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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Beaufort County
Honorable Alex Kinlaw, Jr., Circuit Court Judge

THE STATE, Petitioner-Respondent,

v.

CHARLES DENT, Respondent-Petitioner.

Opinion No. 5860 (S.C. Ct. App. Filed August 18, 2021)
(S.C. Ct. App. Appellate Case No. 2018-001257)

APPENDIX
VOLUME II OF II

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General
S.C. Bar No. 101464
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

ISAAC MCDUFFIE STONE, III
Fourteenth Circuit Solicitor's Office
Post Office Box 1880
Bluffton, South Carolina 29910
(843) 816-1707

ATTORNEYS FOR
PETITIONER-RESPONDENT

E. CHARLES GROSE, JR.
Grose Law Firm
404 Main Street
Greenwood, South Carolina 29646
(864) 538-4466

ATTORNEY FOR
RESPONDENT-PETITONER

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APPENDIX VOLUME II OF II

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Charles Dent

Alan Wilson
Attorney General

Scott Matthews
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211
(803) 734-3727

Isaac McDuffie Stone, III
Solicitor, Fourteenth Judicial Circuit

P.O. Box 1880
Bluffton, SC 29910
(843) 790-6283

Attorneys for Respondent State of South Carolina

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State's Exhibits 1-22 will be transported to the Court.

THE BAILIFF: Would you like a cup of water, sir?

THE WITNESS: I'm good.

Thank you.

BY MS. JOSEPH:

Q How was your drive?

A It was long.

Q I'm sorry.

And you and I just met for the very first time?

A Right.

Q But we have texted?

A Right.

Q And talked on the phone?

A That's correct.

Q A lot?

A Yes.

Q And what is your job title?

A I'm a digital forensic examiner. I work on the electronic crimes task force as part of the Secret Service there in Hoover, Birmingham area in Alabama.

Q And this is a little bit complicated. But you are a Hoover police officer?

A Hoover detective.

Q Hoover detective?

A Right.

Q In fact, what's your rank?

A Right. It's detective.
Q But you are on the task force?
A Correct.
Q So you sort of are loaned out to the task force?
A Correct.
Q What county cases do you work on?
A As far as what type of county cases?
Q No. I guess I'm asking what type of cases come to you, like, from where?
A They come from all over the state.
Q So you're not just handling Hoover cases, you're handling cases anywhere in the state?
A Correct.
Q And you know Detective Justin Cole?
A I do.
Q And did you work with him?
A Not in my current role. But, you know, previously, we worked in passing at the department.
Q Right. So you joined the task force as he was leaving?
A Correct.
Q You were asked to independently review the evidence in this case; is that correct?
A Right.
Q By me?

A Right.
Q Because Justin Cole is no longer with the Secret Service Electronic Task Force?
A Right.
Q Is that the right name of the task force?
A Electronic Crimes Task Force.
Q Thank you.
And he wasn't fired, he just is a consultant now?
A Well, he resigned to take a different type of employment.
Q Right. So he didn't leave under any bad circumstances?
A No.
Q And -- okay. So as part of this case, you examined two items. We're going to talk a little bit about the process by which you did that. But, first, I'm going to hand you State's Exhibit Nos. 19 and 20. So what does State's Exhibit No. 20 depict? What is that a photograph of?
A State's Exhibit No. 19 is a Fuji film camera with a 32 gigabyte SD card memory that was inside the camera.
Q Okay. Did you say what both of them were? I'm sorry.
A No, I didn't. State's Exhibit No. 20 is a JVC camcorder with a separate 32 gigabyte SD card that was

inside that one, also.
Q And then you independently examined the contents of these devices. But can you tell me, did you, actually, physically go and look at those devices?
A No. The devices are no longer physically in our lab. Typically, when we get a case in, we make an exact duplicate of any electronic media that comes in there and we work from that copy. The copy was still on storage devices in the lab. And I took that copy, hashed and verified that it was the same copy that Detective Cole worked with. And I worked from that copy.
Q Okay. So who made -- we're going to call it a copy. Do you mind if I call it a mirror copy just to make it easier for me? What's a better term?
A Forensic image is the proper term.
Q Who made the forensic image?
A Detective Cole.
Q And Detective Cole wrote a report?
A Correct.
Q And you reviewed his report?
A Right.
Q When he wrote that report, was he relying -- did he go to the devices, or did he go to the forensic image?
A Initially, he went to the devices and made a forensic image of the devices. And from there, he worked off of

the forensic image.
Q Okay.
A We don't want to alter any original evidence. And that's the reason for that.
Q Oh, that makes complete sense. If -- so I know -- I work a lot with drug cases. In drug cases, I know that, frequently, they do blind testing. If someone was going to check up on your work, or Detective Cole's work, or any of the other people that work in your department, would they go to the original devices, or would they always work off of the mirror -- forensic copy?
A It's our practice that if the Defense expert or anyone that, you know, has authority to view those -- that evidence, they always work from that forensic image.
Q That's the policy?
A Correct. Never the original evidence.
Q And what's the reason behind that policy?
A Just to make sure the original evidence is not altered.
Q And the answer may be you just don't know. But if someone -- let's say someone was fired from the electronic crimes task force, or someone was deployed overseas, or in some way very unreachable and someone had to duplicate their work, I assume -- first of all, my first question, has that situation ever arisen where someone is truly

unreachable?
A Not to my knowledge.
Q Okay. If that situation arose --
MR. GROSE: Objection to the hypothetical.
THE COURT: I'll allow it.
MS. JOSEPH: Okay.
BY MS. JOSEPH:
Q If that situation arose, would the person -- and you can say, I don't know. Would the person -- and by "person," I mean detective on the electronic crimes task force that was tasked with going back and recreating that work, would they go to the forensic copy, or would they go to the original devices?
A In that hypothetical situation, it would be they would work from the forensic image.
Q So -- okay. I'm going to hand you State's Exhibit No. 22. Do you know what State's Exhibit No. 22 is?
A It looks like a submission form or service request for our task force.
Q And do you fill that out?
A No -- well, it's a joint process between the case agent and the -- the detective in the lab. They go through and fill out the service request together.
Q So someone, not law enforcement, would request you to look at items. And that's what this form is?

A Correct.
Q It's a request to look at items?
A Correct.
Q Is there a way for you to tell if Item 22 is about this case?
A Yes. There's a case number from the Calhoun County Sheriff's Office. It matches. And then the paperwork in here, the case ID and the Secret Service case number, they, also, match.
Q So it's this case?
A Correct.
Q I'm now handing you State's Exhibit Nos. 6 through 15. And I know you reviewed this, like, three seconds ago. You looked at State's Exhibit Nos. 6 through 15 prior to testifying here in court today; is that correct?
A That's correct.
Q So my question to you is, were State's Exhibit Nos. 6 through 15 recovered from State's Exhibit Nos. 19 and 20? So State's Exhibit Nos. 19 and 20 are a camera and camcorder. And were those images on that camera and camcorder?
And if you need time to review your report before you answer that question, please, take your time.
A That's correct. These were -- was it 6 through --
Q 15.

A 15. They were recovered from items -- I'm sorry, State's Exhibit Nos. 19 and 20.

MS. JOSEPH: Okay. That's it.

THE COURT: Mr. Grose.

CROSS-EXAMINATION

BY MR. GROSE:

Q You said that -- and I'm going to use items one and two because items one and two are what's in your report; is that right?

A That's not my report. It's Detective Cole's report.

Q Right. Detective Cole's report.

A Right.

Q You said that those two items, one and two, are no longer at the task force?

A That's correct.

Q When they left the task force, where did they go?

A I don't have that information with me right now.

Q Okay. Where would they normally go?

A Typically, they go back to the submitting agency, which in this case would be the Calhoun County Sheriff's Office.

Q The same place Mr. Stone works?

A That's correct.

Q Now, the Solicitor asked you about the situation where somebody is unavailable. And it sounds like you've

never encountered that situation where somebody is truly unavailable?
A That's correct.
Q And you said the importance of working off an image is because you don't want the evidence to be altered?
A That's correct.
Q And so if somebody was truly unavailable, wouldn't it be possible to go to the arresting agency, in this case, the Calhoun County Sheriff's Office, and get those devices and make another image of them?
A I mean, it's possible. But, typically, since those images were already created and acquired, we'd just work from those images.
Q I'm saying, typically, but if you wanted -- the purpose of keeping the evidence so that it cannot be altered -- it seems like part of the reason to do that is that, under certain circumstances, you could go back to that evidence in the form that it was in and get another image of it?
A Correct.
Q Okay. And when you're -- when we're dealing with doing -- dealing with the sort of -- this digital information, is that the right way to say it?
A Yes, sir.
Q Okay. The -- there are times where it could be

altered from collection before it comes to you, aren't there?

A We have no -- you know, we don't assume any responsibility for anything that happens in transit between the time it is recovered from wherever and between the time we get it. The time we get it in the lab --

Q Right.

A -- nothing is altered at all when it comes to the lab.

Q So when it comes to the lab -- you're not responsible for the condition before it comes to the lab?

A That's correct.

Q You're responsible for the condition after it gets to the lab?

A That's correct.

Q Now, she asked you about State's Exhibit Nos. 5 through -- I mean, State's Exhibit Nos. 6 through 15, I think. Do you know if State's Exhibit No. 6 was -- based on the image that Detective Cole did, was that a deleted photograph or, actually, taken off the camera?

A That was recovered from -- from item number one.

Q Right. But was it a carved image?

A That's correct.

Q And "carved" means it had been deleted?

A Correct.

Q State's Exhibit No. 7, was that a carved image?
A I don't recall.
Q How would you find out?
A I'd have to go back and look at the forensic image.
Q Okay. Do you have that here with you?
A I do not.
Q So there's no way whether you can tell us if that was a deleted item or not?
A No.
Q And that's State's Exhibit No. 7 that I was just asking about the follow-up question.
State's Exhibit No. 8, do you know if that was a deleted item or an item that's never been deleted?
A I don't recall.
Q And you don't have that information here with you?
A No.
Q And State's Exhibit No. 9, do you know if that was a deleted image?
A I don't recall.
Q All right. And you don't have that information with you?
A No.
Q State's Exhibit No. 10, do you know if that was a deleted image?
A I don't recall.

Q And you don't have that information with you; is that right?
A That's correct.
Q State's Exhibit No. 11, was that a deleted image or not?
A I don't recall.
Q And you don't have that information with you?
A No.
Q State's Exhibit No. 12, do you know if that was a deleted image or not?
A That's correct. It was a deleted image.
Q It was a deleted image?
A Yes.
Q So out of that, we've got two that were deleted so far?
A That's correct.
Q State's Exhibit No. 13, was that a deleted image?
A That was a deleted image.
Q So that's three that were deleted. State's Exhibit No. 14, was that a deleted image?
A That was a deleted image.
Q State's Exhibit No. 15, was that a deleted image?
A I don't recall.
Q And you don't have that information with you?
A No.

MR. GROSE: Okay. Is State's Exhibit Nos. 1 through 5 up here, or is that somewhere else?

MS. JOSEPH: No. It's right here. It's on the corner.

BY MR. GROSE:

Q Do you know if State's Exhibit No. 1 was something that came off the forensic image that Detective Cole made?

A I don't recall.

Q So you don't know one way or the other?

A No.

Q All right. State's Exhibit No. 2, do you know if that was a photograph that came off of the forensic image that Detective Cole made?

A I don't recall.

Q And you don't have that information here with you?

A No.

Q State's Exhibit No. 3, do you know if that was an item that came off Detective Cole's image?

A I don't recall.

Q And you don't have that information with you?

A No.

Q State's Exhibit No. 4, do you know if that came off of Detective Cole's forensic image?

A It did.

Q Okay. Do you know if it was deleted or undeleted?

A I don't know if it was deleted or undeleted.

Q And you don't have that information here with you?
A No.
Q And I take it, State's Exhibit Nos. 1 through 3, since you don't know if that came from Detective Cole's image, you don't know whether those were deleted or undeleted?
A That's correct.
Q And State's Exhibit No. 5, do you know whether or not that came off Detective Cole's image?
A It did.
Q All right. And do you know if it was deleted or undeleted?
A I don't recall.
Q And you don't have that information with you?
A No.
MR. GROSE: I beg the Court's indulgence just for a moment.
(Pause.)
BY MR. GROSE:
Q I think you already answered this question. You know Detective Cole and you had worked with him in the past?
A Correct.
Q But your tenure at the task force did not overlap with his tenure at the task force?
A It overlapped exactly two weeks.

Q Exactly two weeks?
A Correct.
Q And that was not during the time where he would have made this forensic image?
A No.
Q And during that time, I'm sure this case probably never came up?
A No, it didn't.
Q And Detective Cole is still around in the Birmingham area, isn't he?
A He travels a lot for his new assignment.
Q Oh --
A But more or less, he's in the Birmingham area.
Q Well, he still works from there and it sounds like he travels?
A Correct.
Q But for his job?
A Correct.

MR. GROSE: Okay. That's all.

MS. JOSEPH: Briefly.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. JOSEPH:

Q Does the process used to make a forensic image alter the original digital files in any way?

A No.
Q How were the forensic copies identified in the lab when conducting a review -- making your report? I think what I'm looking for, what is a hash?
A A hash value is -- basically, it's a digital fingerprint of an entire file or an entire hard drive. Basically, it's, you know -- it's a, you know, mathematical algorithm assigned to a particular file saying this is, you know, what it says it is.
Q Right. So in this case, each item has a hash?
A That's correct.
Q So, like, what I'm calling State's Exhibit No. 19, what he's calling item, I think, one, that is a hash to you?
A That's correct.
MS. JOSEPH: No other questions.
THE COURT: Anything else, Mr. Grose?
MR. GROSE: No, sir.
THE COURT: Thank you, sir.
You can step down.
MS. JOSEPH: Thank you.
Don't go too far.
THE COURT: Anything else by way of proffer, Ms. Joseph?
MS. JOSEPH: Nothing by way of proffer. I think

we're ready for argument, Your Honor.

THE COURT: Okay. Let me hear from you.

MR. GROSE: You know, Judge, there's -- I guess there's several issues here. We -- with regard to the two cameras, item one and two, as they were identified in evidence, we have, virtually, no chain of custody on those items. And I understand that there's case law talking about establishing the chain of custody as near as practical as possible. But I think that analysis is a far stretch to get to that.

For example, I'm familiar with drug cases where an officer gets drugs from an informant, the informant might not testify, but they've watched him go in and come out with drugs. And then they have everything else in the chain.

I'm, also, familiar with the cases where, for example, once you put it in the SLED drop box until the time it gets to the examiner that they don't necessarily have to have every one of those people. But I don't think that any of our case law allows them to authenticate a chain of custody when there are so many steps missing.

And in this case, while Detective Stone, you know, went to obtain the search warrant and went to the residence, he was only there for about 10 minutes. They were still photographing things when he left. He did not

collect any of those items. They appeared -- I forget who he named. But there was a person who had signed it in and out of the evidence locker, Mr. Thompson maybe, his name appeared on that three times.

I understand that Detective Stone prepared the request for Alabama. But I don't think -- for the task force in Alabama. But I don't think he was the one that, actually, transported it there.

And so, really, we have -- and, certainly, we don't have anything with regards to what Detective Cole did after he received them until when the image was made, or any testimony about whether that image had been altered in the period of time when Detective Cole made it up through when Mr. -- Detective Agee looked at it.

And I understand that, you know, if there's a gun with a serial number on it that you don't necessarily have to have the chain of custody to identify it. But if you have a gun and you want to testify whether there's gunshot residue on it, you better be able to establish that nothing has happened to alter that gun, or that gun to have been fired between the time it was collected and when they did that gunshot residue test.

And when we're dealing with, you know, this digital data, I mean, it's one thing for somebody to break in my office and steal my computer and me be able to identify my

computer. But when you start getting into the material that's contained on it, that becomes a whole lot more fungible. That becomes something that can be altered easily.

And so I think that they have to account for that chain of custody more than what they did today. And they, certainly, had -- I believe it was Mr. Becker who was on their witness list that was involved in collecting it, but he's not here. And we could have heard from him. We could have heard from their evidence custodian. It wouldn't have been hard to get those people here.

But I, also, have the confrontation clause issue. The confrontation clause issue, even though, you know, you might not have every step in that chain of drugs between the time it goes from the -- being collected to the time that it is examined, you do have to have the person who conducted the examination in court so that that person can be cross-examined about running the analysis.

And so in this case, it would be us cross-examining Detective Cole about, you know, making the -- the forensic images and what he did or didn't do with it. And he's just not here to be questioned. And, you know, he's not truly unavailable as we talked about before lunch. He doesn't work in the same place, but he's still around. It sounds like he travels for work. He may be very busy.

But they could have gotten him here to do that.

And then I have questions, also, about the evidence that was brought in here out of all -- State's Exhibit Nos. 1 through 16 that we went through -- it's State's Exhibit Nos. 1 through 15 --

MS. JOSEPH: It's 1 through 15.

MR. GROSE: State's Exhibit Nos. 1 through 15 that we went through, none of those were, you know, images that were, actually, still on the camera -- or none of them were testified to -- to that. There's, at least, three or four that he can't say whether or not they came from Detective Cole's image or not.

And there's a number of them that they can't say whether they had been deleted or not. The ones that they could say have all been deleted. And so -- and none of them really -- I mean, none of them are per se illegal. None of them are child pornography. And, you know, I think that, you know, we need to be able to cross-examine Detective Cole.

I, also, have, you know -- and we eluded to it earlier. I think it was State's Exhibit Nos. 13 and 15, the identification of those by Lori Mayo. Certainly, State's Exhibit No. 15, I think, is out because she can't say who that was. And Mr. Agee couldn't offer much additional testimony about that image here today. And

State's Exhibit No. 13, I think, is also -- should be excluded. And I think that pretty much summarizes it.

Thank you.

THE COURT: Ms. Joseph, are you going to argue?

MS. JOSEPH: Thank you, Your Honor.

I have four points to make.

THE COURT: Yes, ma'am.

MS. JOSEPH: First -- and let me go in order. First, Defense provided with you with Melendez-Diaz v. Massachusetts. The State argues that that case is not applicable here because it's a drug case, and it involves fungible evidence.

The second point is that what we're dealing with here is non-fungible evidence. Rule 901 of evidence governs non-fungible evidence. The State provided a case, State v. Pope. In that case, a TV was used as an example of non-fungible evidence. And the Court went on to say that anything with a serial number is non-fungible evidence. And I have another copy of --

THE COURT: Go ahead. I'm listening.

MS. JOSEPH: And then I want to read you this direct quote from State v. Pope, but it's State v. Pope, actually, quoting State v. Freiburger. And I, also, provided the Court a copy of State v. Freiburger.

The quote is, While the chain of custody requirement

is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence, that is evidence that is unique and identifiable, the --

THE COURT: Which page of the case are you reading?

MS. JOSEPH: Oh, I apologize, Your Honor.

THE COURT: Are you reading from Pope?

MS. JOSEPH: Actually, I am reading from Pope, that's quoting Freiburger.

THE COURT: Got you.

MS. JOSEPH: And it's on Page 5 of 6, Your Honor. And it's the top of column two.

THE COURT: Okay.

MS. JOSEPH: So I'm going to start over.

While the chain of custody requirement is strict where fungible evidence is involved, where the issue is the admissibility of non-fungible evidence, that is evidence that is unique and identifiable, the establishment of a strict chain of custody is not required.

And, Your Honor, the use of TV is in the middle of column two on Page 5. They say a shotgun, or a television, or a pistol. They're giving examples. And, Your Honor, this case was, actually, about a scale. And if this scale, actually, had a serial number. And that's why they're saying anything with a serial number applies.

And then my third point is -- and this quote, also, comes from the Pope case. This quote is talking about fungible evidence, but we still think it applies here. They're saying that if you want to challenge the chain, the -- if the identity of each person handling the evidence is established and the manner handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill motive.

So in this case, the Court wants to make it clear we identified every member of the chain. Arthur Agee, the last witness, was able to speak to the manner of handling, as was Investigator Stone. And there was no proof of tampering, bad faith, or ill motive. In fact, Arthur Agee testified the reason they go off of a forensic copy is to avoid damaging the evidence. So the policy is there for a reason. That is to, in fact, avoid any tampering.

So without a showing of tampering, bad faith, or ill motive, we feel that Defense cannot challenge the chain and cannot challenge the use of forensic -- the use of copying, mirroring, or making of a forensic copy.

Because if Your Honor agrees this is a non-fungible item and, therefore, we do not need to establish strict chain, then the State believes the only question on the table is the issue of the forensic mirroring of the items,

which means the copying of the items. And Arthur Agee testified to that process, why that process was done. And he testified that in any sort of independent review situation, they always go back to the forensic copy. And Detective Cole's report was based off of that forensic copy. And even the forensic copy is unique and has a hash value that identifies each item and where it comes from.

Finally, Your Honor -- well, sorry. I have two more points. There's no confrontation clause. The problem with this issue -- there's no confrontation clause issue here because Arthur Agee conducted an independent review. So they're able to confront the person who will be testifying about his own independent knowledge.

Defense Counsel brought up that several of these items had been deleted, or Arthur Agee could not testify to whether or not they had been deleted. We believe that goes to weight, not admissibility.

And then, finally, number 15, where Lori Mayo was able to say that she believes that those are her daughter's legs. She believes that is a dance costume her daughter wore. Arthur Agee can testify that that item was found on the camcorder and the camera. He cannot testify about whether or not it was deleted. Whether or not that is the victim goes to weight, not admissibility.

MR. GROSE: Whether or not it's the victim goes to

relevance. And I disagree with some of that.

First of all, they've not established the entire chain of custody as far as identity is concerned because we don't know who collected those two items. And so without that being in the record, they haven't established all of that.

Secondly, she's relying on serial numbers. But one of them, they don't have a serial number for, they just have a model number. So even under her own argument, anything that came off of that device, she hasn't -- because we're dealing with images off of two devices. Anything that came off that device, she hasn't even established that.

And we're not talking about identifying a stolen TV, or identifying a stolen gun, or a gun that was picked up at a crime scene. We're talking about, you know, what the -- we're talking about the digital data on the computer, which I would argue is much more like a fungible item than a non-fungible item. Even drugs, for example, can be made more like a non-fungible item. That's the whole reason for putting them in those SLED vest packs and sending them up the chain.

And this is important because they're conflating the chain of custody with the confrontation clause argument. The chain of custody wasn't the real issue in

Melendez-Diaz. The real issue in that was the Sixth Amendment confrontation right of the person who, actually, did the examination.

And this is also -- and they didn't do it for the purposes of the proffer. And I'm not objecting to that. But they're going to have to qualify Detective Agee as an expert, which means they would, also, have to qualify Detective Cole as an expert. And we would get an opportunity to cross-examine him about those qualifications. And we can't do that if he's not here.

So, you know, it's -- the confrontation clause is a lot more complicated than that. And we may need to get somebody back up here to see if they can tell us, if it becomes important in the analogy, which -- of the analysis, which one of the items came off of the one with the serial number versus the one without the serial number. And, in fact, I'd like to recall Detective Agee for that limited purpose.

THE COURT: Any objection to that?

MS. JOSEPH: So he's calling him -- he's -- what is the limited purpose he's calling him --

MR. GROSE: The limited purpose is whether or not he can tell whether these images came -- which device they came off of.

MS. JOSEPH: Okay. That's fair. Yeah, that's --

THE COURT: Come on back up.

You're still under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. GROSE:

Q And I'll try to go through this fast. State's Exhibit No. 1, do you know if that came off of your evidence item one or two?

A I don't recall.

Q State's Exhibit No. 2, your item one or two?

A I don't recall.

Q State's Exhibit No. 3, your item one or two?

A I don't recall.

Q State's Exhibit No. 4, your item one or two?

A I don't recall.

Q State's Exhibit No. 5, your item one or two?

A That came off of item number one.

Q And that's the one with no serial number?

A It looks like there's a serial number listed on the report.

Q On the request form that we have, there's no serial number for item one.

A There's a serial number in the forensic report.

Q Okay. And State's Exhibit No. 6, do you know if that was one or two?

A That was item one.
Q State's Exhibit No. 7?
A That was item two.
Q Okay. State's Exhibit No. 8?
A Item two.
Q State's Exhibit No. 9?
A Item two.
Q State's Exhibit No. 10?
A Item two.
Q State's Exhibit No. 11?
A Item two.
Q State's Exhibit No. 12?
A Item one.
Q State's Exhibit No. 13?
A Item one.
Q State's Exhibit No. 14?
A Item one.
Q And State's Exhibit No. 15?
A Item two.
Q And as far as the several that you don't know which item they came from, you don't have that information here today, do you?
A No, I don't.
Q I'm sorry.
A No, I don't.

MR. GROSE: Thank you.

That's all.

MS. JOSEPH: Your Honor, just for clarification --

THE COURT: I've just got one question.

MS. JOSEPH: Of course.

EXAMINATION

BY THE COURT:

Q You're working off of Mr. Cole's report?

A I worked -- for items one and two, I worked off of the forensic image.

Q Of Mr. Cole --

A Right, that he recreated. Right.

Q Not a report that you did?

A No. I did not do a report.

MR. GROSE: And just as follow-up for that.

REDIRECT EXAMINATION

BY MR. GROSE:

Q The report that you looked at while I was asking you those questions is Detective Cole's report?

A Yes. The report right here, yes. That's correct.

Q And so the serial number from item one came from Detective Cole's report. You've never seen, actually, item one?

A That's correct.

MR. GROSE: Thank you.

MS. JOSEPH: Judge, if I may.

CROSS-EXAMINATION

BY MS. JOSEPH:

Q I know we're just re-clarifying over and over again. The Judge asked you if you had worked off of Detective Cole's report. You -- Detective Cole created a forensic copy?

A Forensic image.

Q Forensic image. And that means that he took -- let's say the camera, he took the contents of the camera, which are digital files, nothing physical?

A Correct.

Q And he copied it?

A Correct.

Q So you didn't do that copy?

A I did not.

Q And that copy lives in your office?

A That's correct.

Q And every single device that comes in -- I'm sure hundreds of devices a year come into the electronic crimes task force?

A Right.

Q And that's the process that's done every single time?

A That's correct.

Q And you do that process yourself?

A Right.
Q And it's -- what does it entail? So, for a camera, what does that mean?
A So, in this instance, there was an SD card inside. You remove the SD card and put that SD card inside a write blocker. What the write blocker does, it does not -- it allows our tools to -- to read evidence, but it cannot write. It kind of acts as a one-way valve. Information can come in, but it can't go back out. It can't be altered.

So it can read that data from the SD card and copy it, but no information can be written back to that SD card.
Q Okay. And then you take the SD card out of that device?
A The write blocker.
Q The write blocker.
A And it's put back in our evidence locker until the case is done with.
Q And then the forensic image --
A Right.
Q -- lives at your office?
A That's correct.
Q And that's what you went back and looked at for this case?

A That's correct.
Q So you -- if you had been asked to do an independent -- at this -- I could give you a case number for any case in your office and you could go look at a forensic case -- I'm sorry, forensic image?
A That's correct.
Q And that's how you -- that's how anyone in your office, in fact, does review evidence for court, for example. So if you had done the original report and you wanted to review it for court, you would never go to the original devices. You would always go to the forensic copy?
A That's correct. That's our standard practice.
Q Okay. You're not relying solely on Detective Cole's report?
A For items one and two, no.
Q For items one and two. And items one and two are the camera and the camcorder?
A That's correct.
Q You're relying on your own independent review of the forensic image?
A That's correct. Verify the report.
MS. JOSEPH: Is it item two that we're having an issue with the serial number?
MR. GROSE: Item one.

BY MS. JOSEPH:

Q What is item one again?

A It's a JVC camcorder.

Q And you may not be able to answer this. I may need to recall Detective Cole [sic]. But do you -- there's a serial number here that's listed?

A That's correct.

Q Do you know if that's an internal serial number?

A It should be -- I don't know.

Q You don't know. That's okay.

MS. JOSEPH: Can we recall Detective Cole [sic] for that limited question?

MR. GROSE: Detective Cole is the one that's not here.

MS. JOSEPH: Right, Sergeant Stone. All of these men have like four letters in their last name. Agee, Cole, Stone, that's five. I'm sorry. That was wrong.

THE COURT: Okay. You can step down.

Let's move this along.

Come on up, sir.

DIRECT EXAMINATION

BY MS. JOSEPH:

Q Lieutenant Stone --

A Yes, ma'am.

Q -- item one, which is State's Exhibit No. 19 -- is

State's Exhibit No. 19 up there?
A No, ma'am.
Q We'll find State's Exhibit No. 19.
I'm handing you State's Exhibit Nos. 18 and 19. And State's Exhibit -- I'm handing you State's Exhibit Nos. 18, 19, and 20. And was it the camcorder?
A Yes, item number one.
Q Item number one, the camcorder, you don't have a serial number listed; is that correct?
A That's correct.
Q Why don't you have a serial number listed?
A There's not a serial number on the model tag on the camcorder.
Q And where is the serial number located?
A I'm assuming --
MR. GROSE: Objection. Speculation.
THE WITNESS: It's not on the camera -- on the external of the camera.
BY MS. JOSEPH:
Q You've collected several electronic devices in your career?
A Yes.
Q And do some devices have internal serial numbers?
MR. GROSE: Objection. Relevance. We're talking about this one item.

THE COURT: All right. I'm going to sustain that.

Go ahead.

We're just talking about one item.

MS. JOSEPH: I'm just asking him -- no further questions.

MR. GROSE: I have no questions.

THE COURT: You can step down.

MS. JOSEPH: I think that's it, Your Honor.

THE COURT: Anything further before I rule?

MR. GROSE: Not from me.

MS. JOSEPH: No, Your Honor.

THE COURT: All right. I made reference prior to lunch of the witness list. And one of the reasons that I asked Counsel about the witness list was because I was concerned about one of the witnesses in the case.

And I think Counsel, at the beginning of the week, when I made inquiry about -- or the Court made inquiry about the witnesses that would be appearing, I think Counsel -- the State's Counsel made reference to some folks from Alabama. I didn't know who they were.

I looked at the witness list and I went through them. And I saw there were three individuals from the Alabama Sheriff's Department -- or detectives listed there. I think because of the seriousness of the case, I wanted to make sure that both sides had the opportunity to know who

the witnesses were on both sides.

My concern was then and is still now -- and I had an opportunity and I read this Melendez-Diaz case. And I read some other cases, too, that talked about the Court's obligation to weigh the probative value of the evidence presented versus the prejudicial effect. And there are a whole line of cases that talk about that. And there's a whole line of cases that talk about the Court's requirement to look at 404(b) and reconcile that with 403. There are a whole line of cases there.

And then there are a whole line of cases that talk about res gestae and the Lyle case we talked about earlier. All of those cases were there. And I read all those cases. I read all of those cases.

Because Counsel filed these motions and I was reading the cases because, obviously, I needed to get in my mind -- based upon what I heard, I needed to be prepared to rule based on what I heard. And those were all the cases I was reading. I read all of them, every single one of them.

And there's just a bunch of them that says I, as the trial judge, must -- must perform, for lack of a better word, a balancing test on the record to determine the admissibility of the evidence, whether the probative value of the evidence is outweighed by the prejudicial and vice

versa. I'm required to do that.

But what I'm hearing today is you've got a witness -- a critical witness, in this Court's estimation, Detective Cole. He is the gentleman -- I mean, he went out there. He is the one that -- that determined whatever images that were collected. I mean, he was -- he's critical in this case.

And I think in Melendez-Diaz -- even though the Melendez-Diaz case --

And Madam Court Reporter, I'm going to cite that case for you. It was given to me by Counsel. It's the Melendez, M-E-L-E-N-D-E-Z, Diaz, D-I-A-Z v. Massachusetts.

And this is a case -- even though it's a drug case, the critical thing is the whole confrontation clause. That's critical. That is very critical. And the reason I say it's critical is every Defendant has the absolute Constitutional right to confront any witnesses on his behalf, unless he waives it.

And Mr. Agee didn't do an independent examination. He -- I mean, he relied -- whether he relied somewhat on the report of Detective Cole as to some of it, none of it, he didn't do it all.

And I am not satisfied that the State has afforded this Defendant an opportunity to confront -- and when I say "confront," Mr. Cole needed to be here. Defense

Counsel needed to have the opportunity to cross-examine him, to ask him some specific questions.

And so even though I read all these cases about Lyle and 403 and Rule 404(b) and all that, my ruling as to the exclusion of the evidence is not based on any of that. It's just based on the fundamental Constitutional right of confrontation, the ability to have the right to confront any witnesses.

So based on that solely, that Constitutional right, I am excluding that.

Anything else?

MR. GROSE: And does that go from State's Exhibit Nos. 1 to 5? Because we had talked about the limited --

THE COURT: Yes.

MR. GROSE: Thank you.

THE COURT: Anything from the State?

MS. JOSEPH: Your Honor, the State would just say as to items one through five that those -- there's no testimony from the mother that those came from the devices. She is clear that she does not know the origins of those.

And, once again, if we were to show her a photo of her house, even if she had no idea who took the photo, she can say, yes, that's my house. That's an accurate depiction of my house. In the same way, she's going to

say items one through five are photos of her daughter, accurate photos of her daughter at approximately this age in a house where she lived.

So we would argue that one through five do come in and their origins will not be mentioned at trial.

THE COURT: As to which devices and as to which location?

MS. JOSEPH: Right. The devices won't come in, the location won't come in. We will not be recalling Lieutenant Stone. We will not be recalling Arthur Agee. Just the mother will get on the stand and will testify items one through five, they depict her daughter at approximately this age in her house in Beaufort.

THE COURT: I've already pretty much ruled on that.

MR. GROSE: I don't have anything to add.

THE COURT: I'm not going to change it.

All right. Anything further before we bring the jury in? Anything else?

MR. GROSE: We need a restroom break.

THE COURT: All right. Let's take a 10-minute restroom break and then we'll be ready.

(WHEREUPON, a break was taken.)

THE COURT: You're standing. So have you got a matter you want to take up before we bring the jury in?

MS. JOSEPH: Briefly, Your Honor.

THE COURT: Yes, ma'am.

MS. JOSEPH: Your Honor, it's not the State's intention -- we would like to avoid this because putting children on the stand is always difficult. Now, it's the State's intention to try to get these photos in through J.M. . I just want to make the Court aware. But we will be recalling Lori first.

MR. GROSE: I mean, she can't testify to the authenticity of these photos. And given -- I mean, I think they would need to proffer that, if that's what their intention is now.

MS. JOSEPH: It's the State's contention that we do not need to proffer. She's the subject matter of those photographs.

In Defense's earlier motion, he used the example of if I were trying to use a photo where the person testifying had not taken the photo. He said that he would be agree -- he would agree that someone standing over the shoulder of the person taking the photo could testify.

So in this case, J.M. was, clearly, present when the photos were taken, because she is the subject matter. However, Defense can, obviously, object as we go forward. We don't think --

MR. GROSE: I'm moving to exclude the admission of the photographs based on the Court's previous ruling. I'm

moving that if they're going to try to admit them through J.M. that that needs to be, first, taken up outside the Court's [sic] presence given the number of times that she testified yesterday that she couldn't remember. I think it would be extremely prejudicial for them to parade photos in front of the jurors that, ultimately, can't be authenticated.

MS. JOSEPH: Obviously, we would not show these photos to the jury prior to them being admitted. I mean, we would be very careful about that. You watched me in court. I'm very careful to warn witnesses, don't show these to the jury. I mean, I really take that very seriously, Your Honor.

THE COURT: All right. So what I'm hearing is that the mother of the child -- obviously, there's some question about authenticating the pictures. You're not going to use her. You want to try to put the child back up by way of proffer and let me hear --

MS. JOSEPH: Sure, sure. We can do that, Your Honor.

MR. GROSE: And remembering that the ones that can be identified whether they were deleted or undeleted. They were all deleted. The rest is unknown.

MS. JOSEPH: I mean, she won't be testifying about that. These are just images of her. She was there when they were taken. And she's going to testify about the

circumstances surrounding the photographs.

THE COURT: Is she going to be able to testify when they were taken?

MS. JOSEPH: I mean, you can -- we're proffering it. So you can --

THE COURT: I mean, I got it, but that's a question.

MS. JOSEPH: That's fair.

THE COURT: That's a fair question.

MS. JOSEPH: You're the Judge.

MR. GROSE: And in my crime scene example, we weren't talking about photographs that had been deleted. I mean, there is an authentication issue to these photographs. And I don't think -- I don't think they can do anything with this particular witness to change that.

THE COURT: All right. Well, we'll -- I'll let you do it by way of proffer.

MS. JOSEPH: Thank you, Your Honor.

THE COURT: Anything else before we bring the jury back? They've been sitting back there for a while.

Anything else?

MS. JOSEPH: No, sir.

We are going to put Lori on the stand first in front of the jury and then proffer J.M. .

THE COURT: If that's what you want to do.

MR. GROSE: And none of the photographs are with

Lori. That's just --

MS. JOSEPH: Right. Just the text messages.

MR. GROSE: I just wanted to --

THE COURT: Well, let me just ask you this just so the jury won't be back and forth. Do you want to do the proffer with the child now? Because after that, everybody else is going to be fact witnesses.

MS. JOSEPH: After J.M. , Your Honor, the State will, actually, be resting. So it might make more sense to do J.M. 's proffer now.

THE COURT: That's what I was suggesting.

MS. JOSEPH: Yes, Your Honor. And I'm agreeing with your suggestion.

MR. GROSE: Can I make another suggestion?

THE COURT: What's that?

MR. GROSE: That we call Lori. By the time that's done, it's already 4:00, that we excuse the jurors for today. And you can determine whether or not -- you know, during the proffer whether J.M. is going to testify. We could do that first thing in the morning, if that's their last witness. We'd be prepared to present our case.

THE COURT: How many witnesses have you got?

MR. GROSE: Right now, I'm anticipating calling five. But I, also, anticipate, you know, that I could be done by midday. And we could be, you know, arguing and charging

tomorrow afternoon.

THE COURT: Well, my intention was to go until about 6:00, or whatever. I don't want to -- I don't want to let the jury go and then I've got five witnesses tomorrow that we can't get through because we've got all kinds of legal matters, you know. The way this has gone -- I'm not complaining, I mean, you just don't know what's going to come up.

MR. GROSE: Well, my first witness is the longest witness. And I have to call that witness first before I call the other witnesses.

THE COURT: Have you got any -- any of your witnesses here today?

MR. GROSE: They're all here today.

THE COURT: So how long is your longest witness going to take? An hour, hour and a half?

MR. GROSE: It's going to be Mr. Dent. I imagine it's going to take an hour, hour and a half, or more. The rest of them will be short.

THE COURT: An hour, hour and a half on direct?

MR. GROSE: Maybe.

THE COURT: Or cross?

MR. GROSE: Between an hour, hour and a half on direct would be my estimation. I don't know how long their cross would take. The rest of them would be short.

THE COURT: I'm not going to do that. What we're going to do today is we are going to do the proffer on J.M. . We're going to put Lori up for the limited purpose you're talking about.

MS. JOSEPH: Yes.

THE COURT: The State is going to rest after that?

MS. JOSEPH: After Lori and J.M. , the State will rest.

THE COURT: We're going to take a 10-minute break. And then I'm going to let you put your first witness up. We're going to cover Mr. Dent today.

MR. GROSE: We might be here longer than 6:00, but that's -- I mean, it's your call. But I just think that -- by the time we get done with the proffer and do all that, we're going to be pushing 5:00.

THE COURT: What's your position, Ms. Joseph?

MS. JOSEPH: We leave it in the Court's discretion, Your Honor.

MR. GROSE: I really do feel like my case is all within a half day. I mean, I know lawyers --

THE COURT: Instead of -- I'll change that. Instead of starting at 9:30 in the morning, we'll start at 9:00.

MR. GROSE: That makes sense.

THE COURT: We'll start at 9:00. We'll get these two, the proffer and this witness. And then I'll excuse

the jury and we'll start at 9:00.

And you're going to rest before we leave here today?

MS. JOSEPH: Yes, Your Honor.

THE COURT: The State is going to rest.

And then tomorrow morning sharp at 9:00, we'll start with your first witness.

MR. GROSE: Yes, sir.

THE COURT: Fair enough?

MR. GROSE: Fair enough.

THE COURT: Okay. Let's do that.

Where's my bailiff at?

THE BAILIFF: Right here, sir.

THE COURT: Well, now, let's bring J.M. in here. We've got to do that first.

She's outside -- is she here?

MS. JOSEPH: Bring J.M. in.

(WHEREUPON, J.M. entered the courtroom.)

EXAMINATION

BY THE COURT:

Q Yes, ma'am. Could you come forward and stand right there for me?

I know you've been in here before; right?

A Yes.

Q And the last time you were in here, you said you knew the difference between telling the truth and telling a

lie; is that right?
A Yes, sir.
Q Are you willing to tell me the truth today?
A Yes, sir.
Q Are you okay?
A Sort of.
THE COURT: The best you can.
Okay. Come on around and have a seat here for me in this little box. We're not going to keep you long. We've just got a few questions to ask you.
MS. JOSEPH: Did you have any other questions for her, Your Honor?
THE COURT: No. Go ahead.

DIRECT EXAMINATION

BY MS. JOSEPH:
Q Hi, J.M. . You were here yesterday; right?
A Yes, I was.
Q You were in this room?
A Yes.
Q And you testified right there?
A Yes, ma'am.
Q Do you remember that?
A Yes.
Q You talked to me. And you know why we're here this week; right?

A Yes.
Q It's because of some stuff with your grandfather?
A Yes, ma'am.
Q When you lived in Beaufort County, which is here in this area, I think you lived in Bluffton; is that right?
A I'm not sure.
Q But when you lived -- you remember living in this area?
A Yes.
Q And how long did you live there -- or here?
A I think four years. I'm not sure.
Q Do you remember around what age you were?
A I think it was seven to nine.
Q Seven to nine. You said yesterday that your grandfather would come visit; right?
A Yes.
Q Okay. When he would come visit, would he take photographs of you?
A I don't remember, but I think he would.
Q Okay. So I'm going to show you some photographs. And I want you to look at them. And then I'm going to ask you some questions about them. Okay. But I want you to look at them first. Okay.
A Okay.
Q You need to be careful. You do have to look at them.

A Yes.
Q You have to be careful -- you can look at them, but you can't show them to anyone else. So just be careful and look at them.
A (Witness complied.)
Q All right. How many photographs did I hand you?
A Four.
Q The one that's on top of the stack, what number does it have? There's like a red sticker, and it has a number.
A 15.
Q 15. Okay. Can you put that on the bottom of the stack.
A (Witness complied.)
Q All right. What's the number that's on the top now?
A 13.
Q All right. 13. What is that a photo of?
A Me.
Q You. And do you know how old you were when that photograph was taken?
A I don't remember.
Q Do you know where that photograph was taken?
A I don't know which house it was in.
Q Okay. But was it in a house in Beaufort?
A Yes.
Q And how many houses did you live at in Beaufort?

A Two.
Q And how do you know that it was a house in Beaufort?
A Again, I'm not sure where I lived. I just know I lived in two houses.
Q No, no. When you look at the photograph --
A Oh, I see a blue couch. And we had a blue couch back then.
Q So you see a blue couch?
A In the background.
Q So you're in the photograph. It's in Beaufort. Who took that photograph?
A I'm not sure, but I think it was my grandfather.
Q You're not sure, but you think it was your grandfather?
A Yes.
Q Put that photo upside down on top in front of you on the rail.
A Like, this way, like, facing me?
Q Let me see.
A I'm sorry.
Q It's okay. You're doing great. Like bam. What's the next photo?
A It's a picture of me.
Q It's a picture of you. What's the number on it?
A Six.

Q All right. So it's a picture of you. And how old were you in that photograph?
A I'm not sure.
Q Okay. Can you tell where the photograph was taken?
A I think the picture was taken in one of the houses.
Q And why do you think that?
A It has the same blue couch as the last one.
Q And do you know who took that photograph?
A I'm not sure, again, but it looks the same as the last one.
Q So it looks the same as the last one?
A Yes.
Q Why do you say it looks the same?
A I'm wearing the same outfit. It has the same background. And it looks like the same place.
Q All right. And you think you know who took the last one. So do you think you know who took this one?
A I think it was him again since it looks like the same one.
Q So put that photo upside down on top of that one. Perfect.
All right. What's the next photo?
A It's 11.
Q Good. And what is that a photo of?
A Me.

Q And how old are you in that photo?
A I'm not sure.
Q And where was that photo taken?
A In one of the houses.
Q And why do you say that?
A It's the same wall background. And I remember what the first house looked like. And it looks like the first one.
Q Okay. And who took that photograph?
A I'm not sure.
Q Okay. Can you put that one in a separate stack?
A (Witness complied.)
Q What's the number for the next one?
A 15.
Q What is that a photo of?
A Someone in shorts, but I think it's me.
Q You think it's you?
A Yes. Because these are my shorts from a dance recital that I had.
Q And was that -- was that uniform -- was that a uniform that everyone wore?
A It wasn't a uniform. It was just a requirement. You had to wear some type of, like, dance shorts.
Q So you recognize those shorts?
A I do.

Q And where was that photo taken?
A I'm not sure.
Q And why are you not sure?
A It has a plain background and it's zoomed in.
Q And who took that photograph?
A I think it was him.
Q Okay. When you say you think it's him with this photo only, how sure are you?
A From one to 10?
Q Yeah.
A I think it's a six.

MS. JOSEPH: Okay. Thank you.

No further questions.

THE COURT: Mr. Grose.

MR. GROSE: Yes. Just very briefly.

CROSS-EXAMINATION

BY MR. GROSE:

Q You don't know who took any of those photographs, do you?
A Some of them, I don't. Some of them, I think I do.
Q Okay. But they've just asked you about four; right?
A Four, yes.
Q And so -- in one of them, I think you said you're not sure?
A Yes, sir.

Q And in three of them, you said that you think it was your grandfather?
A Three of them, yes.
Q Okay. But you just say you think that, you're not sure of that?
A Yes, sir.
Q Okay. And when he would come to your house, he wasn't the only one that used the cameras, was he?
A Again, I'm not sure. I don't remember.
Q I'm just going to show you a picture, if that's all right. And it's in black and white. Does that look like you in that picture?
A Yes, it does.
Q And that's you taking a selfie in the mirror?
A Yes, sir.
Q Okay. So in addition to your grandfather, your brother, also, lived in the house; right?
A Yes, he did.
Q And your mother lived in the house; right?
A Yes, sir.
Q And there was a time when a lady named Dee was staying there; right?
A Yes, sir.
Q Was there any other people that stayed there, other than John Camelo?

A No. I think that's all the people that stayed in that house.
Q All right. And the blue couch, that's how you recognized it as the place that you lived; right?
A Yes, sir.
Q You had the blue couch -- do you remember that blue couch being in Florida when you lived there?
A I do. But it had a sheet over it and that's how it was blue. But when we were in Florida, it was white.
MR. GROSE: All right. I beg the Court's indulgence for a moment.
THE COURT: Yes, sir.
(Pause.)
BY MR. GROSE:
Q And you don't have any idea where any of those four photos came from before today, do you?
A I think it came from an SD card, but I'm not sure.
Q But that's just speculation?
A I don't know what that means.
Q It's kind of like --
MS. JOSEPH: Objection, Your Honor. She said, "I think." I mean, this is --
BY MR. GROSE:
Q It's kind of like an educated guess.
A I mean, I'm saying I think so.

Q But you don't know?
A But I don't know.
MR. GROSE: Thank you.
THE COURT: Any other questions?
MS. JOSEPH: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. JOSEPH:
Q J.M. , I'm handing you five more photos. Can you look at those?
A Do you want me to flip this one over?
Q Yeah. Give it to me.
Thanks.
Five more photos. Do you recognize those photos?
A Some of them, yes.
Q Okay. So what's on top of the stack? What number?
A One.
Q And do you recognize that photo?
A I do.
Q Okay. And what does that photo show?
A Me on my birthday.
Q You on your birthday. And do you remember that day?
A Yes.
Q Do you know where that photo was taken?
A It was taken in the second house.
Q And do you remember who took that photo?

A No. I think it was my mom.
Q And were you -- was that a special day?
A For me, yes.
Q What date -- what was that day?
A What do you mean by what day?
Q Like, why was it special?
A Because it was my birthday.
Q Did lots of people take your photo on that day?
A I'm not sure. I think just my mom because it was my birthday.
Q So why don't you put that upside down in front of you like we did the last ones.
A (Witness complied.)
Q Good job.
Okay. What's the next photo?
A It's a picture of me. It's number two.
Q Okay. So number two is a picture of you. Do you recognize that photo?
A No.
Q Can you put that -- well, actually, really quickly, do you know where that photo was taken?
A I'm not sure what house it was.
Q Do you know whose room it was?
A No.
Q Okay. Can you put that upside down and make a

separate stack?
A (Witness complied.)
Q Perfect.
What's the next photo?
A It's a picture of me and my grandfather. It's number three.
Q So it's number three. It's you and your grandfather. And do you know where that was taken?
A In -- I think it was taken in the first house.
Q Okay. Do you know if it was taken in Beaufort County?
A Yes.
Q And how do you know that?
A Just the layout of the house, and there's a door. And we had a door that was connected to a bathroom.
Q Do you know how old you were in that photo?
A No. I'm not sure.
Q Okay. Can you put that photo on this stack?
A This side?
Q Good job.
What's the next photo?
A It's a picture of me. It's number four.
Q Do you recognize that photo?
A I do.
Q And where was that photo taken?

