked her if she had only a "generalized knowledge" of automatism, she replied that she had "specialized knowledge in terms of having a medical degree that allows me to know that automatism exists and how to identify it." R. 168, 1. 13 - 169, 1. 7. She agreed that she did not promote herself as "somebody who studies automatism" and that she had not written any papers on automatism. R. 169, 11. 11 - 17. She had treated patients who exhibited automatism. R. 170, 1. 21 - 171, 1. 3. At this point, the State concluded its voir dire and argued Dr. Salas did not have "specialized training or knowledge in order to help define a

fact on this particular subject in this case" and also objected that her testimony was irrelevant. R. 171, 11. 7 - 17.

Defense counsel argued her testimony was relevant because of complainant's testimony that she had sex with Haynes while he was drunk and unaware of what was happening. R. 171, 1. 18 - 172, 1. 18. Defense counsel argued that Dr. Salas's knowledge was "superior to the jurors' knowledge" and that she could educate them about whether what the complainant said happened was possible. R. 172, 11. 19-25. He then proffered Dr. Salas's testimony that an unconscious man can have an erection, ejaculate, impregnate a woman, and never awaken. R. 173, 1. 11 - 176, 1. 3.

The trial judge then questioned defense counsel about whether Dr. Salas would offer an opinion as to whether Haynes suffered from automatism and could have impregnated complainant while unconscious. R. 176, 11. 1 1 - 22. Defense counsel stated she would not offer such an opinion. R. 176, 11. 11 - 22. Judge Goodstein asked, "So, what she's prepared to testify, there is this thing called automatism and it can happen?" Trial counsel agreed, while relating Dr. Salas's opinions to sexual performance. R. 177, 11. 1 - 5. The trial judge also asked whether Dr. Salas had any information about how much alcohol Haynes consumed, and defense counsel said she did not. R. 177,11. 4 -9.

Judge Goodstein then ruled she would not allow Dr. Salas's testimony and would not qualify her as an expert. R. 178, 1. 3 - 182, 1. 20. The trial judge concluded that the psychiatrist's testimony could only "invite the jury to speculate" because she had not examined Haynes and could not testify whether Haynes had automatism. R. 178, 1. 3 - 179, 1. 14. Judge Goodstein noted that diminished capacity is not a defense. R 178, 1. 24 - 179, 1. 6. ~~His~~ The court debated whether Dr. Salas was not an expert because she only read "summaries" of forty articles. R. 179,

1. 15 - 180, 1. 9. Defense counsel argued that Dr. Salas' s information was admissible because the information she had was relevant and "lay people without some additional information can't solve it." R. 181, 11. 9 - 20. While the trial judge agreed that the jury needed "appropriate expert testimony regarding . . . automatism," the court ultimately concluded that because Dr. Salas could not "take the next step to relate [automatism] to this defendant," her testimony was inadmissible. R. 181, 1.21-182, 1. 20.

Findings of Fact and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, William Brunson. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a "'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526–527, neither

may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id.

at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant's allegation is addressed fully below:

Failure to Investigate

Applicant alleges that plea counsel was ineffective for failing to properly investigate the facts of the case. Counsel testified that he received and reviewed all of the discovery in this case. Counsel testified that he does not believe that there was anything that was in the family court case that was not in the Solicitor's file. Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has

the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

Based on these reasons, this Court finds plea counsel was not ineffective on this ground and this allegation is denied and dismissed with prejudice.

Failure to Move for a Directed Verdict

Applicant alleges that counsel was ineffective for failing to move for a directed verdict or failing to move to dismiss charges. Applicant alleges that counsel should have moved for a directed verdict or should have moved to have the charges dismissed due to evidence that was presented by the State or evidence that was failed to be produced at trial. Counsel testified that he did in fact move for a directed verdict at trial and that the judge denied his motion. The record directly supports counsel's testimony, that in fact, a directed verdict was made and ruled upon. Based on the record directly refuting Applicant's allegation, this Court finds trial counsel was not ineffective on this ground and this allegation is denied and dismissed with prejudice.

Family Court Concerns

Applicant alleges that counsel was ineffective for failing to bring to the court's attention that he was already tried in Family Court and he should not have been tried in General Sessions. Applicant testified that he believes that since he was going through the process in Family Court he could not be charged in General Sessions at the same time. Applicant testified that he thought he took an Alford Plea in Family Court. Applicant testified that he felt that the State could not use the DNA evidence from the DSS case against him in his General Sessions case. Counsel testified that the Family Court matter did not preclude the State bringing General Sessions charges against Applicant. Counsel testified that he received all of the evidence from the Family Court proceedings. Counsel testified that he tried to explain to Applicant multiple times that he could be in Family Court and General Sessions. Counsel testified that he challenged one of the DNA tests taken in the Family Court case as the method being insufficient for use in General Sessions. Counsel testified that he did not challenge the DNA test on its chain of custody, as he felt there was not merit to that issue.

Based on these reasons, this Court finds plea counsel was not ineffective on this ground and this allegation is denied and dismissed with prejudice.

Trial Court Error

This Court finds Applicant failed to present any testimony, argument, or evidence at the hearing concerning the allegation in his application that the trial court erred in admitting the detective's testimony. Additionally, the Court finds this allegation is a direct appeal issue and is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 420 (1993). Applicant could have raised

this issue on appeal. The failure to do so has waived this allegation as grounds for relief, and the allegation is dismissed.