A I think it was taken in the second house.
Q And where in the second house?
A In the guest bedroom.
Q And who slept in the guest bedroom?
A Sometimes my grandfather. And if someone else came to stay over, but that was like after --
Q Okay.
A -- like, a couple of months. So I think that was where my grandfather stayed.
Q Okay. You think that's where your grandfather stayed. Do you think it was the guest bedroom, or do you know?
A I know. The bed was in the corner next to the door.
Q Okay. And how old were you in that photo?
A I'm not sure.
Q And was it -- was it house number one or two?
A House number two.
Q Okay. If you would put that in this stack. And what's the next photo?
A It's a picture of me. It's number five.
Q And do you recognize that photo?
A No. But it looks like some of other photos that you showed me.
Q Okay. Can you put that photo in that stack?
A (Witness complied.)

MS. JOSEPH: So, Your Honor, based on that, we would move to admit -- and I'll do this with Defense. State's Exhibit No. 1, that's the birthday party photo. State's Exhibit No. 3, that's the cooking photo. And State's Exhibit No. 4, that's the photo of the Defendant --

J.M. and the Defendant's bed.

MR. GROSE: Just briefly.

RECROSS-EXAMINATION

BY MR. GROSE:

Q I think State's Exhibit No. 1, you said you thought that your mother took that; right?

A Yes. Because it was my birthday.

Q Okay. And number four, do you know who took that?

A I'm not sure. But because it was in the guest bedroom, I believe it was my grandfather. Again, I'm not sure.

Q But you're not sure; right?

A (Witness nodded.)

Q And number three, do you know who took that?

A No. Because my grandfather is in the photo.

Q So it, certainly, wasn't him?

A No.

Q Okay. It couldn't have been him. Oops, I'm sorry.

A That's all right.

MS. JOSEPH: And those are my questions for

J.M. -- actually, those are your questions for J.M. ?

MR. GROSE: They're my questions for J.M. for this hearing.

THE COURT: All right. I'm going to excuse her while I hear argument from Counsel.

J.M. , you can leave.

THE WITNESS: Thank you.

THE COURT: All right.

MS. JOSEPH: J.M. , walk this way.

(WHEREUPON, J.M. exited the courtroom.)

THE COURT: All right. Before I rule on admissibility, I'll be glad to hear any arguments from Counsel.

MS. JOSEPH: Just really briefly, Your Honor. We're not seeking to get in these sets of photos -- merely that these are -- well, it's two sets of photos. So for the second set of photos, which is the kitchen photo, her in a bed --

MR. GROSE: Can we reference the numbers?

MS. JOSEPH: Absolutely.

And her at the birthday party. So State's Exhibit Nos. 1 is the birthday party. State's Exhibit No. 4 is the bed. State's Exhibit No. 3 is the kitchen. We're seeking to get those in.

We're not going to be asking her who took the photos.

Instead, we're going to be asking where were they taken. Because the point is that this is where the alleged incident happened.

And, actually, she talks about the kitchen in her Hope Haven interview. And then she talks about the bed -- the bed would be one of the scenes where things occurred. So that's why we want to get into these.

There are no crime scene photos in this case. Investigator LaVan testified he did not take crime scene photos. This is sort of what we're left with. And the jury has a right, the State would argue, to see where the alleged incidents occurred. So that is the basis for State's Exhibit Nos. 1, 3 and 4.

And then for State's Exhibit Nos. 13, 6, 15, and 11, as Your Honor heard, she's going to testify that it's her, at what age it is. And then she's going to testify, I think my grandfather took it -- took these photos.

And, Your Honor, whether or not the Defendant took it -- they can argue he didn't take it. He can take the stand, if he wants, and say he didn't. He doesn't have to, obviously. And that would go to weight, not admissibility.

MR. GROSE: With regards -- can I see them?

Because I can't remember the number of the first set.

MS. JOSEPH: And just really quickly, the second set

was State's Exhibit Nos. 13, 6, 15, and 11.

MR. GROSE: With regard to State's Exhibit No. 4, which is what she referred to as the bedroom photo, the testimony was that was the guest bedroom. I don't know that we have any evidence that anything happened as far as -- well, from the interview as far as any photographs being taken, I don't think there was any testimony about the guest bedroom.

But again -- and I can get you the cite. But there's a case where they introduced -- in a murder case where they introduced a picture of a guy in a band uniform and said his nickname was Bunny, I believe. And that case got overturned on appeal. And I think that's -- number four is getting into that category.

With regards to State's Exhibit Nos. 6, 11, 13, and 15, one of those four -- and we'd have to go back and see which one. But one of those four, she just said, I wasn't sure. She said with regards to three of them that she thought that her grandfather took them, but she couldn't say for certain.

And with regards to State's Exhibit No. 15, she didn't even say that that was her. She was equivocal on whether that was her or not.

And so, you know, this is the point where, I guess, looking at a lot of those 403 cases comes back into play,

you know. You get into the danger of unfair prejudice outweighing any probative value for her to be able to testify, oh, I think my grandfather took those pictures, but no -- no certainty on that.

And, again, all of these -- none of these are actual photographs. These are -- or there's been no testimony to establish that. All of these are -- are carved or couldn't be excluded as being carved, meaning that they had been deleted.

So, you know, I don't think that she could even testify that those were fair and accurate pictures from what was taken of her, assuming they all are her, because she's not sure about one. I don't think she would be able to testify to that because of what we know about those photographs from the rest of the hearing that we've already had.

THE COURT: All right. Let me tell you what we're going to do as to the first set.

I think -- the question, Counsel, Ms. Joseph, I think is time, place, and age; is that correct?

MS. JOSEPH: Time, place, and age.

MR. GROSE: And by first set -- because we've kind of talked about them as first set and then flipped them.

MS. JOSEPH: My understanding is bedroom, kitchen, birthday party, State's Exhibit Nos. 1, 3, and 4.

THE COURT: Right. What I'm going to do as to the first set -- and that was the ones you just mentioned -- I'm going to allow those to be admitted. As to the others, I'm going to allow them to be admitted and let the jury attach whatever weight they deem necessary. So it goes to weight as to the other set.

MS. JOSEPH: Thank you, Your Honor.

So we're going to call Lori for the text messages and J.M. for these photos. And then we're going to rest, Your Honor.

THE COURT: Anything else before we bring the jury back?

MS. JOSEPH: Nothing.

MR. GROSE: Well, can I have just a moment?

THE COURT: Yes, sir.

(Pause.)

THE COURT: All right. Anything further before we bring the jury back?

MS. JOSEPH: No, Your Honor.

MR. GROSE: I'm looking for a case to give you, but I think -- I'm looking for the case with the photographs. And I could just put that on --

THE COURT: Well, if you find it, you can give it to me before we leave.

MR. GROSE: Yes, sir.

THE COURT: Just give me the cite.

MR. GROSE: And I have that cite, Your Honor. It helps if you look in the right database.

THE COURT: Just write it down. Do you want to put it on the record?

MR. GROSE: I can just call it out real quick.

THE COURT: What is it?

MR. GROSE: It's State v. Langley, 334 S.C. 643, 515 S.E.2d 98 from 1999. And it's -- had the admission of testimony about the nickname Bunny and the picture in the band uniform. It required reversal.

THE COURT: All right. I'm ready.

(WHEREUPON, the jury came into open court at approximately 4:19 p.m.)

MS. JOSEPH: Your Honor, the State calls Lori Mayo.

THE COURT: Hold on.

MS. JOSEPH: I'm jumping the gun a little --

THE COURT: Hold on.

Ladies and gentlemen of the jury, I always try to be a man of my word. And I apologize to you. I told you I'd get you back in here at 2:30, and I didn't do it. So I want to apologize to you for that.

But the good news is that we've got a couple of witnesses and, hopefully, we won't be too long. So you won't be here for so long. So I apologize I didn't get

you back in here at 2:30. But you had an opportunity to have a good lunch. So that's a good thing.

All right. Yes, ma'am.

MS. JOSEPH: Thank you, Your Honor.

The State calls Lori Mayo to the stand.

THE COURT: All right. Ms. Mayo, come forward.

Swear her again.

THE CLERK: Good afternoon.

Place your left hand on the Bible and raise your right hand.

WHEREUPON,

LORI MAYO,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. JOSEPH:

Q Hi, Lori.

I'm going to hand you what's been marked as State's Exhibit No. 21. Without showing it to the jury, can you just briefly look over State's Exhibit No. 21?

A (Witness complied.)

Q What is State's Exhibit No. 21?

A These are images of a -- text messages on a cell phone.

Q So they're photographs of a cell phone screen?

A Yes.
Q And then the cell phone screen has text messages on it?
A Yes.
Q Do you see your name on the text messages?
A Yes, I do.
Q And then do you see your cell phone number?
A Yes, I do.
Q And these are text messages between you and who else?
A And Charles Dent.
Q And you testified yesterday?
A Yes.
Q And you read out loud some text messages?
A Correct.
Q Are these the same text messages that you read out loud?
A Yes.
Q And is this a true and accurate copy of those text messages, to the best of your recollection?
A Yes.
MS. JOSEPH: At this time, the State moves to enter State's Exhibit No. 21 into evidence.
MR. GROSE: No objection.
THE COURT: Without objection, State's Exhibit No. 21 is in evidence.

(WHEREUPON, State's Exhibit No. 21 was admitted into evidence.)

MS. JOSEPH: And we'd ask that this witness be excused.

THE COURT: Any objection to this witness being excused?

MR. GROSE: Well, I'd like to ask her a couple of questions.

THE COURT: Yes, sir.

MR. GROSE: And this will be real quick.

CROSS-EXAMINATION

BY MR. GROSE:

Q You just testified that these were the same ones we went over yesterday; right?

A Yes.

Q I think they're, actually, slightly different from yesterday, aren't they, in the sense that yesterday's were summaries, and these are the actual messages?

A Correct. But everything that was in these was in that.

Q But these are a little bit more complete?

A Yes.

MR. GROSE: Okay. Thank you.

That's all.

THE COURT: Thank you, ma'am.

You can step down. You can be excused.

Call your next witness.

MS. JOSEPH: Your Honor, the State recalls J.M.

.

THE COURT: All right.

THE CLERK: Just put your left hand on the Bible and raise your right.

WHEREUPON,

J.M. ,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. JOSEPH:

Q Hi, J.M. .

How are you?

A I'm good.

How are you?

Q I'm good.

Thank you for asking.

I'm going to hand you some photographs. Okay.

A Okay.

Q So being very careful and not showing them to the jury, can you look through those photographs?

A Okay.

Q How many photographs did I hand you?

A Let me count them. You handed me three.
Q Three photographs. And do those photographs -- do they have anything on them that has a number?
A They do.
Q And what color is that thing?
A Orange.
Q Okay. And so that sticker is orange. And what numbers do you have in front of you?
A Number one.
Q And do you have any other ones -- what other numbers?
A I have number three and number four.
Q Okay. So State's Exhibit Nos. 1, 3, and 4. Okay. Before we talk about those photographs, did you ever live in Beaufort County?
A I'm not sure. But I do remember living somewhere in South Carolina.
Q Okay. So you lived somewhere in South Carolina?
A I did.
Q That was kind of near here?
A I believe so.
Q And do you know how old you were when you lived in this area?
A It was from seven to nine, I think.
Q So seventh through ninth grade?
A No. Seven to nine years old.

Q Seven to nine years old. Okay.

Now, looking at the photographs, do you recognize photograph one?

A I do.

Q And how do you recognize it?

A It was my birthday. And it's a picture of me.

Q It's a picture of you. And it's your birthday. And how old were you turning?

A I'm not sure.

Q Okay. And where was this photograph taken?

A It was taken in one of the houses I lived in.

Q And do you know if it was taken in house one or two?

A House number two.

Q So it was taken in house number two. And you said it was one of the houses that you lived in. Do you mean in South Carolina?

A Yes, in South Carolina.

Q Going to the next photo. Do you remember how -- can you do that thing we did last time where you did it upside down?

A (Witness complied.)

Q Perfect.

Going to the next photo, what number is that one?

A Number three.

Q What is that a photo of?

A Me and my grandfather.
Q You and your grandfather. And where are you?
A In one of the houses.
Q Do you know if it's house one or house two?
A I think it's house number one.
Q Okay. And how do you know that that was your house in South Carolina?
A We had a door that was next to the kitchen in house number one, I believe. And so that's how I think it is.
Q Could you see the door in the --
A I do see the door in the picture.
Q Do you know how old you were?
A No. I'm not sure.
Q Can you turn that photo over, too?
A On a separate side?
Q No. On the same -- let's stack them.
Perfect.
And what is -- who is photograph number four of?
A Of me.
Q And do you know how old you were in that photograph?
A No. I'm not sure.
Q And do you know where you were in that photograph?
A I was in the guest bedroom in house number two.
Q And who stayed in the guest bedroom in house number two?

A My grandfather and someone named Dee. But that was after he would visit, like, that was when he was done visiting.

Q So do you think this photograph was taken before or after he visited?

A Before.

Q Okay. So after that photo was taken, he stopped visiting?

A Not after the photo. But there's a bunny in the photo. And my grandfather did have a bunny that he visited with and brought with us.

Q So did that bunny only come when he was around?

A I'm not sure. But I do remember the bunny staying with us for -- as -- like, a couple of months, or something.

MS. JOSEPH: Okay. So if you would put that photo on top of the other ones.

Okay. At this time, Your Honor, the State moves to enter State's Exhibit Nos. 1, 3, and 4 into evidence.

MR. GROSE: Subject to our previous hearing.

THE COURT: All right. So entered. Subject to the objection lodged at the previous hearing by the Defense.

(WHEREUPON, State's Exhibit Nos. 1, 3, and 4 were admitted into evidence.)

MS. JOSEPH: I beg a moment of the Court's

indulgence.

THE COURT: Yes, ma'am.

(Pause.)

BY MS. JOSEPH:

Q All right. J.M. , I've just handed you some more photos. Take a second and look at those. And be careful that you don't show them to the jury. Okay.

A Yes, ma'am.

Q You're doing a very good job answering out loud. That's good.

Thank you.

A I've looked through them.

Q Thank you.

How many photographs are there?

A Four.

Q Okay. Let's talk about the one on top. What number is it?

A Number 11.

Q Okay. And who's in that photo?

A Me.

Q And where is that photo taken?

A One of the houses.

Q And when you say "one of the houses," do you mean here in South Carolina?

A Yes, here in South Carolina.

Q And how do you know that?
A Because on Christmas Eve, we got these bean bag chairs in one of the houses. And I'm laying on one of them.
Q And do you know how old you were?
A I'm not sure.
Q Okay. So do what we did before where you flip it over and put it in front of you, please.
A (Witness complied.)
Q Good job.
Okay. What's the next number?
A Number 13.
Q What does number 13 show?
A Me and someone standing in front of the photo.
Q Oh, like someone's arm is in front of the photo?
A Yes.
Q So it's you. And where was that photo taken?
A In one of the houses in South Carolina.
Q And how do you know that?
A We had a blue couch -- well, we had a white couch and we covered it in a blue sheet.
Q And you see that couch in the photo?
A I do.
Q And how old were you in that photo?
A I'm not sure.

Q And do you know who took that photo?
A I believe it was my grandfather.
Q All right. And can you pull the photo that was right in front of you, the one that you flipped over --
A Right here?
Q No, no. Pull it back in front of you. Look at it again. Do you know who took that photo?
A I'm not sure.
Q Do you have a guess about who took it?
A I am guessing it was him.
Q Okay. And when you say "him," do you mean your grandfather?
A Yes.
Q Okay. So can you put -- let's see. I can help. I've made it confusing. I'm sorry.
So going to the next photo, what number is that?
A Number six.
Q And what is that a photo of?
A Of me.
Q And how old were you in that photo?
A I'm not sure. But it looks similar to the last photo.
Q So it looks similar to the last photo. And what makes it similar?
A I'm wearing the same outfit. The couch is in the

background. And, again, someone is standing in the front.
Q And where was that photo taken?
A One of the houses in South Carolina.
Q And who took that photo?
A I'm guessing, because it looks similar to the last photo, it was my grandfather.
Q Okay. So flip that one over, too.
All right. And then what's the next photo?
A It's a picture of someone in shorts, which I believe is me.
Q And why do you think it's you?
A I had neon shorts that I used for a dance recital.
Q And were the neon shorts a uniform?
A No. It's just something we were required to wear to dance rehearsals.
Q So you remember those shorts pretty well?
A I do.
Q And where was that photo taken?
A I'm not sure, because it's a plain background. But in South Carolina, I did take dance classes.
Q And who took that photo?
A I'm assuming it's my grandfather, because it's just me. My legs are showing and some shorts.
Q Okay. So you think it was your grandfather?
A I'm thinking it's my grandfather, yes.

MR. GROSE: I'm going to object to the leading, Your Honor.

THE COURT: All right. Sustained.

Don't lead her.

MR. GROSE: Move to strike.

THE COURT: All right.

BY MS. JOSEPH:

Q J.M. , can you put all the photos back in front of you?

A (Witness complied.)

Q And then what were the numbers of the photographs?

A Do you want me to read all of them?

Q Yes, please.

A 11, 13, 6, and 15.

MS. JOSEPH: Your Honor, at this time, the State moves to enter State's Exhibit Nos. 11, 13, 6, and 15 into evidence.

MR. GROSE: Subject to our hearing -- and, again, she's not testified as to who took the photographs. And with State's Exhibit No. 15, she's not certain that it was her.

THE COURT: And I will allow them to be admitted, and for the jury to give such weight they deem appropriate.

(WHEREUPON, State's Exhibit Nos. 6, 11, 13, and 15 were admitted into evidence.)

MS. JOSEPH: Thank you, Your Honor.

And we ask for permission to publish them at this time?

THE COURT: Any objection to that?

MR. GROSE: Just subject to our earlier objection.

THE COURT: All right. Subject to your earlier objection. Both sets.

MS. JOSEPH: Are you done?

MR. GROSE: I haven't started yet.

I'll let them look at them, and then I'll ask her some questions.

THE COURT: All right.

(Pause.)

THE COURT: All right. Mr. Grose.

MR. GROSE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GROSE:

Q Okay. J.M. , I'm going to show you State's Exhibit No. 1. That's one of the photographs we were just talking about?

A Yes, it was.

Q And do you remember that photograph?

A I do.

Q And I believe you said a little bit earlier when the jurors weren't here that you thought your mother took this

photograph?
A I do think it was taken by my mother. But, again, I'm not sure.
Q Okay. So that's State's Exhibit No. 1. And you thought that was by your mother because you -- you remember that's a dress you wore during your birthday party; right?
A It was, yes.
Q Now, State's Exhibit No. 3, you don't know who took that picture, do you?
A I don't.
Q All right. But your grandfather is in that picture; right?
A He is.
Q So we know he didn't take that picture?
A We do.
Q And that's State's Exhibit No. 3.
State's Exhibit No. 4, you don't know who took that photograph, do you?
A I'm thinking that it was him because it was in the guest bedroom that he stayed in.
Q All right. But when you testified a little earlier when the jurors weren't here, you didn't know who took it, did you?
A I said I don't know, but I'm thinking.

Q Okay. You're thinking. And, in fact, with these others, State's Exhibit Nos. 6, 11, 13, and 15, you really don't know who took those pictures, do you?
A I don't remember being in those photos.
Q I'm sorry?
A I don't remember being in most of those photos. I don't remember who took them, but I'm guessing.
Q So you don't remember when these were taken?
A I don't. But I do know they were in one of the houses.
Q Okay. And you don't -- you're just guessing who might have taken them?
A Yes.
Q Okay. In State's Exhibit No. 6, there's somebody else's feet?
A Those are my brother's.
Q That's your brother?
A Yes.
Q And when your grandfather was there visiting, other people in the house used the camera, didn't they?
A Yes.
Q In fact, I showed you -- I showed you this picture earlier, which is, actually, you with one of his cameras taking a selfie; is that right?
A It is.

Q And so -- and, again, the people that were living there were you, your brother, A.M., and your mother; right?
A Yes, sir.
Q And Dee would stay there sometimes, too?
A After my grandfather was done visiting.
Q Okay. But she would visit while he was there?
A No. I don't remember her ever visiting when he was there.
Q Okay. And you don't remember her coming over with some of her friends sometimes?
A There was one night where I think some -- my mom -- I don't know if it was her birthday or it was Dee's. But it was one night where Dee and my mom's friend, they came over. And me and my friend were sleeping over in my room. And we did go down for most of that part. No one was drinking. But Dee wasn't living there.
Q Okay. And you would have some of your friends come over sometimes, too?
A My friend, yes.
Q Okay. And, again, you're just guessing at who took those pictures?
A Yes, sir.
THE COURT: Ms. Joseph.
MS. JOSEPH: Just very briefly.

REDIRECT EXAMINATION

BY MS. JOSEPH:

Q How old are you now?

A I'm 13.

Q How old were you when you lived back in Beaufort?

A What year?

Q Let's -- well, you lived -- how long did you live in South Carolina?

A Almost four years.

Q And what were the ages again?

A Seven to nine.

Q But you're now 13?

A I am.

Q Do you have a cell phone?

A I do.

Q Do you know what a selfie is?

A Yes, I do.

Q Is this a selfie?

A No.

Q Would you take this photo of yourself?

A No, I wouldn't.

Q Do you like this photo?

A No.

Q Is this a selfie?

A No.

Q Did you take this photo of yourself?
A No.
Q Did you take this photo of yourself?
A No, I didn't.
Q Okay. What about this one?
A No.
Q These are not selfies?
A They're not.
MS. JOSEPH: No further questions.
THE COURT: Anything on recross?
MR. GROSE: Just to follow-up.

RECROSS-EXAMINATION

BY MR. GROSE:
Q The people in the house used the camera, other than your grandfather; isn't that right?
A I'm not sure. I did from that photo you showed me. I'm not sure if anyone else did, because my mom had her own phone and my brother didn't.
Q So all of those, though, that she was just showing you, you're guessing as to who took them?
A I am. But I'm certain that one of those photos -- now that I'm assuming after she did that, when she was going over the photos that weren't selfies, number 15 that was about the green shorts, I -- I'm not guessing. I think I'm saying that it was him that took that photo.

Q Okay. But up until now, you've just been guessing?
A I have.
Q And her questions are prompting you to change your mind?
A No. They're just -- I'm just going along as I can.
MR. GROSE: Okay. Thank you.

FURTHER EXAMINATION

BY MS. JOSEPH:
Q J.M. , you and I talked on the phone before trial; right?
A We did.
Q But you only met me on Monday?
A Yes.
Q And today is Wednesday?
A Yes.
Q And you only saw these photographs today?
A Yes, I did.
Q In fact, I showed you these photographs for the very first --
MR. GROSE: Objection to the leading, Your Honor.
MS. JOSEPH: You're right. I'll rephrase.
BY MS. JOSEPH:
Q When did I show you these photographs?
A You showed me a few minutes ago before the jury walked in -- no. Actually, let me say that again. You

showed me before I came into this courtroom.
Q Today?
A Yes, today.
Q Okay. So I showed them to you a few minutes ago?
A Yes.
Q For the first time?
A Not for the first time. You and her --
Q Rebecca?
A Yes. And your boss came into one of the offices and showed me the photos, and asked me if I remembered who took them.
Q Okay. And that was only a few moments ago -- or it was today?
A It was today.
MS. JOSEPH: No further questions.
MR. GROSE: Nothing further.
THE COURT: All right.
MS. JOSEPH: We ask that she be excused.
THE COURT: Any objection to her being excused?
MR. GROSE: No, sir.
THE COURT: All right. Thank you, J.M. , for coming.
MS. JOSEPH: Your Honor, at this time, the State rests.
THE COURT: All right. Ladies and gentlemen of the

jury, what we're going to do now is -- it's about 4:45. And I'm going to let you go home for the evening.

Please, ma'am, please, sir, do not talk about the case with anyone, including persons in your household. Do not pick up any newspapers, or watch any television that has anything to do with this case.

If anybody approaches you and wants to find out information about the case, you report that person to me. And I'll deal with him or her accordingly.

Now, we're going to start tomorrow morning -- instead of 9:30 as we've been starting the last couple of days, we're going to start tomorrow morning at 9:00. So I need you in your jury room at 9:00 sharp. Because we're going to start very promptly at 9:00.

Okay. Have a good night. And I'll see you in the morning.

(WHEREUPON, the jury was excused from open court at approximately 4:43 p.m.)

THE COURT: Anything else before we retire for the evening?

MR. GROSE: Do you want us to do motions now, or do you want us to do them later?

THE COURT: Well, I guess -- do you want to go ahead and do them now?

MR. GROSE: Yes, sir.

THE COURT: All right.

MR. GROSE: And I'll start with the two criminal sexual conduct with minor charges.

THE COURT: All right.

MOTIONS

MR. GROSE: The State is relying on, you know, these -- the videotaped interviews that we watched this morning. And the -- I beg the Court's indulgence one moment.

(Pause.)

MR. GROSE: In the second interview, the July 15th interview, of course, there was nothing about fellatio that was stated in the first interview. In the second interview, there was a question that was asked, was it in the first house, both houses, or something else? And the answer was that it happened in the old house.

And the way the indictments are structured, there's a period from April of 2013 to August of 2013, and then that's an indictment that ends in 01674.

And then in the indictment that ends 01673 --

THE COURT: And you're reading from the amended indictments; right?

MR. GROSE: Right. I don't think these were ever amended.

MS. JOSEPH: The CSC ones were not amended.

MR. GROSE: That time frame is from August of 2013 to April of 2014. And that would have been the period of time they were in the second unit.

So with regards to the indictment that ends in 01673, our position is that there's not been any testimony of criminal sexual conduct with a minor in the first degree happening at the second location. And so we would move to dismiss that indictment for that reason.

THE COURT: All right. Ms. Joseph.

MS. JOSEPH: Thank you, Your Honor.

The State has a three-tier argument. The first tier is that the indictments are notice documents. And that all that they're meant to do is put the Defendant on notice for what he was charged with. And all that we must prove is that a sexual battery, as defined by the statute, was committed. So she, in her second interview, testified that the Defendant put his mouth on her privates, which would be a sexual battery at the second location.

If Your Honor feels that these are not notice documents and that we must prove fellatio at both locations, then the State would say that in her second interview, she talked about fellatio occurring at the first house. And then on the statement, she testified about fellatio occurring at the second house. So that would satisfy both indictments.

Finally, Your Honor, the victim at the time of this alleged incident was nine years old. She was, actually, eight and nine, very young. And the State feels that it is fair, and we feel like we should be allowed to argue that there was some confusion about where it took place, especially because the two houses were so near each other. They were on the same street in Beaufort County.

And it's the same offender and the same type of conduct. And, therefore, there may be some confusion. And did she testify it happened more than once. So it's possible it happened at both locations. There was just some confusion.

Based on that, we feel like at the directed verdict stage, there is enough evidence to go to the jury if you view the evidence in the light most favorable to the State.

Thank you, Your Honor.

MR. GROSE: And I don't recall the testimony in the trial about both houses. And the other -- the other issue that I had -- and, remember, we started, you know, with issues about the indictment. And I'm telling you that I thought it was very important for the jurors to have the indictments in this case so that they would know exactly what the charges were.

And, in fact, I talked about the indictments in my

opening statement. Because in the indictments, they said that the sexual battery that they were going to prove was fellatio on the Defendant by J.M. . It gives her date of birth and the violation of the Code of Laws. That's the element that they picked.

That's -- yes, there's that Gentry case out there that talks about indictments being a notice document. But they could write that down on a cocktail napkin and give it to us and it would give us notice.

There -- and I realize that a lot of prosecutors treat the Grand Jury like a rubber stamp. But there is still something to the State Constitutional right to have a presentment to the Grand Jury. And they've said that the element that they were going to prove is fellatio.

So whatever arguments that they make about another sexual battery, that would be a variance from the indictment. And I can give you a case. It has to do with -- and I can look it up now, but it would probably be easier to give you in the morning. There's a case involving a homicide by child abuse statute where the State elected their theory in the indictment. And on appeal, they said that that was a variance when they -- when the State asked the Judge to charge a different section of the homicide by child abuse statute, that was a variance.

And to the extent that it's a notice document and only a notice document, this puts us on notice that they were going to prove fellatio. And I brought that up in my opening. And they didn't raise anything then that they were going to change, you know, midstream as to what their theory was in the indictment. And, now, they've rested.

So I don't think -- with regards to the second house, I don't -- I don't see -- I don't see any proof that's been presented for that to go to the jury.

THE COURT: All right. Anything else before I rule?

MS. JOSEPH: Nothing else from the State, Your Honor.

THE COURT: All right. I'm going to respectfully deny your motions. I think there's sufficient evidence for the matter to be submitted to the jury on all offenses.

MS. JOSEPH: Thank you, Your Honor.

MR. GROSE: Well, I haven't even addressed the other three indictments yet.

THE COURT: I thought you were addressing all of them.

MR. GROSE: No. I said wanted to start with the two CSC indictments. And I've only asked for one of them to be dismissed.

THE COURT: All right.

MR. GROSE: But if that's your ruling, I'm not going

to argue with you.

THE COURT: That's as to those two that you talked about. I'll listen to the others. I'll be open minded. Go to the other two.

MS. JOSEPH: Just for clarification, these are the amended indictments, Your Honor?

THE COURT: Right.

MR. GROSE: With regard to the second CSC indictment in the older house, I would just argue that the evidence is insufficient for any reasonable juror to convict.

With regards to the two indictments for disseminating obscene material, again, you know, at the directed verdict stage, they still haven't proven compliance with the statute for getting those warrants. I think Your Honor can consider that again.

But, also, they have to show that the materials violated 16-15-305. And we don't think there's been any testimony that satisfies that requirement. And we would move to dismiss for failure to establish the elements of the crime.

THE COURT: All right. As to both of the criminal sexual conduct indictments, I'll respectfully deny your motion for directed verdict as to those indictments.

As to both of the amended indictments regarding the dissemination of obscene material, as to both of those

indictments, I'll respectfully deny your motion for a directed verdict as to those two as well.

Anything else before we retire for the afternoon -- evening?

MS. JOSEPH: Nothing else from the State.

THE COURT: All right. We'll reconvene back at 9:00 in the morning.

(WHEREUPON, the proceedings were concluded at approximately 4:54 p.m., to be reconvened on Thursday, May 24, 2018.)

THURSDAY, MAY 24, 2018

THE COURT: Anything before we bring out the jury?

MOTIONS

MS. JOSEPH: Yes, Your Honor, briefly.

The State has passed up a motion. Although I have spoken with the Defense subsequently, and I think that maybe our motion was premature.

Yesterday, as we were leaving, we saw Defense Counsel queuing up a video to practice -- you know, we all practice before we put up a display. In addition, as Your Honor is aware, in his motion he filed pre-trial, he included a page from a polygraph examination.

Do you remember that, Your Honor?

THE COURT: Yes.

MS. JOSEPH: The only videos the State is aware of in this case are the Defendant's statements that he gave to law enforcement. And all polygraph examinations are required to be filmed in the State of South Carolina now. So we had reason to be concerned that they were seeking to enter through the Defendant either his statements or his polygraph examination.

When I say his "polygraph examination," I want to be clear. I'm talking both about the actual examination and merely the results, being that he passed. And the State's brief -- which, again, I put in front of Your Honor, and

I, also, provided a copy to Seth. As it makes clear, the Defendant cannot get into his own statement. Because it does not satisfy an exception to the hearsay rule, Rule 801.

If Your Honor were to allow in his statements -- so let's say, you found it did satisfy an exception to the hearsay rule, in his statement, there are several mentions where the -- and I'm paraphrasing here, where the investigator is saying you should take a polygraph examination, you should take a polygraph examination. And there are case law -- there's case law that says if the jury is left with the impression that the Defendant refused a polygraph when, in fact, he did take one, the Defense can satisfy that.

But it's the State's contention that they cannot satisfy that polygraph -- they cannot rebut the inference that he did not take a polygraph. They themselves are the one creating that inference.

And, also, it's the State's position that a polygraph examination really goes into what the jury's role here -- it's the jury's duty -- it's their sole responsibility to determine credibility of witnesses. There's not a per se rule against polygraphs in this state. But they are highly disfavored because a polygraph is a machine that purports to say whether or not a witness is credible. And

that's solely within the jury's purview.

So for that reason, Your Honor, we would seek to keep out the Defendant's statement and his polygraph.

And then we have one other issue after we discuss that.

THE COURT: So there's --

Mr. Grose, there's a video of some sort?

MR. GROSE: She said we discussed it. And it was, basically, I was asking her what she got at. And she said, I suggest you read my three-page motion. I could have answered a lot of this.

Yesterday -- this is not my first time in this courthouse, but it's my first time trying a case in this courthouse. And I am not as familiar with the audio system here as I am in the more backwards places where I practice.

And so with the assistance of the clerk, we ran a test so I could, you know, know how to do it. And I queued up a video of one of my client's interrogations from another case that I tried.

THE COURT: Fast-forward, Mr. Grose. My question is, is there going to be a video in this case?

MR. GROSE: I'm not presenting a video. And I was just trying to explain what I was doing is I was -- the video that they saw is from another case. And it was just

for the purpose of me testing my integration with --

THE COURT: So there's no polygraph?

MR. GROSE: No, there's not. Because I'm not seeking to admit the polygraph.

Now, I do have a concern, you know -- and I believe we're trying to head things off -- problems before they happen. I would refer you back to Page 2 of my pre-trial motion. Because her motion is -- is not only limited to me not introducing Mr. Dent's statement, but even any mention that he gave a statement.

And on Page 2 of that pre-trial brief, I cited State v. Blurton, the Court of Appeals version. Mr. Blurton, actually, won in both venues. But the State v. Blurton case was, actually, a case I tried 20 years ago. So it makes me feel kind of old now.

But in that case, Mr. Blurton testified. And there was some evidence that we wanted to get in that was excluded, and including the fact that he had told certain things to law enforcement at the beginning of the case. And then the assistant solicitor gets up and argues in the closing that Mr. Blurton had 16 months, or whatever it was, to sit in the county jail and make up this story.

And so, you know, if they either in cross-examination or in closing, you know, want to do something like that -- this case is much older, you know. I think we're, at

least, allowed, if the right things develop, to say, you know, Mr. Dent, did you give a statement? Did you talk to law enforcement? Did you deny these allegations? Was that right away? Yes. But that may not become a problem. But I'm concerned that, you know, they're going to try to, you know, make use of that. And I just want to head off anything before it happens, so.

THE COURT: All right. Very briefly, so we can move along.

MS. JOSEPH: In my motion, Your Honor, I have a sentence that says that we recognize that Defense has the right to ask his client, you know, did you cooperate with law enforcement. So we understand that. We just cannot play the video. And he can't just sit here and say, I told law enforcement this, I told law enforcement that. He's on the stand to give testimony today.

MR. GROSE: And I'm not planning on doing that today.

THE COURT: All right. Anything else?

MS. JOSEPH: Yes, Your Honor.

I apologize, but one more matter. We have reviewed the Defense's witness list, which they helpfully provided. The first witness --

Do you have that list, Your Honor?

THE COURT: I do.

MS. JOSEPH: The first name on that list is their

electronics expert.

MR. GROSE: I'm not calling him.

MS. JOSEPH: Right. Which is not being called.

And then two through eight are family members, neighbors, community members, things like that. So we think that there's a high likelihood that the Defense is going to seek to get in character evidence.

And we just wanted to ask again -- first, we want to make Your Honor aware that technically you did not rule on the 404(b) child porn evidence. We think if they're going to enter character evidence about -- I want to be very specific here, about the Defendant's reputation with children -- so they want to say he's around my kids all the time. He has no issue with children. That we would -- in fact, would be allowed to talk about -- or potentially introduce the child porn evidence.

So we wanted to flag that for Your Honor and potentially get a ruling on that now.

THE COURT: All right. Mr. Grose, first of all, let me ask you this. Of these eight witnesses on this list -- and I think yesterday, you alluded to the fact that your Defendant is going to be one of your witnesses.

How many of these witnesses are you going to call? Give me their names.

MR. GROSE: I'm going to call four witnesses. This

is David Dent sitting right here. And this is his mother, Ms. Leffler. I apologize for not remembering her last name. This is Terri Fife and Mitch Fife, who are close friends of Mr. Dent.

I do not plan on asking character-type questions. All of these people have something to say that's relevant.

THE COURT: To the facts of the case?

MR. GROSE: To the facts of this case and, potentially, the specific child that's involved in this case. I'm not going to ask -- I'm not going to ask about any children, other than the interaction between Mr. Dent and his two grandchildren, J.M. and her brother, A.M. .

THE COURT: Right. But I want to be very, very clear.

MR. GROSE: Yeah.

THE COURT: Very, very clear. If these witnesses -- if any of their testimony goes down the path that Counsel just asserted -- I'm telling you on the front end so you'll be aware. You can jump up all you want. But you open up that door, I'm going to let them run in with that stuff.

MR. GROSE: I'm not planning on doing that.

THE COURT: So I'm telling you that right now. So if you hadn't talked to your witnesses and if they go down that path -- even if they go down one inch of that path,

I'm going to allow the State to do that. I mean, so I just want to be -- I want to be clear as to where we're going with this.

MR. GROSE: All right.

THE COURT: Now, the other thing is, I called some witnesses, at least, in the arena that I was recently in, feel-good witnesses. And feel-good witnesses are witnesses who are just going to get up here and say the same thing over and over about -- and I won't say character. I don't know what they'll say.

But what you're telling me is none of these witnesses are going to go to the issue of character. All these witnesses are going to touch upon something that has some factual basis, at least, some parallel with the facts in this case?

MR. GROSE: Yes, sir.

THE COURT: Is that what I'm hearing from you?

MR. GROSE: Yes, sir.

THE COURT: All right.

MR. GROSE: And that's part of why I told you that the four witnesses, in addition to Mr. Dent, would be quick.

THE COURT: All right.

MR. GROSE: Now, I have a concern about opening doors, too.

THE COURT: Okay.

MR. GROSE: And, you know, we've only had certain photographs come into evidence. And if they're going to try to cross-examine him about those or if they're going to try to bring in other photographs through him, they're going to open the door to the fact that I wouldn't go into otherwise that we had a hearing where those photographs got excluded.

THE COURT: You know, I don't want to anticipate what's going to happen. Let's just cross these bridges once we get to it.

But do you want to oppose at a point.

MS. JOSEPH: Well, Defense is correct. I mean, this is -- he's right to sort of see down the road. I was going to ask Your Honor if I can ask about the child porn on his computer. I would do so -- it would be one question. The Defendant is free to give whatever answer he wants. And then I would move on.

I recognize that I'm incredibly limited. But I think that because the Defendant is taking the stand -- and I'm presuming, he, obviously, has the absolute right not to take the stand. But I could ask one or two questions about that and then move on.

MR. GROSE: I -- you know, the --

MS. JOSEPH: Without -- I'm sorry. Just to clarify a

hundred percent. Without going into the Alabama investigation.

MR. GROSE: I don't think that they get to get into that because it's not been established that there was child porn on the computer. And if they get into that, I mean, you know, the testimony was that all the child porn was recovered files. That gets right back into needing to be able to confront the person who, actually, examined the computer.

THE COURT: What if they asked him, do you have child -- number one, do you own a computer? Number two is -- I mean, foundation, do you own a computer? What kind of computer it is? How long have you had the computer? And is child pornography on your computer? And that's a yes or no answer.

MR. GROSE: I don't think that that's relevant. I think that gets into other bad acts. That gets to the 404. And they withdrew that motion yesterday, so.

THE COURT: Well, based upon what the indictments are, I mean, I don't see anything wrong -- I mean, if his -- obviously, he's come into court and he's pled not guilty to all four indictments. I mean, that's his premise that he came into court with.

So the State is asking based on the language in the indictment, which it, obviously, talks about pornography,

do you have pornography on your computer? He came in here and says he's not guilty of any of this.

MR. GROSE: Now, that might be a different question, Judge. Because the -- the indictment says that -- I have it in a folder. But the indictment says he showed her pornography.

And the information on the videos that we've watched is that it was of adults kissing each other. And the testimony in the courtroom was of people implying adults having sex.

So if they ask him about pornography, that's one thing. If they ask him about child pornography, that's implying a bad act. That's implying a crime. That's what 404(b) is exactly intended to exclude.

THE COURT: Well, let me just say this, Mr. Grose. Since we're having that discussion, so you'll know, if that -- if he were -- if that question came up, I'm going to allow that question.

MR. GROSE: Okay.

THE COURT: In the format that I just -- I mean, obviously, you could object to it. But since we're having that discussion, I would allow the State to ask that question.

MR. GROSE: And then here's the thing, Judge. Because I'm a little confused. Because a minute ago, they

were trying to keep me from opening the door about character evidence. Because if I opened the door, you were going to let them rush through it with the child pornography stuff. And, now, they're saying they're going to ask him about that. All these witnesses are aware of that allegation.

So if they do that, then I might have to ask them -- knowing these allegations, I might have -- my intent was not to get into character evidence. And they were wanting me not to do that. But, now, they're saying oh, yeah, we're going to get into this, but we're going to exclude your good stuff. I mean, you're letting them go through that door before we pushed it open even a millimeter.

THE COURT: Well, no door has been opened right now. All the doors are closed, as far as I can see, right now.

MR. GROSE: Well, but you've said you're going to allow that question.

THE COURT: I'll just have to see. I don't know where the witnesses testimony is going to go, either your witnesses or -- I mean, the witnesses in the back for the Defendant.

And I think it's good we're having this discussion now. Because, obviously, I don't want to continue to let the jury go in and out on these legal issues. And we need this train to move as quickly as we can.

So let's -- let's resolve this issue right now. Because I don't want to send the jury out. We're going to be bogged down talking about the same thing then that we're talking about now, so.

MR. GROSE: Well, I think that's a good idea, Judge. So if -- if they're going to ask about -- I'm going to tell you right now.

THE COURT: Right.

MR. GROSE: If they ask a question about child pornography, I am moving for a mistrial. Because that would be, in my opinion, a violation of 404(b), and what we briefed, and what we knew was going to be an issue coming into court this week. And I've got to do that to protect the record.

And once those words child pornography go through this courtroom, you can't unring that bell. That is -- that is a loud bell that's going to reverberate through this courtroom and is not going to go away. So if that is asked, I'm going to move for a mistrial. And it may be granted, it may not be granted. But it's going to insert a huge issue for appeal in this case that is not here right now.

THE COURT: Anything?

MS. JOSEPH: Your Honor, you articulated the question the State wants to ask. We will ask it in the way you

articulated it, you know. You gave a foundational question and then you asked the question. The State is aware, as Your Honor said, that it is a yes or no question. And we are not seeking to enter extrinsic evidence about that.

The Defendant has an absolute right to take the stand. He has an absolute right to not take the stand. When he takes the stand, he does open himself up to questions.

And, Your Honor, I understand Mr. Grose's point that the accusations here are about Mr. Dent showing the victim child porn. The State has been arguing consistently that the Defendant taking photos of the victim were part of grooming. And these were -- him taking sexualized photos of his granddaughter and they were escalating, you know, in order to culminate any sexual abuse --

THE COURT: Well --

MS. JOSEPH: Yes, sir.

THE COURT: I didn't mean to cut you off.

But what I was saying earlier was if that question was asked as I articulated it a minute ago, that's a yes or no answer. The State moves on.

MS. JOSEPH: Exactly.

THE COURT: And if Mr. Dent -- I don't know what he's going to say. But if Mr. Dent says, no, the State moves

on.

MS. JOSEPH: Yes, sir.

THE COURT: If Mr. Dent says, yes, the State moves on.

Based upon that colloquy between the questioner and the person that's answering the question, I see -- it's hard for me to anticipate, Mr. Grose, that that would be in any way prejudicial to the Defendant. There's no elaboration. There's just that specific question, a yes or no answer. And the State moves on.

MR. GROSE: And is -- am I understanding -- and this is more of a question for opposing Counsel than you. But am I understanding that she's going to ask the question limited to pornography and not say child pornography?

MS. JOSEPH: No. I'm going to say child pornography.

MR. GROSE: Then I'm moving for a mistrial when she does that.

THE COURT: I mean, you have every right to do that. And I'll address it at the appropriate time. But it's either a yes or no answer and --

MS. JOSEPH: And the State moves on.

THE COURT: The State moves on. But based upon these discussions from both sides, following that path, the Court does not envision that that would exhibit any prejudice towards Mr. Dent. And, certainly, the Court is

cognizant about that. The Court is aware of that.

So that's the path that will be followed if, in fact, we get to that particular juncture and that's the way the question is going. I don't know which way the question is going to go. But, certainly, any --

And, Mr. Grose, obviously, we're going back through this duplication of testimony. Obviously, we don't -- just try to be as succinct as you possibly can so witnesses don't duplicate testimony about -- or anything.

MR. GROSE: And, Judge, I need five minutes to confer with Mr. Dent.

THE COURT: All right. It's 25 until 10:00. I'll give you 20 to 10:00. I'll sit right here and give you five minutes.

Do you want to take him outside?

MR. GROSE: I would like to take him in one of these private rooms. They might be occupied.

(WHEREUPON, a break was taken.)

THE COURT: Anything else before we bring the jury out?

MR. GROSE: Yes, just very briefly. I've got some requests to charge I'd like to hand up, which they're pretty standard. But I do want to know, at some point later before closing, what definition of reasonable doubt Your Honor is going to use.

And the other thing is, it was brought to my attention this morning by some of the people in the courtroom that sometimes when I'm up questioning witnesses, the Prosecutors have been up and walking around or making faces in response to some of the questions. And I would just ask that that not occur anymore.

THE COURT: All right. Don't make any faces, y'all.

MS. JOSEPH: Thank you, Your Honor.

THE COURT: Anything else?

MR. GROSE: No, sir, not at this time.

THE COURT: All right. Where's my bailiff?

All right. Let's go get them.

THE BAILIFF: Yes, sir, Judge.

MS. JOSEPH: Your Honor, don't we need to do this -- I don't know what it's called, but the little talk to the Defendant about his right to testify?

THE COURT: Yes.

MS. JOSEPH: Sorry. I forgot all about that.

MR. GROSE: And I think that can be satisfied through a colloquy between the Judge and Counsel. I've informed Mr. Dent that he has the right to testify or not testify. And it's his decision either way. And he's chosen to testify.

THE COURT: All right. And, Mr. Dent, would you stand up for me?

Raise your right hand.

WHEREUPON,

CHARLES DENT,

after first having been duly sworn, testified as follows:

THE COURT: Hold on one second.

THE BAILIFF: Okay.

THE COURT: All right. You can put your hand down.

Your lawyer, Mr. Grose, indicates that you -- that he advised you of your right to testify or not testify.

DEFENDANT DENT: Yes, sir.

THE COURT: You fully understood those rights?

DEFENDANT DENT: Yes, sir.

THE COURT: And you're not under the influence today of anything that would impact your judgment?

DEFENDANT DENT: Absolutely not.

THE COURT: You're clear minded and you understand what you're doing?

DEFENDANT DENT: Absolutely.

THE COURT: And you're satisfied with the discussions that you've had with Mr. Grose regarding that right to testify or not testify?

DEFENDANT DENT: Yes, sir.

THE COURT: Any questions of me?

DEFENDANT DENT: No, sir.

THE COURT: Any questions of your lawyer?

DEFENDANT DENT: No, sir.

THE COURT: All right.

MR. GROSE: Thank you, Judge.

THE COURT: Bring them in.

Thank you, Ms. Joseph.

MS. JOSEPH: Thank you, Your Honor.

(WHEREUPON, the jury came into open court at approximately 9:42 a.m.)

THE COURT: All right. Good morning.

Mr. Grose, are you ready to proceed?

MR. GROSE: I am, Your Honor.

At this time, I would call Charles Dent.

THE COURT: All right. Mr. Dent, come forward.

THE CLERK: Good morning.

If you would, place your left hand on the Bible and raise your right hand.

WHEREUPON,

CHARLES DENT,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

THE BAILIFF: Right this way, sir.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. GROSE:

Q Charles, you are the Defendant in this case?

A Yes.
Q And one of the allegations is that you took pictures of your penis and showed them to your granddaughter, J.M. . Did you do that?
A No, I did not.
Q Another allegation is that you showed your granddaughter, J.M. , pornography. Did you do that?
A No, I did not.
Q One of the allegations is that you forced J.M. to commit fellatio on you, oral sex on you at the first townhouse that they lived at here in the Beaufort County area. Did you do that?
A No, I did not.
Q And the final allegation is that you had J.M. perform oral sex on you at the second townhouse that they lived in here in Beaufort County. Did you do that?
A No, I did not.
Q And did you ever do anything, touch J.M. , or have her do anything in a sexually inappropriate manner?
A Absolutely not.
Q Charles, what I want to do is go back and ask you a little bit about your background so the jury can know a little bit about you. Where were you born?
A In Tampa, Florida.
Q I'm sorry. Can you speak into that microphone?

A In Tampa, Florida.
Q And, just generally, where did you grow up?
A In Florida in my early years, and in Tennessee in my later years in school.
Q All right. And what kind of schooling did you have?
A I have a twelfth-grade education. And in my military career, I went to several schools, probably a second year college level.
Q So you said you had a military career. What branch were you in?
A I was in the United States Navy.
Q And what year did you enter the United States Navy?
A In 1985.
Q And how long did you spend in the Navy?
A 20 years.
Q And while you were in the Navy, were you stationed in various places around the country?
A Yes.
Q And where were those places?
A I started my career in Great Lakes, Illinois. I was stationed at a naval air station in Atlanta. I was in a squadron in Point Loma, California. I returned to Atlanta. And then my last duty station was staff headquarters in New Orleans, Louisiana.
Q And what types of positions did you hold in the Navy?

A I started out as a very young recruit. And I progressed up to the level of first class petit officer by my retirement.

Q And as part of that, did you have a security clearance?

A Absolutely.

Q And did you have responsibilities regarding security and homeland security?

A Yes. I was, actually, an instructor for anti-terrorism training. And that required a confidential clearance.

Q Okay. Now, we've been introduced to Lori Mayo, your daughter, this week. Her mother, is her name, also, Lori?

A Yes, it is.

Q Okay. And were you married to the older Lori?

A Yes, I was.

Q Okay. And how many times were y'all married?

A We, actually, were married twice. We divorced for a little over a year, and then we got remarried.

Q Okay. And so when was the first time that you got married, just approximately?

A 1985, I believe.

Q And how long were you married before the divorce?

A We were married until 1993, I believe. And we were remarried in 1994.

Q Okay. When -- when you were divorced for that year, where were you stationed at that time?
A Excuse me. Could you ask me --
Q Yes, sir. Charles --
MS. JOSEPH: Your Honor, objection to 401, 402 relevance. I've let him go into his background. But at this point, we've gone far beyond that.
THE COURT: I'm going to sustain the objection.
MR. GROSE: Okay.
THE COURT: Streamline.
BY MR. GROSE:
Q So you and Lori, your wife -- ex-wife, did y'all have any children together?
A Yes, we did.
Q Okay. And how many children did you have?
A We had three.
Q All right. And who were those children?
A Michael, the oldest, was my stepson.
Q Okay.
A And Michelle, my daughter, and my son, Matthew.
Q Okay. So Michelle -- when you say "Michelle," that's how you distinguish between Lori, the mother, and Lori, the daughter?
A Yes.
Q Okay. So Michelle and Matthew were your biological

children; right?
A Yes.
Q And we've heard mention of an Uncle Michael this week. That was your stepson?
A That is my stepson, yes, sir.
Q Okay. Now, when -- when you divorced the second time, were the children still young?
A Yes, they were.
MS. JOSEPH: Your Honor, again, under 401 and 402, we're going to object to relevance.
MR. GROSE: I'm getting into who lived with who.
THE COURT: I'm going to sustain the objection.
Mr. Grose, move on.
MR. GROSE: Okay.
BY MR. GROSE:
Q Let me jump forward to 2012. In 2012, where were you living?
A I was living in Alabama. I own a farm there.
Q And was anybody living with you in Alabama?
A My son, Matthew.
Q And at that time, do you know where your daughter and her two children were living?
A Yes. They were living in Jacksonville, Florida.
Q Okay. And prior to 2012, was Matthew living with you?

A Yes, he was.
Q And would he travel to Florida?
A Yes. He would travel every year.
Q And how long would he --
MR. GROSE: Judge, we had testimony about this.
THE COURT: Let me hear the objection first.
MS. JOSEPH: Again, it's relevance. We're in Florida. All the allegations are in Beaufort. And Lori Mayo testified, Your Honor, that she had no contact with the Defendant prior to Matthew's death. So anything prior to Matthew's death is not relevant.
MR. GROSE: Well, it's -- there was testimony about Matthew.
THE COURT: I'm going to sustain the objection.
Let's just move on.
MR. GROSE: Okay.
BY MR. GROSE:
Q In 2012, did something happen to Matthew?
A Yes.
Q And what happened?
A He committed suicide.
Q Okay. Was that hard on you?
A Very, very hard.
Q And when he committed suicide, were -- where was -- where were the services for him?

A We had a memorial service in Jacksonville, Florida.
Q Okay. And at that point, did you begin having contact with Michelle and the children?
A Yes.
Q Okay. And how did that contact begin?
A What do you mean by --
Q Well, how did you first kind of get back in touch with Michelle?
A After the memorial service, all -- all -- Michael and Michelle were down there for the memorial service. And I just got to know them during that short period of time a little better. I, certainly, was down there several times before that.
Q And when you were down there for the memorial service, did you have a chance to observe where they were living?
A Yes.
Q And what were the conditions of where they were living?
A It was very poor. It was what I would call a crappy neighborhood.
Q And when you were down there for Matthew's memorial service, was anybody else from your family there with you?
MS. JOSEPH: And, Your Honor, again, we're going to object to relevance. Now, we're talking about a funeral

and --

MR. GROSE: Well, I have to -- this is relevant to the decision for them to move to South Carolina.

THE COURT: All right. Mr. Grose, I've been pretty lenient. I'm going to sustain the objection on --

The relevancy objection, Counsel, that's what it was?

MS. JOSEPH: Yes, Your Honor.

THE COURT: I'm going to sustain that.

So let's move on.

MR. GROSE: Okay. Thank you.

BY MR. GROSE:

Q Were there ever any discussions about Michelle and the children moving to South Carolina?

A Yes, there were.

Q And were you part of those discussions?

A Yes.

Q And who else was part of those discussions?

A My brother.

Q Who's your brother?

A David Dent.

Q And as a result of those discussions, what was decided?

A I wanted to get them away from the conditions the children were living in. It was very frightening where they were at. And I thought a better location, better

schools would improve their quality of life.
Q And so how was the Beaufort area selected?
A My brother, at the time, leased property on Hilton Head. And he was telling us how beautiful it was, how -- what a great community it was.
Q So in what month did Matthew pass away?
A In June of 2012.
Q Okay. And so how soon after that did Lori and your grandchildren move to the Beaufort area?
A In mid-August.
Q Of the same year?
A Yes.
Q Now, when they lived here, what was the -- did they live in more than one townhouse when they lived here?
A Yes.
Q And were those townhouses in the same complex?
A Yes, they were.
Q Can you describe the first townhouse they lived in?
A The first townhouse I leased was a two-bedroom, two and a half bath. It was very small, perhaps, 900 square feet.
Q Okay. And what was the arrangement for paying the bills for that townhouse?
A I -- I paid for everything, the lease, the cable, the water, the electricity. And Michelle was unemployed. She

couldn't afford to pay for anything.
Q Okay. So were you paying the entire rent?
A Absolutely.
Q Okay. And did you and Michelle have some expectations as far as what was going to happen with regard to responsibility for the bills?
A Yes. Michelle's credit was very poor. And we put her name on, perhaps, everything, the electric, cable, the lease in an attempt to improve her credit. And I would give her the money. I would deposit the money into her account and she would be able to write the check.
Q And was there going to be a point where she was going to take over the bills?
A Absolutely. She was very independent. And she wanted to be able to support herself and her children.
Q And what was the plan for when that was going to happen?
A The original plan was one year. We felt like by the end of the first -- of the lease, then she would be able to be independent.
Q Okay. And did that happen at that stage?
A No, it did not.
Q Okay. Now, you described the size of the townhouse. Do you remember how much you were paying in rent for the first townhouse?

A Yes. It was $900 per month.
Q Okay. So at the end of the year, did you agree to continue paying the bills?
A I did. There was no way they could survive or live here without that.
Q Okay. Now, what -- at what point did they move into the second townhouse?
A At the end of the lease, we -- I decided they needed a much larger place. I didn't have anywhere to stay when I was there in the original thing. So I had to sleep in a recliner downstairs in the living room. And I wanted a place where I could, at least, have a place to stay when I was over visiting.
Q And we're going to come back to that in a second. But how much bigger was the new townhouse?
A The new townhouse was a four-bedroom, three and a half bath townhome with a garage.
Q Okay. And do you recall what the cost -- or the lease amount was for that townhouse?
A Yes. It was $1,100 per month.
Q Okay. So that was $200 more than the first one?
A Yes.
Q Okay. And do you remember the date that they moved into the second townhouse?
A Yes. The lease was up on August 30th. And we moved

that weekend.
Q Okay. So August 31st, September 1st is when that started?
A Yes.
Q Okay. Now, you talked about when you would visit. Did you reside there the entire time?
A No, I did not.
Q And you have -- still have property in Alabama?
A Yes. I own a small hobby farm in Alabama.
Q And just where in Alabama is that?
A It's 60 miles from Birmingham.
Q So if you're going to come from Alabama to Beaufort, how long does that take?
A It's a six-hour drive, at least.
Q And when you would come, would you, also, include other visits in your trip?
A Yes.
Q And who else would you visit?
A I would visit my friends, Terri and Mitch. They lived in Charleston at the time. And my mother lived in Mooresville, as did my brother. And I would travel there before I came here, or I would travel there after I left here.
Q Now, would you -- did you ever buy presents for the children?

A Absolutely.
Q And did you buy them for just one, or did you buy them for both?
A No. I bought them for both, equally.
Q Okay. And when you say that, how did you go about deciding what type of presents to buy?
A They were two very different children. A.M. was a video gamer from the age of three. And he was obsessed with that. So I would try and buy him a video game or, perhaps, some accessories for his gaming system. And then I would buy J.M. something equally priced.
Q Okay. So -- and would you try to tailor what you bought J.M. to her interests?
A Yes. She was very much into dolls and girly stuff. I would buy her doll houses, and things like that.
Q And did anybody else ever shop with you when you were buying your grandchildren presents?
A Yes. I would travel and see my mother in Charlotte before I came down. And we would go to thrift stores and different places looking for gifts for both of them.
Q Now, when you were visiting in South Carolina, how much would you come?
A When we [sic] first moved here, I couldn't come very often. I was very busy with my farm. Perhaps, once a month, maybe every five weeks or so.

Q And, typically, how long would you stay?
A Sometimes just for the weekend. Perhaps, on holidays, I would stay a little bit longer.
Q And when you would come here, would you take photographs?
A Of course.
Q All right. And would you take photographs of your grandchildren?
A Yes.
Q The first townhouse they moved into in August of 2012, do you remember the holidays from that year?
A I do. I wasn't able to come to every holiday.
Q All right. Did you make Thanksgiving?
A I think I did.
Q Okay. Were you able to make them both that year?
A Both?
Q Thanksgiving and Christmas. I'm sorry.
A No, I was not.
Q And when you -- for the holidays that you were there, was there any other of your family that visited as well?
A Yes. My brother and my mom both stayed in Hilton Head during the holidays -- those holidays.
Q Now, during that first year -- during the time they were in the first townhome, did any issues start to arise between you and Michelle?

A Yes. There was some financial issues.
Q And can you tell us about that?
A The original plan was for Michelle to become independent and be able to live on her own with her children at the end of the year. And she was unemployed the majority of that year.
Q Okay. And did y'all begin to have any discussions or issues about the finances?
A Yes.
Q Okay. And can you tell us about that?
A Yes. J.M. expressed a desire to -- to be in a dance class, a dance school, acrobatics. And I signed her up for that. And A.M. was interested in Boy Scouts and fishing. And we did that on a regular basis. I paid for all of that.

Michelle, being unemployed, she -- she had food stamps and -- but she didn't have money for other things. I had to help her with her car payment, and insurance, et cetera.
Q All right. And so after the move into the second townhome, did -- was there any escalation in any of those concerns?
A Yes. Michelle didn't want to move there because the cost had increased. And she could not afford the first apartment at a cheaper price. She, certainly, could not

afford the more expensive one. However, I was paying for everything.

So I insisted that if I were going to come over and visit and help support them, I would have to have a place I could stay, also.

MR. GROSE: I beg the Court's indulgence for a moment.

(Pause.)

BY MR. GROSE:

Q I want to show you some documents. If you could look at those first, please.

A (Witness complied.)

Q And what are those?

A Those are screen shots of Facebook messages.

Q And who are those between?

A Me and my daughter, Michelle.

Q And what timeframe were those messages?

A This is -- I didn't bring my glasses. I'm sorry. I apologize. I'm sorry.

Q No problem.

A They appear to be in September of 2013.

Q Okay. And what was the subject matter of those messages?

A They were concern -- they were conversations about the finances.

Q What issue was discussed in some of those?
A In one of them, Michelle tells me that the kids are home alone with no phone and this makes me want to quit my job. The kids are, also, starving. We have no food, no food stamps, no money.
Q So was she wanting you to send more money?
A Absolutely.
Q And were you, also, sending Michelle an allotment?
A Yes. When I was in the military, I set up an allotment to come out of my pay for the children. And that continued after I retired from the military.
Q Okay.
A That allotment was increased several times.
Q And did that allotment, eventually, go to Michelle?
A Yes, it did. It went to her and to my son, Matthew.
Q I want to show you State's Exhibit No. 21, which is a multiple-page document. And I want you to look at this particular message right there.
A Okay.
Q Can you tell the date of that by looking at it?
A July 3rd, 2014.
Q Okay. And does that text message refer to the allotment?
A Yes, it does.
Q And what does it say?

A It is from Michelle to me. And it says, I'll be expecting the rent money and my allotment in my account by Friday, unless you want your mom and brother to find out, too.

Q Now, in 2014, were you making any decisions about the arrangement that you and Michelle had?

A In 2014?

Q In 2014.

A Yes, I was.

Q And what were you considering?

A I was considering ending the lease and trying to find them a much cheaper place where she could possibly live independently with her children.

Q And were you thinking about whether or not you were going to continue sending --

A I had already decided I was not going to continue to be on the lease. It would be her own.

Q And at what point did you make that decision?

A Perhaps, as early as March or April of 2014.

Q And when you were going through the process of trying to make that decision, would you talk to anybody else about it?

A Yes, I did. I discussed it a lot. I lived at home alone since Matthew passed away. And I would call my friends and my brother. He is very intelligent with

finances. And I would discuss it with him.
Q So your brother, David, that you mentioned earlier?
A Yes, David.
Q And your friends, who are you referring to?
A Mitch and Terri, particularly Mitch. I didn't talk as much to Terri.
Q And Mitch and Terri, where do they live?
A They live in Charleston.
Q Moving back to the holiday season in 2013, did you visit South Carolina around the holidays?
A Yes, I did.
Q Did you stay in the apartment?
A Yes.
Q Was there a time where you visited, but you stayed with your brother?
A Yes. My brother and mother stayed on Hilton Head during the holidays, Thanksgiving and Christmas. And we would go over there and have the family meals. And I was with them.
Q Did Michelle and the children come over for those meals?
A Yeah.
Q In 2013?
A Yes.
Q Okay. Was there a time that you and your brother

delivered presents?
A Yes, we did at Christmastime. At Christmastime, I didn't stay at the apartment. I stayed with my brother on Hilton Head.
Q Okay. So you stayed there at Thanksgiving, but not at Christmas?
A Correct.
Q So at Christmas, even though you weren't staying there, were there presents for the grandchildren?
A Absolutely, large box.
Q And who helped you deliver them?
A My brother. It was such a large container with the gifts inside, we both had to carry it inside.
Q Okay. And did you buy gifts for everyone?
A Absolutely.
Q Now, at some point -- at some point, did you learn about somebody named John Camelo?
A Yes, in mid-2014.
Q Okay. And how did you find -- well, did you ever meet him?
A I was introduced to him. But we were sitting in a truck and he was in a van.
Q And did you have time to have any lengthy conversation with him?
A No, not at all.

Q And were you ever told anything about his background?
A I was. I was told...
Q All right. And what were you told?
A I was told that he -- excuse me -- that he worked for the pool company as a maintenance man. And he was living in an extended-stay motel.
Q Were you told anything else, other than that?
MS. JOSEPH: Your Honor, objection. Hearsay.
THE WITNESS: No.
THE COURT: Sustained.
BY MR. GROSE:
Q Were you -- in 2014, up to the time that you were arrested, were you ever aware that John Camelo had an experience -- or history in law enforcement?
A No, I was not.
Q Before you were arrested in 2014, were you aware that John Camelo had been a private investigator?
A No, I did not.
Q Okay. Did you ever learn that John Camelo was going to be moving into the townhouse?
A I found out after the fact. He moved in sometime in June or early July. And I was not aware of that. I was told that.
Q Okay. And who told you that?
A My granddaughter, J.M. .

Q Okay. And what did you think about John Camelo moving into the townhouse?
A I was very concerned. I didn't know the man at all. I thought it was really strange that Michelle and him had only been dating, perhaps, less than a month and he moved in. And he moved into the part of the townhome that I lived in when I was there.
Q Okay. And did you express those concerns?
A Yes, I did.
Q And was that the source of more tension between you and Michelle?
A It was -- it was very concerning, mainly, because of the grandchildren, a stranger moving in and living there, taking care of the kids, and watching them when Michelle wasn't there.
Q All right. And I asked you in the beginning whether or not you had ever done anything sexually inappropriate with J.M. . Did you ever make any threats to J.M. ?
A No, I did not.
Q And just so we're clear. Did you ever show J.M. pictures of your penis?
A No, I did not.
Q And did you ever show J.M. pornography?
A No, I did not.
Q And did you ever have J.M. perform oral sex on

you?
A No, I did not.
Q At any location?
A No.
MS. JOSEPH: Your Honor, at this point, we'd object, asked and answered. He's not allowed to just ask the same questions he asked at the beginning.
THE COURT: I'm going to sustain that.
Counsel, that was already asked earlier.
MR. GROSE: Thank you, Your Honor.
At this time, I don't have any other questions.
THE COURT: Cross-examination.
MS. JOSEPH: Thank you.

CROSS-EXAMINATION

BY MS. JOSEPH:
Q Do you have State's Exhibit No. 21 in front of you still?
A I do.
Q Do you have those Facebook messages as well?
A I do.
Q Will you hand those to me?
A Sure.
Q I'm handing these back to you.
A Thank you.
Q How do you recognize those Facebook messages?

A I don't understand. What do you mean?
Q Let me rephrase the question. That's a Facebook conversation?
A Yes. It's Facebook messages.
Q Right. And it's between you and your daughter?
A Yes.
Q So you recognize the conversation, because it's a conversation between you and your daughter?
A Yes.
Q Okay. On your Facebook app?
A Yes.
Q Okay. And there's a date on it?
A (There was no response.)
Q It might be really small.
A I'll put my glasses on. Do you want to know the date?
Q No. Just is there a date on it?
A There is one on it.
Q And is there a true and accurate depiction of that conversation? And if you need to take a moment to review it, I understand. So what I'm asking is, has that conversation been altered? Is it an accurate picture of that conversation?
A Yes, it appears to be.
MS. JOSEPH: Your Honor, at this time, we move to

enter this as State's Exhibit No. 23.

MR. GROSE: No objection.

THE COURT: Without objection, State's Exhibit No. 23.

(WHEREUPON, State's Exhibit No. 23 was marked for identification and admitted into evidence.)

BY MS. JOSEPH:

Q You are J.M. 's grandfather?

A Yes, I am.

Q And you just testified that you visited J.M. , and Lori, and A.M. in Beaufort?

A Yes.

Q And you visited frequently?

A Perhaps, every four to five weeks.

Q And you stayed for about a week at a time?

A No. I stayed on weekends mainly. And on holidays, I would stay longer.

Q And -- sorry. In the second house, you had a bedroom that was a guest bedroom, and it was on the first floor?

A Yes.

Q And that was your room?

A Yes.

Q And what years did Lori live in Beaufort? What years did Lori --

A What years?

Q Yes, sir.
A We [sic] moved here in 2012. And I have no idea how long she lived here after 2014.
Q So you're aware that she lived here from 2012 to 2014?
A Yes.
Q And J.M. was between the ages of seven and nine during 2012 to 2014?
A Yes.
Q And prior to Matthew's death in 2012, you did not have much of a relationship with Lori?
A That is not correct.
Q Okay. You were on the lease in Beaufort?
A Yes.
Q And you just testified that you paid the rent for the two Beaufort houses?
A Yes.
Q And you paid for their cable?
A Yes.
Q And you paid for Lori's phone?
A In 2014 only.
Q And you gave J.M. a phone?
A No. That is not correct. I gave the children a phone so they could call 911.
Q So you gave A.M. and J.M. a phone?

A Yes.
Q And how old was A.M. ?
A Two years older than J.M. the whole time.
Q So approximately 11 years old?
A In 2014 -- he was nine years old in 2012.
Q So you gave a seven and nine-year-old a phone?
A No, I did not. I gave them a phone in 2014.
Q A nine and 11-year-old?
A Nine and 11-year-old, correct.
Q You paid for J.M. to go to dance lessons?
A I did.
Q And you did, in fact, buy J.M. toys?
A Yes, I did.
Q And gift cards?
A Once, I believe.
Q And you gave her money?
A On occasion.
Q You just testified that you made Lori move into a bigger house that she told you she couldn't afford because you wanted a place to stay?
A Yes. I was already paying for the other place. There was only a $200 difference to move to the new place.
Q But she told you she couldn't afford it?
A She wasn't paying for it, I was.
Q But you, also, said that you wanted her to be

independent?
A Originally, that was the plan.
Q But you made it harder for her to be independent?
A I did not. She was unemployed the whole time.
Q So she was unemployed the whole time. But in this Facebook message, it says that her kids are at home because she's at work?
A Yes. She did work occasionally.
Q Okay.
A Briefly.
Q And then you have a -- do you have State's Exhibit No. 21 in front of you?
A I do.
Q Turning to the second to last page, your text message to her is, You didn't take care of the cable -- Internet cable bill yet.
A Can I look at it?
Q Of course. Second to last page --
A Which page?
Q Second to last. And then it's the right bottom square. And I'll give you a moment to review.
A Thank you.
You said the bottom right square?
Q Yes. And it's blue because it's a text from you. And it starts with "Michelle," because it's clearly to

Michelle.
A Yes.
Q So it says, You didn't take care of the cable Internet bill yet. On Tuesday, it will be $325. Also, you agreed to pay $30 a month on your phone. So she was, in fact, financially contributing?
A This was July 31st after I had been removed from the property.
Q You made Lori move into a bigger apartment so you would have a place to stay?
A I didn't make her do anything.
Q Even though you just testified that your brother had a place in the area. You could have stayed with your brother?
A Absolutely not. He was leasing a place on holidays in the wintertime only.
Q You would agree that Lori was desperate for money?
A Yes, I would agree.
Q And you would agree that she was a single mom?
A I agree.
Q And your attorney had you read out a text -- and it's on the same page. It's, actually, the square right above. It says, I'll be expecting the rent money and my allotment in my account by Friday, unless you want your mom and brother to find out, too.

A Yes. This was July 3rd.
Q So here she is saying I want my money?
A Yes.
Q I want my money?
A Yes.
Q And she is threatening to tell your mom and your brother; right?
A Yes.
Q Okay. And this text -- and you have to turn the page back -- was sent on July 3rd?
A Yes.
Q Or July 2nd, I apologize. July 2nd.
A Mine says July 3rd.
Q So that's, actually, the next text. So you have to go back one page back. And that's July 2nd of 2014 that that was shown?
A Yes. These texts were not sent on the same day.
Q So on July 2nd, 2014, she sent a text threatening you for money -- threatening you, wanting money?
A Yes.
Q And saying that she was going to tell your mom and your brother?
A Yes.
Q But she had already told law enforcement. She had already started the investigation?

A I have no idea.
Q So you've been sitting in here during the whole trial?
A Yes.
Q And you heard Lori read these text messages out loud to the jury?
A Some of them.
Q Okay. Because she was reading a summary when she testified. And you, obviously, have the text messages -- or photographs of the text messages in front of you?
A I am not sure these are the same text messages. I'm sorry.
Q Oh, do you need a moment to review them?
A No. I don't remember exactly what she read. And I'm not sure if these are the ones she read.
Q It sounds like you need a moment to review them.
A No. I just don't remember what she read.
MR. GROSE: And, Your Honor --
THE COURT: Stand up. Stand up.
MR. GROSE: I'm just going to object --
THE COURT: What's your objection?
MR. GROSE: Pitting.
THE COURT: Overruled.
BY MS. JOSEPH:
Q In those texts, she says -- she texts you that you

touched her daughter?
A In which text, ma'am?
Q It's on Page 2. It's the top right square. It's yellow. I didn't know you were touching my daughter.
A Yes. I see that text.
Q You do see that?
A Yes.
Q And in these same text messages at a later date, she says that you showed pictures of your penis to her daughter?
A What page is that on?
Q That's the third to the last page. And it's the bottom right square. You showed J.M. pictures of your penis. Are you fucking serious? You are sick.
A I don't see that on the last page.
Q No, it's the third to last. Third to last.
A Third to last. Okay. I'm backwards.
Q Yeah. Start at the back.
A Okay.
Q So she did text you that?
A Text me what?
Q Okay. So this is July 2nd of 2014. Do you see it? You showed J.M. pictures of your penis. Are you fucking serious? You are sick.
A Yes.

Q And you texted -- this is about you I'm talking about. You texted, I haven't done anything to hurt J.M. .

A And that is after her text?

Q No. It's, actually, one of the first you sent.

A I'm getting very confused. And which page is that on?

Q That's on, actually, the very first page. So this is before she texted you, You touched my daughter. Before she texted you, You showed photos of your penis to my daughter. This is at the beginning of the conversation. It says, I haven't done anything to hurt you or J.M. .

A It does not say that. It says, I haven't ever done anything to hurt you or J.M. , and you know it.

Q Okay. And then you, also, texted later on, I would never hurt the children.

A And what page is that on?

Q That's on the next page, the bottom right square top text. I would never hurt the children and you know that, exclamation mark.

A Yes, I texted that.

Q But in these text messages, you never denied sexually touching J.M. ?

A I was never asked.

Q You never explicitly denied showing photos of your

penis to your granddaughter?
A In the text only?
Q Yes.
A Yes. It was ridiculous.
Q In fact, in these text messages, she confronts you with these allegations. And your next text is about rent money?
A Next text meaning?
Q Meaning, she says that you showed her daughter a photo of your penis and your next text --
A Please give me a minute. Okay. I do see that text dated July 2nd.
Q So she confronts you with these allegations and your next text is about rent money?
A 30 days later.
Q Do you own a computer?
A I do.
Q And what type of computer do you own?
A I currently own an HP laptop.
Q How long have you owned that computer?
A About two years.
Q Do you own any other devices?
A I do not -- I do have an Apple iPad. I apologize.
Q And you have photos of your granddaughter on these devices?

A I do not.
Q Is there child pornography on these devices?
A Absolutely not.
MR. GROSE: Your Honor, at this time, I move for a mistrial pursuant to Rule 404(b) and Rule 403.
THE COURT: All right. Denied.
MS. JOSEPH: I beg a moment of the Court's indulgence, Your Honor.
(Pause.)
MS. JOSEPH: No further questions.
THE COURT: Anything on redirect, Mr. Grose?
MR. GROSE: Just very briefly.

REDIRECT EXAMINATION

BY MR. GROSE:
Q She asked you about whether you denied touching J.M. . And you denied showing J.M. pictures of your penis?
A Yes.
Q After you were arrested, did law enforcement interview you?
A They did.
Q And did you cooperate with that?
A Absolutely.
Q And did you deny those allegations at that time?
A If I were asked -- I don't recall if I was asked

that.

Q And did you answer every question that they asked you?

A Yes, I did.

MR. GROSE: That's all I have.

Thank you.

THE COURT: Recross?

MS. JOSEPH: Nothing, Your Honor.

THE COURT: Thank you, sir.

You may step down.

Next witness.

MR. GROSE: Your Honor, I call Sue Leffler.

THE CLERK: If you would, place your left hand on the Bible and raise your right hand.

WHEREUPON,

AUDREY SUE LEFFLER,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

THE BAILIFF: Right this way.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. GROSE:

Q Can you state your full name, and spell your last name?

A Audrey Sue Leffler, L-E-F-F-L-E-R.

Q And do you know Charles Dent?
A Yes.
Q And how do you know him?
A He's my son.
Q And where do you live?
A Just north of Charlotte.
Q Okay. And I want to focus your time -- direct your attention to the time beginning around 2012 -- the summer of 2012. At some point after that, did you ever meet Lori Michelle Mayo and her children?
A Yes.
Q And when was that?
A It was the Thanksgiving holidays. And my daughter and I had come over to stay at David's place. And I invited Michelle and the children to come up and eat with us.
Q Okay. And was Charles there for that particular gathering?
A No, he wasn't.
Q Okay. Now, were you aware that Charles was making trips back and forth between Alabama --
A Yes.
Q -- and South Carolina?
A Yes.
Q Okay. And on some of those trips, would he stop and

see you on the way to South Carolina?
A Yes.
Q All right. And did you ever go shopping with Charles?
A Always.
Q And what did you go shopping for?
A The children.
MS. JOSEPH: Objection. Relevance.
THE COURT: Sustained.
MR. GROSE: Your Honor, I have a matter of law to take up.
THE COURT: All right. Send the jury out.
(WHEREUPON, the jury was excused from open court at approximately 10:33 a.m.)
THE COURT: Yes, sir.
MR. GROSE: Your Honor, before we get into that, I would just note, for the record, that my mistrial motion I understood would incorporate all of our prior discussions into it. So that's preserved for appellate review.
THE COURT: All the discussions that we had prior to the jury coming in today?
MR. GROSE: Well, the whole -- everything we've had this week about 404(b), and 403, and Lyle, including my specification objection based on all of that, that they not be allowed to ask a question about child pornography.

THE COURT: Well, that's not my understanding of that, Counsel. And let me tell you why. The 403 -- the 404 and 403, I addressed that yesterday when we were talking about the Alabama proffer. I didn't -- as a matter of fact, the reason that the Court ruled the way it did had nothing to do with the 404 argument or 403 argument. It had nothing to do with that.

MR. GROSE: Okay.

THE COURT: So what I'm saying is I don't want you to stand and make a motion for a mistrial and try to use the umbrella of all of that when you, specifically, indicated prior to the jury coming in that -- your statement was that if the word pornography -- child pornography was used, that would be the basis of your motion for a mistrial.

So I'm not going -- and I'm not going to allow you to now put your -- under an umbrella of a mistrial and include everything that happened all week. Because that was not the specific language that you alluded to before the jury came in today.

So in that regard, I'll listen to you. But I'm not going to allow you to do that. I'm going to let the basis of your mistrial -- your motion for a mistrial be based on what you said that you would do.

MR. GROSE: And when --

THE COURT: And I'm going to let you respond to that.

MR. GROSE: When I objected and said 404(b) and 403, did you not understand that was prior bad acts?

THE COURT: I understood --

MR. GROSE: The analysis?

THE COURT: I understood precisely, Counsel. I understood precisely. I'm very familiar with both of those rules.

MR. GROSE: Okay.

THE COURT: I know them as well as you do, probably better.

MR. GROSE: I'm sure you probably do.

THE COURT: So I know exactly what they are. But I'm not going to allow you to do that. Now, I'm going to let them respond to your motion.

Counsel, do you want to respond?

MS. LUTTRELL: No, Your Honor.

THE COURT: But that's -- is that -- that was my understanding of the basis for the motion for mistrial and --

MR. GROSE: Well, as long as you understand that I've been trying to keep the child pornography questions out all week. And I, specifically, this morning talked about that motion and referenced you again to the pretrial brief and said that if they went into that that I was going to

object to that as bad character evidence, which is 404(b) and --

THE COURT: So I've already ruled on that. So the matter of law you're alluding to is the ruling that I made in reference to a mistrial. Is that what we're talking about?

MR. GROSE: That was the first thing. I wanted to get that on the record because I -- I didn't -- I understood you didn't want us to do what we just had to do, which was send the jury out this morning.

THE COURT: Well, I think everything is on the record, Counsel.

MR. GROSE: Okay.

THE COURT: I spent -- I was very patient with both of you before this jury came out to eliminate this kind of argument --

MR. GROSE: Okay.

THE COURT: -- to continue to prolong this matter. And I understood what the arguments were going to be. I did not rule pre-trial -- I indicated on the record that I wanted to hear some testimony. I did that. You made your motion. It's based upon what you previously said. And I ruled on it.

So to take this jury out for us to rehash what was discussed before the jury came out, I think, just prolongs

this matter unnecessarily.

MR. GROSE: Well, I have to protect the record.

THE COURT: The record is protected. And I understand that.

MR. GROSE: And I understand you're saying you considered, at least, what we did this morning. And I'm good with that.

THE COURT: All right. But here again -- here again, you know, I was patient this morning with both lawyers to allow you to get into any of these matters so we wouldn't consistently have the jury come back and forth. And if that's the reason you did this --

MR. GROSE: No. But I have to --

THE COURT: What's your second reason?

MR. GROSE: Well, the reason I did this was that I wanted to talk about -- I want to make a proffer on the objection that you just sustained. I have to make this proffer to be able to appeal this issue.

THE COURT: Okay. Go ahead and make the proffer on the objection. Go ahead.

DIRECT EXAMINATION

BY MR. GROSE:

Q When Charles would visit you on his way to South Carolina, did you and he ever go shopping?

A Yes.

Q And what did you go shopping for?
A Always both children.
Q And when you say "always both children," what does that mean?
A We bought for J.M. and A.M. . He would not be sure what was proper for their age. And I would help him pick it out. And we always made sure that it was the same cost for both of them.
Q And --
A Different things, but the same.
Q All right. Did he try -- in your observations, did he try to buy things that they were interested in?
A Yes.
Q And did he try to be even in what he bought the grandchildren?
A Yes.
MR. GROSE: Okay. And that would be my proffer. And I think that's relevant to respond to their grooming argument. And it's relevant because it corroborates the testimony of the Defendant, which is always relevant.
THE COURT: Let me hear from you. Anything on that point?
MS. LUTTRELL: No, Your Honor. That's fine.
THE COURT: All right.
MR. GROSE: When they say "that's fine," do they mean

they're withdrawing their objection?

THE COURT: I can't speak for them.

MR. GROSE: Well, I'm asking because -- I'm asking to be able to ask her those questions.

MS. LUTTRELL: That's fine, Your Honor. We withdraw our objection.

Thank you.

THE COURT: Anything else?

MR. GROSE: No, sir.

THE COURT: Bailiff, bring the jury back.

THE BAILIFF: Yes, Your Honor.

(Pause.)

THE BAILIFF: It's going to be a minute, Judge.

MR. GROSE: While we're waiting on that, can we talk about scheduling just really quick?

THE COURT: On the record or off the record?

MR. GROSE: It's up to you.

THE COURT: Let's put everything on the record.

What do you want to chat about?

MR. GROSE: I anticipate being done by noon. And I would like to have -- since we seem to be on a good timetable, have a little bit of time. I don't know if they have any reply. But between -- just to get ready for closing, just what time you would want us back for lunch, assuming we're done by noon.

THE COURT: We're going to take a short lunch break. The lunch break will last no longer than an hour.

MR. GROSE: Okay.

THE COURT: And we're going to -- since you asked that question, we're going to go as long as it takes to get this matter to the jury today.

MR. GROSE: All right. I appreciate that.

THE COURT: So the lawyers need to be aware of that. Because that's going to be the movement of the Court. We're going to do this today.

MR. GROSE: Well, and my anticipation was to do it today.

THE COURT: All right. I'm glad we're on the same page.

MS. JOSEPH: Your Honor, I'm just -- I'm looking ahead. I'm looking at the requests to charge. Is there a standard testimony of children, standard charge instruction, Your Honor?

THE COURT: I haven't looked at what he gave me.

Do you want to deal with that now or later?

MS. JOSEPH: We can deal with that later. I just didn't know if you knew if there was a standard one.

MR. GROSE: There, at least, used to be one in the charge book. I don't know if it's still there. It was in there as recently as 2015.

THE COURT: You can confer with each other with -- to save time, you can confer with each other on that. Everything else looks like a standard charge. But, at least, on that issue, if y'all confer, whatever you can agree upon between now and then will be fine.

MS. JOSEPH: Okay.

(Pause.)

THE BAILIFF: Are you ready for the jury?

THE COURT: Anything before the jury comes out?

MR. GROSE: No, sir.

THE COURT: All right. Bring the jury in.

(WHEREUPON, the jury came into open court at approximately 10:48 a.m.)

THE COURT: All right. Mr. Grose, go ahead.

MR. GROSE: May it please the Court.

THE COURT: Yes, sir.

CONTINUED DIRECT EXAMINATION

BY MR. GROSE:

Q Ms. Leffler, when we left, I was asking you about whether or not you went shopping with Charles. Do you recall that question?

A Yes.

Q All right. And what was -- did you all go shopping?

A Yes.

Q And what was the purpose of going shopping?

A We shopped for the children and their mother. And we would always make sure that the cost for each was the same, or very close. But we shopped for what the children were interested in.

Q And when you say "the children," who are you referring to?

A A.M. and J.M. .

Q And from your observation, did Charles try to buy presents for them that catered to their various interests?

A Yes.

Q And from your observation, did he try to be fair and balanced in his selection of gifts?

A He was very careful with that, that they each had the same value.

MR. GROSE: Thank you.

That's all the questions I have. I don't know if they have any for you.

THE COURT: Cross, Ms. Luttrell.

MS. LUTTRELL: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MS. LUTTRELL:

Q Ms. Lef -- Leffler --

A Leffler.

Q Ms. Leffler, you just testified to this jury that you met Lori in 2012; is that right?

A No.
Q No. Was that the first time you met her in South Carolina?
A I had not -- right. That's right.
Q Okay. And that was the first time you met the kids, A.M. and J.M. ?
A Yes.
Q And the Defendant, he wasn't there for that meeting?
A No.
Q And when your -- your son, the Defendant, when he would come visit in South Carolina, you didn't come down here with him; right?
A Not always, no.
Q You didn't stay at Lori's house when he stayed there?
A Oh, no. I stayed at David's.
Q You always stayed at your other son's house?
A Yes.
Q You never stayed at the apartment or the townhome with your son?
A No.
Q So you were never there when he was staying the night at the townhome with J.M. ?
A No.
Q This is your son; right?
A Yes.

Q You love your son?
A I do.
Q You care about your son?
A I do.
Q You'd do anything for your son; right?
A Not anything, no.
Q You don't want to see your son get in trouble for this; right?
A No. But, at the same time, I don't want him accused of something I don't believe happened.
Q But you weren't there; right?
A I wasn't there.
Q And you've been sitting here the entire trial; right?
A Correct.
Q You've been listening to all of the other witnesses testify before you got up here?
A That's right.

MS. LUTTRELL: No further questions, Your Honor.

MR. GROSE: Nothing further.

THE COURT: All right. Thank you, ma'am.

You can step down.

MR. GROSE: My next witness will be Mitch Fife.

THE CLERK: Good morning.

Will you place your left hand on the Bible and raise your right hand?

WHEREUPON,

MITCHELL DWAYNE FIFE,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

THE BAILIFF: Right this way, sir.

DIRECT EXAMINATION

BY MR. GROSE:

Q I'm going to start off asking you to state your full name for the record, and spell your last name.

A Okay. My name is Mitchell Dwayne Fife, last name is F, as in Frank, I, as in India, F, as in Frank, E, as in echo.

Q All right. And you go by Mitch?

A I do go by Mitch.

Q Okay. Mitch, where do you live?

A I live in Charleston, South Carolina.

Q And do you work?

A I do work.

Q Where do you work?

A I work at the Boeing Company.

Q That's the -- where they make the planes?

A That is an airplane manufacturing company, yes.

Q And do you know Charles Dent?

A I do know Charles Dent.

Q And how long have you known Charles Dent?

A Approximately 30 years, I've known him.
Q And how did you and Mr. Dent meet?
A We were stationed together in our military careers twice.
Q And what locations were y'all stationed together?
A We were stationed in Atlanta --
MS. JOSEPH: Objection, Your Honor. Relevance.
THE COURT: I'm going to overrule. I'll let you ask that question.
MR. GROSE: All right.
BY MR. GROSE:
Q Which places?
A Atlanta twice. Actually, both times we were stationed there. We were both stationed there twice.
Q Okay. Now, focusing on 2012 to 2014, were you aware that Charles was making trips from Alabama to South Carolina?
A Yes, I was.
Q And would he visit you during those trips?
A Yes, he would.
Q Would he, also, visit your wife?
A Absolutely.
Q Obviously, you live together; right?
A Absolutely.
Q And who is your wife?

A My wife is Terri Fife, who's sitting in the white sweater.
Q And I'm not going to ask you to go into any details of the conversations. But did Charles ever have conversations with you about issues involving the arrangement between him and his daughter, Lori Michelle Mayo?
A Yes, he did. He did.
Q And when did those conversations take place?
A I believe they started around 2012 -- late 2012, early 2013.
Q All right. And then, did they continue all the way through his arrest in 2014?
A They did.
MR. GROSE: Okay. Thank you.
That's all the questions I have.
THE COURT: Cross.
MS. LUTTRELL: Very briefly, Your Honor.

CROSS-EXAMINATION

BY MS. LUTTRELL:
Q Mr. Fife?
A Yes, ma'am.
Q Have you ever met Lori?
A Yes, I have.
Q Did you ever --

A Lori, the wife, or Lori, the daughter?
Q Lori Michelle Mayo, the daughter?
A The daughter, yes, I have.
Q Did you ever visit with Charles when he would stay at her townhome?
A Yes.
Q You would stay the night at Lori's townhome?
A I did not. No, ma'am, I did not.
Q So you've never -- you were never there when the Defendant was staying in the townhome at the same time as J.M. ?
A Well, we visited -- he stayed -- yeah. He stayed there, but we didn't.
Q So you would go stay somewhere else during that short visit?
A No. I only live two hours away. So I would drive home. We visited for a couple -- few hours and we drove back home.
Q But he would stay there and you would not be there at the same time?
A Well, when we were visiting, we were there at the same time.
Q But not overnight is what I'm asking?
A Not overnight, correct.
Q You never stayed --

A I never stayed overnight --
Q -- in the apartment?
A -- in the apartment, no, I did not.
Q And you said Charles, the Defendant, he's your friend of 30 years?
A He's my best friend.
Q Your best friend?
A Yes.
Q You don't want to see him get into any trouble?
A Of course not.
Q And you've been sitting in this trial the entire time it's been going on?
A I have.
Q And you got to listen to all the other witnesses testimony?
A I have.

MS. LUTTRELL: Thank you, Your Honor.

No further questions.

MR. GROSE: Just a couple follow-up.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. GROSE:

Q You said that you were stationed with Charles in Atlanta; right?
A Correct. We were both stationed in Atlanta.

MS. LUTTRELL: Objection. Outside the scope.

MR. GROSE: Well --

THE COURT: Hold on. Hold on, Mr. Grose.

I'm going to sustain that objection. It's outside the scope of redirect. You've got to go back in cross.

MR. GROSE: Yes, sir.

THE COURT: Outside the scope.

BY MR. GROSE:

Q So did -- she asked you if you had ever met Lori Michelle Mayo?

A Correct.

Q All right. When was the first time you met her?

A When we were stationed together in Atlanta the first time.

Q Was that when she was a child?

A She was about probably seven to nine years old.

Q Okay. And then you, also, met -- or saw her again and met J.M. and A.M. . Where did that happen?

A That happened at the place in Beaufort -- or Bluffton where they lived.

Q All right. And do you remember the time frame that happened?

A Yes, I do. It was -- it was around the time frame of the Heritage Classic, which my wife, Terri, and I were down visiting -- or we went for the golf tournament.

Q And what year was that?
A That was 2014, I believe.
MR. GROSE: Thank you.
That's all the questions I have.
THE COURT: Anything further?
MS. LUTTRELL: Nothing further.
THE COURT: Thank you, sir.
You can step down.
All right. Next witness.
MR. GROSE: Terri Fife.
THE CLERK: Good morning.
If you would, place your left hand on the Bible and raise your right hand.
WHEREUPON,

TERRI LYNN FIFE,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.
THE COURT: Mr. Grose.

DIRECT EXAMINATION

BY MR. GROSE:
Q Terri, I'm going to ask you to state your full name for the record. Since I assume your husband and you spell your last the same, I'm going to ask you to spell your first name. Because there's different spellings of that.
A Yes. My name is Terri Lynn Fife. My first name is

spelled T-E-R-R-I.
Q Okay. And are you married to Mitch?
A Yes.
Q And how long have you and Mitch been married?
A 10 years.
Q And where do you live?
A We, actually, live in Summerville, but people say Charleston. But it's South Carolina.
Q And how long have -- well, do you know Charles Dent?
A Yes.
Q And how long have you known Charles Dent?
A Since before Mitch and I got married. I met him through Mitch, of course. I guess about 12 years or so.
Q Okay. And were you aware that -- in the 2012 to 2014 period of time, were you aware that Charles was making trips from Alabama to South Carolina?
A Yes.
Q And would he ever visit your house in Summerville?
A Yes, he would.
Q Okay. And did you ever meet Lori Michelle Mayo and her children?
A Yes, I did.
Q And when did you meet them?
A It was at the time of the Heritage Golf Classic. We had came down and were invited over to meet them and the

children.
Q Okay. And, again, I don't want to go into any conversations. But were you aware that your husband and Charles were having conversations?
A Yes, absolutely.
Q And you were -- were you aware whether that included issues that had developed between Lori and -- Lori Michelle and Charles?
A Yes.
Q Okay. And do you remember the time frame when those conversations were going on?
A Yes, I do.
Q And what was that time frame?
A It was in the springtime of 2014 before -- I think it was before and after we went to visit.
MR. GROSE: Thank you.
That's all the questions I have.
THE COURT: Any questions?
MS. LUTTRELL: No questions, Your Honor.
THE COURT: All right. Thank you, ma'am.
You can step down.
MR. GROSE: At this time, Your Honor, I would call David Dent.
THE COURT: All right.
THE CLERK: Good morning.

Place your left hand on the Bible and raise your right hand.

WHEREUPON,

DAVID LAMAR DENT,

after first having been duly sworn, testified as follows:

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. GROSE:

Q Would you, please, state your full name for the record?

A David Lamar Dent.

Q Okay. And are you related to Charles?

A I am his younger brother.

Q His younger brother. How many years separate you and him?

A I think just under two.

Q And where do you live?

A I live in Troutman, North Carolina, which is just north of Charlotte.

Q Okay. And are you employed?

A Technically not. I just retired Friday.

Q Okay.

A From the IT industry.

Q Well, congratulations. What did you retire from on Friday?

A Hewlett Packard.
Q And you said you did IT internet technology?
A I do -- or I did, yes.
Q All right. I want to focus you on the 2012 to 2014 period of time. Do you -- did you know Matthew?
A I did.
Q And were you aware of when Matthew committed suicide?
A I was.
Q Okay. And were there any services for Matthew?
A There were. I went to Alabama and picked up Charles, helped to facilitate by transporting them down to Florida for the services.
Q And you attended those services?
A I did.
Q All right. And did you have any interaction with Michelle Mayo and her children when you were in Florida?
A Yes, I did.
Q And did you have an opportunity to observe where they lived?
A I did.
Q And can you tell us what kind of conditions they were living in?
A It was a very poor neighborhood, a large community complex.
Q And were there discussions that took place about

whether or not Michelle and the children might move to another location?
A Yes, there were.
Q And were you involved in any of those discussions?
A Yes, I was.
Q Okay. And can you tell us how that decision was made?
A My brother and I had discussions about the conditions of Michelle and the children. And it was a suggestion that he consider putting them in a safer environment to give them a chance to recover from where they were at.
Q Okay. And, ultimately, they moved to South Carolina?
A Yes, they did.
Q And do you know how the Beaufort area was selected?
A I have had property down here for several years and/or leased property. And so I had recommended this area.
Q And in that summer of 2012, did you have any interaction with Michelle and the children?
A I --
Q After Florida?
A No, I did not. They moved here and I was still working and living in the Charlotte area.
Q Did you have any interactions with them around the holidays of 2012?

A I did. I, actually, invited Michelle and the children, along with Michael and his family, to our house at Hilton Head.
Q And Michael is Charles' stepson and Lori's sister -- I mean brother?
A Her brother, yes.
Q Okay. And so did they come to your place at Hilton Head?
A They did. Michael and his family, actually, stayed with us. And then Michelle and the children came and visited.
Q And did you have any interaction with them again in the holidays later that year?
A We did. They came back for Christmas as we were there for the holidays.
Q And was Charles there for both of those events?
A No. I don't recall Charles being there for Thanksgiving. He was there for Christmas.
Q Did you have any interaction with Michelle and the children during 2013?
A Limited.
Q Okay. And when you say "limited," what do you recall?
A Well, I, typically, was not able to come into the Hilton Head area until the fall and winter of 2013. And

during that period of time, I had gone over with him to deliver some presents to the family.