Conclusion

Based on all the foregoing, this Court finds and concludes 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 notes Applicant must file and serve a notice of appeal within thirty 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 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant shall be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 8 day of Aug, 2019.

Maite Murphy

THE HONORABLE *MAITE MURPHY*
Presiding Judge
Tenth Judicial Circuit

Summerville, South Carolina

WITNESSES

Stan Graham

Calhoun County Sheriff

ARREST WARRANT NUMBER
M360354

Arrested: April 9, 2010

ACTION OF GRAND JURY

TRUE BILL

Bobby J Shumpert
Foreperson of Grand Jury
Date: May 14, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS09-0070

The State of South Carolina

County of CALHOUN

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

THE STATE
vs.

John Edward Haynes

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR – SECOND DEGREE

SC Code: **16-3-655(3)**

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

ATTEST TRUE COPY
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

Witness:

C.C.C. PLS. AND G.S.

FILED
2010 MAY 14 A 10:57
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

614

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)

INDICTMENT
2010GS09-0070

At a Court of General Sessions, convened on May 17, 2010 the Grand Jurors of Calhoun County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINOR – SECOND DEGREE

That in Calhoun County, South Carolina, on or about January 1, 2008, the Defendant, John Edward Haynes, did engage in a sexual battery upon a minor who was at least fourteen (14) years of age but less than sixteen (16) years of age and the defendant was more than two years older than the victim and/or in a position of familial, custodial, or official authority to coerce the victim, in that the defendant did have sexual intercourse with the victim, [redacted]. This offense is in violation of Section 16-3-655 of the South Carolina Code of Laws, as amended.

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

Karen Fryar, Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF Calhoun
STATE VS.
John Edward Haynes
AKA:
Race: B (BLK) Sex: M Age: 40
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City,State,Zip: St. Matthews, SC 29135
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS09-0070
A/W#: M360354
Date of Offense: 1/1/2008
S.C. Code § : 16-3-655(3)
CDR Code #: 0397

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Sexual Conduct with Minor - Victim Under 16 Yrs of Age - Second Degree

in violation of § 16-3-655(3) of the S.C. Code of Laws, bearing CDR Code # 0397
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Sarah Ford 77029
Ford, Sarah A. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 30 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: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

FILED 2013 FEB 28 P 4:04 KENNETH HASTY CLERK OF COURT CALHOUN COUNTY ST. MATTHEWS, S.C.

ATTEST TRUE COPY KENNETH HASTY CLERK OF COURT CALHOUN COUNTY

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$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	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E begining
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: Sex Offender registry
Sexual Predator Offense
This Sexual battery was NON consentual! The offense is most serious and
☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Claudia H. Faulkner
Court Reporter: Henry Young
Presiding Judge: Diane S. Goodstein
Judge Code: 2113
Sentence Date: 2-28-2013

SCCA/217 (03/2011)

Defendant should be placed on electronic monitoring.

WITNESSES

Stan Graham

Calhoun County Sheriff

ARREST WARRANT NUMBER
M360353

Arrested: April 8, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: May 14, 2010

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS09-0069

The State of South Carolina

County of CALHOUN

COURT OF GENERAL SESSIONS

May 17, 2010 TERM

THE STATE
vs.

John Edward Haynes

Indictment for

INCEST

SC Code: **16-15-20**

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

Witness:

C.C.C. PLS. AND G.S.

ATTEST TRUE COPY
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

FILED

617

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)

INDICTMENT
2010GS09-0069

At a Court of General Sessions, convened on May 17, 2010 the Grand Jurors of Calhoun County present upon their oath:

INCEST

That in Calhoun County, South Carolina, on or about January 1, 2008, March 1, 2009 the Defendant, John Edward Haynes, did engage in incest in that the defendant did have sexual intercouse with his wife's daughter, [redacted]. This offense is in violation of Section ~~16-3-655~~ 15-20 1987 of the South Carolina Code of Laws, as amended.

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

Karen Fryar, Solicitor

STATE OF SOUTH CAROLINA
COUNTY OF Calhoun
STATE VS.
John Edward Haynes
AKA:
Race: B (DC) Sex: M Age: 40
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City,State,Zip: St. Matthews, SC 29135
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS09-0069
A/W#: M360353
Date of Offense: 1/1/2008
S.C. Code § : 16-15-20
CDR Code #: 0090

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Incest
in violation of § 16-15-20 of the S.C. Code of Laws, bearing CDR Code # 0090
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Sarah A Ford 77029
Ford, Sarah A. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 10 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 5 days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for 5
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: 2-28-2013
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

FILED FEB 28 2013 4:04 P KENNETH HASTY CLERK OF COURT CALHOUN COUNTY ST. MATTHEWS, SC

ATTEST TRUE COPY KENNETH HASTY CLERK OF COURT CALHOUN COUNTY

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms:
☐ Set by SCDPPPS
Recipient:

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

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp
May serve W/E begining
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: Sex offender registry; sexually violent offender Probation to begin when released from SCDC; Must successfully complete SO Offender treatment *
☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Claudia H. Paulling
Court Reporter: Henry Effing
Presiding Judge: Doyet A. Goodstein
Judge Code: 242
Sentence Date: 2-28-2013

SCCA/217 (03/2011)

* NO contact with minor children until SO Offender [illegible]