Q And was that at one of the holidays?

A That was Christmas.

Q Okay. And you said when you had gone over with "him," who did you go over with?

A With Charles.

Q And when you say "presents," who were the presents for?

A The family.

Q And did he buy everybody presents?

A To my knowledge, yes.

Q During this time period in 2012 to 2014, did you and Charles have any conversations about how the arrangement was going between him and Michelle?

A Yes.

Q And did he express any concerns to you?

A Yes.

Q Okay. What time frame?

MS. JOSEPH: Objection, Your Honor. This series of questions has been leading.

BY MR. GROSE:

Q What time frame --

THE COURT: Hold on. Let me rule on the objection, Mr. Grose. Rephrase your question.

BY MR. GROSE:

Q What did you and Charles have conversations about?

A One of the topics --

MS. JOSEPH: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

MR. GROSE: Well, the topic is not hearsay.

THE COURT: I'm going to sustain the objection. You can rephrase the question.

MR. GROSE: All right.

BY MR. GROSE:

Q Did you and Charles have conversations?

A Yes, we did.

Q And what period of time were these conversations going on in?

A We spoke on a pretty regular basis. So I would say from 2012 through 2014.

Q Okay. And during this time -- when you say "regular basis," how often?

A Every couple of weeks, maybe once a month.

Q And during this period of time in 2012 to 2014, did you start giving Charles some advice?

A I did.

Q And what advice did you give him?

A There -- there were conversations regarding financials with he and Lori -- or Michelle. And my

suggestion, at that time, was he needed to remove himself from that environment and let them move on and, you know, take back -- and go back into their own lives.

Q All right. And did you -- were you giving him that advice in the early months of 2014?

A Yes.

MR. GROSE: Thank you.

That's all the questions I have.

THE COURT: Anything on cross-examination?

MS. JOSEPH: Yes.

Thank you, Your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MS. JOSEPH:

Q So you're the Defendant's brother?

A Yes.

Q And we keep talking about Lori, and J.M. , and A.M. , but that's actually -- they're related to you, too. That's your niece?

A Yes, and nephew.

Q Niece and nephew; right? And Lori is related to you, too?

A She, technically, I would think to be my niece.

Q Right.

A And they're my grandnieces. I'm not sure exactly how

genealogy works for that.
Q Right. And then your mom testified earlier; right?
A Yes, she did.
Q Right. And she kept saying Lori, J.M. , but that's, actually, her granddaughter, great granddaughter?
A Yes.
Q This is a family affair --
MR. GROSE: Objection to comments.
THE COURT: All right. Sustained.
MR. GROSE: Move to strike.
THE COURT: Strike that, Madam Court Reporter.
BY MS. JOSEPH:
Q So you testified you had property in Hilton Head around 2012, 2014?
A Yes.
Q Yes. And you would sometimes come down and stay?
A Yes.
Q Was that a one-bedroom apartment?
A No. I, actually, had a three-bedroom house at the time.
Q Okay. In Hilton Head?
A Yes.
Q Did people ever stay over?
A Yes.
Q Frequently?

A I'm not sure what you mean by "frequently."
Q Let me ask a more fair question. Some people -- maybe me -- don't like having guests at their house. It stresses me out. But you're not that type of person?
A No, I would say I am. That's why I come to Hilton Head because I do like my quiet time. And this is a period of time at the end of the year where I do that.
Q But you did have some guests sometimes?
A I did, yes.
Q So, as you just said, the Defendant is your brother and you love him very much?
A Yes.
Q And you would do anything for him?
A I think that's a leading question, but --
Q I'm, actually, allowed to ask leading question.
A Oh, so I would say no.
Q Okay. And you've been sitting in here for the past three days, and you've been watching all the evidence?
A Yes.
Q And you had conversations with your brother about money and Lori?
A Yes.
Q Okay. And speaking about money, you have helped your brother out financially?
A I have.

Q When he, actually, got arrested for these charges, you're the one that posted bail?
A I am.
MS. JOSEPH: No further questions.
THE COURT: Anything on redirect, Mr. Grose?
MR. GROSE: No, sir.
THE COURT: Thank you, sir.
You can step down.
MR. GROSE: And that would be our last witness.
So, at this time, we would rest.
THE COURT: All right. Could I have a sidebar with the lawyers?
MS. JOSEPH: Of course, Your Honor.
(WHEREUPON, a bench conference was held.)
THE COURT: All right. Ladies and gentlemen of the jury, what we're going to do at this juncture, I'm going to send you back to your jury room for approximately about 20, 25 minutes. And I'll bring you back. And, at that time, we will have opening -- I mean closing arguments from both sides.
So -- and I think you've already -- those of you who didn't get to have a bathroom break a few minutes ago, you can have that at this time. Please, ma'am, please, sir, do not discuss the case with each other or anything of that nature while you're waiting. And I'll be back with

you shortly.

Okay. Thank you.

(WHEREUPON, the jury was excused from open court at approximately 11:13 a.m.)

THE COURT: All right.

MOTIONS

MR. GROSE: And, Judge, just so I don't forget. At the sidebar, the State said they did not have any reply.

So, at this time, I think it's incumbent upon me to renew my motions for directed verdict.

THE COURT: Yes, sir.

MR. GROSE: I would do that at this time based on the same grounds that we used last night. I referenced a case about a variance in the indictment. That's Bailey v. State. And I'm providing the Solicitor a copy. It's 392 S.C. 229 -- I'm sorry, 709 S.E.2d 671 from 2011. I have a copy for the Court.

THE COURT: Yes, sir.

MR. GROSE: And that goes to the issue of the criminal sexual conduct indictments. And the fact that once the State alleged a complete offense and identified fellatio in the indictments that due process requires that that be what is limited to what goes to the jury.

And so I would just, also, remind the Court yesterday about our motion, in addition to the other three, that had

to do with the second house where we had comments in the interview that was played that nothing happened there. And I think she testified that fellatio only happened once.

So I don't see how both -- I think the second indictment still should be dismissed. And I'll leave it at that.

THE COURT: Ms. Joseph.

MS. JOSEPH: In the interview, she talks about fellatio happening more than once at the first house. On the stand, she testified about the fellatio happening at the second location.

The State would, also, briefly say that we view indictments as notice documents. She talked about oral sex, cunnilingus being performed on her at the second house.

With Your Honor viewing the evidence in the light most favorable to the State, we ask that this motion be denied.

Thank you, Your Honor.

MR. GROSE: And I understand the standard is in the light most favorable to the State. But, again, I'm trying to prevent problems before they happen. I imagine that they're going to argue that they can prove something other than fellatio. And if they do that, that's -- that just

gives us a free shot at doing this again another day, if they get a conviction, because of the Bailey case.

THE COURT: All right. Anything further from the State?

MS. JOSEPH: Nothing further.

THE COURT: All right. Motion is denied.

Anything else -- we want to go over the -- I think reasonable doubt.

MS. JOSEPH: Yes, Your Honor.

The State has looked over the reasonable doubt language given to Your Honor. We would object to the second paragraph, which talks about civil cases. We just don't think it's necessary. So if you cross off that paragraph, we would agree with everything else.

THE COURT: Let me just tell you what I've got --

MS. JOSEPH: Yes, Your Honor.

THE COURT: -- what I intend to present. So what is reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. The law does not require proof that overcomes every possible doubt.

MR. GROSE: Well, I would request that additional

language that they don't object to, if based on your consideration of the evidence, you are firmly convinced that the Defendant --

THE COURT: Excuse me a second. Let me get that.

MR. GROSE: Okay.

THE COURT: Let me get to that page. Are you in the third paragraph?

MR. GROSE: I'm in the third paragraph.

THE COURT: Okay.

MR. GROSE: I understand they object to the second paragraph. I would like the second paragraph, but I'm not going to argue that that hard. I liked what you used in the first paragraph. So I have no problem with that. But I would like that entire second -- or I mean entire final paragraph.

THE COURT: That starting with proof beyond a reasonable doubt is proof that leaves you firmly convinced?

MR. GROSE: Right. And going through -- yes, sir. And going through the end of that paragraph.

THE COURT: All right. What's the State's position on that language?

MS. JOSEPH: That's fine, Your Honor.

Can you, if possible, read back exactly what you're going to say now? Can you just reread it?

THE COURT: Incorporating --

MS. JOSEPH: Yes. So I know what the final product is.

THE COURT: All right. So what is reasonable doubt? A reasonable doubt is the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

The law does not require proof that overcomes every possible doubt. There are few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think there's a real possibility that the Defendant is not guilty, you should give the Defendant the benefit of the doubt and find him not guilty.

The only thing that I excluded from the third paragraph, Mr. Grose, was that first sentence since I had said that in the charge that I just went through.

MR. GROSE: It's all covered. So, yeah, we're good

with that.

THE COURT: Okay.

So, Ms. Joseph, you're okay --

MS. JOSEPH: Yes, Your Honor. No objection.

THE COURT: All right. So just so we're clear, on this document, Mr. Grose, that you've given me, I'm going to cross out the first paragraph and cross out -- the first two paragraphs and cross out the first sentence in the third paragraph, and incorporate the other language in addition to my standard.

MR. GROSE: Perfect.

Thank you, Judge.

THE COURT: All right. Now, let's -- I think the circumstantial evidence and direct evidence part is pretty standard. I think you guys have seen that before.

MS. JOSEPH: It is. No objection.

THE COURT: I'll be glad to go over it with you. And I've looked at this. And it's in line with what you've given me.

MR. GROSE: Yeah. And I think that under the way the Logan case was decided, I have to request that. But I know that's the standard charge in the book.

THE COURT: Right.

And on the -- the charge regarding children, what I wanted both of you to do is maybe -- I think you've got

a -- in your standard -- in your book downstairs, you've probably got a charge that goes, specifically, to that.

And I guess you and Mr. Grose can maybe in the last five minutes of your lunch or something, just take a look at it and see what you can agree on. And we'll discuss it again before we bring the jury back -- before we charge the jury to see if we can come to some consensus on that particular charge.

MR. GROSE: And I think this is probably -- don't hold me to this. I think this is probably verbatim from the 2015 charge.

THE COURT: From the 2015 charge?

MR. GROSE: Which is what I have. I don't have any more recent version. I created this charge. I don't know.

THE COURT: I've looked at it in that 2015 book. And it looks real similar. I don't think -- but I'll let Ms. Joseph take a look at it.

MR. GROSE: And, just for the record, I'm fine with whatever is in the charge book.

THE COURT: All right.

MR. GROSE: If it's not verbatim, it's pretty close.

THE COURT: And as far as the indictments are concerned, when I get to that part, I'm going to be reading the -- I've got two indictments on criminal sexual

conduct first degree. Those indictments are not the amended indictments.

MS. JOSEPH: Right. They have never been amended.

THE COURT: But on the disseminating obscene material indictments, both of those are amended indictments?

MS. JOSEPH: Yes, Your Honor.

THE COURT: And I have those. So these are the four that I'll be reading when I get to that portion of the charge.

MS. JOSEPH: Yes, Your Honor.

MR. GROSE: And we're going to send those to the jury, too, I believe.

THE COURT: Yeah. I think -- was it agreed upon?

MS. JOSEPH: Yes, yes.

MR. GROSE: It was. But I think she's about to change that.

MS. JOSEPH: No, I'm not.

MR. GROSE: Okay.

MS. JOSEPH: I'm about to change something.

Your Honor, after consulting with my co-counsel, we're concerned that if we close right now that we're going to close, and then they're going to get lunch. And I think that both Mr. Grose and I think that we're good enough and stern enough lawyers that our words will move them.

So I'm concerned about them getting lunch immediately after us closing. So I would prefer they get lunch, hear our closing, and then immediately start deliberating.

MR. GROSE: That's what I wanted to talk about earlier. That would have been my suggestion. But I'm good with whatever you do Judge, so.

MS. JOSEPH: I had to think about it. I'm sorry, Your Honor.

THE COURT: It's the old --

Let's go off the record.

(Pause.)

THE COURT: Okay. Bring the jury back in.

(WHEREUPON, the jury came into open court at approximately 11:27 a.m.)

THE COURT: All right. A little slight change in plans. And let me tell you what it is. I've got some good news for you. The good news is I'm going to let you go to lunch a little earlier today. Normally, lunchtime is around 12:00, 12:30. So I'm going to let you go earlier. Also, the good news is you don't have to come back until 1:00. All right. So that's the good part about it. So you can enjoy your lunch.

I also -- when you come back at 1:00 and you report to your jury room, I need you to collectively decide only this, not to discuss the case. Don't talk about the case

at all. But I need you to decide among yourselves who's going to be the jury foreman.

And then when you decide who that's going to be, you let me know when I bring you back in after lunch. And then I'll just -- I'll ask who is the foreman. And whoever the person is designated as the foreman will let me know that he or she has been designated as the jury foreperson.

We'll go to lunch. Here again, same admonition. Do not discuss the case with each other. Do not do any research. Do not do any discussions with anybody in any restaurants or any place you may go eat lunch.

And I will see you back promptly at 1:00. Enjoy your lunch.

(WHEREUPON, the jury was excused from open court at approximately 11:29 a.m.)

THE COURT: Anything before we break? Any loose ends?

MS. JOSEPH: Nothing.

THE COURT: Nothing?

MS. JOSEPH: Nothing.

THE COURT: We'll break for lunch.

(WHEREUPON, a lunch break was taken.)

THE COURT: Two things.

MS. JOSEPH: Yes, Your Honor.

THE COURT: That will probably mushroom into three things, and maybe four things. The first is Madam Court Reporter has given me an exhibit, State's Exhibit No. 23. And I think there was some question whether or not this particular exhibit is in evidence.

Is everybody in agreement that it is in evidence?

MR. GROSE: We are.

MS. JOSEPH: Yes.

THE COURT: Okay. That clarifies that.

Now, the second thing is, everybody is clear on the whole reasonable doubt charge; correct?

MS. JOSEPH: Yes.

THE COURT: Mr. Grose, are you good on that?

MR. GROSE: Yes, sir.

THE COURT: All right. And I think everybody is clear on the charge regarding circumstantial evidence versus direct. Because it mirrors the same exact standard charge that I normally give.

MS. JOSEPH: Yes, Your Honor. No objection.

MR. GROSE: Yes, sir.

THE COURT: So did the two of you have an opportunity to look at the charge regarding children?

MS. JOSEPH: Yes, sir.

It is from the desk book. But the State would still object to the second to the last sentence, Your Honor.

Just because something is the standard charge doesn't mean the State can't object.

THE COURT: The second to the last sentence. Beginning with -- it's a long sentence, but beginning with because? Have you got it in front of you?

MS. JOSEPH: I, of course, don't, Your Honor -- oh, here it is.

THE COURT: The second to the last sentence is a pretty long sentence. As a matter of fact --

MS. JOSEPH: I have, In addition, young children may be influenced.

THE COURT: Oh, okay. That's the last sentence -- that's the second to the last sentence. I see it now. In addition, young children may be influenced by the way questions are asked. It is up to you to decide whether the child understood the questions asked.

And that's directly out of the charge book; right?

MS. JOSEPH: Right. Yes, Your Honor.

THE COURT: Well, you can object, but I'm going to go ahead and charge it.

MS. JOSEPH: Thank you, Your Honor.

THE COURT: Okay. Anything else? Is everybody --

Mr. Grose, are you ready with your technology?

MR. GROSE: Yeah. We're good on that. We both had a chance to test.

During the lunch break, I got an e-mail that they were requesting Your Honor charge 16-3-657. And, of course, that's addressed -- why you can't do that is addressed in my pre-trial brief. And I don't know where we stand on that.

THE COURT: Let me get that.

MS. JOSEPH: And, actually, Your Honor, that request is withdrawn.

THE COURT: Okay.

MR. GROSE: The only other request that I would make is when you're defining criminal sexual conduct and you're defining sexual battery that you limit it to fellatio, which is what's in the indictments.

THE COURT: All right.

MS. JOSEPH: And the State would object to that, Your Honor. We would just ask that you read everything in full.

THE COURT: Let me get that. Let me just read this sentence. And I think -- let me ask this question. My able clerk and I was talking about this. I think on the -- there's -- on the verdict form, there has -- does the jury -- there has to be some notation regarding sexual intercourse either by the person or the object --

(Pause.)

THE COURT: While he's doing that, let me just tell

you what I'm defining as sexual battery. A sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or any object into the genital or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

MS. JOSEPH: That's correct.

Thank you, Your Honor.

THE COURT: And your objection would be?

MR. GROSE: My objection is that the State has limited themselves to fellatio under the indictment. And I cited the -- I believe it was the Bailey case and provided a copy earlier regarding variance or going outside and changing the elements.

And I would also -- we mentioned the Court of Appeals case in Blurton earlier.

THE COURT: Right.

MR. GROSE: The Supreme Court case at 352 S.C. 235, 573 S.E.2d 802. And that citation is in my brief. While I didn't cite to the Supreme Court case, the jury charge issue that the Supreme Court took up in Blurton dealt with the Judge giving an instruction to the jury that was a correct statement of the law, but was confusing and misleading under the facts of that case.

And, of course, by the time it got to the Supreme Court, Mr. Blurton already had a new trial. But the Supreme Court addressed that issue because when he had his retrial, they wanted to make certain that the jury was instructed properly. And what -- the summary of what Justice Pleicones said in that opinion was --

THE COURT: Do you -- what's the cite on the Blurton case?

MR. GROSE: It's the Supreme Court 352 S.C. 203, 573 S.E.2d 802 from 2002.

THE COURT: Okay.

MR. GROSE: And, basically, Justice Pleicones said the charge has to be tailored to the facts of the case.

THE COURT: Did that case cite Bailey?

MR. GROSE: Well, Bailey hadn't been decided then. Bailey is a more recent case.

THE COURT: Okay.

MR. GROSE: And Bailey, specifically, deals with the variance between what the indictment says and the evidence, and what the jury's asked to consider for a conviction.

THE COURT: Let me read this. I'm just reading the footnote in Bailey. It says, Variance between the allegations and the proof. While a conviction may be sustained under an indictment, which is defective because

it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than alleged.

Is that where --

MR. GROSE: Right. That's what I'm looking at. And in their indictment, they, specifically -- they identify the specific sexual battery. And it gets back to the concept of the presentment to the Grand Jury.

THE COURT: Right.

MR. GROSE: We -- in the State system, unless you're charged by the State Grand Jury where they do have transcripts of the Grand Jury, we don't have any way of knowing what the Grand Jury was presented, other than what's in the indictment. And there's no evidence in the indictment that the Grand Jury considered anything other than fellatio.

THE COURT: So what you're saying is that definition of sexual battery is okay with you with the omission of everything else other than fellatio?

MR. GROSE: Yes, sir.

THE COURT: What's the State's position regarding that?

MS. JOSEPH: Thank you, Your Honor.

I've had this issue come up in many of my trials --

trials of this nature.

THE COURT: Yes, ma'am.

MS. JOSEPH: The indictment is a notice document. We are not contesting that it goes back to the jury. But it's important to note it is not evidence, Your Honor.

They were put on notice that he committed criminal sexual conduct in the first degree with a minor, which is committing a sexual battery with a child under 11. And that's what we are going to argue to the jury.

In addition -- but, I mean, I think we're splitting the baby here. Because we are asking for the full definition of sexual battery to be read into the record. We're asking to argue that a sexual battery was committed. The Defense can point to the indictment -- and the indictment is going back with them. So he gets to make that point. So I think that every side is satisfied.

But as far as why it's not an error and why you won't be overturned is because the indictment is a notice document. Yes, it says to wit, fellatio. But, fundamentally, sexual battery is the element that's required to be proven.

MR. GROSE: But they limited it to one sexual battery. And I think that if you go with my approach and you just define fellatio as being a sexual battery and explain what that means, if your charge does that, and

send back a verdict form that says guilty or not guilty, we'll know if they found beyond a reasonable doubt whether fellatio was committed.

The reason -- I think there's two reasons probably for putting the particular sexual battery in the -- on the verdict form, two reasons why the code did that. That wasn't there until South Carolina decided to make criminal sexual conduct with a minor a death penalty eligible case. That's already -- while our statute hasn't been to the U.S. Court, the Supreme Court has decided that issue. So that's no longer the case, because a finding of a particular sexual battery was an aggravating circumstance for a capital case.

The second is probably so that there's an assurance that there was a unanimous jury on which sexual battery was, actually, committed, which is, also, going to, you know, whether or not the verdict was unanimous to that level. And since we only have one at issue here, it's either -- in my opinion, it's either guilty or not guilty. They either have proven fellatio beyond a reasonable doubt or they haven't.

And we keep coming back to this concept of an indictment being a notice indictment. That is true. That is not the only purpose of an indictment. But to the extent that it's notice, it says this is what we're going

to prove. And, now, they're trying to change that, you know. I mean, I've seen indictments where multiple, you know, potential batteries were listed. They could have drawn the indictment that way.

THE COURT: All right. Let me just ask you this, Mr. Grose. This is piggybacking on what Ms. Joseph said. You could cure that in -- when you're -- well, I guess you can cure it in your closing argument, that particular discrepancy.

MR. GROSE: Well, I mean, I plan on referencing the indictments in my closing argument. I don't think that cures the due process violation of allowing her to argue something different than the indictment and allowing the jurors to consider something different than the indictment. That coming from me is not the same as it is coming from Your Honor.

THE COURT: Well, you know, I think what I can do is I could say sexual battery is defined as, and -- and let you decide -- in your closing, you could reference whatever you want to. But I feel comfortable defining sexual battery as I just said a minute ago. I feel comfortable doing that.

MR. GROSE: And is that the way you, initially, read it, the broader definition?

THE COURT: Yes.

MR. GROSE: Just note our objection.

THE COURT: I will. I will.

Are you -- are the two of you going to submit proposed verdict forms?

MS. JOSEPH: We can, Your Honor.

THE COURT: Can you do that?

MS. JOSEPH: Yes, sir.

THE COURT: And just be working on that.

MS. JOSEPH: Yes, sir.

THE COURT: Okay. Anything else?

(Pause.)

THE COURT: 16-3-655, Subsection D(1), I'm reading about -- maybe about the first four -- maybe four sentences down. I'll just read it into the record. It says, In the case of a person convicted at trial for a violation of Subsection A(1), the Judge or jury, whichever is applicable -- here, being the jury applicable -- must designate as part of the verdict whether the conduct constituted a sexual battery involved sexual or anal intercourse by a person or intrusion by an object.

My reading of this is that the verdict form has to have some language. That's what I'm reading. And we read that the other day. And that's what -- the discussion that I had with the clerk.

MS. LUTTRELL: And, Your Honor, I can tell you that

this same issue just came up last month, I believe, in a very similar case. And there was a lot of discussion back and forth. And, actually, the Defense and our office both agreed that that finding is -- it's in there. And if you look further down in that same paragraph -- it's kind of hard to direct you.

THE COURT: Well, you start reading it.

MS. LUTTRELL: But later on, it says, In order to be eligible for the death penalty pursuant to this section, the sexual battery constituting the current events and any prior events must have involved sexual or anal intercourse by a person or intrusion by an object.

THE COURT: All right.

MS. LUTTRELL: It goes on to talk that about if the prior offense was committed prior to when this -- the effective date of this section, then the Judge would hold a hearing to determine, at that point, if the offense was committed or involved sexual or anal intercourse by a person or intrusion.

It's our position that that finding is only necessary if the State were seeking the death penalty in a future case. Here in this case, if there were a conviction, which is a minimum 25-year offense, based on the Defendant's age -- we're not seeking that additional finding.

THE COURT: So your position is that should not be placed on any form -- verdict form?

MS. LUTTRELL: It's only required in a future proceeding if the State were -- if this same offense came up again and the State were seeking the death penalty in that case.

THE COURT: And I'm assuming that -- that question came up in a prior case and the Court --

MS. LUTTRELL: And in that case, it was a first offense of this type as well. It was very similar to what we're dealing with here.

THE COURT: And the Court at that time adopted your rationale?

MS. LUTTRELL: Yes, Your Honor.

THE COURT: Or the State's rationale in that regard?

MS. LUTTRELL: Yes, Your Honor.

MR. GROSE: And my rationale is identical, except it goes a step further. That the State would never seek the death penalty in one of these cases because they know it has already been held unconstitutional by the United States Supreme Court without a murder being involved.

THE COURT: All right. I'm satisfied that we would not include that language.

MR. GROSE: And, Judge, I'm not going to be able to do a proposed verdict form since it's just me. And my

request would be for the verdict form, guilty or not guilty on each of the four indictments.

MS. JOSEPH: We'll, obviously, show it and have it approved. And I understand he's saying alternate guilty, not guilty.

THE COURT: Yes. Just prepare one and show it to him.

MS. JOSEPH: We'll take care of that, Your Honor.

THE COURT: Please, ma'am.

All right. Anything else before we bring the jury back?

When we bring the jury back, what we're going to do is -- we're ready to close; right?

MS. JOSEPH: Right. So I'm going to open -- close in full, Your Honor. And then I will rebut whatever Defense says at the end. That's my understanding.

MR. GROSE: Mine as well.

THE COURT: Okay. So you're going to open, he's going to come, and then you're back again?

MS. JOSEPH: Briefly, yes, Your Honor.

THE COURT: We're ready.

(WHEREUPON, the jury came into open court at approximately 1:15 p.m.)

THE COURT: All right. Good afternoon.

All right. Juror #309. All right. Ma'am, would you

exchange seats with this juror.

Juror #309 will serve as foreman [sic] of the jury.

All right. We are now going to go into closing arguments on both sides.

Are both sides ready to proceed?

MS. JOSEPH: Yes, Your Honor.

MR. GROSE: Yes, sir.

THE COURT: All right. Ms. Joseph.

CLOSING ARGUMENTS

MS. JOSEPH: Thank you.

May it please the Court.

Opposing Counsel.

Members of the jury, the Defendant admitted on the stand that Lori was desperate for money. She was a single mom. And, yes, sometimes, even frequently, she asked the Defendant for money. But the difference between what we're arguing and what they're arguing is they want you to believe the Defendant entered Lori's life in 2012 and saved her. He rescued her and her children. He was her guardian angel.

But if you look at the Defendant's testimony, his own statements on the stand, and if you remember Lori's testimony, the Defendant admitted that Lori, J.M. 's mother, was strong and independent. Lori said she was doing just fine in Florida before Mr. Dent reentered their

lives.

He wasn't saving them. He was trapping them with money. He agreed to pay the rent, the cable, their phone. He wanted to buy them a car. Because he was doing something that all predators, all manipulators do. He was getting the upper hand.

And now, I'm going to go through the evidence piece by piece and explain why he wanted the upper hand, what his ultimate goal was.

Now, what I say to you right now and what Defense says to you, this isn't evidence. This is me, as a lawyer, arguing to you. The things that are evidence, the things that when you go back there and have to think about, that's the -- the testimony that you heard right here when the people came and talked to you, and it's the photos, and it's videos. So let's together look back on that.

The first thing and the most important thing that you have to consider is the statement, the two videos made by J.M. in this case. So you saw J.M. testify. And she's now 13. But back when this video was made, she was nine years old. And this video was made approximately a month after she had made a disclosure about what had happened to her. This is the closest in time account about what she remembers about the abuse.

So let's look at this -- let's remember this video and sort of thing -- big picture, big picture. What are your impressions? I want you, the jury, to remember how detailed she was. How she corrects herself over and over again. No, that's not right. That's not how it happened.

The Defense is going to want to say she's confused, that she's lying. But what I see is a child trying her hardest to get it right. And when she doesn't know, she says, I don't know. When she's not sure, she says, I'm not sure. Over and over again, she corrects herself. She corrects the interviewer, even though it makes her uncomfortable. She admits when she doesn't know things.

And overwhelmingly, I think the thing that we all agree on is that these videos are long. They are long, long videos. And they are full of details, small little details.

There are two types of details that I want to talk about. There are details about the abuse. And then there are other details.

So for the details about the abuse, I want you all to recall how she described urine. That's what she called it. She was, obviously, talking about the Defendant's ejaculation. How she when asked what color it was, she said without hesitation white. And then, members of the jury, maybe you don't remember this, maybe you need to

re-watch the video, which we can allow you to do. She said it looks like flour, if you mixed it with something. That is a weird, and vivid, and detailed description.

In addition to talking about the Defendant's semen, she talked about how he -- the ejaculation never went into her mouth. How it would come close and the Defendant would run off into the bathroom. She's describing behavior that would be normal in this type of situation that is, in fact, how the Defendant would behave.

She, also, described his penis as sometimes soft and sometimes hard. She talked about -- not even talking about fellatio, but just talking about the other sexual acts, she's asked did he ever try to put his tongue in your mouth? And she looked horrified by the question. But she says, Yes. I knew you were going to ask that. Yes, he did. And I kept my mouth closed. And she shows the interviewer, I kept my mouth closed.

She, also, doesn't want to answer when she's asked about pornography. Did he show you nasty videos? Did he show you videos? I didn't want to tell you this, but, yes, yes, he did. It was adults. They were kissing. They were in a bed. I saw private parts. That's why I didn't want to look. I said eww.

She's very vivid in her descriptions. She's very vivid as she -- each time the interviewer asked over your

clothes, under your clothes. She can say, well, that was over my clothes, that was under my clothes, that was under his clothes. The level of detail is so high.

But looking at the interview as a whole, it's not just the abuse. Her descriptions of the abuse are very vivid. But maybe you don't believe the descriptions of abuse. So ignore the abuse. Ignore the abuse.

Look at the other details. The conversation that really caught my eye was the conversation about the sports bra. Because she -- she describes an entire conversation she has with her grandfather, the Defendant, about the sports bra.

He asked her, Why are you wearing a sports bra?

And she says, Because I am.

And then she talks about how much it covers her. And how she had to go upstairs and put it on because he was touching her chest. If she is making something up, she is making up an entire conversation. And I would argue that nine-year-old kids simply don't do that.

And the other vivid details she describes that have nothing to do with sexual abuse, she talks about that turkey over and over again, how he's big, and she's afraid of it. She, actually -- if you listen, if you re-watch the interview, which I encourage you to do, she describes where each adult is in the house when he's visiting. She,

also, describes how everyone else is out on the Gator, which is that small golf cart type thing, and she was alone. There's just detail upon detail upon detail. So that's the video. And the video is the biggest piece of evidence in this case.

And before I move on to talking about other things, I do want to show you one brief clip from this video.

Jennifer, can you try turning it on and off?

I think we may just have audio.

(WHEREUPON, a portion of State's Exhibit No. 17 was played in open court.)

MS. JOSEPH: Before we move on from the video, I would be remiss if I didn't talk about other things that J.M. said, not about the abuse, not about the details of her life.

She talks extensively about how the Defendant threatened her. And the threats are very specific because the threats that maybe a normal nine-year-old girl -- this wouldn't be a concern in her life. He said he's going to kick us out of his house -- or our house if I tell. And Lori said and the text messages show that they -- and the Defendant said that he was paying the rent. They are completely dependent on him. And he's using that dependency. He's threatening this child with that control.

In addition, she talks about bribes so, so, so, so much. And that is not surprising. If any of you have kids, kids talk about the things they get, the toys, their possessions. And here she is, jewelry, gifts, gift cards, money. He had money in his room all the time, she says.

Now, the Defendant put up witnesses, his brother, his mom. And I say his brother, his mom because these people are not claiming Lori and J.M. as their kin. They're not doing that.

He put up his witnesses and they talked about Christmas gifts, how the Defendant would show up with Christmas gifts, some for A.M., some for J.M. . And maybe that's true. Maybe on Christmas, he did give gifts. And he gave them to both children.

But J.M. isn't talking about gifts. J.M. is talking about bribes. She even uses the words bribe. She thinks it's a bribe. And the interviewer has to correct her, but she knows -- she knows what word to use. And she gives an example, you know, A.M. got a smaller gift. I got a bigger gift. He loved me more. Why? Because he was trying to control her more.

Now, in this case, J.M. gave two interviews. And you, obviously, have seen both of them. You just saw a clip of one of them. In the first interview, J.M. primarily talks about the Defendant touching her, rubbing

her, making her feel uncomfortable. She talks about trying to get away from him kissing her on the mouth. It is in the second interview where she says he made me lick his penis. He put his own mouth on my private parts --

MR. GROSE: Objection. Variance to the indictment.

THE COURT: I'll let you proceed.

Objection noted for the record.

MS. JOSEPH: He talked about penetrating her vagina. He talked about --

MR. GROSE: Objection. Variance to the indictment.

THE COURT: Subject to your objection.

You may proceed.

MS. JOSEPH: She talked about him touching her private parts under her clothes. Over and over again, she's making these disclosures in the second interview.

The Defense is going to talk extensively about how because she made two statements, she's lying. You know, she said -- and it's true, she told the interviewer in the first interview, I told you everything. I told you everything.

And, members of the jury, this is my chance to talk to you. And this is my version. And I'm basing my version off of these videos, off of what I watched, off of the evidence, and off of what J.M. says at the very beginning of the second statement over what John Camelo,

the first witness, if you remember that, said, she was afraid. She was afraid she was going to get in trouble. She was afraid that her mom would hate her. She was embarrassed. This is a little girl just wearing sunglasses. She's trying to hide. She's embarrassed.

We had Tessa Trask come and testify. That was the expert from Hope Haven. And she said a lot of really important things. But one of the things that she said, and I want you to remember in the context of this case, is that disclosure is a process. It's a conversation.

J.M. has been abused by someone she trusted. It took her a while to find someone she trusted to tell. It took her a while to tell the entire truth. Do not blame J.M. for having her trust erased. It was the Defendant that erased that trust.

So, now, we're going to talk about the evidence, other than the videos. So other than this interview where she tells the interviewer what happened to her, I want you to remember she, also, told her mom and she, also, told John. And she told you in court what happened to her.

Why did she tell John? I want you to remember back to John's testimony. John no longer dates Lori. He has no contact with J.M. . He is a neutral third party. He has no dog in this fight. I believe that J.M. told John because she viewed him as law enforcement. She

viewed him as a safe person to tell. I, also, think she told him because when she told him, the Defendant was far away. He was no longer visiting. He couldn't hurt her anymore.

Now, J.M. told John. She told her mom. And, as I mentioned, she came here and told you. Once again, Defense is going to argue that her statement here is so different than the videos. And this is just a different opinion. He's going to see differences. He's going to argue for differences.

I saw so many similarities. Four years have passed. She's now 13 years old. Like most survivors, she's trying to put this behind her. But she remembered having been forced to lick his penis. She remembered him kissing her all the time, making her feel uncomfortable, being touched all over. She remembers being shown porn and him taking inappropriate photos of her. She remembers the bulk of what happened to her.

So I want you to compare her testimony that you've heard here and then compare the tapes. And I think you'll be overwhelmed with how much she, actually, really does remember.

In addition to looking at her video statement and her statement from the stand, I want you to look at the behavior described by her here and then in the videos.

And I want you to remember Tessa Trask's testimony.

So Tessa was the expert from Hope Haven. And she defined grooming. And I have a definition of grooming, but I'm going to read it out loud, too. It's giving gifts, things of value, treats or privileges, developing a trusting relationship with a child and her family to gain access to the child, and normalizing sexual touch through exposure. It can include exposure to pornography or other acts. It is safe to say that J.M. had never seen this definition of grooming when she went into that Hope Haven interview when she was nine years old.

And, frankly, even if you showed a nine-year-old that definition, I don't think that they would really understand it or be able to shape their story to fit that definition. So it should shock and amaze you how much her description of the conduct matches that description, giving gifts, things of value, treats, or privileges.

She describes over and over again the bribes she was given. He would pull up the American Girl Doll website, which American Girl dolls, that's a big one, pull up that website in front of her and say, Do you want one of these dolls? These expensive, expensive dolls. He would give her gifts, gift cards, money. He was consistently bribing her.

Developing a trusting relationship with a child and

her family to gain access to the child. He inserted himself. He pushed himself into their lives. He paid their rent, their cable, their phone bill. He wanted -- he said on the stand that he wanted Lori to be independent. But he encouraged, pushed Lori to get a bigger house, a house she couldn't afford so that he could have a private space in that house, a room all of his own.

He made a big point on the stand that he thought it was weird, it made him uncomfortable that John moved into the house so quickly. That was practically a stranger, he said, living in the house. But he was practically a stranger. He had no relationship with J.M. prior to 2012. And suddenly, he was there. Suddenly, he had a room. Suddenly, he was visiting all the time. Even when he had other places to stay in the area. He could have stayed with his brother. He could have stayed with his best friend who lived in Charleston.

And, finally, and most importantly, the last prong of grooming is his normalized sexual touch through exposure. Yes, J.M. talked about fellatio, which is when she was forced to lick his penis. But that's the culmination, members of the jury. That's the final act. There's so much ground work.

He was touching her, her back -- interestingly, if you watch the video, she is so uncomfortable with the

touching. Because I do think, deep down, kids know. And he's touching her inner thighs, her back. He's warming her up. He's grooming her. He's showing her photos of his penis. He's showing her porn. He's taking photos of her. All of this, it's building, it's building. That's what grooming is. He's trying to get to a point when he, finally, culminates, he does what he wants, she won't tell anyone. It's called grooming. It's a long process.

And, frankly, the grooming in this case mostly worked. She didn't really want to tell. Even when she told, she tried not to tell the whole truth because it was embarrassing and she knew there would be consequences if she told.

The other thing that Tessa Trask, the expert, talked about was that sexual abuse is trauma. And that trauma has certain symptoms. John, our very first witness, testified that he saw red flags.

Now, he's not an expert in sexual abuse. This is just a boyfriend whose girlfriend's daughter is acting weird. She is hugging him all the time, kissing him, calling him dad, sitting on his lap, trying to touch his groin. This is someone who no longer talks to Lori, no longer has a relationship with J.M. , years later saying, yeah, I remember some troublesome behavior.

And Lori testified and talked about nightmares.

These are ways -- outward signs of abuse. All trauma victims, all sexual abuse victims do not exhibit these signs, just to be clear. But in this case, the State argues that these actions that John and Lori described were symptoms of a sexual abuse.

Now, J.M. was recalled to the stand and talked about some photos. And I want to sort of talk about these photos as well. So, really, you can consider the photos in two sets. This photo of J.M. at her birthday, this photo of J.M. and her grandfather, the Defendant, cooking, and this photo of J.M. in the Defendant's bedroom with a bunny that the Defendant would bring with him. Those photos are to provide context.

Investigator LaVan testified that given the nature of the allegations, given the time that had passed, he did not take crime scene photos. But if you listen in her interview, she says that she was cooking with her grandfather the first time he ran his hand up her legs. In case you need a visual of what this house looked like.

Now, the second group of photos, J.M. testified to most of them she wasn't sure, but she thought the Defendant took them. So this photo -- for example, this photo of her bending down in front of the camera, the camera almost going down her shirt, she's not sure, but she thinks the Defendant took it. It's not her brother

because her brother is behind her; right? She thinks the Defendant took this one. When she was asked again, she was almost positive that the Defendant took this one. This is her dance uniform, it's her legs.

After you've looked at the video and you remember J.M. 's own statements, I want you to remember the Defendant's statements, which should be fresh in your mind because you heard them today. He admitted that Lori was a strong, independent woman and he forced her to move from Florida. He forced her to move into a bigger house, a house she couldn't afford. On one hand, he's saying I want her to be independent. Why is she so dependent on me for bills? But each step, he's making her more and more and more dependent.

I want you to review the text messages. I want you to review the Facebook messages. First of all, in the Facebook messages -- he said she doesn't have a job. Those Facebook messages, which he testified were his Facebook messages, the first thing she says is the kids are at home because I'm at work.

And, yes, her next sentence is, I want money for J.M. 's dance recital. That's because J.M. was taking dance because the Defendant was paying for it. And he was paying for it because he wanted the whole family dependent on him.

And in those text messages, they do talk about rent. She wants that rent paid because she wants a roof over the head of her kids. But read those text messages closely. Because the last text message -- in fact, I'm not going to quote it. Let me find it.

Do you have State's Exhibit No. 21?

Here, I have it.

And you'll have a chance to read all of these. You know what, keep your money. We don't need shit from you. I don't care if the rent gets paid or not. This isn't about money. It's about you being a pedophile and molesting children. I hope you get what you deserve.

The Defendant, when he got on the stand wanted to argue -- wanted you to believe that Lori was after the money. Money, money, money, money, money. But when Lori confronted him, you did this to my daughter, you did this with my daughter, he didn't stop communicating with them, freak out. He didn't deny the allegations outright. Instead, it was him that came back talking about the rent again.

And, also, there was no financial gain in this case. And I'm going to say this at the end as well. There's no financial gain because they told -- they could no longer afford to live where they lived and they ended up in a long-term hotel. I mean, what was the gain?

So after you've considered the testimony, and after you've reviewed the evidence, and -- the evidence in this case, it's the videos, the photos of J.M. , the text messages, Facebook messages, you will be asked to decide guilt or innocence in this case. And I'm with the State. And the State in this case, me, this table, Investigator LaVan, we have the burden.

So the burden is written up here. And you can take a moment to read it. The Judge is going to read it to you. But, simply put, we have the burden. We must prove beyond a reasonable doubt that the Defendant did what he's accused of doing.

Reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth hesitate to act. And the example that's frequently used, you're making other big decisions in your life, buying a home, who to marry, the type of uneasiness that would cause you to hesitate when making those type of big decisions.

Can you go back to the second slide?

Members of the jury, the State has met that burden. We have proved beyond a reasonable doubt based on the videos, based on the testimony, based on all the things that you will review that the Defendant, Charles Dent, made J.M. , his granddaughter, lick his penis, look at

pornography, look at photos of his penis.

The Defense is about to speak to you. They're going to try to confuse you. They're going to try to tell you what they think this case is about.

This case is not about money. Because Lori and J.M. and A.M., J.M. 's brother, got nothing from telling the truth. They were kicked out of their house. They weren't allowed to keep paying rent there. They couldn't afford it. And they ended up in a long-term motel.

This case is, also, not, by the way, about other traumas in J.M. 's life. Yes, J.M. 's Uncle Matt killed himself. But you do not act out in a sexual way the way that John Camelo described because you're going through trauma related to suicide. J.M. was acting like a sexual assault victim.

This case is, also, by the way, and, perhaps, most importantly, not about J.M. not knowing her dad, which was a question Defense asked J.M. when she was on the stand. It's, also, not about Lori's dating history.

Over and over again, J.M. was asked, who did this to you? Did anyone else do this to you? She consistently said, my grandfather, my grandfather, Charles Dent did this to me. He's guilty.

Thank you.

THE COURT: Mr. Grose.

MR. GROSE: I beg the Court's indulgence for just a moment.

THE COURT: Yes, sir.

MR. GROSE: I want to, I guess, start today where we started on Tuesday morning. But before I go into it, I want to just comment on something. I know that this process can be kind of frustrating sometimes. And it can be kind of burdensome with all the getting up and going out and the schedule is changing. And while we always do our best to apologize for the inconvenience, one of the things that we never apologize for is the process itself.

It's like Judge Kinlaw talked about on Tuesday morning when he first started addressing you and has sort of been your guide through this trial in telling you how everything works. That the right to a jury trial is so important that John Adams and the other founding fathers put it into our Constitution because it was that important. That when the Government decides to take an allegation and put somebody on trial for life and liberty that a jury gets to decide, gets to hear what the evidence is and what the allegations are.

Now, on Monday when we started, one of the things we talked about was the presumption of innocence and the burden of proof. We're going to talk about that again in

a minute.

I'll, also, review the indictments with you. The indictments are very important. While the Judge told you that's not evidence, an indictment is the way that the State tells a person what they're charged with and what they have to come to court and defend.

I, also, ask that you pay attention to three things, the timeline, opportunity for coaching, and motive. And we're going to talk about all of these in a little bit more detail. This is more my words, just sort of a summary, of reasonable doubt and a way to begin to explain it.

We talked a little bit on Tuesday about the different levels of burden of proof that we follow in our courts. If it's an automobile accident case, the burden of proof is by a preponderance of the evidence. Is it more likely than not that somebody was at fault in the accident?

In a civil case, if fraud is alleged, and that's pretty serious, you have a higher standard. That's clear and convincing evidence.

But the highest standard in our law is beyond a reasonable doubt. And when you get to talking about beyond a reasonable doubt, you know, it's not all doubt, but it has to leave you firmly convinced. But if you think that there is a real possibility that a defendant is

not guilty of what they're charged with, you're supposed to give them the benefit of the doubt, and find them not guilty.

I don't know for sure, but I imagine that that's where the term give somebody the benefit of the doubt came from. It came from these concepts that John Adams and our other founding fathers thought were so important that they would be included in our Constitution.

So when you go through the evidence -- and it's really interesting. Because when the Prosecutor was up here, she said, well, this is my view of the evidence. And she tried to predict what she thought my view of the evidence might be when I came up here.

And that's interesting to me because that's her acknowledging that there's more than one way to look at this evidence, more than one way to view it. Because in our society, if in a jury trial, there's really more than one way to view the evidence, if there is a real possibility after viewing the evidence that a person is not guilty, then that's what the verdict's supposed to be.

The Judge is, also, going to charge you on something called circumstantial evidence. And I'm not going to try to quote the exact words as to what he's going to say. But it's just this sort of same type of, you know, convincing. If there is two ways to look at

circumstantial evidence, then the State has failed to meet their burden of proof. And they rely on a lot of circumstantial evidence. Certainly, things like testimony, eyewitnesses accounts are what we call direct testimony.

But one of the things that they did in their closing argument just a few minutes ago was want to talk about John Camelo's relationship with J.M. , and how John said that J.M. acted with him. Now, first of all, you haven't heard one bit of testimony that J.M. displayed any sexual or sexualized behavior with anybody else. So we're going to come back to that a little bit later on when we talk about John Camelo a little bit more and how all of this sort of evolved.

So the timeline. Matthew's suicide was, obviously, a pretty important point in the lives of a lot of the people that you've heard from in this courtroom here. You probably noticed this morning when Charles was up here that he got a little almost teary and a little emotional when he talked about that. And what we know and -- I mean, this is tragic. I mean, there's a lot of tragedies in all of this that we're going to talk about.

But what we know is that Matthew was close to his sister. Sometimes, we refer to her as Lori and sometimes we refer to her as Michelle. And that Matthew would go to

Jacksonville, Florida.

Sadly, Matthew was not the first suicide in this family. Lori's mother, also, named Lori, committed suicide. And, you know, sometimes mental illness does run in a family. And maybe that's what happened here, and maybe it's not. But they want you not to focus on that.

And the reason I don't think you can overlook that is because they want you to consider in this case the expert that came in and testified. This was an expert that hadn't read the file, hadn't interviewed J.M. , wasn't aware of any of J.M. 's, what we call, social history, sometimes, this family history, what J.M. has been exposed to in her life. She wasn't familiar with J.M. 's school records, didn't know that she did well in Beaufort when the abuse was supposedly going on, but didn't do well after they moved to North Carolina. Because if you think about it, if somebody is being abused, that's when they're grades are going to drop off.

Ms. Trask, also, talked about adjustments. And that children can sometimes have adjustment problems when they move. And J.M. was having those adjustment problems in North Carolina.

But the reason that you can't ignore the suicide is because Ms. Trask talked about there being different types of trauma. And back in the day, we didn't understand -- I

say back in the day, 20, 30, 40 years ago, we didn't understand what types -- what being exposed to trauma did to people.

I mean, I think after Vietnam, we began to learn more about that, and learn how when somebody is close to you and they die, like Matthew did, that that's something that has an effect on you. And that that's something that can be a trauma in somebody's life. So we can't overlook that.

So the timeline -- I mean, we've been through it over and over. August of 2012, the first townhouse. August of 2013, the second townhouse. June 10th, 2014, law enforcement contacted. July 10th, July 18th, the interview -- I'm sorry. First interview date is on July 10th. July 18th, two things happen. That's when they gave the authorities more information. But it's, also, the day that the Maurice incident happened. And then the second interview happened a week later.

Now, I alluded to the Maurice incident in opening statements. And I'm not trying to sit here and say Maurice is guilty and Charles is not. That's not the point of bringing it up. But it is curious that the Maurice incident happened on exactly the same day that more information came out. And when we get a little bit further, we're going to be talking about some of the

circumstances of when that additional information came out.

But what's important is I want you to think about children. I want you to think about somebody that's nine years old at that time. I want you to think about what we know about children. Children have imaginations. And that is a good thing. I mean, we want them to have imaginations. That's how you learn, that's how you develop. But, sometimes, the imaginations can run wild a little bit.

Children, also, want to please adults. I asked J.M. , one of the questions, if she wanted to please her mother. And she said, Yes. That's typical of children. We, also, saw an example of how children are able to read signs from adults and tailor what they say to it.

In this very -- we witnessed it yesterday. We witnessed it when they were talking about the photograph -- I don't have my glasses on, but the photograph with the dancing shorts. You know, there was a time she wasn't sure who took that. You found out that they showed that to her yesterday not long before she came into this courtroom to testify about it.

You heard how her answer evolved. And the more times she was asked the question she thought or, at least, said she was more sure that she thought her father [sic] took

it. There's no evidence who took any of these photographs, except there's evidence that Charles didn't take some of them. We don't know who took these photographs.

But when you walk through this door and you come in here -- and the way this courtroom is set up, and I don't know a better way to do it. But you have people on one side that are prosecuting, and the Defense is on the other side. And I'm sitting next to J.M. 's grandfather, Charles Dent. She had met the Prosecutor on the telephone. And she met her in person this week.

Now, I'm not saying anything improper happened here. I'm not saying that anybody said, J.M. , I need you to get in here and change your story. What I'm saying is that the dynamics of this courtroom and you knowing that there's people on different sides of the issue, and knowing that I'm connected to Charles Dent, knowing that these people are connected to Lori Mayo, her mother, who she wants to please, it's the process.

Even at that age, even at 13, she's giving the answer that she thinks is going to be -- receive the most approval from the adult that she wants to get approval from. Look, I'm not trying to blame Lori. I'm just trying to talk about -- I mean, J.M. . I'm not trying to blame J.M. . I just want to talk about the dynamics,

and what we know about children, and what we know about them wanting to please adults. And we're going to come back to her imagination in a minute.

But before I do that, I want to go through the indictments. Okay. Because the indictments, like we talked about, is what the State is trying to prove. And there's two indictments for disseminating obscene material to a person under 12. And in this first indictment, 1671 are the last numbers of it, they're saying that Charles took pictures of his genitals and showed them to J.M. .

(WHEREUPON, a portion of State's Exhibit No. 16 was played in open court.)

MR. GROSE: Okay. Two things about that. But before that, I apologize that the picture is a little splotching. I've never gotten it able to play on my computer as well as it did yesterday morning.

But it's important to listen to what is said. And there was two things that were said in that that are important. One is for that indictment, the photographs of the genitals, she said he took 10 pictures and showed them to her, 10 pictures of his penis and showed them to her.

Now, I told you on Tuesday they weren't going to have any pictures of Charles Dent's penis. They brought in some other pictures without any evidence of where they came from. But they're not the pictures that prove this

count -- or this charge as contained in this indictment.

The other thing that's important is right there at the very end, you heard her say, no, as far as taking a picture of herself. So even at that young age, she understood that she could say no and something wouldn't necessarily happen.

Now, the next indictment is, also, the disseminating of obscene material. And this is showing pornography. And once again, we've had some testimony, but we haven't had anything that has confirmed or corroborated showing of pornography.

The next two indictments are for criminal sexual conduct with a minor in the first degree. And in these indictments, the State says what they're going to prove is a sexual battery. And they say they're going to prove that Charles had J.M. commit fellatio on her [sic]. And it gives her date of birth and the code section that's involved.

And, again, going back to the timeline, there's a time frame in this first indictment, April 2013 to August 2013. Again, this goes back to the leases. Remember, they moved into the first one in August of 2012. They moved into the second one at the very end of August, beginning of September of 2013.

The next indictment still alleges the same thing, the

fellatio. But it alleges a time frame in August of 2013 going to April of 2014 when they didn't have communication anymore. This is from the second interview.

Remember, in the first interview -- and they don't even dispute this. In the first interview, there was no disclosure, no comments, no claims, no accusations about fellatio. Look, what -- I want you to listen to what was said here.

(WHEREUPON, a portion of State's Exhibit No. 17 was played in open court.)

MR. GROSE: So she was given a choice to say where it happened, first house, both houses. And so even under this video -- and we don't think that this really happened. But under this video, she's only talking about it happening in one place. And she was consistent about that, although arguably inconsistent about whether it was the first one or the second one. But the point is from the get-go, you can take one of these off the table because her statements don't even support that it happened at both locations.

Now, we're going to keep talking and talk about why this was evidence of coaching, why there was coaching involved in this case, and the opportunities for coaching. Now, you know, this, also, gets back to something I said on Monday, which was I told you to expect her to come in

here and make some allegations.

But we were kind of warned in the Prosecution's opening that her memory was not going to be good. And we can talk about a little bit different reasons why that might have been. But, certainly, she didn't testify to all the things on Tuesday when she came in here that she did in her -- what she talked about in the videos.

But I, also, warned you that you were going to see these videos. And I, also, asked you to look for evidence of coaching. Because the thing is, in our system, the way the Court system works, people don't just walk in here and say I was coached or I was, you know -- I coached somebody to say something. You have to begin to look for clues. You have to pay attention to these videos and look for clues for coaching.

And so I'm going to play this one in a second. But she starts off saying, My mom told me to tell you this. And then we're going to listen to her make up a story.

(WHEREUPON, a portion of State's Exhibit 17 was played in open court.)

MR. GROSE: I mean, Ms. Capps caught her making up something. And this gets back to the active imagination that I was talking about before. And when she was telling this story about the places that it was hidden in or whatever, she sounds the same as she does when she's

talking about everything else.

And if you remember in other parts of the video, probably later on when they came back to this same thing, you know, it wasn't clear at what point she learned about the layout of everything in Alabama, whether she had been there at the point that this supposedly happened, or whether it was coming from photographs.

But it began with my mom wanted me to tell you this. My mom wanted me to tell you this is a clue about the coaching. The way it's said in this, you're going to hear her say, I told my mom lots of things. I just have to remember them.

And then we're going to get to a point later on where she says, My mom said. And when we get to that, I want you to pay attention. Because she's talking about things that she's claiming that Charles did to her. But then she sort of switches and starts talking about -- continues with, My mom said.

And again -- and we're still in the first interview. And there's some evidence where they ask her about, you know, being made to touch somebody's private parts.

(WHEREUPON, a portion of State's Exhibit No. 16 was played in court.)

MR. GROSE: So she had to remember. And in that story, she switched to talking about her mom saying that

he was rubbing this part. And we can't tell -- I wish they had this easel turned where we could see it. But from the context where they're talking about private parts, she's -- J.M. is disclosing to Ms. Capps that her mom talked about Charles rubbing his own penis and he shouldn't do that.

She just sort of switched. It kicked in. And it was probably subconscious, but it was another little clue. And then Ms. Capps honed in and asked, Have you ever been asked to touch his private parts?

And she said, No.

Now, I said we were going to come back to the relationship with John Camelo, a/k/a dad, and have you ever had to -- well, also, this is another thing about have you ever had to touch anybody else's private parts. Before we play this, let's talk about Camelo --

MS. JOSEPH: Objection, Your Honor. Improper third-party guilt.

MR. GROSE: I'm not going to third-party guilt, Your Honor. This is a response -- I'm going to play this video. But this is a response to their comments about the sexualized behavior. This is in evidence.

THE COURT: Go ahead.

MR. GROSE: Thank you.

Before we play it, we had some contradictions in this

courtroom about who J.M. referred to as dad. Now, the significance of her not knowing and ever meeting her real dad, which is tragic, is that I imagine that all through her life she's wanted to have a dad.

And her mother, Lori, told you that she's probably called every one of her boyfriends dad. J.M. didn't want to acknowledge that in here. She said that the only person she called dad is her mom's current boyfriend in New York, and she never called John Camelo dad. Well, John Camelo remembered being called dad and that's in the video.

And, again, I said nobody talked about J.M. having sexualized behavior with anybody other than John. So let's listen to what J.M. said about her relationship with John, who her mother had met in February or March, started dating in May and moved into the house.

(WHEREUPON, a portion of State's Exhibit No. 16 was played in open court.)

MR. GROSE: Okay. I mean, who let's a boyfriend they've only known for a few months spank their children? And then we find out it's for play or for fun. And they talked about, you know, wrestling with each other. And she said she had accidentally grabbed him somehow.

So this is not -- when you hear J.M. talk about this, this is not a relationship of her just coming up and

hugging on somebody and kissing them. Sure, she wants a dad. But this is a really odd kind of relationship with somebody that she's barely known.

The second interview, I think it's important -- the July 25th interview, it's important to talk about -- to listen to what she said about why she didn't remember everything.

(WHEREUPON, a portion of State's Exhibit No. 17 was played in open court.)

MR. GROSE: So John -- and remember, this is the same day the Maurice thing happened. And she was probably under some scrutiny about why this guy is coming around wanting to play with her. And then John starts asking, Did you remember to tell her everything? And over and over, she says, I'm trying to remember things. It's almost like she's trying to remember what she was told to say.

And when John's asking that question, it's like he knows what everything is. Did you remember to tell her everything?

And she was like, I forgot. And she said, And I was scared to tell them.

But that begs the question, was she scared to tell John the things that she was supposed to say? It's like John already knew. Or was she scared to tell John that

she didn't remember to tell Ms. Capps some of the things? It's an important question.

Now, as far as, you know, motive is concerned. We, certainly, have had, you know, presentations of two different ways as to what the arrangement was and how it was supposed to work. And they want to argue that there's nothing irrational. There's nothing for Lori to have gained out of this, or the children because she was getting kicked out of the house.

Well, it gets back to that timeline. August '12 to August '13 is when they had the lease on the first townhouse. August 2013 to August of 2014 was when they had the lease on the second townhouse. And almost every place that rents wants some kind of notice of when you're going to terminate the lease.

And you heard the people that are connected to Charles and, yes, they're probably some of the most important people in his life. But who else would you expect to be witnesses in a case like this? Who else would you confide in in your ordinarily -- ordinary everyday lives except the people that are important to you and close to you?

And Charles Dent was talking to Mitch Fife and his brother, David Dent, about the issues that he and Lori were having with regards to the arrangement that they had.

And he was getting advice. And you heard David say, you know, I told him he needed to back out of this situation.

And this was happening early on in 2014. It was early on in 2014 before any of these allegations came up. There was a date that that lease terminated. And so if Lori is truly interested in being self-sufficient, she knows what that date is. She has no obligation under any circumstances to stay there. But she knows what that date is and that it's coming.

And there's been a dispute about how much she was working. And they want to say, oh, these text messages say she was. We're not saying she wasn't working some of the time. We're saying she wasn't working a lot of the time.

So come the end of that lease when Charles -- and she knows that Charles is not going to be paying the bills any more. She has the time to plan to do something. And all of this was brewing. And she wanted that to continue. And it wasn't going to. And that's when all of this started evolving.

It gets back to reasonable doubt. And it gets back to what we were talking about, if there's a real possibility that Chares Dent is not guilty, you're supposed to give him the benefit of doubt.

In this case, you've got to ask yourself, is there a

real possibility that Lori was trying to get back at her father? And when you look at everything, everybody, including Lori, she said that she and the children were living in a poverty neighborhood, a bad neighborhood, I think, is how Lori described it.

She talks about the work that she was doing in Jacksonville -- or in Florida in one of these messages that the State introduced today. She was being a stripper. And she was living in a poor neighborhood. They had just had a death in the family, somebody that she relied on in the summers for some of the child care.

We don't know the number of homes that they had lived in during that period of time. But the most stable time in Lori's life and J.M. 's life was the two years that they lived here in Beaufort. And while they moved from one unit to another, they were units in the same apartment complex.

In the four years that Lori and the children have been gone from Beaufort, they've lived in three houses in two states. That was the testimony. And you've got a seven-year-old child when she comes here, seven to nine for the time frame that she's living here who wants to please her mother and has never had a stable father figure in her life. Oh, she's searched for it and she's looked for it in all of her mother's boyfriends.

But to J.M. , people in her mother's life disappear. When she's done with them, they're gone. When she was done with Charles Dent, he was gone. When she was done with John Camelo, he was gone.

In fact, I suggest that she was, actually, manipulating John Camelo because he said he had been a victim of sexual abuse himself. And that was an issue that was important to him. And she had him move in to pay half the rent, but Charles finished out the rent. So she was using that money for something else.

But getting back to the point, they're all gone. And J.M. knows that people disappear from her mother's life. And her mother wants her to make these allegations. We saw the evidence of coaching in these videos.

When she came in here -- when J.M. came in here and couldn't remember things this week -- and some of the videos we watched today, she was nonchalant talking about this. When she comes in here today -- or this week to talk about it, there's a lot of reasons why a child may forget things, may be hesitant, may be inconsistent with things. They want to say it's about the disclosure process.

But they, also, talked about kids reacting to stresses in their life and being asked to do something -- or doing something that's out of the ordinary. And I

would imagine that it would be an extreme stress on a child to be coached to lie about something that didn't happen.

Her school problems didn't start until after this. They weren't going on while the abuse was supposedly taking place. The changes happened after she was coached to talk about something that didn't happen.

And so coming in here and being reluctant -- people don't come in here and say I was coached. But she may have been uncomfortable in here because she knows that what she's doing is wrong. She's not a bad person. She's lived a sad life. She's lived a tragic life. And it's unfortunate that we have to be here and talk about all of this.

But when you get back to the burden of proof, is there a real possibility, based on the evidence that you've heard here this week, that Lori coached J.M. to do this? If the answer is yes, then we ask you to find Charles Dent not guilty of all of these charges.

THE COURT: Ms. Joseph.

MS. JOSEPH: Thank you, Your Honor.

Jennifer.

THE CLERK: Yes.

MS. JOSEPH: Motive, motive, motive, motive. There is a reason the Defense talked to you so much about

coaching, so much what he views as inconsistencies in these videos before he got to motive. Motive is sort of a throw away for them. Because, basically, effectively, if you look at the testimony, Lori admits I was living in a bad neighborhood. We're not hiding it. She admits she had a variety of jobs, temp agencies, Publix.

The Defendant testified on the stand that she was on food stamps -- or the Facebook messages mention food stamps. It is not a crime to be poor. It is not a crime to struggle. You are not a bad mom if you struggle. She was doing fine in Florida.

These are the risk factors for sexual abuse. Single-parent household. Why? Because predators know that people that they can financially manipulate are people that they can effectively prey upon. I'm sorry. I'm getting worked up. But emotion is something that we have to talk about in this case. Read the Facebook messages. Read the text messages. Look at the anger in those text messages.

The Defense wants to argue that Lori coached J.M. . And he says -- he looks at the videos and he says, look, she's saying my mom said, my mom said, my mom said. First of all, all nine-year-olds say my mom said a hundred times.

Second of all, in her very first interview, the

interviewer asked, you know, basically, why are we here? And she says, My mom said we're here so this doesn't happen again to any other little girl. So, yeah, her and her mom, they had some conversations about this meeting. And her mom said go in there and tell the truth. Read the text messages.

The Defense wants to argue that this is all about timeline. And in support of his argument, he has put up a bunch of bias witnesses to say, oh, yeah, he was talking about kicking that lame girl out, you know, at the end of this lease.

But meanwhile, he's moved her into a house so that he can have a room there and is visiting her all the time. But he wants this to end as soon as possible, you know. He just had established a relationship with his daughter and grandchildren, but cutting them off because he wants her to be financially independent, even though he's moving her into a bigger home.

But look at the timeline established not by his witnesses, but by the text messages. Yes, Lori texted her father and said, I want rent money. That's on the same day she's reported this case to law enforcement. She is not saying give me rent money or I will tell the police. She's already told the police. At this point, she's just looking for money so she can keep a roof over her kids

head for a little bit longer.

There is no motive in this case, members of the jury, because she talked to her daughter. Her daughter told her what happened to her. And they ended up not in the house, they ended up in a long-term motel. And, members of the jury, there is nothing wrong with being in a long-term motel. After all, it's another roof over her children's head. They had lived in a bad neighborhood in Florida. But they survived before without Charles Dent and they survived after without him.

They keep wanting to talk about John Camelo and what a weirdo. This is a short relationship. And Lori is a bad mom for having these boyfriends move in.

This is a man that she had no relationship with, no relationship with. And suddenly, he's buying gifts, huge packages of Christmas gifts. He's paying their rent. He's paying their cable. He's all up in their life. He's baby-sitting. He has a room in that house. The same behavior that they want you to judge John for and find him not credible, the Defendant exhibits.

A lot of what Defense Counsel talked about was how we had failed to do things. We didn't show you photos of the Defendant's penis. We didn't show you porn found on electronic devices. We're not required to do that.

And he started talking about circumstantial evidence.

And he said the Judge would talk to you about circumstantial evidence. And he didn't want to read out the definition of circumstantial evidence that the Judge is going to read. But I'm going to do that because circumstantial evidence is frequently viewed as a dirty word, I think. If you guys -- you know -- it's viewed as not being serious. But -- and I'm going to read it.

Crimes may be proven by circumstantial evidence. The State can rely on direct evidence, circumstantial evidence, or some combination of the two. The Judge is going to read that to you.

Circumstantial evidence is evidence. And it's not a lesser type of evidence. And why -- why is this case about circumstantial evidence? Why do we not have photos of J.M. licking the Defendant's penis? Why do we not have J.M. 's clothes covered in the Defendant's semen? We don't have that because of the grooming process. Because sexual assault cases, these type of cases, they do not happen out in broad daylight with witnesses. They happen in private homes. They happen between two people who have a power difference. And that's what happened here.

It happened when J.M. was alone with the offender. It happened in a private home. It happened after months of grooming. And that is why we must rely on

circumstantial evidence.

They talked about how there are two interviews, and how she didn't tell the interviewer everything in the first interviewer -- first interview. This is a nine-year-old girl who had held in all of this abuse for a year.

She, finally, found the courage to tell someone. Her mom told her to tell everything that had happened to her. Through the course -- in those tapes, she says, I'm trying to remember. I'm trying to remember. She's trying to remember. It's a lot to remember. And this is her chance.

The Defense Counsel told you that children have imaginations. They do. Children's imaginations do not let them perfectly describe the consistency of semen. He said that children want to please adults. Why would J.M. telling her mom, hey, your dad, a man who you just got back in touch with, sexually abused me? Why would that please her mom? We know there was no financial gain.

Defense Counsel talked to you a lot about the indictments in this case. I'm holding a copy of the indictments. You're going to get a copy of the indictments. The indictments are not evidence. But you will get a chance to look at them. But they are not evidence.

As Defense Counsel pointed out, there are two date ranges, it's the difference between the first house and second house. Then it alleges in both of these indictments the Defendant committed a sexual battery upon a minor who is less than 11 years of age.

And, obviously, everyone testified that J.M. was nine approximately when this occurred, eight or nine. And then the indictment goes on to say, to wit, fellatio. Fellatio, members of the jury, is oral contact between a victim and male genitalia. That's what fellatio is.

So it says, to wit, it gives an example. And she did talk, both on the stand and in her tape, about being forced to lick the Defendant's penis. But all the law requires is that she have committed a sexual battery. And the Court is going to read out the definition of sexual battery. But I'm going to read it to you as well --

MR. GROSE: Objection to the variance to the indictment.

THE COURT: Overruled, subject to your objection.

MS. JOSEPH: Thank you, Your Honor.

Sexual battery means sexual intercourse, cunnilingus, which is oral contact with a Defendant and female genitalia, fellatio, anal intercourse, or any intrusion however slight of any part of a person's body or any object into the genitalia or anal opening of a person's

body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes. The Defendant committed a sexual battery over -- he committed several sexual batteries over a year period on J.M.

This is where I finish talking to you and you get to go out and look at the evidence and consider it. I know that you will take that seriously. I just ask that you look at all of the evidence. And as the Judge said at the beginning of the trial, apply your common sense.

Thank you so much for taking this matter so seriously.

THE COURT: Thank you, ma'am.

We're going to take about a three-minute break. And the three-minute break is for Your Honor to use the restroom.

So take the jury out. And we'll be back in about three minutes.

(WHEREUPON, the jury was excused from open court at approximately 2:42 p.m.)

(WHEREUPON, a break was taken.)

(WHEREUPON, Court's Exhibit No. 10 was marked for identification and admitted into evidence.)

THE COURT: The jurors are using the restroom and they'll be back shortly. The exhibit -- not the exhibit,

the note where they selected the jury Foreman, I just had that marked as Court's Exhibit No. 10.

And I'm assuming that's without objection.

MS. JOSEPH: Without objection, Your Honor.

MR. GROSE: Correct.

THE COURT: Okay. Here you go.

MR. GROSE: Your Honor, they have given me copies of the proposed verdict forms. I have no objection to those.

THE COURT: All right.

MR. GROSE: I do have one question. When they put up their definition of reasonable doubt, it had jurors searching for the truth in it. I don't remember hearing that when you read yours out.

THE COURT: I didn't read that when I read it out. Was that in --

MS. JOSEPH: Yeah, Your Honor. I did my best to take down your version.

MR. GROSE: Okay. And I'm not criticizing her. I just wanted to make sure that it's not in what you're going to say because of the case law on that.

THE COURT: Yes.

MR. GROSE: So we're good.

THE COURT: All right.

MR. GROSE: I mean, I don't think either of us got it exactly like you're going to do it, you know, but we're

good.

THE COURT: And I think that language was in prior definitions. And then I think -- you know, there was some discussion about that. But in other words, it's not anything I'm going to say.

MR. GROSE: And I didn't think it was because I'm kind of tuned in to that one for some reason.

THE COURT: All right.

MS. JOSEPH: While we're on break, Mr. Grose, do you want to look at the evidence and make sure what's going back?

THE COURT: As to each verdict form, I'm going to read exactly what's on this verdict form.

MS. JOSEPH: Yes, Your Honor.

THE COURT: Anything before we bring the jury in?

(WHEREUPON, there was no response.)

THE COURT: Bring in the jury.

(WHEREUPON, the jury came into open court at approximately 2:59 p.m.)

CHARGE ON THE LAW

THE COURT: All right. Ladies and gentlemen of the jury, I know you've been here all week and you've listened to a lot of testimony. But what I'm getting ready to do right now is very, very critical. I need you to focus on everything and every word that comes out of my mouth. In

other words, I want you to listen to everything I'm getting ready to say. So, please, ma'am, and, please, sir, please, listen. And I'm going to try to speak loud enough so everyone can hear.

Ladies and gentlemen, you have heard all of the evidence that you're going to hear in this case. And you have heard the closing arguments. And, now, it is my duty to instruct you on the law that applies to the facts in this case.

It is your duty to determine the facts from the evidence that you've heard during this trial. As to those facts, you must apply the law as I give it to you. And you should not be concerned with what you think the law should be, but what the law is. And you should not be concerned with any undue sympathy, or biases, or prejudices, or personal likes or dislikes you may have.

And that means that you must decide this case solely on the evidence before you and according to the law. As you recall, you took an oath at the beginning of this trial to do exactly that.

Now, in following my instructions, you must follow all of them and not single out some of my instructions and ignore others. Because all of my instructions are equally important. And do not read into these instructions or anything that I may have said or done during this trial as

any indication to what I think the facts are or what your verdict should be.

Because, as I told you at the outset, under our Constitution and system of justice, you and you alone are the sole and exclusive judge of the facts of this case. You decide what the facts are by evaluating and weighing the evidence you've heard during the trial. There's no way for you to do that in a literal sense.

I'm, certainly, not going to give you a set of scales to go back and forth to conduct experiments. But what I'm talking about is weighing the evidence and evaluating it by using your good common sense, your sense of logic and reason, and your own life experiences. And you bring those things to bear on what you've heard during this trial.

I, also, told you at the beginning of the case that evidence consists of several things. The first is sworn testimony, and the second is exhibits. You judge the credibility of the evidence. And you, as jurors, would have to necessarily gauge the credibility or believability of the evidence presented. That's within your purview. And I'm not going to go back and forth over that with you, because I know you heard me the very first time I said that at the outset of this trial.

But I will tell you that you may, also, consider in

deciding credibility of the witnesses testimony in such a way that you believe everything that they say, or you would believe nothing a witness says. You may believe parts of a witnesses testimony, and disbelieve the other part of a witnesses testimony. You may believe one witness over several, or several over one. But I know that you will decide this matter of credibility using reason, and logic, and your good common sense and not do it in an arbitrary fashion.

Now, there are, also, two sources -- or two types of evidence, rather. And I'm talking about now is there's direct evidence and circumstantial evidence. Direct evidence is the testimony of someone who claims to have direct and actual knowledge of a fact, such as an eyewitness. Direct evidence is evidence that if it is believed immediately establishes a fact.

Circumstantial evidence. Circumstantial evidence is indirect evidence. Put another way, circumstantial evidence is proof of a chain of facts from which you could find that another fact exists, even though it has not been proven to you directly.

The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. You may consider both kinds. And there's not a greater degree of certainty required of one over the

other.

Now, ladies and gentlemen, there are certain things -- or certain witnesses who come in here who are qualified and described as experts. You saw that during the course of this trial. These are people who by reason of their training, education, and experience have achieved a specific expertise in their field. And they are, unlike other witnesses, entitled to give their opinions about things that they have observed.

However, expert witnesses share this with all other witnesses, and that is that you, the jury, are the sole judges of their credibility as well. You may accept their testimony, or you may reject their testimony, or give it whatever weight that you think their opinion or testimony deserves. You're not required to accept even the uncontradicted opinion of an expert.

Now, there are certain principles that apply in criminal cases. And I'm going to go over those again with you now. And I went over those -- some of those with you -- or those with you at the outset of the trial.

The first is the mere fact that Mr. Dent, the Defendant in this case, was indicted and charged doesn't constitute evidence of any kind. The fact that a person has been indicted doesn't even create a suspicion of guilt.

I explained to you that these indictments are simply the manner -- or formal manner in which a case begins. In other words, that's how cases begin. And they, certainly, do not constitute evidence against the Defendant.

Mr. Dent, in these four indictments, has pled not guilty. And that puts the burden of proof solely and squarely upon the shoulders of the State. And he can only be convicted if all 12 of you agree that the State has proven each and every element of the charges against Mr. Dent beyond a reasonable doubt.

You're, also, required to weigh each of these charges separately and consider the evidence as to each one separately. There are four indictments, four charges, four evaluations by you of each one to determine -- and that has to be done to determine whether or not the State has met its burden of proof as to each element of the offense.

Mr. Dent is presumed innocent. And that presumption of innocence is not some legal technicality. It is a fundamental right that all of you -- every person enjoys in this country. And it can only be removed if the State convinces you with proof beyond a reasonable doubt as to every element of the crime.

Now, what is reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a

reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

The law does not require proof that overcomes every possible doubt. There are few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think that there is a real possibility that the Defendant is not guilty, you should give the benefit of the doubt and find him not guilty.

So if based upon -- on your view of the evidence you are firmly convinced, then you -- that the Defendant is guilty of the crime, then you must find him guilty. On the other hand, if you think he is not guilty, as I said earlier, you must give him the benefit of the doubt.

Now, in order to establish criminal liability, the State must prove criminal intent. And criminal intent is a matter that must be determined by you from the facts. And there is no way to prove criminal intent to a mathematical certainty.

So the law says that criminal intent may be inferred from circumstances. It is not necessary to establish intent by direct evidence. Intent my be established by circumstantial evidence taking into account the circumstances that are at issue.

Criminal intent is a mental state of conscious wrongdoing. It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed.

The testimony of children. During this trial, you have heard the testimony from a child. Where a witness is a child, you must determine, as with any other witness, whether the testimony is believable. In deciding believability, you may consider not only matters that I have already discussed with you, but you may, also, consider the age of the child, the child's ability to observe and remember the facts, and the child's ability to understand and answer questions.

Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth.

In addition, young children may be influenced by the way the questions are asked. It is up to you to decide whether the child understood the questions asked.

Now, the offense that we're, first, going to discuss is criminal sexual conduct with a minor first degree. Mr. Dent is charged in two indictments. Both indictments charge him with criminal sexual conduct in the first degree, count one and count two.

In order to convict the Defendant of this offense, the State must prove several things beyond a reasonable doubt. First, the State must prove that the Defendant engaged in a sexual battery with the victim. Sexual battery is -- is defined as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genitalia or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnosis -- diagnostic purposes.

The State must next prove beyond a reasonable doubt that the victim in the case was less than 11 years old at the time of the alleged sexual battery. Consent, willingness, indifference, or ignorance on the part of the minor, if any, as to what was taking place does not in any way affect the charge of criminal sexual conduct with a

minor. The specific date and time of the alleged offense is not an element that the State is obligated to prove.

The next charge against this Defendant is the dissemination of obscene material to a minor prohibited by Section 16-15-305 of our South Carolina Code of Laws, which makes it unlawful for an individual 18 years of age or older to knowingly disseminate to a minor 12 years of age or younger material which he or she knows or reasonably should know to be obscene.

Now, ladies and gentlemen of the jury, in order to convict this Defendant of this offense, the State must prove beyond a reasonable doubt that the Defendant knowingly disseminated, which is defined as published, exhibited, or otherwise made available to a minor under the age of 12 anything obscene.

Knowledge of the conduct of the content of the material or performance, or failing under reasonable opportunity to exercise reasonable expectation that would have shown the content of the material or performance. Material is considered obscene if, to the average person, applying the contemporary community standards, the material shows or describes sexual conduct in a patently offensive way that the average -- that the average person applying contemporary community standards relating to the showing or description of sexual conduct would find the

material taken as a whole to the purpose -- to the pure interest in sex -- to a whole appeals to be purely interest in sex. I'm sorry.

To a reasonable person, the material taken as a whole lacks serious literacy, artistic, political, or scientific value. And the material is used -- or is used as not otherwise protected -- that the material used is not otherwise protected or privileged under the Constitution of the United States.

Now, many of the terms I've just used in describing obscene material have special definitions for purposes of these offenses. Sexual conduct means vaginal, anal, or oral intercourse, actual or simulated, normal or perverted between human beings, animals, or a combination of an act that depicts actual or simulated touching, caressing, or fondling of or other similar physical contact with the covered or exposed genitalia, pubic, or anal regions, or female breast, nipple, whether alone or between humans, animals, or a human and an animal at the same time, or opposite sex in an act of actual sexual stimulation or gratification.

Patently offensive means, obviously and clearly, disagreeable, objectionable, repugnant, displeasing distasteful or obnoxious to contemporary standards of decency and propriety within the community. Nudity in and

of itself is not obscene. Materials showing or depicting nude men or women may be provocative without being obscene. And, also, the candid display of male or female genitals is not in and of itself obscene.

In other words, sex and obscenity are not synonymous. They're not the same thing. The contemporary standards means the current modern standards within this community.

In deciding whether materials in this case are obscene, you're not to base your decision on your own personal tastes or personal standards. Instead, you must decide whether an ordinary adult in this country would -- in the county would find the materials to be obscene as I have defined the terms to you. The materials must be judged as a whole in their entire context.

Now, those are the principles and law applied to the offenses upon which this Defendant is charged. There's two counts of each one of those areas that I just outlined.

The verdict form is pretty straightforward. Now -- and I'll talk about that in just a minute.

Now, ladies and gentlemen of the jury, you were chosen prior in this case to be unbiased partisans. And you are the judges of the facts. You were chosen to be a juror in this case because both sides in this case, the State as well as Defense, believed that all 12 of you

could be fair and impartial, and you could decide this case without any kind of bias, or prejudice, or preconceived ideas.

So you are the judges. You're the judges of the facts. And your sole interest is to determine what the facts are, take the law as I just gave it to you, and apply it to those facts using your life experiences, your common sense, and your sense of logic and reason. Once you do that, you'll be able to reach a verdict in this case.

Now, each of you has a vote in this case. And your vote is exactly that, it's your vote and no one else's. Don't be afraid to change your mind if you are of different minds and the discussion that you have -- the discussion that you have persuades you that you should change your mind. But don't change your mind simply to get the case over with or to reach a unanimous verdict. Because, obviously, the case is important to both sides, both important to the Prosecution, both important to the Defense.

The record in this case is now closed. There's not going to be any more witnesses. There will be no more evidence presented. There will be no more testimony.

So if something was referred to during the trial that you want to have, but you don't have back there in the

jury room as an exhibit, I can't get it for you. So keep that in mind.

Don't start talking about this case until I have instructed the bailiff to deliver to you the verdict form and the exhibits.

Now, you have already selected a Foreperson. I'm going to now go over with you the possible verdicts in each one of the offenses charged.

In the State of South Carolina v. Charles Dent, indictment 2014-GS-07-01673, in which Mr. Dent is charged with criminal sexual conduct with a minor first degree, count one -- as to count one -- as to indictment 2014-GS-07-01673, the charge of criminal sexual conduct with a minor first degree, we, the jury, unanimously find the Defendant, Charles Dent -- and pay no particular attention as to the order that I'm listing it. I have to list it in some order. We find Charles Dent not guilty or guilty.

Once you make a decision in that regard, Madam Foreperson, sign your name and date it.

As to count two, the State of South Carolina v. Charles Dent, charged with criminal sexual conduct with a minor first degree, we, the jury, unanimously find the Defendant, Charles Dent -- and here again, I reiterate, pay no attention to the order in which this is listed, I

had to list it in some order -- not guilty or guilty.

And once you reach a decision on this particular count two, then, Madam Foreperson, you would sign it and date it. Once you, the jury, all 12 of you reach a decision on it, then you would sign and date it.

On the other two indictments, count three, the State of South Carolina v. Charles Dent, as to indictment 2014-GS-07-01672, on the charge of disseminating obscene material to a person 12 years old or younger, we, the jury, unanimously find the Defendant, Charles Dent -- and here again, pay no attention to the order in which this is listed, I had to list them in some order -- not guilty or guilty.

Once you reach a verdict, then Madam -- the Foreperson of the jury signs it and dates it.

On count four, indictment 2014-GS-07-01671, it states as follows, as to indictment 2014-GS-07-01671, on the charge of disseminating obscene material to a person 12 years or younger, we, the jury, unanimously find the Defendant, Charles Dent -- and here again, as to this particular -- this fourth indictment, pay no attention to the order in which this is listed, I had to list it in some order -- guilty or not -- not guilty or guilty.

And once you reach your verdict, the Foreperson of the jury would sign it and date it. And this will be

given back to the Court.

Now, I am going to -- I have some legal matters to take up with both sides. So I am going to ask that you go back to your jury room. And, please, ma'am, and, please, sir, do not begin deliberating until the verdict forms have been brought to you by the bailiff, along with all the exhibits. There's to be no discussion at all about this case until you receive that.

Everybody is clear on that?

(WHEREUPON, all of the jurors indicated in the affirmative.)

(WHEREUPON, the jury was excused from open court at approximately 3:24 p.m.)

THE COURT: Any exceptions to the charge by the State?

MS. JOSEPH: None, Your Honor.

THE COURT: Any exceptions to the charge by the Defendant?

MR. GROSE: Three. First, out of an abundance of caution, I think I need to renew my objection to the manner in which the Court charged sexual battery. We asked it be limited to fellatio. And, of course, you gave them the other options. And that's the same arguments we made before.

When Your Honor was charging 16-15-305, I know you

talked about the term knowingly. But I don't recall if you read the definition of that.

THE COURT: Of what? The definition of what?

MR. GROSE: The term knowingly, which is in 16-15-305(c)(5).

And, finally, with regard to circumstantial evidence, I think that that was a variance from the Logan case and didn't include all the language about to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the Defendant's behavior as suspicious, then the proof has failed. That may not be the only variance, but that's one that jumped to mind. And that's Defendant's request to charge number two.

And that's my objections.

MS. JOSEPH: I didn't note those, Your Honor. I don't know which circumstantial evidence you were reading, if you were, in fact, reading the one Defense provided, but it seems to include everything pertinent. If he wants you to read the definition of knowingly, we have no objection to that.

THE COURT: What definition do you have of knowingly that you want me to read?

MR. GROSE: I have 16-15-305(c)(5). Knowingly means --

THE COURT: 16-15-305?

MR. GROSE: Yeah. It means having general knowledge of the content of the subject material, or performance, or failing after reasonable opportunity to exercise reasonable inspection, which would have disclosed the character and material of the performance. And that's straight out of the code.

THE COURT: I'm satisfied that the charge on circumstantial evidence was satisfied. So I'm probably not going to do that.

But I will give a definition of knowingly. And I'm assuming that's for purposes of the indictments on dissemination?

MR. GROSE: Yes, sir. Just because that's a part of that code section.

THE COURT: And I'll bring them back.

And I think the State has no opposition to that?

MS. JOSEPH: No objection at all, Your Honor.

Thank you.

THE COURT: As soon as I get that in front of me.

MR. GROSE: I believe you need to hire him as your permanent clerk. He's done a good job this week.

THE COURT: He's done an excellent job.

MR. GROSE: And we've only seen part of it. I'm sure he has done many more things.

(Pause.)

THE BAILIFF: Are you ready, Your Honor?

THE COURT: Yes.

(WHEREUPON, the jury came into open court at approximately 3:30 p.m.)

FURTHER CHARGE ON THE LAW

THE COURT: All right. Ladies and gentlemen of the jury, in the charge that I gave you just a minute ago as to the offenses count three and four, this Defendant is charged with disseminating obscene material to a person 12 years of age or younger. And I'm going to read the language in the indictment. And I'm going to tell you what I'm getting ready to do.

In the indictment, it says that in Beaufort County, South Carolina, on or about April of 2013 through April of 2014, the Defendant, Charles Dent, did, while 18 years of age or older at the time of the offense, knowingly disseminate to a minor 12 years of age or younger at the time of the offense material he knew or reasonably should have known to be obscene within the meaning of Code Section 16-15-305.

I need to give you a definition of what the word knowingly means. And knowingly means -- in that code

section, it is defined as knowingly means having general knowledge of the content of the subject material or performance, or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of the material or performance.

And I'll read it again. Knowingly means having general knowledge of the content of the subject material or performance, or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of the material or performance.

So I needed to define -- and that word is, obviously, used in the -- in this count three and four. So I just wanted you to know that. And that's -- I think that's it.

So until you get further instructions from me and receive the verdict forms and the exhibits, please, do not begin to deliberate. I need to discuss something else with the lawyers.

(WHEREUPON, the jury was excused from open court at approximately 3:32 p.m.)

THE COURT: And, Counsel, let the record reflect that, obviously, you made -- Mr. Grose, you made a statement regarding the Court's charge regarding circumstantial evidence. And I found that the charge that I did give to the jury was satisfactory. So I did not charge what you asked, but, certainly, I note your

exception for the record.

MR. GROSE: And my ongoing exception to the sexual battery.

THE COURT: To the sexual battery.

As it relates to the request to define to the jury the word "knowingly," are there any questions or exceptions to that?

MS. JOSEPH: No exceptions or objections, Your Honor.

MR. GROSE: No, sir.

THE COURT: All right. Anything else before we send the verdict forms and exhibits back?

And I think everybody has had an opportunity to go through the exhibits and make sure they're all in. And the indictments go back. I think everybody is in agreement that the indictments go back.

MR. GROSE: Yes, sir.

THE COURT: All right.

MR. GROSE: And you're correct. We've already reviewed the evidence and I think that's ready to go.

MS. JOSEPH: And she has the indictments.

THE BAILIFF: Everybody is satisfied this is everything?

MS. JOSEPH: Yes, sir.

MR. GROSE: Yes, sir.

MS. JOSEPH: Thanks, Your Honor.

And, Your Honor, are you ready for pleas?

THE BAILIFF: Judge, are you ready for your alternates? We usually just bring them in.

THE COURT: Yes.

(WHEREUPON, Juror #153, Keri Haars-Sherry, and Juror #140, Douglas Gilman, entered the courtroom.)

THE COURT: All right. Juror #40.

JUROR #140, DOUGLAS GILMAN: #140.

THE COURT: And you're Juror --

JUROR #153, KERI HAARS-SHERRY: #153.

THE COURT: We thank you for your service. We're going to excuse you. You're free to do whatever you want to do. You can stay here, or go home, or do whatever. We appreciate your service and appreciate you staying here these last four days.

JUROR #153, KERI HAARS-SHERRY: Thank you.

JUROR #140, DOUGLAS GILMAN: Thank you.

(WHEREUPON, Juror #153, Keri Haars-Sherry, and Juror #140, Douglas Gilman, exited the courtroom.)

THE COURT: Okay. Anything else?

MR. GROSE: No, sir.

(WHEREUPON, the proceedings were recessed at approximately 3:37 p.m.)

QUESTIONS FROM THE JURY

THE COURT: We have questions. Here are the

questions.

Do y'all want to come up here and read them with me at a sidebar?

MS. JOSEPH: Sure.

(WHEREUPON, a bench conference was held.)

THE COURT: State's Exhibit Nos. 1, 3, 4, 6, 11, 13, and 15. That's what's written on here. What device or camera did the photos come from? Who was it? Whose was it? I'm assuming that's what they meant. Who discovered them, the police-mom?

MS. JOSEPH: Maybe if you just tell them their recollection, I assume, to rely on --

MR. GROSE: Are we on the record?

MS. JOSEPH: We are on the record.

THE COURT REPORTER: I can't hear --

THE COURT: You got the question I just read, though; right?

THE COURT REPORTER: Yes, sir.

You say maybe if --

MS. JOSEPH: I said maybe they should just be told to rely on their recollection. And then the Judge was starting to answer me.

THE COURT: I was just going to say that they need to rely on their recollection and the testimony.

MS. JOSEPH: Yes, Your Honor. That's sounds

appropriate.

MR. GROSE: I would add that all the testimony is in, like you told them.

And I would, also, note on the record that I believe this note establishes prejudice for our objections to those photographs coming into evidence.

THE COURT: Do you want me to write all that?

MR. GROSE: Well, actually, I would like you -- no. I'm just putting on the record that I think this question indicates prejudice to the admission of those exhibits.

THE COURT: Let me ask you. As opposed to me bringing them out, are both sides okay with me writing on here that all of the relevant evidence and testimony is in? That's all I was going to put --

MR. GROSE: That's perfect.

MS. JOSEPH: Well, can you write you must rely on your --

THE COURT: You tell me what you want.

MS. JOSEPH: All of the relevant evidence is in, period. You must rely on your own recollections.

MR. GROSE: I don't think the second part is necessary, but I don't object to it.

MS. JOSEPH: Of the testimony received.

THE COURT: Okay. I'm just going to put, all of the relevant evidence is in. Rely on the testimony presented.

MS. JOSEPH: Okay.

MR. GROSE: That's perfect.

MS. JOSEPH: Thank you, Your Honor.

(WHEREUPON, Court's Exhibit No. 11 was marked for identification and admitted into evidence.)

(WHEREUPON, the proceedings were recessed at approximately 3:52 p.m.)

(WHEREUPON, Court's Exhibit No. 12 was marked for identification and admitted into evidence.)

THE COURT: We have a note from the jury. I can tell you what the question is. They need a reprint of the verdict form on two. But I told them to write it out on a piece of paper so we could make it an exhibit.

MS. JOSEPH: Yes, Your Honor.

THE COURT: Y'all take a look at it.

MS. JOSEPH: Yeah. That looks great. Who wrote that has great handwriting.

THE COURT: Take a look at that.

MS. JOSEPH: That looks perfect.

MR. GROSE: Oh, is this the one you reprinted?

THE COURT: Is it okay just sending that one back?

MR. GROSE: Yes, sir.

(WHEREUPON, the proceedings were recessed at approximately 6:23 p.m.)

THE COURT: We have a verdict.

Bring the jury in.

(Pause.)

THE BAILIFF: Are you ready, Your Honor?

THE COURT: Yes, sir.

(WHEREUPON, the jury came into open court at approximately 6:43 p.m.)

THE COURT: Madam Forelady, has the jury reached a verdict?

JUROR #309, JULIE RICHARDSON: Yes, sir.

THE COURT: Mr. Bailiff, hand the verdict forms to the Clerk.

THE CLERK: Thank you.

THE COURT: Madam Clerk, please, publish the verdicts.

VERDICT

THE CLERK: The State of South Carolina v. Charles Dent, indictment #2014-GS-07-01673, we, the jury, find the Defendant guilty.

As to indictment #2014-GS-07-01674, the charge of criminal sexual conduct with a minor first degree, we, the jury, unanimously find the Defendant, Charles Dent, not guilty.

In count three, as to indictment #2014-GS-07-01672, the charge of disseminating obscene material to a person 12 years old or younger, we, the jury, unanimously find

the Defendant, Charles Dent, guilty.

In count four, as to indictment #2014-GS-07-01671, the charge of disseminating obscene material to a person 12 years old or younger, we, the jury, unanimously find the Defendant, Charles Dent, guilty.

THE COURT: All right.

MR. GROSE: I request the jury be polled, Your Honor.

THE COURT: All right. Poll the jury, Madam Clerk.

THE CLERK: Would you like me to use names or numbers?

THE COURT: Numbers.

THE CLERK: Juror #232, is this your verdict?

JUROR #232, MELANIE MARTIN: Yes, it is.

THE CLERK: Is it still your verdict?

JUROR #232, MELANIE MARTIN: Yes, it is.

THE CLERK: Juror #256, is this your verdict?

JUROR #256, ALEXES MITCHELL: Yes, it is.

THE COURT: Is it still your verdict?

JUROR #256, ALEXES MITCHELL: Yes, it is.

THE CLERK: Juror #383, is this your verdict?

JUROR #383, RICHARD WELKER: Yes, it is.

THE CLERK: Is it still your verdict?

JUROR #383, RICHARD WELKER: Yes, it is.

THE CLERK: Juror #279, is this your verdict?

JUROR #279, EDDIE PEARCE: Yes, it is.

THE CLERK: Is it still your verdict?
JUROR #279, EDDIE PEARCE: Yes, it is.
THE CLERK: Juror #172, is this your verdict?
JUROR #172, TAKAYLA HOLMES: Yes, it is.
THE CLERK: Is it still your verdict?
JUROR #172, TAKAYLA HOLMES: Yes.
THE CLERK: Juror #309, is this your verdict?
JUROR #309, JULIE RICHARDSON: Yes, it is.
THE CLERK: Is it still your verdict?
JUROR #309, JULIE RICHARDSON: Yes, it is.
THE CLERK: Juror #268, is this your verdict?
JUROR #268, PAULA NOVAK: Yes, it is.
THE CLERK: Is it still your verdict?
JUROR #268, PAULA NOVAK: Yes.
THE CLERK: Juror #311, is this your verdict?
JUROR #311, SINDODA ROBINSON: Yes, it is.
THE CLERK: Is it still your verdict?
JUROR #311, SINDODA ROBINSON: Yes, it is.
THE CLERK: Juror #278, is this your verdict?
JUROR #278, CHRISTOPHER PATRILLA: Yes.
THE CLERK: Is it still your verdict?
JUROR #278, CHRISTOPHER PATRILLA: Yes.
THE CLERK: Juror #334, is this your verdict?
JUROR #334, PETER SINGLETON: Yes, it is.
THE CLERK: Is it still your verdict?

JUROR #334, PETER SINGLETON: Yes, it is.

THE CLERK: Juror #266, is this your verdict?

JUROR #266, LEONARD NEWTON: Yes.

THE CLERK: Is it still your verdict?

JUROR #266, LEONARD NEWTON: Yes.

THE COURT: All right. Thank you, ma'am.

All right. Ladies and gentlemen of the jury, your services here this week has ended. I appreciate -- everyone here appreciates your service. We appreciate the time you've spent. And at this time, I'm going to excuse you.

And thank you so much for being attentive all week long. I know it's been a long week. It's been a difficult time. But I, certainly, want to thank you on behalf of the State of South Carolina and, certainly, on behalf of the parties involved in this matter.

So you're excused -- hold on.

THE CLERK: I'm sorry.

THE COURT: Hold on a second. Have a seat.

Any questions of the jury by anyone?

MS. JOSEPH: No questions from the State.

MR. GROSE: Nothing additional.

THE COURT: All right. Thank you, ma'am. Thank you all.

I appreciate it.

(WHEREUPON, the jury was excused from open court at approximately 6:47 p.m.)

MS. JOSEPH: Your Honor, we just need a few moments to prepare the sentencing sheets.

And I believe the victim's mother, at least, would like to be heard.

THE COURT: All right. Any motions, Ms. Joseph?

MS. JOSEPH: I apologize.

THE COURT: Any motions?

MS. JOSEPH: No motions from the State.

MR. GROSE: I want to take the 10 days as provided by the rule, Your Honor.

THE COURT: All right.

(Pause.)

THE COURT: Juror #332 indicated that he was not polled. So I'm bringing that juror back in for that sole purpose.

Did you -- that's what he says.

THE CLERK: Okay. I'm sorry, Your Honor. I don't recall. I thought that I did call #332, but I may not have.

THE COURT: All right. So is it okay? I'm going to bring that juror in just for that limited purpose.

MS. JOSEPH: Yes. No objection, Your Honor. That's okay.

(WHEREUPON, Juror #332, Robert Simonsen, entered the courtroom.)

THE COURT: Juror #332, yes, sir. You indicated you had not been polled?

JUROR #332, ROBERT SIMONSEN: That is correct.

THE COURT: All right. Madam Clerk.

THE CLERK: Is this your verdict?

JUROR #332, ROBERT SIMONSEN: It is.

THE CLERK: Is this still your verdict?

JUROR #332, ROBERT SIMONSEN: Yes, ma'am, it is.

THE CLERK: Thank you.

THE COURT: Thank you, sir.

(WHEREUPON, Juror #332, Robert Simonsen, exited the courtroom.)

MS. JOSEPH: Your Honor, I'm handing you up the verdict forms and the sentencing sheets.

And, Your Honor, the State would like a chance to be heard whenever Your Honor is ready.

THE COURT: All right. Is the State ready to proceed?

MS. JOSEPH: Yes, Your Honor.

THE COURT: Is the Defense ready to proceed?

MR. GROSE: Yes, Your Honor.

THE COURT: Yes, ma'am.

MS. JOSEPH: I'm going to be very brief. I know

we've been here for a very long time. And the victim's mother, Lori Mayo, would like to be heard.

The State in this case is asking for life. And let me tell you why. The State demonstrated at trial that this was careful grooming done over a period of over a year.

In addition, something that was mentioned at trial, but something I was careful to stay away from because the Defendant was not charged with incent, is this was his granddaughter. That's a special relationship that was violated as part of this heinous crime.

And then, finally, this is evidence that could not come in at trial, but Your Honor heard about the evidence extensively in pre-trial motions. Large amounts of child pornography were found on the Defendant's computer as part of the investigation in this case. Taking all that evidence into consideration, Your Honor, we think that this man deserves life in prison.

And now -- Your Honor, if now is the appropriate time, we would like the victim's mother to be heard.

THE COURT: Yes, ma'am.

MS. LORI MAYO: This has not been easy in any way for me or my daughter. Since the day that she told me, I have not been able to talk to her about it, just to make sure that there was no indication that she was coached in any

way.

For four years now, my daughter has not been able to heal from this, and neither have I. We have watched over our shoulder every single day. I keep moving from place to place because I'm afraid who's going to come after us.

I knew as soon as I called the police that he would never come near my daughter again. We had the option many times to back out and to not put her through this this week. My daughter and I both know that we are doing this to make sure it doesn't happen to anyone else.

I don't have a recommendation. I feel like you guys know what you're doing. And that's all.

MS. JOSEPH: And that's it from the State, Your Honor.

THE COURT: Mr. Grose.

MR. GROSE: Your Honor, you've already heard a little bit about Mr. Dent. They've not provided you with any criminal history because, essentially, he doesn't have any. He only has, as I understand it, a simple possession of marijuana conviction from his late teens before he went into the military.

You know, obviously, he has a supportive family and a support structure that have been here throughout this week, you know. I think from what I've been able to learn, he had, you know, a distinguished career when he

was in the Navy. And we'd ask that you take all of that into account.

There is a -- a minimum sentence that you have to impose, which is, essentially, going to be a life sentence for him. We would ask that you impose the minimum sentence on the criminal sexual conduct and run any of the other sentences concurrent.

He's, also, been on a GPS home detention since he was arrested in Alabama. And under the statute, he can be given credit for the entire time since the date of his arrest through today. So we'd ask that you do that as well, Your Honor.

THE COURT: What's the State's position regarding the --

MS. JOSEPH: Your Honor, that is in the Court's discretion. We'd, obviously, ask that that not be -- not take into effect. This case, frankly, took far too long to come to court. The State's aware of that.

Your Honor, yes, he has no criminal history. But you should consider that he has a pending child porn case in Alabama. We ask that he not be given credit for that time.

And, again, we are asking for life because this is -- this was a violation of his relationship with a blood relative. This is a violation of a little girl. This was

careful grooming. And, ultimately, he had child pornography on his computer. And he was taking sexual in nature photos of his granddaughter.

For those reasons, Your Honor, we think the minimum is just not enough in this case.

THE COURT: Anything else?

MR. GROSE: No, sir.

THE COURT: All right. Mr. Dent, anything you would like to say?

DEFENDANT DENT: I have nothing to say.

SENTENCING

THE COURT: The State of South Carolina v. Charles Dent, indictment number 2014-GS-07-01673, charging the Defendant with criminal sexual conduct in the first degree the victim under 11, the sentence of the Court is that you, Charles Dent, be sentenced to the South Carolina Department of Corrections for a period of 30 years.

On indictment 2014-GS-07-01672, State of South Carolina v. Charles Dent, charging Charles Dent with disseminating obscene materials to a person 12 years old or younger, the sentence of the Court is you, Charles Dent, be sentenced to the South Carolina Department of Corrections for a period of 15 years. That sentence is to run concurrent.

On indictment 2014-GS-07-01671, the State of South

Carolina v. Charles Dent, charging Charles Dent with disseminating obscene material to a person 12 years old or younger, the sentence of the Court is that you, Charles Dent, be sentenced to the South Carolina Department of Corrections for a period of 15 years. That sentence is, also, to run concurrent.

Good luck to you, sir.

MR. GROSE: And did you make a decision on the house arrest?

THE COURT: I will not do that.

MS. JOSEPH: Thank you, Your Honor.

THE COURT: All right. Thank you.

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

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Beaufort County, South Carolina, on the 21st, 22nd, 23rd, and 24th days of May, 2018.

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

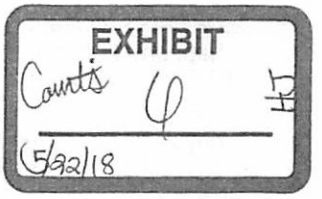
November 20, 2018

_____

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

Subject: State v. Dent
Date: Thursday, April 5, 2018 at 1:06:02 PM Eastern Daylight Time
From: Alex Joseph
To: Rebekah Luttrell, April Winston, Charles Grose



Good afternoon:

Here are the notes from Rebekah's (cc-ed here) and April's meeting with John Camello (this was who Victim first disclosed to):

He said he grew up in Beaufort and graduated from Beaufort HS. After graduation he was a volunteer firefighter and also did some work with PD. In the late 90's he moved back to Florida (where he was born) to be close to family. He lived in south Florida where he met/married his wife. From 2002-2012 he worked as a college administrator at a few different colleges in South Florida. He also was a private investigator for 10 years in Florida working with a couple different agencies - mostly worked on child runaway cases, child abuse/molestation cases, and child drug cases. In 2009 his wife and step daughter moved to LA and the two lived separate for three years until divorce in 2012. Camello suffered from severe depression after the divorce and attempted suicide. Started counseling and during these sessions disclosed for the first time that he was sexually abused by a male family friend when he was 12 years old for approx a year.
Camello moved back to Beaufort in 2013. First job back was a pool security guard with the apartment complex where Lori and victim lived. He met them at the pool and would talk with Lori. He said Lori was very outgoing, and the kids were both well-behaved, sociable and outgoing. Eventually he and Lori started dating. He would occasionally go to the house for dinner and to hang out. He always hung out with the kids in the living room. The D picked the family up from the pool twice and Camello briefly met him. He seemed like a normal grandpa, but they never had a lengthy conversation. Lori told Camello the D was helping pay bills, would visit occasionally and was retired navy and lived out of state.
A month or two into dating Lori, Camello started noticing signs from J.M. that raised red flags. He said she was affectionate towards him, liked to be touching people and tried kissing Camello on the cheek. She would try to sit in his lap often, which made him uncomfortable. Also she would dance and "shake her booty" or "twerk" in front of him, which he found odd for her age. Both the victim and Adam would call Camello dad, and Lori told the kids that Camello "could be there new dad." When out in public, victim would introduce Camello as "my new dad." This also made Camello uncomfortable and he found it a little odd.
After he started dating Lori, he learned that she used to be a stripper in Florida and she smoked marijuana. He decided this was not a relationship he wanted to continue. He eventually moved into the house, but he said it was purely as a renter, and he told Lori he was moving in to help her pay bills and rent a room from her. He can't remember if J.M. disclosed before or after he moved into the house.
J.M. Disclosure: He can't remember specific details, but does remember they were sitting in the living room, possibly on the couch. Said Adam was in the room, because he was never alone with the kids, he was always with both of them and/or Lori was with him when he was with the kids. He doesn't remember if J.M. just told him or if he asked her questions, but J.M. disclosed that her grandfather had touched her and it made her uncomfortable. She told him her grandfather had kissed her on the mouth. After she disclosed J.M. became very upset and emotional. He said J.M. was very clear, no confusion when she disclosed. She seemed like she'd been wanting someone to ask and wanting to tell someone. Camello immediately told Lori and suggested she report to law enforcement. He said Lori called police that same night. He was working two jobs at the time, Lowes at night. He said he went to bed after the disclosure to get some sleep before his night shift and Lori woke him up because police were at the house to take a report. He told her to just talk to them and tell them everything she knew. He did not give a statement until later. Levan came to the house and took two different statements from him about each disclosure. {Prior to getting a statement, Levan read Camello his rights and Camello signed a waiver.
Second disclosure: He doesn't remember exactly how long after the first disclosure. He said after the first disclosure J.M. attempted to put her mouth new Camello's groin area over his clothes a couple times, and this raised more red flags that more happened than what she originally disclosed. He said he asked her if anything else happened, and that's when she wrote the note that D "made her lick it." He said J.M. face was "full of fear" when she disclosed the second time and she again became very emotional. After the second disclosure Camello decided to remove himself from the situation, and told Lori in front of Levan that he could not be alone with the kids anymore. Camello said he asked Adam if D ever made him uncomfortable and Adam said no. He said Adam never disclosed anything about D. Said Lori disclosed abuse by D when she was younger well-after J.M. disclosures.
Shortly after the second disclosure, Camello moved out and back into the Suburban. Lori had trouble paying bills after Camello moved out and he was able to help her with a room at the Suburban while she got back on her feet.

He found out they were moving the day before they left. He didn't know where they were going and hadn't kept in touch after they moved.
Neighbor Incident: He did remember there was a neighbor who came by asking to play with J.M. He said this happened after both disclosures, and he was already living at the house. He said the neighbor was much older than J.M. maybe late teens/early 20s. He thinks he was mentally handicapped. He told the guy to leave because he was too old to be playing with J.M. . Another day the guy came back and was sitting in the backyard. Camello physically removed him from the backyard and had a talk with the guy's mom. They also filed a police report. He asked J.M. about the guy, and she was adamant nothing happened.

Thanks,

Alex
Assistant Solicitor
Fourteenth Circuit Solicitor's Office
P.O. Box 1880
Bluffton, SC 29910
o: (843) 405-9247
f: (843) 705-7479

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State,..... Respondent,

v.

Charles Dent, ... Appellant.

Rule 210, SCRCP Certification

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By _____

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Charles Dent

October 29, 2019
Greenwood, South Carolina

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FINAL BREIF OF APPELLANT

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Charles Dent

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Question XI

Should this Court grant Charles Dent a new trial based on the cumulative error doctrine?

STATEMENT OF THE CASE

On July 15, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging Charles Dent with two counts of third-degree criminal sexual conduct with a minor and two counts of disseminating obscene material to a minor twelve years of age or younger involving his granddaughter J.M. R. 17-18.

On July 30, 2014, the Beaufort County Sheriff's Office obtained arrest warrants charging Mr. Dent with two counts of first-degree criminal sexual conduct with a minor involving his granddaughter J.M. R. 19-20.

On August 22, 2014, the Calhoun County Alabama Sheriff's Office served a fugitive from justice arrest warrant on Mr. Dent at his home in Rabittown, Alabama. At

the same time, law enforcement executed a search warrant and seized electronic devices and electronic storage devices.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01674 alleging Mr. Dent committed first-degree criminal sexual conduct with a minor, "between April 2013 and August 2013," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 33-34.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01673 alleging Mr. Dent committed first-degree criminal sexual conduct with a minor, "between August 2013 and April 2014," alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 31-32.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01671 charging Mr. Dent with disseminating obscene material to a minor twelve years or younger, "between the dates of April and April 2013," by showing J.M. "multiple nude and obscene photographs of his own genitalia via a laptop computer and electronic tablet." R. 25-26. On March 15, 2018, the Beaufort County Grand Jury amended this indictment to allege, between "April of 2013 through April of 2014," Mr. Dent showed J.M. "multiple photographs of his own genitalia on a digital camera." R. 23-24.

On October 30, 2014, the Beaufort County Grand Jury returned true bill indictment number 2014-GS-07-01672 charging Mr. Dent with disseminating obscene material to a minor twelve years or younger, "between the dates of August 2013 and April 2014," by showing J.M. "multiple nude and obscene photographs of his own genitalia via a laptop computer and electronic tablet." R. 29-30. On March 15, 2018, the

Beaufort County Grand Jury amended this indictment to allege, "between April of 2013 and April of 2014," Mr. Dent showed J.M. "pornography." R. 27-28.

From May 21-24, 2018, the State tried Mr. Dent before the Honorable Alex Kinlaw, Jr. and a jury. Alexandra M. Joseph and S. Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office represented the State. E. Charles Grose, Jr. represented Mr. Dent. The jurors found Mr. Dent not guilty of first-degree criminal sexual conduct with a minor "between the dated of April 2013 and August 2013" (Indictment No. 2024-GS-07-01674). R. 12. The jurors found Mr. Dent guilty of first-degree criminal sexual conduct with a minor "between the dates of August 2013 and April 2014" (Indictment No. 2014-GS-07-01673) and both counts of disseminating obscene material to a minor twelve years or younger. R. 9-11. Judge Kinlaw sentenced Mr. Dent to concurrent terms of imprisonment of thirty years for first-degree criminal sexual conduct with a minor and fifteen years for each count of disseminating obscene material to a minor twelve years or younger. R. 13-15.

On June 1, 2018, Mr. Dent moved for a new trial. R. 73-79. On June 4, 2018, the State responded. R. 82-86. By written order dated June 17, 2018, filed on June 22, 2018, Judge Kinlaw denied the motion for a new trial. R. 16. This appeal follows.

STATEMENT OF FACTS

A. Motions hearing and status conference on February 28, 2018.

On February 28, 2018, the Honorable Carmen Mullen convened a hearing on Mr. Dent's written motion to compel disclosure of records of the children's advocacy center, pursuant to *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713, 726 (2017), because J.M.'s "state of mind" might be an issue at trial. R. 35-41. The State agreed these records

should be provided to the Court for an *in camera* review. R. 92-99. Judge Mullen ultimately released records from Hopeful Horizons, formally known as Hope Haven of the Lowcountry, and Cape Fear Behavioral Health Center, LLC in Fayetteville, North Carolina. R. 1-8.

The parties also discussed the execution of a search warrant at Mr. Dent's home in Alabama. The Solicitor stated:

> [D]uring her Hope Haven interview, [J.M.], the victim in this case, stated that the defendant took images of her and that he hid the card that these images were on, the phone card or – I'm sorry – the memory card in his property in Alabama.
>
> Because of that allegation, his property in Alabama was searched. They searched all his electronics. They found child pornography on his computer. They never found the memory card. So the memory card that was part of her allegation never recovered.
>
> And they found 151 images of possible child erotica and 60 images of possible child pornography and, in those images, 12 depict the subject's granddaughter bent over while facing the camera. Or – and I'm getting – what I'm reading you is from the Alabama incident report that I provided defense. And several of the images appear to be aimed down the female's shirt.
>
> And then eight images are of the subject's granddaughter, which is [J.M.], the victim in this case, posing in blue jeans and a t-shirt, and her legs are spread. And then in some of the images, her legs are pulled back down by her shoulders. And there are some images of – but you don't see the face in them, but they believe it's from the same series of just her groin area, but she's clothed.
>
> So that leaves us, Your Honor, with approximately 20 images that have potential to be [J.M.]. Now, their forensics say that it is the granddaughter. I mean they went into the computer and searched it because of our investigation. There's a possibility that some of the naked images or some of the remaining photos are also [J.M.].

R. 99-100.

Counsel for Mr. Dent informed the Court that neither he nor Mr. Dent's attorney in Alabama had seen any of those images and Mr. Dent wants an independent digital forensics expert to review to the evidence, which was still located in Alabama. R. 102-04.

Finally, the prosecution informed the court and counsel the State would be amending two of the four indictments to correct the dates.[1] R. 104-05.

B. Pre-trial Motions.

The trial judge convened hearings on pre-trial motions filed by both sides.

1. Mr. Dent's motions to quash indictments for of disseminating obscene material to a minor twelve years or younger.

Mr. Dent moved to quash the indictments for of disseminating obscene material to a minor twelve years or younger. He argued the two "indictments allege a violation of [S.C. Code Ann. §] 16-15-355 with regard to obscenity, which falls under the meaning of [section] 16-15-305. He argued, "[U]nder Section 16-15-355, the only party that's allowed to seek arrest warrants or search warrants for violation of those sections is the solicitor office." The arrest warrants "were obtained by the sheriff's department," meaning the State "failed to comply with the correct procedures" and "those indictments should be quashed." R. 65, 114.

The prosecution argued (a) "this motion is not in the Defense's best interest" because, if successful, "the State will simply reindict and move forward and have another bite at the apple," (2) section 16-15-435(a) "does not apply to [section] 16-15-355," and (3) the language requiring the solicitor to seek the arrest warrant is "a recommendation only." R. 114-16.

---

[1] As seen in the Statement of the Case, the Solicitor substantially amended the substance of Indictment No. 2014-GS-07-01672.

Mr. Dent reminded the Court that obscenity law is "subject to its own unique set of interpretations by the United States Supreme Court." He also argued the statue is "intended to provide specific procedures in order to protect people who might be accused of violations" and, as a penal statute, must "be construed against the State and in a light most favorable to the accused." Finally, Mr. Dent argued the statute's use of the term "may" refers to "prosecutorial discretion" and did not create a loophole for law enforcement to "circumvent the solicitor's office." R. 116-17.

The trial judge reasoned:

> My interpretation of the statute stating the case that an arrest warrant for violation of Section 16-15-305 may be issued only upon the request of a circuit solicitor. I, certainly, would agree with Counsel, Ms. Joseph, that my interpretation of the statute is the operative word is "may." And the way I interpret that language is "may" is not required that it be issued by the circuit solicitor, but it could be issued by law enforcement.

R. 117. Mr. Dent asked the trial judge, "[H]ow do you interpret the word 'only'? Because that seems to suggest that only the Solicitor can do it." Counsel also pointed out "the legislature was aware of other procedures for getting arrest warrants. And they chose to say that these type of arrest warrants can only be gotten by the Solicitor." R. 117-18. The trial judge denied the motion to quash these indictments. R. 118-19. Mr. Dent renewed this motion prior to the trial court swearing the jurors. R. 230.

2. State's Motion to admit child advocacy center interview and expert testimony.[2]

On May 18, 2018, the prosecution filed a motion for the admission of out-of-court statement of the child pursuant to S.C. Code § 17-23-175. R. 49-56. Mr. Dent's pre-trial

[2] The State agreed not to use the term "forensic interviewer." R. 224-25. The prosecution breached this agreement during the testimony of Investigator LaVan (R. 353) and Ms. Trask (R. 393).

brief opposed this motion. R. 59-65. He argued the statue requires "the trial judge make certain findings of fact after reviewing the videotape," the procedures established by *State v. Anderson*, 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015) and *State v. Brown*, 411 S.C. 332, 768 S.E.2d 246 (Ct.App.2015), and the prohibition against "testimony that improperly bolsters the credibility of the [complaining] witness or vouches for her credibility," citing *Anderson, State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015), *State v. Kromah*, 401 S.C. 340, 37 S.E.2d 490, (2013), *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011), and *State v. McKerley*, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012).

The prosecution proffered the testimony of Shauw Chin Capps, who is the chief executive officer of "Hopeful Horizons, formally Hope Haven of the Lowcountry," which "is the children advocacy, domestic violence, and rape crisis center serving the Fourteenth Judicial Circuit." Ms. Capps interviewed J.M. on July 15 and 28, 2014. J.M. "was nine years old when she was interviewed." Both of these interviews were recorded. The trial judge reviewed the videotapes. R. 152-60, 168.

Mr. Dent argued portions of the interviews should be redacted because of "improper vouching and bolstering," prohibited by "the *Kromah, Anderson* line of cases." The prosecution agreed to the redactions. R. 162-63, 168-69. The prosecution argued for the admissibility of the videotaped statements, and Mr. Dent argued against admissibility. The trial judge ruled the videotapes admissible, subject to redaction and the limitations of *Anderson* and *Brown*. R. 169-76.

The prosecution next proffered the testimony of Tessa Trask, who is employed by Hopeful Horizons and "working towards" becoming a licensed professional counselor. At the time of her testimony, she had "a provisional license as a licensed professional

counselor intern." She received a "certification as a forensic interviewer in July of 2017." Ms. Trask watched the two interviews conducted by Ms. Capps, her supervisor at Hopeful Horizons. Ms. Trask also had access to the Hopeful Horizons files on J.M. but claimed she did not review those files. Ms. Trask also claimed not to have discussed this case with Ms. Capps. The prosecution offered Ms. Trask "as an expert in behavioral characteristics of child victims of sexual abuse." Ms. Trask planned to testify that sexual abuse can present as a trauma, ADHD and trauma can have similar symptoms, the disclosure process in sexual abuse cases, "coaching, lying, and confusion in a sexual assault case," grooming, and risk factors for sexual abuse. R. 176-85.

Mr. Dent argued testimony by Ms. Trask about trauma and ADHD "is something that's particularly tailored towards [J.M.] in this case, based on what we know about her records." He also argued that the testimony about coaching and lying is "a veiled way of saying this child was not coached," which would violate the *Kromah-Anderson* line of cases. R. 185-89.

In his pretrial brief and during the hearing, Mr. Dent specifically requested the trial judge require the prosecution to proffer Ms. Trask's complete testimony for the trial judge to determine the reliability pursuant to *Watson v. Ford Motor Company*, 389 S.C. 434, 699 S.E.2d 169 (2010) (summarizing three-part procedure for qualifying expert witnesses) and *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015) (state failed to show individual reliability of witness sufficient to allow her to testify as child abuse assessment expert). The trial judge declined that request and ruled Ms. Trask could be qualified as an expert in behavioral characteristic of child victims of sexual abuse." R. 47-58, 183-91.

3. State's motion to admit other bad acts.

On May 18, 2018, the prosecution filed a written motion "to allow the evidence of a prior bad act of the Defendant, Charles Dent," pursuant to Rule 404(b), SCRE, which involved "the discovery of child pornography on the Defendant's computer in Calhoun County, Alabama." R. 49-56. The State abandoned this motion later in the trial. This motion hearing, however, included discussion about images of J.M. found during the execution of the search warrant in Alabama. The prosecution argued:

> [A]s part of this investigation, as you, Your Honor, have heard in the first forensic interview of [J.M.], she states the Defendant took sort of gross photos of me and he took gross photos of himself. And he showed me porn. And he hid this camera card on my – on about the facts of the case, I'm going to tell you how the State is going to enter this evidence. his property in Alabama.
>
> And based on the totality of her statement, Investigator LaVan reached out to Calhoun County, Alabama.

R. 197-98. The Solicitor planned to present testimony of a Calhoun County Alabama Sheriff's Deputy to testify about the search of Mr. Dent's home and a witness from the computer task force to testify about images found on the electronic devices, including "borderline sexual" images of J.M. and child pornography. R. 198-99.

After considering additional arguments of counsel, the trial judge decided to "hold off ruling on [this] issue until after a proffer" of the digital forensic expert's testimony to give Mr. Dent "the opportunity to cross-examine." R. 208-20.

C. The Trial.

1. Opening statements.

During opening statements, the Solicitor stated John Camelo "started noticing some red flags from J.M.'s behavior. Based on his own personal experience and

knowledge of child sexual –" Mr. Dent interjected, "Objection. Improper bolstering. Move to strike." The trial judge overruled the objection. The Solicitor continued:

> Based on his own personal knowledge of child sexual abuse, he noticed that [J.M.'s] behavior was outside the realm of a typical nine-year-old girl. He is going to tell you today about some of that behavior, about her being over friendly with him, wanting to sit on his lap, kiss him on the cheek, constantly wanting to touch him, someone she had known for about a month or two.

R. 243-44. J.M. subsequently told Mr. Camelo that Mr. Dent had been sexually abusing her and making her feel uncomfortable for the past year." The Solicitor also acknowledged that J.M.'s memory "might not be what we all want it to be." R. 244-45.

During his opening statement, Mr. Dent informed the jurors it "is important to know exactly what's in the indictments" that the State has to prove beyond a reasonable doubt. The two criminal sexual conduct indictments are divided by time from when J.M. "lived in one apartment and moved into another apartment." The indictments allege Mr. Dent made J.M. "perform oral sex" at "those two different locations."[3] Also,

> [w]ith regards to the dissemination charges, one is that the State has said that they're going to prove beyond a reasonable doubt that Charles took multiple pictures of his penis and showed them to [J.M.]. You're not going to see any pictures of Charles Dent's penis. None of that evidence was ever found. They're, also, alleging that he showed [J.M.] pornography.

R. 250-51. Mr. Dent also asked the jurors "to look for evidence of a motive to make false allegations." He also asked the jurors to view the videotaped interviews with a critical eye. R. 251-57.

[3] Later on, during opening statements, Mr. Dent repeated the indictments alleged Mr. Dent Made J.M. perform oral sex on him at the two locations, which is what the State represents it will prove. R. 255.

2. John Camelo.

The prosecutor called John Camelo, who met J.M. through her mother Lori Michelle Mayo, in May of 2014. Mr. Camelo and Ms. Mayo began dating. The following exchange occurred between the Solicitor and Mr. Camelo:

> Q. And at any point when you and Lori started dating, did you notice anything in particular about [J.M.'s] behavior?
>
> A. Yes. I observed red flags – what I considered red flags in terms of her actions, gestures, mannerisms, things that a nine-year-old child at the time wouldn't normally be – you don't –
>
> Q. Okay. Now, you say "red flags." Let me back up a little bit. Have you ever worked in a law enforcement capacity?
>
> A. I did. I spent four years as a police cadet and police cadet supervisor with Beaufort City. I was, also, a volunteer fire fighter for several years. I was a private investigator for 10 years. Also, a Sunday school teacher, Boy Scout leader.
>
> And so I've had a lot of training –

R. 258-60.

Mr. Dent objected, and the trial judge considered the objection outside the presence of the jurors. Counsel reminded the trial judge, "[W]hen we had a sidebar about scheduling matters, I, also, brought up my concerns about them trying to portray Mr. Camelo as somebody who had special training in order to be able to detect child abuse or sexual abuse." Counsel reminded the trail judge about the objection during the State's opening. Counsel argued, [I]nitially, their first question sounded like it was going to be limited to just the behavior that he witnessed that he thought was odd," but the Solicitor questioned Mr. Camelo about "not just his employment history," but also about training which seems intended to show that Mr. Camelo "has some sort of training to be able to detect child abuse," which would be "improper vouching or bolstering" under the

Kromah-Jennings-Anderson line of cases. Counsel reminded that witnesses, including expert witnesses, are not allowed to testify "that somebody is telling the truth" or offer "an opinion that this child was sexually abused." Counsel argued:

> I think it's done in kind of a clever way. Because they're trying to present him and tell you a little bit about the background, but doing it in a way that you would normally qualify somebody as an expert without offering him as an expert so that it has that same, you know, appeal to a jury. And – and that's my concern.
>
> So I would move to limit his testimony.

R. 260-62.

The State claimed it was "laying the foundation for him to give a lay opinion based on personal experiences. He was a private investigator for 10 years." The prosecution proffered Mr. Camelo's testimony. Mr. Camelo testified, "I was personally sexually abused by a male for a – during my youth between the ages of 12 and 13." He also raised a stepdaughter "[f]rom the age of five till she was 17." Mr. Camelo identified the "red flags" he claimed to have observed:

> Being overly clingy with men, particularly, wanting to kiss my cheek, wanting to touch me in areas that a – you know, where a child – a minor should not be touching a male, particularly, the genital area.

R. 262-64. Based on these concerns, Mr. Camelo testified he asked J.M. "if anyone had touched her, or if anyone had done anything inappropriate to her." J.M. answered, "My grandfather." R. 264-66.

Mr. Dent further noted Mr. Camelo's testimony risked violating the time and place limitations or Rule 801(d), SCRE and the Solicitor instructed Mr. Camelo not to name the alleged perpetrator. The trial judge limited the Solicitor for asking any "questions regarding whether or not he has an opinion regarding abuse." R. 266-67, 269.

The Solicitor then proffered Mr. Camelo's testimony about "a second time [J.M.] disclosed to this witness" after the first interview at Hopeful Horizons. J.M. wrote a statement on a piece of paper that she had not made during the interview because she, purportedly, "was afraid." R. 267-69.

The jury returned to the courtroom. Mr. Camelo testified about the "red flags" he observed: "Gestures of a sexual nature that a none-year-old – that a minor wouldn't normally know without having been shown or taught by someone." When J.M. told him "something had been going on," Mr. Camelo was so concerned that he immediately informed Ms. Mayo, who contacted law enforcement. R. 270-72.

Mr. Camelo testified about "a second disclosure" after J.M.'s first interview at Hopeful Horizons." J.M. wrote it on a piece of paper, handed it to Mr. Camelo, and "ran off." Mr. Camelo testified this statement "was even more concerning than the first disclosure." This disclosure by J.M. was made to Mr. Camelo after Mr. Camelo did not allow an older male neighbor speak to J.M. Mr. Camelo gave the paper to Ms. Mayo who contacted law enforcement. R. 272-73.

Mr. Camelo testified he moved in with Ms. Mayo "primarily because they had a fear of [Mr. Dent] coming around."[4] Mr. Camelo also testified J.M. "would tell people I was her father, her new dad" and called him "Dad."[5] Mr. Camelo also helped Ms. Mayo and her children move into a motel before they left South Carolina. Mr. Camelo testified that he ended the romantic relationship with Ms. Mayo because, "[v]ery shortly after –

---

[4] Mr. Dent objected as speculation and hearsay and moved to strike. The trial judge sustained the objection but did not strike the testimony." R. 276.

[5] On cross-examination, Ms. Mayo testified that J.M. referred to as "Dad" "[p]retty much every man I've ever dated." Ms. Mayo could not recall how many men J.M. called "Dad." R. 344-46.

after all of this initiated, which, unfortunately, became very stressful, a very stressful, strange situation. And I just felt it was best to end the relationship. R. 271, 275-77.

On cross-examination, Mr. Camelo acknowledged that when he moved in with Ms. Mayo and her children, he took the downstairs room that Mr. Dent used when he visited. Mr. Camelo acknowledged he was the one that brought up the subject of sexual abuse when J.M. made the first disclosure. Mr. Camelo acknowledge that A.M. (J.M.'s older brother) never referred to him as "Dad." Mr. Camelo denied telling the prosecutors that Mr. Mayo told her children that Mr. Camelo could "be their new dad." Consel for Mr. Dent reminded Mr. Camelo that he had attributed the break up with Ms. Mayo to the stress of the sexual abuse allegations. Counsel asked, "You had, also, learned some information about Lori's background?" When Mr. Camelo asked for clarification of the question, counsel explained, "That she had been a stripper in Florida and has smoked marijuana." The prosecution objected based on relevance. The trial judge excused the jurors from the courtroom, and counsel explained:

> Your Honor, the question that was asked on direct was the reason for the breakup of the relationship. And they were allowed to paint a particular picture to the jury.
>
> I was provided by e-mail a summary of an interview that the prosecution's office did with Mr. Camelo preparing for trial. And in at that interview, it says, After he started dating Lori, he learned that she used to be a stripper in Florida and she smoked marijuana. He decided this was not a relationship he wanted to continue. And then it goes into, he, eventually, you know, moved into the house.
>
> And so I don't think that – the suggestion that was made on direct was that Mr. Dent and the allegations were responsible for the breakup. But that's contrary to what he told the Prosecutors.
>
> Also, he had told them – according to their summary, he had told them that Lori had told the kids that [Mr.] Camelo could be their new dad.

R. 277-83. Counsel explained the Sixth Amendment's confrontation right allows Mr. Dent to question Mr. Camelo about facts "relevant to the issue of the break up." Counsel argued the questions are relevant to "rebut the suggestion that [the prosecution] made that the allegations by [J.M] against Charles Dent was the reason that the relationship broke up." R. 283-84.

The Solicitor argued the reasons for the break up is not relevant and pointed to her notes about Mr. Camelo starting to distancing himself from Ms. Mayo after J.M.'s disclosure of sexual abuse. Counsel for Mr. Dent proffered the cross-examination of Mr. Camelo. Mr. Camelo acknowledged he did not want to continue the relationship after learning Ms. Mayo had been a stripper in Florida and smoked marijuana. The trial judge ruled, "I'm going to sustain the objection as to relevancy and strike that last question you asked regarding that." R. 284-90, 297-99; Courts Exhibit 6, R. 790-91.

When the jurors returned to the courtroom, Mr. Dent continued his cross-examination of Mr. Camelo. Mr. Camelo did not know whether his moving out of Ms. Mayo's townhouse coincided with the end of the lease agreement. Mr. Camelo claimed he was not aware of the fact that Mr. Dent paid the rent until after the fact. R. 290-92.

Mr. Dent cross-examined Mr. Camelo about the conversation he had with J.M. between her two interviews at Hopeful Horizons. Mr. Camelo testified about the older male, named Maurice, coming to the townhouse "three times that day." On one of those occasions, Maurice "opened the door and walked in" without permission. Mr. Camelo told him to leave, but he came back again and sat down on the back porch in a lawn chair. Maurice wanted to see J.M. Mr. Camelo was concerned about this man's intensions because "he was much older than" J.M. Mr. Camelo called law enforcement. He also

confronted J.M. about Maurice. J.M. did not make the second disclose of sexual abuse until after Mr. Camelo confronted her about Maurice. R. 292-97.

3. Lori Michelle Mayo.

The State called Lori Mayo, who is the mother of J.M. and her older brother A.M. They lived in Beaufort County from 2012 to 2014 in two different townhouses, "about seven or eight houses" apart, on the same street. The first townhouse had two bedrooms. The second townhouse had four bedrooms. When they moved from the smaller townhouse into the larger townhouse, the extra bedroom was for her father, Charles Dent. R. 301-03.

Ms. Mayo's brother, Matthew, committed suicide in 2012. Matthew was "really close" with Mr. Dent. Prior to Matthew's suicide, Ms. Mayo and Mr. Dent "didn't speak very much at all, occasionally, on holidays and birthdays over the phone." After Matthew's death, Ms. Mayo "felt an obligation to [Matthew] to befriend [their father] and to give him a chance in our lives." Prior to moving to Beaufort County, Ms. Mayo and her children lived in Jacksonville, Florida in a neighborhood that "wasn't a very nice neighborhood." According to Ms. Mayo, Mr. Dent paid part of the rent for both townhouses in Beaufort County. Ms. Mayo was not able to afford either townhouse on her own, and Mr. Dent's name was on both leases. Mr. Dent helped with Ms. Mayo's cell phone bill in 2014. R. 303- 07.

Ms. Mayo identified John Camelo as her "ex-boyfriend." Ms. Mayo understood J.M. made a disclosure to Mr. Camelo. After Mr. Camelo told her about the disclosure, Ms. Mayo talked to J.M. Ms. Mayo contacted A.M.'s therapist. After taking to A.M.'s therapist, Ms. Mayo called law enforcement. R. 307-09.

After J.M.'s initial disclosure, Ms. Mayo exchanged text messages with Mr. Dent.[6] The conversation began with Mr. Dent stating Ms. Mayo needed to "pay half the rent" and contribute towards the cable bill and phone bill. Ms. Mayo texted "she didn't know that [Mr. Dent] touched her daughter." Mr. Dent responded "that he would never touch the children and she knew that." They discussed removing Mr. Dent from the lease agreement. In subsequent texts, Ms. Mayo accused Mr. Dent of showing "pictures of his penis to" J.M. and threatened Mr. Dent "had way more than his credit to worry about if the rent didn't get paid" or if she did not get "the allotment that he owed her." R. 289-15.

Ms. Mayo testified that she dated both men and women. Ms. Mayo opined that Mr. Dent "loved it when Dee lived there and brought her friends over."[7] Over objection, Ms. Mayo opined Mr. Dent had an issue with John Camelo living in the townhouse because she told her father Mr. Camelo "used to be in law enforcement. And he had a background with helping young girls who had been sexually abused." Over another objection, Ms. Mayo testified Mr. Dent "was very upset" with Mr. Camelo living in the townhouse after he learned that information. R. 318- 20.

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[6] Over objection, the trial judge allowed Ms. Mayo to read a summary of the text messages from an incident report rather than referring to the actual text messages. R. 310-11; Court's Exhibit 9. The prosecution later introduced the actual text messages.

[7] On cross-examination, Ms. Mayo admitted Dee was not a romantic relationship. She further acknowledged that during the time she lived in Beaufort County, "John Camelo was the only romantic interest that lived or stayed over for extended periods of time in [her] townhouse. R. 343-44.

Over objection,[8] Ms. Mayo explained why J.M. did not tell her everything about the sexual abuse at first: "She told me that she thought that I would be mad at her. And she, also, was embarrassed." R. 320-21.

After the lease agreement terminated, Ms. Mayo and the children "stayed in a hotel for a couple of months while [she] tried to find a home." R. 317.

On cross-examination, Ms. Mayo repeated that J.M. went to Mr. Camelo both times she disclosed sexual abuse. Her written statement to law enforcement, however, stated she "questioned [her] daughter because of [her] own suspicions about [her] dad ever doing anything that she didn't want him doing." She agreed "John Camelo's name is never mentioned anywhere in that statement." Ms. Mayo further acknowledged that she did not call law enforcement on the same day she questioned J.M. R. 322-24.

Mr. Dent cross-examined Ms. Mayo about living in Jacksonville, Florida before she moved to Beaufort County. Mr. Dent and her mother, married, divorced, remarried, and divorced again. Ms. Mayo lived with her mother in Jacksonville. Matthew lived with Mr. Dent in Alabama. Ms. Mayo had a close relationship with Matthew, who visited often in Jacksonville. The Solicitor then objected to Mr. Dent questioning Mr. Mayo about these family relationships as not relevant, citing Ruled 401 and 402, SCRE. The judge considered the objection outside the presence of the jurors. Counsel for Mr. Dent argued:

> [T]hey already brought up Matthew's suicide. The reality of this is that mental illness runs in this family, particularly on the mother's side. And [J.M.] was close to both Matthew and to her grandmother.

[8] The trial judge denied Mr. Dent's request to proffer the hearsay outside the presence of the jurors. R. 321.

> Her grandmother, also, committed suicide, and may have even made one suicide attempt while living in the same household. And this is entirely relevant. Because you heard yesterday that the – they plan to ask the counselor – well, not the counselor, but the so-called independent expert about trauma.
>
> And we have counseling records where when they were going through the potential different types of trauma that [J.M.] had experienced – and it has information in there about, you know, the history of suicide and the fact that she knew – either was told or knew enough about suicide of a family member or of a person that she would have, you know, images about that in her mind.
>
> And so if – if trauma is going to be an issue in this case like they're making it, then I'm entitled to show the other sources of trauma. And so it is very relevant to why we're here if that's, you know, the State's theory.
>
> I mean, they're going – they're going to argue, you know, that some of [J.M.'s] behaviors were related to trauma. And I think I'm entitled to go into the traumas that she's experienced in her life.

R. 324-27. Counsel proffered two sets of mental health records. R. 328; Court's Exhibits 7 and 8. Counsel continued:

> And the State has said – and they're calling witnesses to talk about characteristics of child abuse. And they've said they're going to have testimony about trauma. And this goes to our Sixth Amendment right to confront and cross-examine it.

R. 328-29.

The prosecution argued its expert, Tessa Trask, "has not met with" J.M., plans to "define trauma," will opine "that sex abuse can cause trauma," and testify "in the biggest generalities possible." The Solicitor suggested Mr. Dent would be free to argue the "trauma was caused from other things." Mr. Dent pointed out the prosecution could object if he made an argument "that's outside the record." Counsel for Mr. Dent reminded the trial judge the court limited the scope of the proffer of Ms. Trask. Counsel argued Mr. Dent has a right to cross-examine the prosecution's witnesses about "the

theories and themes" of the defense. Counsel anticipated the prosecution will argue J.M.'s "symptoms of trauma confirm she was sexually abused," noting appellate court holdings in *Anderson*, *State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993), *overruled on other grounds by State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016), and *State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). Counsel reminded the trial judge that Judge Mullen, following the *Blackwell* procedure, had ordered disclosure of J.M.'s mental health records because her state of mind was at issue in this case. R. 329-33.

The Solicitor argued:

> It's the concerns in *Blackwell* that the State is concerned about here. Once again, there is a higher threshold to release mental health records because they are mental health records.
>
> There's a reason that I am so deeply concerned with [J.M.'s] mental health becoming a focal point of the Defense. And I think what's important to note, Your Honor, is that frequently when we have legal arguments, we get very bogged down in the minutia.
>
> And if we zone out right now, Mr. Grose is arguing that whether or not [J.M.] experienced other trauma is a pillar of his defense. That just simply can't be the case. Because she is – they're going to watch the videos. Basically, her – the red flags that John Camelo talked about are one small aspect of this case. Her disclosure is, clearly, the focal point of this case.
>
> And so I think that he's trying to argue that the fact that she experienced other traumas is this pivotal thing in this case. And it just simply can't be, Your Honor. And I think he's allowed to ask maybe one or two questions about, you know, was she close with Matt? Did Matthew kill himself? Was she close with your mom? Did your mom kill herself?
>
> I apologize. I'm being real glib.
>
> But I think he has to move on. He can't just rake over the coals with this information. And that's what he's been doing. I mean, we're on question four. I mean, at this point, we're sort of at the zip code of where they lived in Jacksonville. I mean, he's really going deep.

R. 333-34.

The trial judge limited Mr. Dent's cross-examination to the four questions suggested by the prosecutor.[9] Counsel for Mr. Dent protested, "I don' think that allows us to go into it deeply enough." Counsel then offered, "I don't even have to ask those four questions if they're not going to call their expert this afternoon. I mean, that's why this is relevant." R. 334-16.

The following exchange occurred when the jurors returned to the courtroom:

> Q. When we left off, I think I was asking you about your brother, Matthew. [J.M.] was close the Matthew, wasn't she?
>
> A. I don't know if I would say that, but they loved each other.
>
> Q. Okay. And I think you already testified that Matthew committed suicide?
>
> A. Yes.
>
> Q. And [J.M.] was close to your mother, wasn't she?
>
> A. Yes.
>
> Q. And your mother, also, committed suicide, didn't she?
>
> A. Yes.

R. 336-37.

Ms. Mayo acknowledged, after Matthew's suicide, she and Mr. Dent "began to re-establish a relationship." Mr. Dent's brother owned a timeshare in Hilton Head, and that was one of the reasons Ms. Mayo decided to move to Beaufort County. Ms. Mayo testified about the two townhouses, working multiple jobs, and being unemployed for

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[9] After reviewing the mental health records proffered by counsel for Mr. Dent, the trial judge *sua sponte* reversed this ruling, allowing the defense "a little bit more latitude in that area." R. 369.

part of the time she lived in Beaufort County. Ms. Mayo denied she and Mr. Dent agreed he would help pay the rent for one year and the Ms. Mayo was "supposed to take it over." R. 337-39.

Mr. Dent cross-examined Ms. Mayo about the text messages. Ms. Mayo acknowledged she and Mr. Dent argued about the rent money and money for J.M.'s dance lessons. She acknowledged the disagreements over money began in 2013. R. 340-42.

Ms. Mayo could not recall when she met John Camelo. Ms. Mayo admitted they had a romantic relationship but denied Mr. Camelo ever moved into the townhouse, acknowledging only that "he stayed over every once in a while [] for maybe the night."

Finally, Ms. Mayo acknowledged on cross-examination that J.M. was a good student in Beaufort County. J.M. struggled more with school after they moved to North Carolina. R. 257-59.

4. Investigator Cornelius LaVan.

Investigator Cornelius LaVan of the Beaufort County Sheriff's Office investigated the allegations made by J.M. Investigator LaVan never interviewed J.M., but he scheduled both interviews for J.M. at Hopeful Horizons. After the second disclosure, Investigator LaVan collected for evidence a pair of J.M.'s shorts, but he never requested a forensic scientist examine that evidence. R. 352-58.

Over objection, Investigator LaVan read the dates of the alleged sexual abuse from copies of the arrest warrants. R. 358-60.

Investigator LaVan also investigated the incident involving the older man named Maurice, who was ultimately referred for a mental health evaluation. R. 360-61, 364-65.

5. J.M.

J.M.'s direct examination is less than eight pages of the 769-page trial transcript. She testified she used to live in Beaufort County, with her mother and brother, in two different houses in the same neighborhood. Her grandfather, Charles Dent, would sometimes visit. The visits lasted about a week. R. 371-73.

J.M. identified John Camelo as, "My mom's ex-boyfriend," who lived with them for a while. When asked, "[D]o you remember what you told John?," J.M. replied, "Not really." J.M. could not remember what she told her mother. R. 373-74.

The Solicitor asked J.M. if she "remember anything about what was done to you while you lived in those houses?" J.M. testified:

> I remember he started kissing me, like, on my face, my mouth. He started licking my belly, like, my belly button and started, like, touching me in weird places. And he took pictures of his private parts and told me to take pictures of mine.

R. 374-76.

J.M. also claimed Mr. Dent showed her pictures of "[p]eople having sex" on one occasion. Regarding allegations of a "sexual battery," the following exchange occurred:

Q. Okay. Did he ever make you touch his penis?

A. He didn't make me touch. He made me lick his private parts.

Q. Can you tell me about that?

A. It's hard to explain. I'm sorry.

Q. That's okay. When you say he made you, what does the that mean?

A. It means he told me to.

Q. Okay. Once or more than once?

A. Once.

R. 377. J.M. denied Mr. Dent had ever threatened her. R. 377-78.

On cross-examination, J.M. confirmed Mr. Dent never threatened her, stated the fellatio occurred only one time, and acknowledged Mr. Dent never touched her private parts under her clothing. J.M. denied she ever called John Camelo—or any other person—"Dad." J.M. never met her biological father, which was hard on her growing up. J.M. acknowledged her mother is important to her, and she wants to please her mother. J.M. was close to her Uncle Matthew. Matthew's suicide was hard on J.M. She couldn't recall how many houses she lived in after moving away from South Carolina. J.M. made A's and B's in in South Carolina but "struggled with grades after she moved to North Carolina. J.M. had difficulty making friends in North Carolina. J.M. did not recall who started the conversations with Mr. Camelo and her mother about the sexual abuse allegations. She could not remember if her mother wanted her to make sure she "said certain things" during the Hopeful Horizons interviews. J.M. recalled talking to people about her testimony, but she could not recall whether she practiced the questions and answers. R. 379-89.

6. Tessa Trask.

The trial judge qualified Tessa Trask as an expert in the behavioral characteristics of child victims of sexual abuse, subject to the pre-trial objections. Ms. Trask never met J.M. or read the case file; however, she did watch some of pre-trial proceedings. R.391-94.

Ms. Trask defined the "traumagenic model." Child sexual abuse is "considered traumatic for the child because it's introducing sexuality" in a "traumatic" and "in a way that's developmentally inappropriate." The child "may experience trauma symptoms or

any other reactions that a child or an adult may experience when a traumatic event occurs." When the Solicitor asked Ms. Trask to provide a "working definition of trauma," Mr. Dent objected, pursuant to *Chavis*, because the trial court has to determine the reliability of the testimony, noting that if the working definition is something the expert developed herself, then "it's not subject to peer review." The Solicitor argued, "This goes to weight, not admissibility." The trial judge agreed and overruled the objection. R. 394-95. Ms. Trask testified, "So what I consider to be trauma has about six parts." She testified:

> So the first part is something that is extremely stressful or scary. It's something that occurs outside of the realm of someone's typical experience. It's not something they would expect to happen. It's something that makes them feel temporarily overwhelmed. Their ability to cope – they're not able to cope in the moment, rather.
>
> Another piece is it makes them change the way that they think about themselves, about others, and the world. It makes them feel helpless, ashamed, or horrified.

R. 394-96.

Ms. Trask testified "there are three main categories of symptoms" of trauma "called avoidance, hypervigilance, and reexperiencing symptoms." Regarding sexual abuse trauma, "some children may exhibit no signs and symptoms," and "some children may exhibit like a complete 180 in their behavior or in their personality." However, Ms. Trask expects "to see the trauma symptoms" of avoidance, hypervigilance, and reexperiencing. She also "expect[s] to see a change in behavior, like a change in sleep patterns, eating patterns, or energy." Ms. Trask testified she "may expect" to see "developmentally inappropriate sexual behavior." R. 396-98.

Ms. Trask testified, "Sometimes, trauma goes undiagnosed and is diagnosed as ADHD or ADD instead," although Ms. Trask acknowledged she is "not an expert in ADD or ADHD. R. 399.

Ms. Trask testified about the disclosure process. "It happens incrementally or gradually over time" in different stages, ranging "from tentative to active." Disclosure could be accidental (by chance) or purposeful. R. 399-400.

Ms. Trask testified about "grooming," which involves three "pieces." The first involves "the giving of privileges, things of value, money, treats, prizes." The second involved "creating, developing, maintaining a trusting relationship with the child and the family so that the perpetration can gain access to the child." The third involves the perpetrator "gradually exposing the child to sexual contents, and so normalizing sexual content through gradual exposure." R. 400.

Ms. Trask testified there are risk factors of sexual abuse for the child and the caregiver:

> So risk factors for the child would be age, emotional well being, prior history, and whether or not the child has any kind of delay or disability.
>
> Risk factors for the caregiver would include whether there's any substance used, or substance abuse on behalf of the caregiver, and then, also, whether the caregiver is a single parent.

R. 400-01.

On cross-examination, when asked about using her "own framework" for the working definition of trauma, Ms. Trask would only say, "My testimony is based on a combination of my education, my training, and my experience in the field." R. 402-03.

Ms. Trask reconfirmed she never met J.M., interviewed J.M., or read J.M.'s file at Hopeful Horizons. Ms. Trask does not know J.M.'s social history. She does not know whether J.M. has ADHD. She did not interview Ms. Mayo. Ms. Trask acknowledged the loss of a close relative can be a source of trauma for a child. Children can have adjustment disorders unrelated to trauma. R. 403-06.

7. Shauw Chin Capps.

Shauw Chin Capps, the chief executive officer of Hopeful Horizons, interviewed J.M. on July 10 and 25, 2014. She identified the videotapes of the two interviews, which were played to the jurors, subject to pre-trial objections and redactions. R. 422-30.

D. Motion to Suppress Search Warrant.[10]

Before the prosecution called Lori Mayo, Mr. Dent informed the trial judge, outside the presence of the jurors, that the Solicitor intended "to begin introducing photographs that were recovered from the devices in Alabama." Counsel reminded the trial judge the Court had not ruled on the motion to suppress these photographs "for failure to comply with the statute that requires the Solicitor to be the one to initiate the application for the search warrant." The trial judge denied this motion. R. 299-300.

The trial judge convened an *in camera* hearing regarding the admissibility of the evidence collected during the execution of the search warrant in Alabama. The Solicitor announced the two witnesses from Alabama would be Investigator Joey Stone of the Calhoun County Alabama Sheriff's Office and Detective Arthur Agee of the computer crimes task force. The Solicitor acknowledged Detective Agee did not examine the evidence or prepare the written report. Mr. Dent objected because the State "listed on

[10] Mr. Dent renewed his objection to the Solicitor's office not applying for the search warrant. R. 459.

their witness list Justin Cole, who's the one who did the report, did the examination," and Mr. Dent has a Sixth Amendment right to cross-examine the person who conducted the examination. *See Melendez-Diaz,* 557 U.S. 305 (2009). R. 431-46.

The Solicitor acknowledged the child pornography discovered on the electronic devices had been deleted, meaning the pathway showing where the images were stored on the computer was also deleted. The prosecution withdrew its motion to admit the child pornography under Rule 404(b), SCRE. The prosecution, however, intended to proceed with its motion to introduce images of J.M. R. 446-48.

The prosecution proffered the testimony of Lori Michelle Mayo. Ms. Mayo identified screen shots of the text messages between her and Mr. Dent. R. 449-53; State's Exhibit 21. At the request of the Solicitor, Ms. Mayo identified State's Exhibits 1-5 as pictures of J.M. "in our old house." Ms. Mayo said she did not take those photographs. The Solicitor represented the State would not contend Mr. Dent took these photographs. Rather, the State offered these photographs "to show the location where the crime occurred." The Solicitor acknowledged the State could not establish the chain of custody of these photographs. Mr. Dent pointed out, "If they wanted to introduce photographs to show where the incident [] happened, that could have been done without using photographs, that [] came off the device that was in question." Counsel also noted cases have been reversed because the prosecution introduced sympathetic photographs of a crime victim. *E.g. State v. Langley*, 334 S.C. 643, 515 S.E.2d 98 (1999) (held that: (1) neither victim's sister's testimony nor photograph of victim was relevant to defendant's guilt, and (2) admission of such testimony and photograph was reversible error). Counsel for Mr. Dent then explained:

> And what they're going to do is in this second set, they're going to argue that – some of the pictures where [J.M.'s] wearing the same top as she is in State's Exhibit No. 5 are prejudicial to us because they're going to argue that they're sexual in nature.
>
> And so I feel like that since we've had this confrontation clause, chain of custody issue come up that have to object to every single photograph that came from those devices. The fact that we've been able to look at them, the fact that we've been able to get duplicates of it is not relevant to the inquiry.
>
> The inquiry is, can they establish a chain of custody? And do we get to cross-examine Investigator Cole, who did the examination? And I would want to cross-examine him about State's Exhibit Nos. 1 through 5, in addition to the others as well.

R. 453-70 (citing *Melendez-Diaz, supra*).[11]

At the Solicitor's request, Ms. Mayo identified State's Exhibits 6-14 as photographs of J.M. Ms. Mayo testified some of the photographs appeared to have been taken in the townhouses in Beaufort County. In State's Exhibit 15, Ms. Mayo recognized "a pair of green shorts exactly like" what J.M. had for dance classes. Ms. Mayo could not identify where this photograph was taken. R. 470-80.

The prosecution proffered the testimony of Joey Stone, an investigator with the Calhoun County Alabama Sheriff's Office. Investigator LaVan of the Beaufort County Sheriff's Office contacted Investigator Stone in July 2014 about serving the arrest warrants on Mr. Dent. Investigator Stone also obtained an Alabama search warrant after officers serving the arrest warrant "saw electronic devices, cameras, [and] cell phones in plain view." After collecting the devices, Investigator Stone obtained a second search warrant to examine the devices. The Calhoun County Alabama Sheriff's Office transferred the electronic devices to the Alabama Electronic Crimes Task Force. On

[11] The trial judge and counsel discussed Mr. Dent's objections extending to State's Exhibits 1-15. R. 470, 472.

cross-examination, Investigator Stone acknowledged he was not present the entire time the search warrant was executed. He did not have personal knowledge of which officer actually collected the evidence. R. 480-99; State's Exhibits 18 and 22.

The State proffered the testimony of Arthur Agee, a digital forensic examiner with "the electronic crimes task force as part of the Secret Service" in Hoover Alabama. He identified State's Exhibit 19 as a photograph of "a Fuji film camera with a 32 gigabyte SD card memory that was inside the camera." He identified State's Exhibit 20 as a photograph of "a JVC camcorder with a separate 32 gigabyte SD case that was inside." Detective Agee did not examine these two devices because the devices were no longer present at his lab in Alabama. He reviewed a forensic image of the devices that was made by Detective Cole, as well as Detective Cole's written report. R. 500-02.

Detective Agee reviewed State's Exhibits 6-15. He testified these exhibits were recovered from the devices depicted in State's Exhibits 19 and 20. On cross-examination, Agent Agee testified a "carved image" means the image had bee deleted. Agent Agee testified State's Exhibits 6, 12, 13, and 14 were carved images. Detective Agee could not recall whether State's Exhibits 7, 8, 9, 10, 11, and 15 were carved or deleted images. Detective Agee did not have the forensic images of these devices with him in South Carolina to be able to provide more information. Dective Agee did not know whether State's Exhibits 1, 2, and 3 are "photograph[s] that came off the forensic image Detective Cole made." Agent Agee testified State's Exhibits 4 and 5 "came off Detective Cole's forensic image, but he did not know whether these images were deleted or undeleted images. Detective Agee could not even state which device contained State's Exhibits 1, 2, 3, and 4. R. 507-16, 527-33.

Regarding the two cameras, Mr. Dent argued the prosecution established "virtually no chain of custody on those items." Detective Stone obtained the search warrant, but he was at Mr. Dent's home only "for about 10 minutes," and "[h]e did not collect any of those items. Although Detective Stone prepared the request for the electronic crimes task force to examine the evidence, he did not transport the items for the Sheriff's Office to the task force. Mr. Dent argued:

> [W]e don't have anything with regards to what Detective Cole did after he received them until when the image was made, or any testimony about whether that image had been altered in the period of time when Detective Cole made it up through when Mr. – Detective Agee looked at it.

R. 517-19.

Mr. Dent argued a Sixth Amendment confrontation clause violation. The prosecution is required "to have the person who conducted the examination in court so that person can be cross-examined about running the analysis." Detective Cole is "just not here to be questioned." Mr. Dent reminded the trail judge that Detective Agee knew some of the images had been deleted, wan not sure whether some of the images had been deleted or not, and was unaware whether two of the items were even recovered from the devices depicted in State's Exhibits 19 and 20. Mr. Dent also argued the prosecution was

> conflating the chain of custody with the confrontation clause argument. The chain of custody wasn't the real issue in *Melendez-Diaz*. The real issue in that was the Sixth Amendment confrontation right of the person who, actually, did the examination.

R. 519-26.

After hearing the proffered testimony and arguments of counsel, the trial judge made a finding of fact that Detective Agee did not conduct "an independent examination" and agreed Detective Cole is a "critical witness" that Mr. Dent was entitled to confront

under the Sixth Amendment. The trial judge, accordingly, excluded the testimony of Investigator Stone and Detective Agee. At this stage of the trial, the trial judge ruled State's Exhibits 1-15 would be excluded. R. 535-39 (citing *Melendez-Diaz, supra*).

After a recess, the prosecution announced it would try to admit the photographs through J.M. Mr. Dent argued J.M. could not "testify to the authenticity of those photographs." Mr. Dent reminded the trial judge that the images "that can be identified whether they were deleted or undeleted. They were all deleted. The rest is unknown." R. 539-43.

The State proffered the testimony of J.M. J.M. testified State's Exhibit 1 appeared to be a photograph of her birthday party, taken in the second townhouse by her mother. J.M. identified State's Exhibit 3 as a photograph of her and her grandfather taken in the first townhouse. She did not know who took this photograph but agreed it was not her grandfather because he is in the photograph. J.M. testified State's Exhibit 4 is a picture of her taken in the guest bedroom of the second townhouse. She believed her grandfather took this photograph, but she was not sure. J.M. testified State's Exhibit 6, 11, and 13 are photographs of her, but she could not identify where it was taken. J.M. testified State's Exhibit 15 is "[s]omeone in shorts, but I think it's me." R. 547-61.

Without asking J.M. who took the photographs, the prosecution argued to introduce State's Exhibits 1, 3, and 4 to show "where the alleged incident happened." Regarding State's Exhibits 6, 11, 13, and 15, the prosecution argued J.M. will testify those are pictures of her "[a]nd then she's going to testify, I think my grandfather took it – those photos." R. 561-63.

Mr. Dent argued the trial judge should exclude the photographs. State's Exhibit 4 should be excluded pursuant to *Langley, supra.* Regarding State's Exhibits 6, 11, 13, and 15, J.M. was not sure who took those photographs. She was equivocal on whether State's Exhibit 15 was her or not. All of these imaged were "carved" (meaning deleted) or could not be excluded as being "carved." Counsel for Mr. Dent argued:

> I don't think that she could even testify that those were fair and accurate pictures from what was taken of her, assuming they all are her, because she's not sure about one. I don't think she would be able to testify to that because of what we know about those photographs from the rest of the hearing that we've already had.

R. 563-64, 566.

Mr. Dent also argued the photographs should be excluded under Rule 403, SCRE because "the danger of unfair prejudice outweighing any probative value for her to be able to testify, oh, I think my grandfather took those pictures." R. 563-64.

The trial judge ruled these exhibits would "be admitted and let the jury attach whatever weight they deem necessary. So it will got to the weight." R. 564-68.

E. The Trial Resumes.

1. Lori Michelle Mayo.

The prosecution recalled Lori Mayo to identify screen shots of the text messages she discussed in her earlier testimony. R. 567-69; State's Exhibit 21.

2. J.M.

The prosecution recalled J.M. and introduced State's Exhibits 1, 3, 4, 6, 11, 13, and 15, subject to the previous objections. R. 570-80. On cross-examination, J.M. acknowledged she thought her mother took State's Exhibit 1. J.M. didn't know who took State's Exhibit 3, but agreed it was not her grandfather. Regarding State's Exhibit 4,

J.M. did not know who took that picture but thought it was Mr. Dent "because it was the guest bedroom that he stayed in." Regarding State's Exhibits 6, 11, 13, and 15, the following exchange occurred:

> Q. . . . . And, in fact, with these others, State's Exhibit Nos. 6, 11, 13, and 15, you really don't know who took those pictures, do you?
>
> A. I don't remember being in those photos.
>
> Q. I'm sorry?
>
> A. I don't remember being in most of those photos. I don't remember who took them, but I'm guessing.
>
> Q. So you don't remember when these were taken?
>
> A. I don't. But I do know they were in one of the houses.
>
> Q. Okay. And you don't – you're just guessing who might have taken them?
>
> A. Yes.

R. 580-83.

3. Directed verdict motion.

After the State rested, Mr. Dent moved for a directed verdict. He noted the State relied on the two Hopeful Horizon videotaped interviews. The July 15, 2014 interview did not contain any evidence of fellatio. In the July 28, 2014 interview, the only evidence of fellatio was that it occurred in the first townhouse. Counsel argued, "So with regards to the indictment that ends in 01673, our position is that there's not been any testimony of criminal sexual conduct with a minor in the first degree happening in the second location. And so we move to dismiss that indictment for that reasons." R. 589-90.

The State responded with three arguments. First, it argued "indictments are notice documents"[12] that merely put an accused on notice of the charges, meaning the State merely has to prove a sexual battery as defined by the statute. The State argued it could rely on a statement in the second interview alleging cunnilingus. Second, the State argued J.M.'s second videotaped interview established fellatio at the first house, and J.M.'s trial testimony established fellatio at the second house.[13] Third, the State argued it should be allowed to argue there was some "confusion" about where the sexual abuse occurred because of J.M.'s age, the close proximity of the two townhouses, and the allegations of a common offender. R. 590-91.

Counsel for Mr. Dent reminded, "I don't recall the testimony in the trial about both houses" being the location of fellatio. Counsel reminded the trial judge he read the indictments in opening statements and "thought it was very important for the jurors to have the indictments [during deliberations] in this case so that they would know exactly what the charges were." In the indictments, the State identified "fellatio on the Defendant by J.M." as the sexual battery it intended to prove at trial. "That's the element they picked." Counsel argued, even though some "prosecutors treat the Grand Jury like a rubber stamp," there is "the State Constitutional right to have a presentment to the Grand Jury." Any argument by the State "about another sexual battery [] would be a variance from the indictment." *See Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011)

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[12] *E.g. State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Counsel for Mr. Dent argued, [T]here's that *Gentry* case out there that talks about indictments being a notice document. But they could write that down on a cocktail napkin and give it to us and it would give us notice." And, "But there is still something to the State Constitutional right to have a presentment to the Grand Jury." R. 592.

[13] This argument misstated the evidence as J.M. testified the fellatio occurred only once, and she did not identify a location.

(supplemental jury instructions impermissibly enlarged indictment by instructing jury that it could convict defendant of a crime not alleged in indictment). Counsel argued, as a notice document, the indictment "puts us on notice that they were going to prove fellatio." Counsel concluded, "with regards to the second house," there is not "any proof that's been presented for that to go to the jury." R. 591-93. The trial judge denied the motion. R. 613.

Mr. Dent also moved for a directed verdict on the two counts of disseminating obscene materials to a minor twelve years of age or younger. Counsel reminded the trial judge the State had not "proven compliance with the statute for getting those warrants." The State also failed to prove the materials violated section 16-15-305. The trial judge denied this motion. R. 594-95.

Mr. Dent renewed his directed verdict motions at the close of all evidence. R. 683-85.

4. Charles Dent.

Charles Dent testified. He denied forcing J.M. to commit fellatio, denied taking pictures of his own penis and showing them to J.M., and denied showing J.M. any pornography. R. 614-15, 636-37.

Mr. Dent grew up in Florida and Tennessee. He joined the United States Navy in 1985. During his twenty year career, Mr. Dent was stationed in Great Lakes, Illinois, Atlanta, Georgia, Jacksonville, Florida, Point Loma, California, and New Orleans, Louisiana. He had a security clearance and responsibilities involving homeland security. Mr. Dent was married to Lori Michelle Mayo's mother on two occasions. He had three children—Michael (a stepson), Lori, and Matthew. Mr. Dent retired to a farm in

Alabama where he lived with Matthew. Lori Mayo was living with her mother in Jacksonville. R. 615-20.

Matthew committed suicide in June 2012. The memorial service was in Jacksonville, which is when Mr. Dent began having contact again with Ms. Mayo and her children. They were living in "very poor" conditions in "a crappy neighborhood." There were discussions about Ms. Mayo and the children moving to the Beaufort area of South Carolina, which is near where Mr. Dent's brother, David Dent, has a vacation home in Hilton Head. The first townhouse was "two-bedroom, two and a half bath" about "900 square feet." Mr. Dent "paid for everything, the lease, the cable, the water, the electricity." Ms. Mayo was unemployed and had poor credit. The plan was to "improve her credit" and for Ms. Mayo to eventually take over paying the bills. At the end of the first lease, Mr. Dent continued paying the rent for the larger, four bedroom, three and a half bath townhouse. Mr. Dent regularly made trips where he would visit Ms. Mayo and the children in Beaufort, his friends Mitch and Terri Fife in Charleston, and his mother in Charlotte. He would bring presents for his two grandchildren, tailored to the individual interests of each child. R. 620-28.

During the time Ms. Mayo and the children lived in the first townhouse, Ms. Mayo had financial difficulties because she was unemployed for most of that year. Mr. Dent paid for J.M.'s dance classes and acrobatics and for A.M.'s Boy Scouts and fishing supplies. He helped Ms. Mayo with her car payment. R. 628-30.

Mr. Dent identified and testified about messages between him and Ms. Mayo regarding her quests for money. By March or April 2014, Mr. Dent "was considering

ending the lease and trying to find them a much cheaper place where [Ms. Mayo] could possibly live independently with her children." R. 630-34.

Mr. Dent met John Comelo, who was introduced to him as a "maintenance man" for a "pool company." Dr. Dent learned, from J.M., after the fact, that Mr. Comelo had moved into the townhouse. Mr. Dent was concerned and "thought it was really strange that [Ms. Mayo] and him had only been dating, perhaps, less than a month and he moved in." Mr. Dent expressed those concerns to Ms. Mayo, which added to the tension between them. R. 634-36.

5. Other Defense Witnesses.

Mr. Dent called his mother Audrey Sue Leffler (R. 650-63), his brother David Dent (R. 673-82), and his good friends Mitch Fife (R. 644-70) and Terri Fife (R. 670-72), who corroborated various aspects of Mr. Dent's testimony. They also testified about his interactions with his grandchildren.

F. Charge Conference.

The trial judge convened a charge conference. Mr. Dent requested, when "defining sexual battery," the trial court "limit it to fellatio." The State objected to that request. The trial judge ruled the Court would instruct the entire definition contained in S.C. Code Ann. § 16-3-651(h).[14] R. 693-706.

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[14] S.C. Code Ann. § 16-3-651(h) provides, "'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes."

Mr. Dent also requested the trial judge provide the circumstantial evidence instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). R. 708; Request to Charge No. 2, R. 81.

G. Closing Arguments.

During closing argument, the Solicitor asked the jurors to recall J.M.'s videotaped interviews for her allegations of the sexual assaults and viewing pornography. R. 707-11. When the Solicitor began to argue the jurors could convict Mr. Dent for performing cunnilingus on J.M., Mr. Dent's counsel interjected, "Objection. Variance to the indictment." The trial judge overruled the objection. The Solicitor then argued the jurors could convict Mr. Dent for "penetrating her vagina." Counsel interjected, "Objection. Variance to the indictment." The trial judge overruled the objection. When the Solicitor agued the jurors could convict Mr. Dent for any "sexual battery," counsel interjected, "Objection to the variance to the indictment." The trial judge overruled the objection. The Solicitor then read the full definition of "sexual battery" found in S.C. Code Ann. § 16-3-651(h). R. 713, 750-51.

During closing argument, Mr. Dent asked the jurors to pay attention to the allegations in the indictments, and noted "an indictment is the what that the State tells a person what they're charged with and what they have to come to court to defend." Counsel reviewed the precise allegations of the indictments. R. 725, 732-34.

H. Jury Charge.

The trial judge's charge of the law to the jurors included the complete definition of "sexual battery" found in S.C. Code Ann. § 16-3-651(h):

> In order to convict the Defendant of this offense, the State must prove several things beyond a reasonable doubt. First, the State must prove that

> the Defendant engaged in a sexual battery with the victim. Sexual battery is – is defined as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genitalia or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnosis – diagnostic purposes.

R. 761.

After the trial court's instruction on the law, Mr. Dent renewed his "objection to the manner in which the Court charged sexual battery," noting he had "asked [the definition] be limited to fellatio. And, of course, [the trial judge] gave them the other options." R. 768. Mr. Dent renewed this objection in his new trial motion. R. 73-79. Mr. Dent also objected because the jury instruction on circumstantial evidence deviated from the charge deemed mandatory in *Logan*. R. 769.

ARGUMENTS

Question I

Did the trial judge err by not directing a verdict of acquittal on Indictment No. 2014-GS-07-01673 when the State failed to present any evidence that "fellatio on the Defendant by J.M." occurred during the time frame of the indictment?

> In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict. During trial, [w]hen ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. The trial court should grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty, as [s]uspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.
>
> On appeal, [w]hen reviewing a denial of a directed verdict, this Court must view the evidence and all reasonable inferences in the light most favorable to the state. If the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the trial court's decision to submit the case to the jury.

State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408-09 (2013) (internal citations and quotations omitted); *and see State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Gaster*, 349 S.C. 545, 564 S.E.2d 87 (2002); *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000); *State v. Burdette*, 335 S.C. 34, 515 S.E.2d 525 (1999); *see also* Rule 19(a), SCRCrimP.

When arguing the directed verdict motion, both parties agreed J.M.'s July 15, 2014 interview did not contain any evidence of a sexual battery, let alone fellatio. The parties also agreed J.M.'s July 28, 2014 interview alleged fellatio occurring only at the first townhouse. The jurors acquitted Mr. Dent on the indictment that corresponded to the timeframe J.M. lived in the first townhouse.

When denying the directed verdict motion, the trial judge might have been influenced by the prosecution's argument that J.M. testified in during the trial that Mr. Dent made her perform fellatio at the second townhouse. A review of the trial record, however, reveals this argument to be a misstatement of the evidence. The following is the only testimony by J.M. about fellatio:

Q. Okay. Did he ever make you touch his penis?

A. He didn't make me touch. He made me lick his private parts.

Q. Can you tell me about that?

A. It's hard to explain. I'm sorry.

Q. That's okay. When you say he made you, what does the that mean?

A. It means he told me to.

Q. Okay. Once or more than once?

A. Once.

R. 377.

Thus, the only allegation of fellatio is that it occurred at the first townhouse, and the jurors acquitted of this charge.[15] This Court, therefore, should reverse the trial judge and enter an order directing a verdict of acquittal on Indictment No. 2014-GS-07-01673.

Question II

Did the trial Judge err by not limiting the definition of sexual battery to "fellatio" when "fellatio on the Defendant by J.M." was the only sexual battery alleged in the indictment.

> In South Carolina, [i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment. A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense.
>
> [W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged. A conviction under the latter circumstance violates principles of due process . . . because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged.

Bailey v. State, 392 S.C. 422, 433–34, 709 S.E.2d 671, 677 (2011) (internal citations and quotations omitted); *and see State v. Gunn,* 313 S.C. 124, 437 S.E.2d 75 (1993) and *State v. Cody,* 180 S.C. 417, 186 S.E. 165 (1936); *see also Thomason v. State,* 892 S.W.2d 8, 11 (Tex.Crim.App.1994).

As seen, Indictment No. 2014-GS-07-01673 alleged Mr. Dent committed first-degree criminal sexual conduct with a minor, "between August 2013 and April 2014,"

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[15] As argued in more detail in Question II below, allowing the State to rely on a sexual battery other than fellatio would be an impermissible variance from the indictment. *See Bailey, supra.*

alleging a single sexual battery, "to wit: fellatio on defendant by J.M." R. 31-32. The trial judge allowed the prosecution to argue for the jurors to convict Mr. Dent for first-degree criminal sexual conduct with a minor for a sexual battery other than fellatio. The trial judge also instructed the jurors they could convict Mr. Dent of first-degree criminal sexual conduct with a minor for a sexual battery other than fellatio. This argument and jury instruction resulted in a variance in the indictment. This Court should reverse the trial court and enter a directed verdict on Indictment No. 2014-GS-07-01673. In the alternative, this Court should order a new trial.

Question III

Did the trial judge err by not excluding the testimony of Tessa Trask's when this testimony was based on her own theories and the record does not contain any evidence that her theories are reliable?

> The jury and the trial court each have distinct roles and separate responsibilities that they must execute during a trial. The jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial and reaching a verdict. The trial court, on the other hand, is charged with the duty of determining issues of law. As a part of this duty, the trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law. Once the trial court makes a ruling that the particular evidence is admissible, then it is exclusively within the jury's province to decide how much weight the evidence deserves.

Watson, 389 S.C. at 445, 699 S.E.2d at 174-75. *Watson* recognized a three-prong test to determine the admissibility of expert testimony. "First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Id.* 389 S.C. at 446-47, 699 S.E.2d at 175 (citing *State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009)). Second, "while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the

particular subject matter." *Id.* (citing *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252-53, 487 S.E.2d 596, 598 (1997)). Finally, "the trial court must evaluate the substance of the testimony and determine whether it is reliable." *Id.* (citing *State v. Council,* 335 S.C. 1, 20, 515 S.E.2d 508, 518 (evaluating whether expert testimony on DNA analysis met the reliability requirements). "Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. *Id.*

"There is no formulaic approach for determining the foundational requirements of qualifications and reliability in non-scientific evidence. However, evidence of mere procedural consistency does not ensure reliability without some evidence demonstrating that the individual expert is able to draw reliable results from the procedures of which he or she consistently applies." *State v. Chavis*, 412 S.C. 101, 108, 771 S.E.2d 336, 339 (2015) (internal citation omitted); *and see State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009) (trial court's gatekeeping function in assuring reliability of expert testimony applies to nonscientific evidence).

As seen, the trial judge declined Mr. Dent's request to convene the full hearing required by *Chavis* and *White* by limiting the scope of that hearing to determining the background and qualifications of Ms. Trask. The trial judge erred by not determining the reliability of Ms. Trask's testimony. The record is devoid of evidence establishing the reliability Ms. Trask's methods and theories. The trial court erred when it admitted Ms. Trask's testimony, and this Court should order a new trial.

Question IV

Did the trial judge err by allowing the prosecution to introduce State's Exhibits 1, 3, 4, 6, 11, 13, and 15 when the prosecution could not establish the chain of custody, the witness could not authenticate those images, the images were not relevant to guilt, and the prejudicial effect of those images and J.M.'s testimony about those images substantially outweighed any probative value.

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901, SCRE. "Establishing a strict chain of custody is not an ironclad requirement, and the fact of a missing link does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be and has not been altered in any material respect. The [trial] court's role is merely to act as a gatekeeper for the jury, and the proponent of the evidence need only make a prima facie showing of its authenticity." *State v. Brockmeyer*, 406 S.C. 324, 343, 751 S.E.2d 645, 655 (2013) (internal citations and quotations omitted).

In *Langley*, this Court found the witness's testimony and the victim's photograph were not relevant to proving the guilt of appellant," and "[b]ecause the evidence of appellant's guilt was not overwhelming, [this Court] find this irrelevant evidence did not affect the outcome of the trial under a harmless error analysis." 334 S.C. 643, 648, 515 S.E.2d 98, 100 (1999). Additionally, "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Rule 403, SCRE.

As seen, many of the images were "carved," meaning they had been deleted and recovered. The prosecution could not establish that any of the were not "carved," meaning the prosecution could not establish that any of the image has not been altered.

The prosecution failed to produce the witness with personal knowledge of the examination of the electronic devices that purportedly contained those images. During the *in camera* hearing, the Solicitor acknowledged J.M. did not have the personal knowledge to know whether those images had been altered. Thus, the prosecution was not able to authenticate any of the images—either by establishing the chain of custody or presenting testimony that the images had not been altered.

State's Exhibits 1, 3, and 4 did not have any arguable relevance to establishing guilt and should have been excluded, as not relevant, under *Langley*. State's Exhibits 6, 11, 13, and 15 are extremely prejudicial, and the prosecution did not establish any probative value of these images. It could not establish who took these photographs or whether these photographs had been altered. For example, State's Exhibit 15 could be a photograph of J.M. lying on the floor with her pet rabbit, taken by someone other than Mr. Dent, subsequently cropped to appear to be a close up image of J.M.'s legs and the bottom portion of her dance outfit. Rule 403 excludes State's Exhibits 6, 11, 13, and 15. This Court should order a new trial.

Question V

Did the trial judge err by overruling Charles Dent's objections during the State's opening and the direct examination of John Camelo, thereby allowing Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience?

As seen, the Solicitor cleverly questioned John Camelo about his education, training, and experience as a police officer and private investigator, as if the State intended to qualify him as an expert witness. The State linked Mr. Camelo's education, training, and experience to his observations of "red flags" about J.M.s' behavior, thereby suggesting Mr. Camelo believed J.M. had been sexually abused. This line of questionng

was a back door introduction of opinion evidence prohibited by *Anderson, Kromah, Jennings,* and similar cases. This Court should order a new trial.

Question VI

Did the trial judge err by denying Charles Dent his Sixth Amendment right to confront and cross-examine John Camelo about the real reasons why he ended the relationship with Lori Michelle Mayo?

"The Sixth Amendment's Confrontation Clause provides that, [i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." *Crawford v. Washington*, 541 U.S. 36, 42 (2004) (internal quotations omitted). The Supreme Court has "held that this bedrock procedural guarantee applies to both federal and state prosecutions." *Id.* citing *Pointer v. Texas*, 380 U.S. 400 (1965); *see, e.g., State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017) (court's error, in deciding not to review witness's privileged mental health records in camera to determine whether disclosure of records was necessary under Confrontation Clause); *State v. Henson*, 407 S.C. 154, 754 S.E.2d 508 (2014) (admission of codefendant's redacted confession during a joint trial violated defendant's rights under the Confrontation Clause); *State v. Mizzell*, 349 S.C. 326, 563 S.E.2d 315 (2002) (defendants' right of confrontation was violated by limitation of cross-examination into co-conspirator witness's potential sentence if convicted of same crimes as defendants). Due process also requires the prosecution to correct false testimony. *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006) (State was obligated to correct co-defendant's false testimony at trial).

As seen, the prosecution solicited testimony from John Camelo about the reason for his ending the romantic relationship with Lori Michelle Mayo, which allowed the jurors to believe the relationship ended because of J.M.'s allegations of sexual abuse.

This testimony was contradicted by information provided by Mr. Camelo during an interview with the prosecution team. R. 790-91. The trial judge erred by denying Mr. Dent's Sixth Amendment right to confront and cross-examine Mr. Camelo about his prior inconsistent statements. Rules 613 and 801(d)(1), SCRE; *State v. Caulder*, 287 S.C. 507, 339 S.E.2d 876 (Ct. App. 1986) (inconsistent statement of witness who testified at trial was admissible as substantive evidence). This Court should order a new trial.

Question VII

Did the trial judge err by deviating from the jury instruction mandated by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013)?

Our Supreme Court held: "[T]rial courts should provide the following language as a circumstantial evidence charge, in addition to a proper reasonable doubt instruction, when so requested by a defendant:"

> There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
>
> Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.
>
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two."

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013).

Mr. Dent requested this instruction and objected when the trial judge deviated from the *Logan* instruction. R. 688, 756, 769; Request to Charge No. 2, R.81. In this

case, the State relied on a combination of direct and circumstantial evidence. Mr. Dent was prejudiced because the omitted language would have instructed the jurors that the state's proof must point conclusively to the guilt of the accused and mere suspicion is not enough. This Court should order a new trial.

Question VIII

Did the trial judge err by not quashing the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the arrest warrants?

> The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. However, all rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (internal quotations and citations omitted). An "arrest warrant for a violation of Sections 16-15-305 . . . may be issued ***only*** upon request of a circuit solicitor." S.C. Code Ann. § 16-15-435(A) (emphasis added). The State did not follow this procedure, as law enforcement—not the Solicitor—sought the arrest warrants. The trial judge erred by accepting the Solicitor's argument that these code sections provide an alternate—rather than the only—method of obtaining the search warrants. This Court should strictly construe the requirements set forth in S.C. Code §§ 16-15-305 and 435. "When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citing *State v. Blackmon,* 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)). This Court should order a new trial.

Question IX

Did the trial judge err by not suppressing State's Exhibits 1, 3, 4, 6, 11, 13, and 15 because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the search warrant and arrest warrants?

A search warrant . . . for a violation of Sections 16-15-305 . . . may be issued only upon request of a circuit solicitor." S.C. Code Ann. § 16-15-435. This statute must be strictly construed. *See Roberts, Nelson,* and *Blackmon, supra.* As seen, the search warrant was sought based on information provided by Investigator LaVan—not the Solicitor. The trial judge erred by not suppressing this evidence. This Court should reverse the trial court and suppress the evidence.

Question X

Did the trail judge err by not directing the verdict on the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not satisfy the requirements of the statute.

As seen, the State did not follow the statutory requirements of S.C. Code §§ 16-15-305 and 435 for obtaining the search warrant and arrest warrants for the two indictments for disseminating obscene material to a minor twelve years of age or younger. These statutes must be strictly construed. *See Roberts, Nelson,* and *Blackmon, supra.* Section 16-15-305, additionally, sets forth specific requirements before the allegedly obscene material can support a conviction. Not only did the prosecution not present any obscene material in during the trial, J.M.'s testimony did not satisfy the prerequisites of section 16-15-305 to support a conviction for disseminating obscene material. This Court should reverse the trial judge and issuing an order directing a verdict of acquittal on these charges.

Question XI

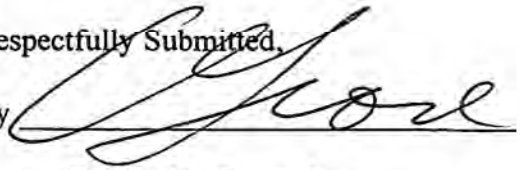
Should this Court grant Charles Dent a new trial based on the cumulative error doctrine?

Each of the foregoing arguments independently entitles Charles Dent to a new trial. This Court, however, should not overlook the cumulative error doctrine, which "provides relief to a party when a combination of errors that are insignificant by themselves have the effect of preventing a party from receiving a fair trial." *State v. Johnson*, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999). *And see State v. Blurton*, 342 S.C. 500, 512, 537 S.E.2d 291, 297 (Ct. App. 2000), *reversed on other grounds by State v. Blurton,* 352 S.C. 203, 573 S.E.2d 802 (2002) (cumulative error of solicitor's improper argument and improperly excluded evidence warranted reversal). Many of Mr. Dent's questions on appeal are intertwined, thereby compounding the prejudice.

CONCLUSION

This Court should reverse the trial judge and enter an order directing an verdict of acquittal on Indictment No. 2014-GS-07-01673. This Court should reverse the trial judge and enter an order directing a verdict of acquittal two indictments for disseminating obscene material to a minor twelve years or younger. In the alternative, this Court should enter an order quashing those indictment. In the alternative, this Court should order a new trial.

Respectfully Submitted,

By 

E. Charles Grose, Jr.
The Grose Law Firm, LLC

Attorney for Appellant Charles Dent

November 4, 2019.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State,..... Respondent,

v.

Charles Dent,..... Appellant.

Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,

By: _____

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

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Greenwood, South Carolina

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THE STATE, Respondent,

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CHARLES DENT, Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

Post Office Box 1880
Bluffton, SC 29910
(843)-790-6283

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE

In October 2014, the Beaufort County Grand Jury indicted Appellant for two counts of criminal sexual conduct with a minor, first degree. (R. 31-32, R. 33-34). In March 2018, the Beaufort County Grand Jury indicted Appellant for two amended counts of disseminating obscene material to a minor twelve years of age or younger (R. 23-24, 27-28). On February 28, 2018, a pretrial hearing was held in the Beaufort County Court of General Sessions with the Honorable Carmen Mullen presiding. On May 21-24, 2018, a jury trial was held in the Beaufort County Court of General Sessions with the Honorable Alex Kinlaw, Jr., presiding. Appellant was represented by E. Charles Grose, Jr., Esq. The State was represented by Assistant Solicitors Alexandra Joseph and Rebekah Luttrell of the Fourteenth Circuit Solicitor's Office. At the conclusion of trial, the jury convicted Appellant of one count of criminal sexual conduct with a minor, first degree (2014-GS-07-1673) and both counts of disseminating obscene material to minor twelve years of age or younger. The jury acquitted Appellant of the remaining count of criminal sexual conduct with a minor, first degree (2014-GS-07-1674). Following the verdict, the trial judge sentenced Appellant to a term of thirty years' imprisonment for criminal sexual conduct with a minor, first degree and, and fifteen years' imprisonment for each count of disseminating obscene material to a minor twelve years of age or younger. All sentences ran concurrently, resulting in an aggregate sentence of thirty years' imprisonment. Appellant filed a motion for a new trial on June 1, 2018. On June 17, 2018, the trial judge denied Appellant's motion. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

The victim (Victim) in this case was born in 2005. (R.32). Victim and her mother (Mother) moved to Beaufort County, South Carolina in 2012 and continued living in the county until 2014. (R. 302). Victim was 7 years old when she and Mother moved to Beaufort County in 2012 and 9 years old when they moved away in 2014. (R. 571). Mother is Appellant's daughter and Victim is Appellant's granddaughter. (R. 303, 375). Mother also had a son (Brother) who was 9 years old when they moved to Beaufort County and 11 years old when they left. In August 2012, Victim and Mother moved to Beaufort County from Jacksonville, Florida at Appellant's suggestion. (R. 622-23). Initially, Mother, Victim and Brother lived in a two bedroom townhome that was paid for by Appellant. (R. 623). In August 2013, Mother, Victim, and Brother moved to a four bedroom townhouse in the same complex as their previous townhouse. (R. 625). The family moved after Appellant decided they needed a bigger townhome so he could have a place to sleep when he came to visit.

Mother began dating John Camelo in May 2014. (R. 259). As Mother and Camelo's relationship progressed, Camelo spent more time with Victim. Camelo observed signs of overt sexual behavior in Victim that he thought were inappropriate for a girl her age. According to Camelo, Victim would kiss him on his cheek and grope his groin area. (R. 271). Victim also began to call Camelo "dad" after he and Mother had only been dating a few months. (R. 271). Camelo asked Victim if anyone had ever done anything inappropriate with her. (R. 271). Victim made an initial disclosure of abuse by Appellant to Camelo. Camelo then told Mother who reported the abuse to law enforcement on June 10, 2014. (R. 308, 363). Victim was referred to Hopeful Horizons for a forensic interview regarding the disclosure. Victim's initial interview took place on July 10, 2014. (R. 424, State's Exhibit #16). After her first interview, Victim made

a second disclosure to Camello. (R. 272). In light of the second disclosure, Victim participated in a second forensic interview on July 25, 2014. (R. 424, State's Exhibit #17).

Victim disclosed that Appellant "[s]tarted kissing me, like on my face, my mouth. He started licking my belly, like my belly button and started, like, touching me in weird places. And he took pictures of his private parts and told me to take pictures of mine." (R. 374, lines 19-23). Victim also disclosed that she was forced to perform fellatio on Appellant. (R. 377). Victim completed two forensic interviews that were entered into evidence at trial pursuant to S.C. Code Ann. §17-23-175. In her first forensic interview, Victim detailed occasions when Appellant touched her vagina, breasts and buttocks. Sometimes, the touching was underneath her clothes, other times it was over her clothes. Victim also disclosed that Appellant showed her pictures of his penis and a pornographic video. (R. 376-77, State's Exhibit #16). In Victim's second forensic interview, she disclosed that Appellant's penis went inside her mouth. She also disclosed that Appellant touched her vagina with his mouth and that his hands went inside her vagina. Victim described urine coming out of Appellant's penis on certain occasions that almost got in her mouth. She described Appellant's "urine" as being white, looking like "flour", and that it stained the carpet. (State's Exhibit #17).

Appellant testified in his own defense and denied all of Victim's allegations. At the conclusion of trial, Appellant was convicted of all counts except indictment number 2014-GS-07-1674 which alleged criminal sexual conduct with a minor, first degree.

STANDARD OF REVIEW

I., X.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." State v. Lindsey, 355 S.C. 15, 20, 583 S.E.2d 740, 742 (2003).

II., VII.

"Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." State v. Jackson, 297 S.C. 523, 526, 377 S.E.2d 570, 572 (1989). "A jury charge is correct if, when read as a whole, the charge adequately covers the law." State v. Logan, 405 S.C. 83, 90-91, 747 S.E.2d 444, 448 (2013). "A jury charge that is substantially correct and covers the law does not require reversal." State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011).

III.

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." Id.

IV.

"The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Collins, 409 S.C. 524, 534, 763 S.E.2d 22, 27 (2014) (quoting State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996)).

V., VI., IX.

"The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

VIII.

When a timely and proper challenge to the sufficiency of an indictment has been raised, what the trial judge is called upon to determine is: "whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense intended to be charged." State v. Tumbleston, 376 S.C. 90, 96-97, 654 S.E.2d 849, 852 (Ct. App. 2007).

XI.

"An appellant must demonstrate more than error in order to qualify for reversal pursuant to the cumulative error doctrine; rather he must show the errors adversely affected his right to a fair trial to qualify for reversal on this ground." State v. Beekman, 405 S.C. 225, 237, 746 S.E.2d 483, 490 (Ct. App. 2013).

ARGUMENT

I.

The trial judge properly denied Appellant's request for a directed verdict of acquittal on indictment number 2014-GS-07-1673 because the State produced evidence that Victim performed fellatio on Appellant during the time frame of the indictment.

Appellant initially argues the trial judge erred by denying his motion for a directed verdict of acquittal on indictment number 2014-GS-07-1673 because the State failed to present any evidence of Victim performing fellatio on Appellant during the time frame of the indictment. Specifically, Appellant argues Victim alleged that fellatio only occurred during the time frame that she lived in the first townhouse in Bluffton and not the second townhouse. Accordingly, Appellant argues a directed verdict should have been granted for indictment no. 2014-GS-07-1673 because the indictment alleged abuse during the time frame when Victim's family lived in the second townhouse. Appellant's argument is without merit. Appellant's argument misrepresents the record and ignores evidence indicating fellatio occurred in the second townhouse. In Victim's second forensic interview, she stated that fellatio with Appellant occurred more than once but she only identified a specific location of abuse for the first occasion when she was forced to perform fellatio on him. (State's Exhibit #17). At trial, Victim testified that fellatio only occurred once, but she did not specify a time or a location where it occurred. (R. 377). Therefore, when taken in the light most favorable to the State, the trial judge properly denied Appellant's motion for a directed verdict when evidence existed that Victim performed fellatio on Appellant during the relevant time frame in indictment number 2014-GS-07-1673. The jury then properly determined the weight of that evidence.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. When reviewing a denial of a directed verdict at the trial level, the appellate court

"views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." Lindsey, 355 S.C. at 20, 583 S.E.2d at 742. When an appellate court reviews the sufficiency of the evidence to support a criminal conviction, "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original).

Here, the State presented evidence that Victim performed fellatio on Appellant through Victim's testimony at trial and through Victim's second forensic interview on July 25, 2014. Although Victim gave contradictory answers regarding how many times she performed fellatio on Appellant, evidence was still presented from which a reasonable fact finder could conclude that Victim performed fellatio on Appellant during the relevant time frame of indictment number 2014-GS-07-1673. Appellant incorrectly asserts that Victim only alleged that fellatio occurred at the first townhouse. In her second forensic interview, Victim asserts that she performed fellatio on Appellant "more than one time." (State's Exhibit #17). Victim does not say that fellatio only occurred at the first house. Victim is only specifically asked by the forensic interviewer where the first instance of fellatio occurred. (State's Exhibit #17). Victim is not asked to specifically identify where and when each instance of fellatio occurred. The logical implication of Victim's second interview is that she performed fellatio on Appellant more than one time and at least one of those incidents happened at the first townhouse during the time frame listed in indictment number 2014-GS-07-1674. Northing in the interview specifically precludes fellatio from having

occurred at the second townhouse during the time frame of indictment number 2014-GS-07-1673.

At trial, Victim deviated from her statements in the second forensic interview regarding how many times she performed fellatio on Appellant. Victim testified she only performed fellatio on Appellant once. (R. 377). However, she never specified where or when that instance took place. In fact, when Victim began to testify on direct examination about Appellant's abuse, she was asked a broad question by the assistant solicitor: "But do you remember anything about what was done to you while you lived in *those houses*?" (R. 374, lines 15-16) (emphasis added). Victim then began to describe Appellant's abusive acts towards her, culminating in Appellant forcing her to perform fellatio on him. (R. 374-77). The assistant solicitor never asked Victim to specify when or where the abuse took place, nor did Appellant on cross-examination. (R. 378-390).

When considering the aforementioned evidence in the light most favorable to the State, the trial judge properly determined that evidence existed from which the jury could find that Victim performed fellatio on Appellant during the time frame listed in indictment number 2014-GS-07-1673, indictment number 2014-GS-07-1674, or both. Because that evidence existed, it was then incumbent upon the jury to determine the weight of that evidence. Ultimately, the jury concluded the State only proved that fellatio occurred during the time frame of indictment number 2014-GS-07-1673. In his closing argument, Appellant encouraged the jury to consider the possibility that Appellant was only guilty of one of the indicted charges and not both because of Victim's conflicting statements. (R. 734). However, despite Victim's conflicting statements, evidence existed from which the jury could determine that fellatio happened in either time frame.

Therefore, the trial judge properly denied Appellant's motion for a directed verdict of acquittal. Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly instructed the jury on the complete statutory definition of sexual battery because it was the correct definition of sexual battery and it adequately covered the law.

Appellant next argues the trial judge erred by instructing the jury on the complete statutory definition of sexual battery rather than limiting the definition to fellatio. Appellant contends that by charging the whole definition of sexual battery, the trial judge allowed the State to argue that Appellant was guilty of a sexual battery other than fellatio. Accordingly, Appellant asserts that an impermissible variance in the indictment resulted. Appellant's argument is meritless. The trial judge charged the complete and correct definition of sexual battery in his charge to the jury. The instruction was not misleading or confusing because the State only attempted to prove that Appellant forced Victim to perform fellatio. Accordingly, Appellant was free to, and ultimately did, encourage the jury to only consider whether fellatio occurred when they deliberated. Therefore, the trial judge did not err in refusing to limit the definition of sexual battery to fellatio.

The purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). "A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." Adkins, 353 S.C. at 318, 577 S.E.2d at 464. "A jury charge that is substantially correct and covers the law does not require reversal." State v.

Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010). "The trial court is required to charge only the current and correct law of South Carolina." Mattison, 388 S.C. at 479, 697 S.E.2d at 583. "Jury instructions must be considered as a whole and, if as a whole, they are free from error, any isolated portions which might be misleading do not constitute reversible error." Jackson, 297 S.C. at 526, 377 S.E.2d at 572. "As a general rule where the law governing a case is expressed in a statute, the court in its charge not only may, but should use the language of the statute, and may indeed be guilty of error if it employs language which constitutes a departure in an essential respect from the statute." Fields v. Gregory, 230 S.C. 39, 94 S.E.2d 15, 21 (1956) (quoting 53 Am.Jur., Trial, para. 542, at page 433).

S.C. Code Ann. § 16-3-655(A) provides:

> (A) A person is guilty of criminal sexual conduct with a minor in the first degree if:
> (1) The actor engages in sexual battery with a victim who is less than eleven years of age;

S.C. Code Ann. § 16-3-655(A)(1). Sexual battery is defined by S.C. Code Ann. § 16-3-651(h) in the following manner:

> "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

S.C. Code Ann. § 16-3-651(h).

Here, the trial judge charged the jury on the definition of sexual battery exactly as it is written S.C. Code Ann. § 16-3-651(h). (R. 761). Therefore, the trial judge charged the complete, current, and correct law of South Carolina. The definition was not misleading or confusing to the jury because the jury was told by the trial judge and the State that fellatio was the specific sexual battery the State was seeking to prove. The trial judge read both indictment numbers 2014-GS-

07-1673, and 2014-GS-07-1674 during jury qualifications. (R. 146-47). Each indictment specifically listed fellatio as the sexual battery the State intended to prove. In its opening statement, the State identified fellatio as the only sexual battery they intended to prove. (R. 247). In the State's direct examination of Victim, Victim was only asked about fellatio. (R. 371-78). In closing argument, the State argued that fellatio was the sexual battery that Appellant was guilty of committing.[1] (R. 715, 722). Therefore, the jury was clearly told which form of sexual battery the State intended to prove.

Appellant argues that by instructing the jury on the complete definition of sexual battery, the trial judge created a variance in the indictment. Appellant confuses the concept of a variance in an indictment with his argument that the trial judge improperly instructed the jury on the definition of sexual battery. These are two separate allegations of error. To the extent that Appellant wishes to raise an improper variance in the indictment as an issue on appeal, he failed to raise that ground in the Statement of Issues on Appeal in his brief. (Final Brief of Appellant 1). See Rule 208(b)(B) SCACR. If this Court gives Appellant the benefit of the doubt and assumes he did raise the issue in his brief, he did not properly preserve the issue for appeal at trial. Appellant moved to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 which alleged that Appellant disseminated obscene material to a minor, but he did not move to quash indictment numbers 2014-GS-07-1673 and 2014-GS-07-1674 which alleged criminal sexual conduct, first degree. (R. 114-19). See S.C. Code Ann. § 17-19-90 ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards."). Only the

[1] The State did make a passing reference to the other forms of sexual battery Victim disclosed in her second interview which Appellant objected to. However, this was the only reference to another form of sexual battery made by the State at trial. The State later emphasized in their closing argument that Appellant was guilty of fellatio. (R. 713).

latter two indictments that Appellant did not attempt to quash are relevant to this issue. The issue of a variance in an indictment is only relevant on appeal if an appellant alleges that a trial judge erred by refusing to quash an indictment. See State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991); State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 (S.C. Court App. 2007). Because Appellant did not move to quash the indictments alleging criminal sexual conduct, first degree, the issue of an impermissible variance in those indictments is not preserved for appeal. Appellant's convictions and sentences should be affirmed.

III.

Because Appellant only objected to the reliability of one subject of Tessa Trask's testimony, Appellant did not preserve any other issues with her testimony for appeal. Even if Appellant did preserve this issue for appeal, the trial judge nevertheless properly admitted Trask's testimony because her testimony was reliable as a blind expert for the limited purpose of describing general concepts in sexual abuse cases and she did not offer an opinion on the credibility of Victim's disclosure. If the trial judge erred in admitting Trask's testimony about trauma, any error was harmless because the testimony did not prejudice Appellant and was even used to Appellant's advantage at trial.

Appellant next argues the trial judge erred in admitting the testimony of Tessa Trask because the record does not contain any evidence that her theories are reliable. Appellant's argument is without merit. As an initial matter, Appellant only objected to the reliability of Trask's definition of trauma. Therefore, any issues with the remainder of Trask's testimony have not been preserved for appeal. If this Court determines that Appellant has preserved this issue for appeal, the trial judge nevertheless properly admitted Trask's testimony because Trask testified as a "blind" expert witness whose testimony was offered to educate the jury on general concepts in sexual abuse cases such as trauma, disclosure, and grooming. Trask did not testify about forensic interviewing and thus her testimony is distinguishable from the testimony warned against by our Supreme Court in State v. Chavis. If this Court determines Trask's testimony was

admitted in error, any error was harmless because Trask did not testify about the credibility of Victim's disclosure or any other topic that would prejudice Appellant.

"The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015). "A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion." Id. "Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010).

In order to admit scientific evidence under rule 702 SCRE, the trial court must find: (1) the testimony will assist the trier of fact, (2) the witness is qualified, (3) the underlying science is reliable, and (4) the testimony's probative value is not outweighed by its prejudicial effect. State v. Council, 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999). To determine if the underlying science is reliable, the trial judge should apply the factors set out in State v. Jones. Id. See State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979); State v. Jones, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001).

In order to admit non-scientific evidence under rule 702 SCRE, the trial court must still make a determination as to the proposed testimony's reliability. State v. White, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009). However, while the trial court still serves an important gatekeeping function in such cases, "the foundational reliability requirement for expert testimony does not lend itself to a one-size-fits-all approach, for the Council factors for scientific evidence serve no useful analytical purpose when evaluating nonscientific expert testimony." White, 382 S.C. at 274, 676 S.E.2d at 688. Accordingly, there is no formulaic approach that a trial court can

or must apply to determine reliability in cases involving nonscientific expert testimony. Id. The trial judge is merely required to "assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact." White, 382 S.C. at 274, 676 S.E.2d at 689. "State v. White should apply in qualifying child abuse assessment experts because their testimony is non-scientific." Chavis 412 S.C. at 106, 771 S.E.2d at 338. "There is always a possibility that an expert witness's opinions are incorrect. However, whether to accept the expert's opinions or not is a matter for the jury to decide." State v. Jones, 423 S.C. 631, 639-40, 817 S.E.2d 268, 272 (2018).

Error Preservation

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). A party may not argue one ground at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). "Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review." State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011).

To determine whether this issue is preserved for appeal, it is instructive to review Appellant's specific objections prior to and during the trial. Prior to trial, Trask testified about her qualifications in an *in camera* hearing. After cross-examining Trask, Appellant requested the trail judge to review "the substance of the testimony to determine that it's reliable." (R. 183, lines 18-19). Appellant added "I'm not clairvoyant. So I think they need to proffer, at least, a summary of her testimony." (R. 183, lines 23-25). The State complied with Appellant's request by proffering a summary of Trask's testimony. (R. 184-85). Trask said she would testify about

trauma, the similarities between trauma and ADHD, disclosure in sexual assault cases, coaching, lying and confusion in sexual assault cases, grooming, and risk factors of sexual abuse. (R. 184-85). Appellant responded to the proffer by saying he was concerned about Trask's testimony regarding trauma and ADHD as well as the potential for testimony about coaching and lying. (R. 186-87). Appellant and the State stipulated that Trask would not testify about coaching or lying, thus eliminating one of Appellant's potential concerns. (R. 188). Court was then adjourned for the day. (R. 190).

The following day Trask testified before the jury. The State tendered Trask as an expert in the field of "behavioral characteristics of child victims of sexual abuse." (R. 393, lines 20-21). Appellant objected "subject -- to the proceedings we had yesterday." (R. 393, lines 23, 25). Trask was tendered as an expert in the relevant field by the trial judge. Trask testified about trauma and offered her own "working definition of trauma just based on research, training, experience –." (R. 394, lines 24-25). Appellant objected on the basis of the reliability of Trask's definition and noted that her definition had not been peer reviewed. (R. 395). The trial judge overruled Appellant's objection. Trask testified about trauma and the additional topics in her pretrial proffer. Appellant did not offer any further objections. (R. 395-402).

A review of the record reveals that Appellant specifically objected to Trask's testimony regarding trauma on the grounds that her definition of trauma was not reliable. This objection was Appellant's only objection to the content of Trask's testimony. Appellant asked for the clarity of a proffer to determine which specific objections he may have with Trask's testimony. After Trask proffered her testimony, Appellant only raised concerns about her testimony as it related to trauma, ADHD, and coaching. Appellant and the State stipulated that neither side would ask about coaching at trial. When Trask testified at trial, Appellant only objected to her

testimony regarding trauma. Appellant did not object to Trask's testimony about disclosure, grooming, or the risk factors of sexual abuse. Therefore, Appellant did not preserve any issue with Trask's testimony for appeal other than her testimony regarding trauma.

Testimony Properly Admitted

If we assume for the sake of argument that Appellant preserved the issue of the reliability of Trask's testimony regarding subjects other than trauma, the trial judge nevertheless properly admitted Trask's testimony. Trask testified about general concepts in sexual abuse cases as a blind expert. Trask did not meet with Victim, nor did she review the case file. (R. 178, 392-93). Trask did not offer an opinion on Victim or the credibility of her disclosure. (R. 404, 406). The facts presented here differ from the facts in State v. Chavis. Unlike the expert in Chavis, Trask did not testify about forensic interviewing or the use of the RATAC method. The expert in Chavis relied on her expertise in the aforementioned subjects to offer an opinion that a disclosure of abuse had occurred to a different forensic interviewer. Chavis 412 S.C. at 107, 771 S.E.2d at 339. Our Supreme Court expressed concern that the expert in Chavis had no way to discern what her rate of error was. Therefore, the Court found the trial judge erred in qualifying the expert because there was no evidence the expert could draw reliable results from the procedures she consistently applied. Chavis 412 S.C. at 108, 771 S.E.2d at 339.

Here, Trask testified about general concepts of abuse, not a method of interviewing that produces quantifiable results. Trask's testimony was similar to the expert testimony analyzed by the Supreme Court in State v. Jones. In Jones, like the present case, the State's expert did not testify about forensic interviewing methods. Rather, the State's expert testified about the general concepts of delayed disclosure and the role of non-offending care givers in child sexual abuse cases. The Supreme Court noted that the State's expert did not identify the specific articles that

formed the basis of her opinion, but she could provide specific citations if asked. Jones, 423 S.C. at 639, 817 S.E.2d at 272. Ultimately, the Court held the State's expert met the threshold reliability requirement to provide an expert opinion. Jones, 423 S.C. at 640, 817 S.E.2d at 272. Although Trask also did not cite to specific articles as the source of her expertise, she nonetheless provided a sufficient explanation of her qualifications for the trial judge to make a determination that her testimony was reliable. Ultimately, as the trial judge noted, the jury was free to determine whether they accepted or rejected Trask's opinions. The trial judge properly admitted Trask's testimony.

Harmless Error

An appellate court generally will decline to set aside a conviction due to insubstantial errors not affecting the result. State v. Black, 400 S.C. 10, 27, 732 S.E.2d 880, 890 (2012). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

If this Court determines the trial judge erroneously admitted Trask's testimony, any such error was harmless. As noted above, the only topic of Trask's testimony that Appellant objected to was her definition of trauma. However, Trask's testimony about trauma did not prejudice Appellant and was even beneficial for some of Appellant's arguments. When describing what trauma in a sexual abuse case might look like, Trask noted that the presence of trauma symptoms "aren't necessarily proof that it did or did not occur." (R. 397, lines 22-23). Furthermore, Trask

readily acknowledged that she did not interview Victim and was not offering an opinion on Victim's credibility (R. 404). Trask acknowledged on cross-examination that a child could suffer trauma from the loss of a loved one. (R. 405). Appellant used Trask's admission to his advantage by arguing in closing that the suicide of Victim's uncle could have had a traumatic effect on her. (R. 727-29). Thus, Appellant not only suffered no prejudice from Trask's testimony regarding trauma, but he used the testimony to his advantage to argue for alternative explanations of Victim's behavior. Any error in the admission of Trask's testimony was therefore harmless. Appellant's convictions and sentences should be affirmed.

IV.

The trial judge properly admitted pictures of Victim into evidence because they were properly authenticated by Victim, they were relevant, and their probative value was not substantially outweighed by the danger of unfair prejudice. If the photos were admitted in error, any error was harmless.

Appellant next argues the trial judge erred in admitting photographs of Victim. Specifically, Appellant alleges error in the admission of State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15. Appellant contends the State did not establish an appropriate chain of custody, the photographs were not properly authenticated, the photos were irrelevant, and finally, even if relevant, the probative value of the photos was substantially outweighed by their prejudicial effect. Appellant's arguments are each meritless. The State was not required to prove a chain of custody because the State did not obtain the photos nor did they seek to prove the photos came directly from Appellant's camera or camcorder. At least some of the photos were obtained by Appellant and provided to the State. (R. 460-63). Additionally, all of the photographs were properly authenticated by Victim as an accurate depiction of her during the time frame alleged in the indictments. Furthermore, the photos were relevant because they depicted where the abuse took place and at least two of the photos were sexualized images of Victim that demonstrated

Appellant's inappropriate relationship with her. The photos probative value was not substantially outweighed by the danger of unfair prejudice. Even if the photos were admitted in error, any error was harmless beyond a reasonable doubt. Because Appellant argues multiple errors by the trial judge within this issue, it is instructive to address Appellant's arguments sequentially.

Chain of Custody

The State initially sought to introduce evidence of child pornography found on Appellant's computer in Alabama as a prior bad act under Rule 404(b) SCRE. (R. 432-33). Ultimately, the State decided not to offer evidence of the child pornography. (R. 447). However, the State did proffer the testimony of Lieutenant Joey Stone and Detective Arthur Agee, both law enforcement officials from Alabama, to enter photos of Victim found on Appellant's camera and camcorder in Alabama. (R. 480-534). The trial judge ruled that the State could not admit the photos through the Alabama law enforcement officials because the witness who extracted the photos was unavailable for trial. (R. 538). In light of the trial judge's ruling, the State recalled Victim to authenticate the photos. Victim identified herself in the photos as well as where they were taken. (R. 570-79). Victim opined that Appellant may have taken the photos but she couldn't be sure. The photos were admitted into evidence. (R. 579).

As an initial matter, some of the photos Appellant claims were admitted in error were obtained by Appellant's expert, not the State. (R. 460-63). Therefore, the State could not establish a chain of custody without the assistance of Appellant's expert. However, even if the State could prove a chain of custody for all of the photos, photos are non-fungible evidence and as such do not require the establishment of a strict chain of custody. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005). Secondly, in light of the trial judge's initial ruling, the State did not seek to prove the photos were taken from Appellant's electronic devices.

Rather, the photos were offered to show the jury the location of the crimes and Victim's age and appearance when she was living in Beaufort County. Therefore, the State was not required to establish a chain of custody because they did not attempt to prove where the photos were recovered from. The State merely attempted to prove that Appellant took the photos based on Victim's testimony. Thus, a chain of custody was unnecessary.

Authentication

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901, SCRE. Evidence must be authenticated before it can be admitted. State v. Aragon, 354 S.C. 334, 336, 579 S.E.2d 626, 627 (Ct. App. 2003). "'The burden to authenticate . . . is not high', and requires only that the proponent 'offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.'" Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting United States v. Hassan, 742 F.3d 104, 132 (4th Cir. 2014)). "The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court." State v. Nance, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996). "If the offered photograph serves to corroborate testimony, it is not an abuse of discretion to admit it." Id.

Here, the State authenticated the photos through Victim's testimony. In regard to State's Exhibits #1, #3, and #4, Victim identified herself in each photo and the house that she lived in at the time the photo was taken. (R. 570-74). In regard to State's Exhibits #6, #11, #13, and #15, Victim identified herself in each photo and stated the photos were taken in one of the two houses in Beaufort County. (R. 575-79). Victim also offered an opinion about who took the photo for State's Exhibits #6, #13, and #15. (R. 576-79). Victim opined that Appellant may have taken the

photos but she could not be sure. The State successfully authenticated the photos for the limited purpose of showing Victim's appearance during the relevant time period and the locations where Victim alleged that abuse occurred. Victim was able to definitively say each photo depicted her in one of the two houses she lived in during her time in South Carolina. Victim speculated that Appellant took the pictures that were offered as State's Exhibits 6, 13, and 15. However, as the trial judge appropriately noted, Victim's uncertainty regarding who took the pictures was a factor to be considered by the jury when assessing the weight of the evidence. (R. 565). The trial judge correctly ruled there was sufficient evidence to support a finding that the photos were in fact photos of Victim in the locations where abuse was alleged during the relevant time frames.

Relevance and Prejudicial Effect

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401 SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403 SCRE. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 630, 496 S.E.2d 424, 429 (Ct. App. 1998) (quoting United States v. Bonds, 12 F.3d 540, 567 (6th Cir. 1993))."All evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided." Id. "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." Collins, 409 S.C. at 534, 763 S.E.2d at 28.

Here, the photos of Victim were offered for a limited, but probative purpose. The State grouped the photos into two categories. State's exhibit numbers 1, 3, and 4 were offered for the limited purpose of showing the age of Victim and the location of abuse. State's exhibit numbers 6, 11, 13, and 15 were offered to show the age of Victim and the location of abuse, but they were offered for an additional purpose as well. While not overtly sexual, State's exhibits 6, 11, 13, and 15 are sexualized images that demonstrate the inappropriate relationship Appellant had with Victim. Put another way, the images are not the type of images one would expect a grandfather to take of his granddaughter. It is against these probative purposes that the trial judge weighed the danger of unfair prejudice. The images are not overtly sexual. By themselves, the photos do not establish that Appellant sexually assaulted Victim or disseminated obscene material. However, when taken in context with Victim's testimony, the jury could have determined that Appellant and Victim had an inappropriate relationship. Or in the alternative, the jury could have found them to be innocent or determined that Appellant did not take them. The State intended the second set of photos to prejudice Appellant. (State's Exhibit #6, #11, #13, #15). However, any prejudice suffered by Appellant was minimal because of the ambiguous nature of the photos. The level of prejudice, if any, certainly did not substantially outweigh the probative value of the photos. The trial judge did not abuse his discretion in admitting the photos.

Harmless Error

If this Court determines the trial judge erred in admitting the photos, any error was harmless beyond a reasonable doubt. The primary evidence offered by the State against Appellant was the testimony of Victim. The photos of Victim offered to give context to Victim's testimony, but they did not prove or disprove whether Appellant committed a sexual battery against Victim or disseminated obscene material to her. The photos were not overtly sexual and

Appellant could have plausibly argued they were innocent photographs. Appellant did not choose to argue this point but instead argued the State had not proven where the photos came from. (R. 732). Appellant thereby disputed that he took the photos or was ever in possession of them. Ultimately, the jury reached their verdict on Appellant's guilt or innocence based on the credibility of Victim's testimony. The photos of Victim did not affect the outcome of the trial. Any error in their admission was harmless.

V.

The trial judge properly allowed John Camelo to testify regarding his personal observations of Victim's behavior because he did not discuss the substance of Victim's disclosure or offer an opinion on her credibility.

Appellant next contends the trial judge erred in allowing John Camelo to testify regarding his personal observations of Victim's behavior and the reasons he found Victim's behavior to be concerning. Appellant argues that Camelo's testimony was used as a "back door introduction of opinion evidence prohibited by Anderson, Kromah, and Jennings." (Final Brief of Appellant 48). Appellant's argument is meritless. Appellant misunderstands the restrictions placed upon the State by the Kromah, Jennings, and Anderson line of cases. In Anderson, our Supreme Court expressed concerned that "the common practice is to present the forensic interviewer to jurors as a 'human lie-detector'" State v. Anderson, 413 S.C. 212, 220, 776 S.E.2d 76, 80 (2015). Here, Camelo did not testify as a forensic interviewer nor did he offer an opinion on the credibility of Victim's disclosure. Camelo testified as an outcry witness under Rule 801(d)(1)(D) SCRE and he described his personal observations of sexual behavior by Victim. Camelo's observations were not based on his law enforcement experience but on his personal experience as a victim of sexual abuse and his experience raising a stepdaughter who was the same age as Victim. (R. 270). Because Camelo did not offer an opinion on the credibility of Victim's disclosure or offer an

opinion that Victim had been sexually abused, Camelo's testimony was properly admitted by the trial judge.

"For an expert to comment on the veracity of a child's accusations of sexual abuse is improper." State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011). A forensic interviewer testifying at trial should avoid "a direct opinion as to a child's veracity of tendency to tell the truth" or "any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a 'compelling finding' of abuse." State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013). However a forensic interviewer may properly testify regarding "any personal observations regarding the child's behavior or demeanor; or a statement as to events that occurred within the personal knowledge of the interviewer." Id.

Here, Camelo did not testify as a forensic interviewer nor did he testify as an expert witness in any subject. First and foremost, Camelo was an outcry witness who testified to the time and place of Victim's first and second disclosures pursuant to rule 801(d)(1)(D) SCRE. Camelo did not reveal the substance of the disclosures or offer his opinion on the veracity or trustworthiness of the disclosures. (R. 271-72). Secondly, Camelo testified about the troubling aspects of Victim's behavior that he personally witnessed. Victim's troubling behavior caused Camelo to ask Victim if anyone had engaged in inappropriate behavior with her. (R. 270-71). After being questioned by Camelo, Victim ultimately made a disclosure of abuse to him. Camelo did not comment on the credibility of the disclosure or offer an opinion as to whether abuse had in fact occurred. Even if Camelo had testified as an expert, his observations about Appellant's demeanor and troubling behavior would have still been admissible under the restrictions of Kromah.

Appellant asserts "the Solicitor cleverly questioned John Camelo about his education, training, and experience as a police officer and private investigator, as if the State intended to qualify him as an expert witness." (Final Brief of Appellant 47). Appellant's assertion is contradicted by the record. On direct examination, the assistant solicitor asked Camelo "Have you ever worked in a law enforcement capacity?" (R. 260, lines 15-16). As Camelo began to discuss his prior law enforcement experience, Appellant objected and an *in camera* hearing took place to address Appellant's objection. (R. 260-69). Outside the presence of the jury, Appellant then speculated that he thought Camelo might testify that "he has some sort of training to be able to detect child sexual abuse." (R. 261, lines 16-17). The assistant solicitor clarified that she would not ask Camelo whether he thought Victim was being sexually abused. (R. 264).

When the jury returned to the courtroom, Camelo was only asked about his personal experience as a victim of child sexual abuse and his experience raising a stepdaughter. (R. 270). It is therefore misleading for Appellant to assert the State asked about Camelo's experience as a police officer in order to offer an opinion about the credibility of Victim's disclosure when Appellant merely feared such a question may be asked. In actuality, the State never asked Camelo for his opinion regarding whether Victim was sexually abused nor did they ask him about the credibility of Victim's disclosure. Camelo merely testified about concerning behavior that he personally witnessed which lead him to ask Victim if she had been abused. Accordingly, the concerns expressed by our appellate courts in Kromah and its progeny are not present in this case. The trial judge properly admitted Camelo's testimony. Appellant's convictions and sentences should be affirmed.

VI.

The trial judge properly sustained the State's objection to the question posed to John Camelo about whether he broke up with Mother because she was a stripper who used drugs when the question was irrelevant and Appellant was not prejudiced by the ruling because the statement was not a prior inconsistent statement and Appellant was free to elicit the same information from Mother on cross-examination but he chose not to.

Appellant next claims the trial judge erred by not allowing Appellant to ask John Camelo if he broke up with Mother because she was a stripper who used marijuana. Specifically, Appellant argues that he was prejudiced by his inability to cross-examine Camelo about a prior inconsistent statement. Furthermore, Appellant fears the jury may have believed Camelo and Mother ended their relationship solely because of Victim's allegations of abuse. Appellant's arguments are without merit. The trial judge properly limited Appellant's cross examination of Camelo because Appellant's question was irrelevant to any issue at trial. To the extent Appellant wished to impeach Camelo with a prior inconsistent statement, he would be unable to do so even if the trial judge allowed the question because Camelo never said he broke up with Mother because she was a stripper who smoked marijuana. To the extent that Appellant wished to inform the jury that Mother was a stripper who smoked marijuana, he was capable of asking Mother that question on cross-examination but he chose not to. Therefore, the trial judge properly sustained the State's objection to Appellant's question and even if the trial judge's ruling was incorrect, Appellant was not prejudiced by the ruling.

The admission or exclusion of evidence is a matter addressed to the trial court's sound discretion and will not be reversed absent a manifest abuse of the trial court's discretion and probable prejudice. State v. Wise, 359 S.C. 14, 21, 596 S.E.2d 475, 478 (2004). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "A court's ruling on the admissibility of evidence will not be reversed on

appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." Id.

Appellant's assertion that "the prosecution solicited testimony from John Camelo about the reason for his ending the romantic relationship with [Mother]" is misleading and inaccurate. (Final Brief of Appellant 48). The relevant portion of the State's direct examination of Camelo reads as follows:

> Q: At some point, did your relationship with [Mother] end?
>
> A: Yes.
>
> Q: When was that?
>
> A: Very shortly after – after all of this initiated, which, unfortunately, became very stressful, a very stressful, strange situation. And I just felt it was best to end the relationship.

(R. 275-76, lines 24-5). The State asked Camelo about if and when he broke up with Mother, not why. When Appellant cross-examined Camelo, the following exchange occurred:

> Q: Right. And you said that – earlier, you talked about you and [Mother] breaking up; isn't that right?
>
> A: Correct.
>
> Q: And you attributed it to the stress of this; is that right?
>
> A: On my part.
>
> Q: Okay. You had, also, learned some information about [Mother's] background, hadn't you?
>
> A: What information are you, specifically, asking me about?
>
> Q: That she had been a stripper in Florida and had smoked marijuana –
>
> Ms. Luttrell: Objection, you Honor. Relevance.
>
> The Court: Sustained.

(R. 281-82, lines 25-13). Appellant asked Camelo about his concerns regarding Mother's past based on the notes summarizing a pretrial interview between the solicitor's office and Camelo. (R. 790-91). The State provided the notes to Appellant in discovery. Appellant claims that Camelo said during the interview that he broke up with Mother because of her history as a stripper and her drug use. (R. 283). The State denied that Camelo made this statement during the interview and the notes from the interview appear to support this contention. (R. 284, 790-91). Following the State's objection to Appellant's question, the trial judge listened to *in camera* testimony from Camelo about his reasons for breaking up with Mother. Camelo proceeded to deny that he broke up with Mother because of her past:

> Q: Was one of the reason that the relationship broke up because you learned that [Mother] used to be a stripper in Florida and that she smoked marijuana?
>
> A: I – it wasn't a reason for me separating myself from her.
>
> Q; Did you tell Ms. Luttrell and Ms. Winston that after you started dating [Mother], you learned that she used to be a stripper in Florida and she smoked marijuana, and you decided this was a relationship – was not relationship that you wanted to continue? Did you make those statements –
>
> A: It's not a relationship I would want to have with anyone.
>
> Q: And part of that was her background as a stripper and the fact that she smoked marijuana?
>
> A: Perhaps.

(R. 286, lines 6-21).

The trial judge properly sustained the State's objection to Appellant's questions regarding Mother's history as a stripper and Camelo's reasons for breaking up with her. First and foremost, the questions are irrelevant to the ultimate issue at trial. Whether Camelo broke up with Mother because she used to be a stripper is irrelevant to whether Appellant forced Victim to perform fellatio on him or whether Appellant showed Victim pornography. Therefore, the trial judge did

not abuse his discretion sustaining the State's objection. Even if the trial judge erred in sustaining the objection, Appellant would not have been successful in impeaching Camelo with a prior inconsistent statement, because Camelo's statement was not inconsistent. Camelo denied that he broke up with Mother because of her past and equivocated about whether he made the statement in the first place. Had Appellant attempted to impeach Camelo with the notes from his interview, he would have been unsuccessful, because the notes did not say what Appellant claimed they did. (R. 790-91). Therefore, Appellant suffered no prejudice from the trial judge's ruling. To the extent that Appellant wished to elicit the sordid details about Mother's past, he was free to do so when he cross-examined Mother. Appellant chose not to do so.[2] (R. 322-50). Appellant's convictions and sentences should be affirmed.

VII.

When read as a whole, the trial judge's jury instruction on circumstantial evidence was proper because it adequately covered the law and closely resembled the language approved by the South Carolina Supreme Court in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997). However, even if the trial judge erred in not instructing the jury using the recommended charge in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), any error was harmless because the State did not rely on circumstantial evidence to convict Appellant.

Appellant contends the trial judge erred by deviating from the recommended circumstantial evidence charge in State v. Logan. Appellant's argument is meritless. While the trial judge did not give the Logan charge verbatim, the jury instruction, when read as a whole, adequately covered the State's burden of proof and the difference between circumstantial and direct evidence. However, even if the trial judge erred in not reading the exact charge from Logan, any error was entirely harmless because the evidence presented against Appellant was direct evidence, not circumstantial.

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[2] Appellant did mention that Mother was a stripper in his closing argument. (R. 742).

In State v. Logan, our Supreme Court endeavored to "articulate for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the State's burden and the jury's responsibility." State v. Logan, 405 S.C. 83, 94-95, 747 S.E.2d 444, 450 (2013). The Supreme Court ultimately affirmed Logan's conviction but attempted to craft an ideal jury charge on circumstantial evidence and reasonable doubt. While the Court did craft a recommended jury charge for circumstantial evidence and reasonable doubt, the charge was a recommendation and not a requirement. The Court noted that trial courts were not prevented from issuing alternative circumstantial evidence charges found in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997) or State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). Logan 405 S.C. at 100, 747 S.E.2d at 452-53. The language articulated in Logan is allowed if requested by a defendant. Logan 405 S.C. at 100, 747 S.E.2d at 453.

Here the trial judge read the following instructions to the jury on circumstantial evidence and reasonable doubt. As to circumstantial evidence the trial judge instructed:

> Now, there are, also, two sources – or two types of evidence, rather. And I'm talking about now is there's direct evidence and circumstantial evidence. Direct evidence is the testimony of someone who claims to have direct and actual knowledge of a fact, such as an eyewitness. Direct evidence is evidence that if it is believed immediately establishes a fact.
>
> Circumstantial evidence. Circumstantial evidence is indirect evidence. Put another way, circumstantial evidence is proof of a chain of fact from which you could find that another fact exists, even though it has not been proven to you directly.
>
> The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. You may consider both kinds. And there's not a greater degree of certainty required of one over the other.

(R. 756-57, lines 10-1). As to reasonable doubt, the trial judge instructed:

> [Appellant], in these four indictment, has plead not guilty. And that puts the burden of proof solely and squarely upon the shoulders of the State. And he can only be convicted if all 12 of you agree that the State has proven each and every element of the charges against [Appellant] beyond a reasonable doubt.

....

> [Appellant] is presumed innocent. And that presumption of innocence is not some legal technicality. It is a fundamental right that all of you – every person enjoys in this country. And it can only be removed if the State convinces you with proof beyond a reasonable doubt as to every element of a crime.
>
> What is a reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.
>
> ....
>
> If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think that there is a real possibility that the Defendant is not guilty, you should give the benefit of the doubt and find him not guilty.

(R. 758-59, lines 5-10, lines 18-4, lines 10-15).

Appellant requested that the trial judge read the exact recommended jury charge articulated in Logan. (R. 688). Ultimately, the trial judge did not read the exact Logan charge as requested by Appellant but still adequately instructed the jury on the definition of circumstantial evidence, reasonable doubt and the State's burden of proof. In fact, the trial judge's instruction closely resembled the language explicitly approved by our Supreme Court in State v. Grippon. Grippon, 327 S.C. at 83-84, 489 S.E.2d at 464. Furthermore, the trial judge's instruction was accompanied by a thorough and correct reasonable doubt charge. Because the jury instruction given by the trial judge contained the correct law and closely resembled a jury instruction explicitly approved by our Supreme Court, the trial judge did not err by refusing to read the Logan charge verbatim.

Harmless Error

Even if the trial judge erred by not instructing the jury using the recommended charge from State v. Logan, any error was harmless. The evidence presented against Appellant at trial was direct evidence. Victim testified as an eyewitness to the crimes that Appellant was accused of. Appellant testified she was forced to perform fellatio on Appellant and that Appellant showed her pictures of his penis as well as a pornographic video. (R. 377, State's Exhibit #16 and #17). The State presented little, if any, circumstantial evidence against Appellant. The only evidence that could possibly be considered circumstantial were the sexualized photographs of Victim. (State's Exhibit #6, #13, #15). Even these exhibits are better classified as direct evidence because they were authenticated and entered into evidence through Victim. (R. 579). Therefore, Appellant was not prejudiced by the trial judge's circumstantial evidence charge because no circumstantial evidence was used against him. Thus, any error in the trial judge's circumstantial evidence charge was harmless. Appellant's convictions and sentences should be affirmed.

VIII.

The trial judge properly refused to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because a defect in an arrest warrant is not a proper ground for quashing an indictment. Even if the trial judge could have quashed the indictment based on a defect in the underlying arrest warrant, the arrest warrant was not defective because S.C. Code Ann. § 16-15-435 does not apply to the statute Appellant was charged with violating.

Appellant next argues the trial judge erred by refusing to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the State did not follow the procedures set out in S.C. Code Ann. § 16-15-435(A) in obtaining Appellant's arrest warrants for disseminating obscene material to a minor under the age of 12. Appellant's argument is without merit. The manner in which Appellant's arrest warrant was obtained is irrelevant to a determination of the sufficiency of the indictment. A defect in an arrest warrant is not a proper ground for quashing an

indictment. However, even if the trail judge could have quashed the indictment based on a defect in the arrest warrant, there were no defects in Appellant's arrest warrants for dissemination of obscene material to a minor. Appellant claims S.C. Code Ann. § 16-15-435(A) requires a circuit solicitor to apply for an arrest warrant rather than a police officer. However, S.C. Code Ann. § 16-15-435(A) explicitly does not apply to the statute Appellant was charged with violating. Therefore, the requirement that a circuit solicitor apply for an arrest warrant is inapplicable to the charge of disseminating obscene material to a minor.

In South Carolina, an indictment issued by a grand jury is generally required before an individual can be held to answer in any court for a criminal offense. See S.C. Const. art. I, § 11. Generally speaking, an indictment is a "notice document." State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). When a timely and proper challenge to the sufficiency of an indictment has been raised, what the trial judge is called upon to determine is: "whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense intended to be charged." Tumbleston, 376 S.C. at 96-97, 654 S.E.2d at 852. An arrest warrant is not required to present an indictment to the grand jury. "[A] grand jury may indict for any crime, certainly any which is not within the exclusive jurisdiction of a magistrate or other inferior court, whether or not there has been a prior proceeding before a magistrate and an arrest warrant issued." State v. Walker, 232 S.C. 290, 295-96, 101 S.E.2d 826, 829 (1958). "[I]t is well established that 'the illegality of an initial arrest [does] not bar the accused person's subsequent prosecution and conviction of the offense charged.'" State v.

Griffin, 416 S.C. 266, 268, 785 S.E.2d 786, 787 (2016) (quoting State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978)).

Here, the supposed defect in Appellant's arrest warrants for disseminating obscene material to a minor are completely irrelevant to the sufficiency of Appellant's indictments. Indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 sufficiently informed Appellant of what allegation he was called to answer and they sufficiently informed the trial judge of what judgement he would have to pronounce. Appellant's original arrest warrants are irrelevant when evaluating the sufficiency of his indictments. Appellant was certainly free to challenge the sufficiency of his arrest warrants in Magistrate's Court prior to the grand jury returning true bill indictments against him. Had Appellant chosen to challenge his arrest warrants in Magistrate's Court, the appropriate remedy would have been a dismissal of the charges by the magistrate. However, Appellant would not have been released from custody because he had also been arrested on two warrants charging criminal sexual conduct with a minor, first degree. Even if Appellant got his charges dismissed based on defects in his arrest warrant, the Solicitor could have directly presented indictments to the grand jury charging Appellant with the same offenses. The trial judge did not have the authority to dismiss Appellant's arrest warrants, but even if the trial judge had such authority, it would have no bearing on the sufficiency of Appellant's indictments.

Assuming for the sake of argument that Appellant's arrest warrants are relevant to the sufficiency of his indictments, there were no defects in the arrest warrant. Appellant was arrested and charged with disseminating obscene material to a minor 12 years of age or younger pursuant to S.C. Code Ann. § 16-15-355. S.C. Code Ann § 16-15-355 provides:

> An individual eighteen years of age or older who knowingly disseminates to a minor twelve years of age or younger material which he knows or reasonably

> should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

S.C. Code Ann. § 16-15-355. The statute that Appellant claims the State did not comply with is S.C. Code Ann. § 16-15-435(A). Section 16-15-435(A) provides:

> (A) A search warrant or arrest warrant for a violation of Sections 16-15-305, 16-15-315, or 16-15-325 may be issued only upon request of a circuit solicitor.

S.C. Code Ann. § 16-3-435(A). Appellant was arrested for two violations of § 16-15-355. Section 16-15-355 is not listed as one of the statues which requires an arrest warrant to be requested by a circuit solicitor. Therefore, § 16-3-435(A) is inapplicable to the arrest warrants Appellant was served with. Thus, there were no defects in the warrants.

The text of S.C. Code Ann. § 16-15-355 does include a reference to S.C. Code Ann. § 16-15-305 in regards to the definition of obscenity. However, this reference does not impose the warrant requirement articulated in § 16-15-435(A) on § 16-15-355. Section 16-15-305 primarily defines obscenity and other terms listed in the statute. Therefore, it was necessary to incorporate by reference within section 16-15-355. In addition to defining statutory terms, S.C. Code Ann. § 16-15-305 also establishes a separate crime of dissemination of obscene material in general which carries a five year maximum sentence rather than the fifteen year maximum sentence mandated under § 16-15-355. Therefore, it is likely the General Assembly specifically chose to impose a requirement that an arrest warrant be sought by a circuit solicitor for only three crimes. Our legislature chose to impose that requirement only for sections 16-15-305, 16-15-315, and 16-15-325. S.C. Code Ann. § 16-15-435(A). If the legislature intended for that requirement to be extended to the crime of disseminating obscene material to a minor, they would have listed § 16-15-355 with the other statutes identified in § 16-15-435(A). Therefore, a county solicitor need

not seek an arrest warrant for a violation of section 16-15-355. Appellant's convictions and sentences should be affirmed.

IX.

The issue of whether the trial judge erred in admitting pictures of Victim because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A) is not preserved for appeal, because Appellant did not object on that ground at trial. However, even if this issue is properly preserved, the State did not use the photos to prove Appellant had disseminated obscene material to a minor. Therefore, the requirements of § 16-15-435(A) were irrelevant to the trial judge's decision to admit the photos.

Appellant's next argument contends the trial judge erred by not suppressing State's Exhibits #1, #3, #4, #6, #11, #13, and #15 because the State did not comply with the warrant requirement articulated in S.C. Code Ann. § 16-15-435(A). Appellant's argument is meritless. As an initial matter, Appellant did not preserve this issue for appeal. Appellant objected to the introduction of the photographs and as seen in Appellant's fourth issue raised on appeal, he articulated many grounds for his objection at trial. (Final Brief of Appellant 46). However, Appellant did not object to the introduction of the photos on the grounds that the County Solicitor failed to request his arrest warrants for disseminating obscene material to a minor. Therefore, this issue is not preserved for appeal. See State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001) (A party may not argue one ground at trial and an alternate ground on appeal.)

However, if this Court assumes Appellant properly preserved this issue for appeal, the issue is nonetheless meritless. State's Exhibit #'s 1, 3, 4, 6, 11, 13, and 15 were not offered to prove Appellant was guilty of disseminating obscene material to a minor under S.C. Code Ann. § 16-15-355. The State never contended the aforementioned exhibits were obscene material. The aforementioned exhibits are photos of Victim, at least some of which, the State argued were sexualized and thus demonstrated the inappropriate relationship Appellant had with Victim. The

photos were irrelevant to the jury's deliberations regarding the charges for dissemination of obscene material to a minor. Appellant admitted the photos were irrelevant to the charge of disseminating obscene material to a minor in his closing argument. (R. 732-33). To prove that Appellant disseminated obscene material to a minor, the State argued Appellant showed Victim photographs of his penis and forced Victim to watch a pornographic video. Both the State and Appellant acknowledged from the beginning of the trial that the jury would not see the alleged photos of Appellant's penis nor would they see any pornographic videos, because the State never recovered these items.[3] The lone evidence presented by the State to prove these crimes was the testimony of Victim. (R. 376-77, State's Exhibit #16). Therefore State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15 were irrelevant to the jury's determination of whether Appellant disseminated obscene material.

As referenced in this brief's previous argument, the warrant requirement of S.C. Code Ann. § 16-15-435(A) does not apply to a charge of disseminating obscene material to a minor under § 16-15-355. However, if the requirement did apply, it would have no bearing on the trial judge's decision to admit or exclude the photographs of Victim. The photos were not obscene and neither side sought to prove they were. The State offered the photos into evidence for reasons that were entirely unrelated to proving whether Appellant had disseminated obscene material to a minor. Therefore, Appellant's argument is entirely irrelevant in evaluating the trial judge's decision to admit the photos. Appellant's convictions and sentences should be affirmed.

[3] Notably, at least some of the photographs Appellant contends were admitted in error were not recovered by the State, but by Appellant's expert. (R. 460-63).

X.

The trial judge properly denied Appellant's request for a directed verdict of acquittal on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the State produced evidence that Appellant disseminated obscene material to a minor.

Appellant once again argues another error by the trial judge based on the State's failure to comply with the warrant requirement of S.C. Code Ann. § 16-15-435(A). However, Appellant additionally argues the trial judge erred by not granting a directed verdict of acquittal because the State did not enter the actual obscene material disseminated to Victim into evidence. Appellant's argument is meritless. The State conceded from the beginning of trial that the photo of Appellant's penis and the pornographic videos would not be entered into evidence. These items were never recovered by law enforcement. Instead, the State relied on the testimony of Victim as well as the disclosures made in Victim's first forensic interview. Victim's testimony was direct evidence that Appellant disseminated obscene material to a minor. Therefore, the trial judge correctly denied Appellant's motion for a directed verdict and allowed the jury to consider what weight they would assign to the State's evidence.

In determining whether a directed verdict should be granted, "the trial judge shall consider only the existence or non-existence of the evidence and not its weight." Rule 19 SCRCrimP. When reviewing a denial of a directed verdict at the trial level, the appellate court "views the evidence and all reasonable inferences in the light most favorable to the State." Bennett, 415 S.C. at 235, 781 S.E.2d at 353. "On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling." Lindsey, 355 S.C. at 20, 583 S.E.2d at 742.

Here the State presented evidence through Victim's testimony that Appellant showed her pictures of his penis and forced her to watch a pornographic video. (R. 376-77, State's Exhibit

#16). The State was not in possession of the photographs of Appellant's penis or the pornographic video. Therefore, Victim's description of the two items was the only evidence presented but it was nonetheless evidence of Appellant disseminating obscene material to a minor. The trial judge was only called upon to determine if evidence existed, not the weight of the evidence. When viewed in the light most favorable to the State, evidence of the relevant offense existed. It was then the jury's duty to determine the weight of that evidence. Whether the county solicitor applied for the arrest warrants underlying indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 was irrelevant to the trial judge's evaluation of the evidence at the directed verdict stage. As is often stated in instructions to juries in our state, arrest warrants and indictments are not evidence of an offense. Therefore, the manner in which the arrest warrants were obtained was entirely irrelevant to whether the State produced evidence at trial that Appellant disseminated obscene material to a minor. The trial judge correctly denied Appellant's motion for a directed verdict on indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672. Appellant's convictions and sentences should be affirmed.

XI.

Appellant did not preserve any issue regarding the cumulative error doctrine for appellate review because the issue was not raised to and ruled upon by the trial judge but rather it was raised for the first time via a post-trial motion. Even if Appellant preserved the issue for appeal, Appellant abandoned the issue by raising it in a conclusory and unsupported manner. Additionally, Appellant's trial was not rendered unfair as a result of any errors, cumulative or otherwise.

Appellant argues that each of the errors alleged in his brief entitle him to a new trial on their own merit. However, in the alternative, Appellant asserts the "intertwined" nature of the errors combine to enhance their prejudice against Appellant thereby entitling him to a new trial. Appellant's argument is without merit. As an initial matter, Appellant failed to preserve this issue for appeal. Appellant did not argue the cumulative error doctrine to the trial judge during

the trial, but rather raised it for the first time in a post-trial motion. Even if Appellant properly preserved this issue for appeal, Appellant abandoned the issue by raising it in a conclusory and unsupported manner. Finally, Appellant's trial was not rendered unfair by any errors, cumulative or otherwise and Appellant has failed to identify any errors entitling him to a new trial.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." Dunbar, 356 S.C. at 142, 587 S.E.2d at 693. A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). "[C]onclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review." State v. Crocker, 366 S.C. 394, 399, n. 1, 621 S.E.2d 890, 893 (Ct. App. 2005). "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." State v. Howard, 384 S.C. 212, 217, 682 S.E.2d, 42, 45 (Ct. App. 2009). "Appellant is limited to grounds raised at trial." State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997).

Here, Appellant failed to raise any issue based on the cumulative error doctrine. Appellant raised the issue for the first time in a post-trial motion. (R. 73-78). Even if this Court determines that Appellant properly preserved this issue for appeal, Appellant abandoned the issue by addressing it in a conclusory and unsupported manner in his brief. Appellant cites appellate authority to establish that there is, in fact, a doctrine in South Carolina known as the cumulative error doctrine; however, Appellant does not explain how the cumulative error doctrine applies to his case other than to say "Many of [Appellant's] questions on appeal are intertwined, thereby compounding the prejudice." (Final Brief of Appellant 52). Appellant's

single sentence, conclusory argument and analysis are insufficient to preserve this issue for appeal. Even if this Court determines that Appellant properly preserved this issue for appeal, Appellant has failed to identify any errors, cumulative or otherwise that entitle him to a new trial. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

Post Office Box 1880
Bluffton, SC 29910
(843)-790-6283

BY: Scott Matthews
SCOTT MATTHEWS
Bar # 101464

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 8, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

THE STATE, Respondent,

v.

CHARLES DENT, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

Post Office Box 1880
Bluffton, SC 29910
(843)-790-6283

BY: Scott Matthews
Scott Matthews
Bar # 101464

Office of the Attorney General
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Columbia, SC 29211
(803) 734-3727

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PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served. This eighth day of November, 2019.

Sally Ellison

SALLY ELLISON
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THE STATE OF SOUTH CAROLINA
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FINAL REPLY BREIF OF APPELLANT

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Appellant Charles Dent

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IN REPLY

Question I

Did the trial judge err by not directing a verdict of acquittal on Indictment No. 2014-GS-07-01673 when the State failed to present any evidence that "fellatio on the Defendant by J.M." occurred during the time frame of the indictment?

The State concedes—as it must based on the plain language of the indictment—that the prosecution was required to prove the sexual battery of fellatio in order to convict Charles Dent of first-degree criminal sexual conduct with a minor. *E.g.* Brief of Respondent at p. 8-11 (limiting discussion of proof of sexual battery to fellatio in repose to Question I), p. 11 ("The instruction was not misleading or confusing because the State only attempted to prove that Appellant forced Victim to perform fellatio."), p. 12 ("[T]he jury was told by the judge and the State that fellatio was the specific sexual battery the State was seeking to prove."),[1] and p. 13 ("Each indictment specifically listed fellatio as the sexual battery the State intended to prove.").

The State's brief, at pp. 8-11, acknowledges (1) J.M. never alleged at trial or during her Hope Haven interviews that fellatio occurred at the second townhouse, which is the location that corresponds with the timeframe in indictment number 2014-GS-07-01673, and (2) the only specific location where J.M. alleged fellatio occurred was at the first townhouse, which corresponds with the timeframe in indictment number 2014-GS-07-01673, for which the jurors acquitted Charles Dent. These concessions—acknowledging there is no direct evidence that fellatio occurred at the second townhouse—are fatal to the State's position.

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[1] This assertion misstates the record. *See* fn. 6, *infra*.

The State asks this Court to engage in mental gymnastics, amounting to rank speculation, raising only a mere suspicion that fellatio occurred at the second townhouse.[2] This speculation is not "substantial circumstantial evidence," which is required for the prosecution to survive a motion for directed verdict. *State v. Hepburn*, 406 S.C. 416, 429 S.E.2d 402 (2013); *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004); *State v. Gaster*, 349 S.C. 545, 564 S.E.2d 87 (2002); *State v. Mitchell*, 341 S.C. 406, 535 S.E.2d 126 (2000); *State v. Burdette*, 335 S.C. 34, 515 S.E.2d 525 (1999); *see also* Rule 19(a), SCRCrimP.[3]

The State's brief, at p. 10, argues, "In his closing argument, Appellant encouraged the jury to consider the possibility that Appellant was only guilty of one of the indicted charges and not both because of Victim's conflicting statements. (R. 734)." This argument is misleading. In reality, counsel for Mr. Dent played a portion of the second Hope Haven interview (State's Exhibit 17) and argued:

> So she was given a choice to say where it happened, first house, both houses. And so even under this video – and we don't think that this really happened. But under this video, she's only talking about it happening in one place. And she was consistent about that, although arguably inconsistent about whether it was the first one or the second one. But the point is from the get-go, you can take one of these off the table because her statements don't even support that it happened at both locations.

---

[2] Additionally, this Court should recognize that J.M.'s trial testimony was under oath, whereas her Hope Haven interviews were not under oath. The State argument requires the Court to draw speculative inferences from unsworn statements.

[3] The State's position requires this Court and the jurors to search the record for the explanation of guilt. Requiring jurors to search the record is contrary to the burden of proof. *E.g. State v. Manning*, 305 S.C. 413, 415, 409 S.E.2d 372, 374 (1991) (rejecting instruction stating, "A reasonable doubt is a substantial doubt for which honest people, such as you, when searching for the truth can give a real reason."); *State v. Raffaldt*, 318 S.C. 110, 115-16, 456 S.E.2d 390, 393 (1995) (same).

R. 734. Thus, while maintaining Charles Dent's innocence, counsel argued the prosecution's evidence didn't support fellatio occurring at both townhouses. Mr. Dent contested the allegations contained in all of the State's indictment.

Question II

Did the trial Judge err by not limiting the definition of sexual battery to "fellatio" when "fellatio on the Defendant by J.M." was the only sexual battery alleged in the indictment.

The State's brief, at p. 11, argues, "The instruction was not misleading or confusing because the State only attempted to prove that Appellant forced Victim to perform fellatio."[4] This assertion is not supported by the record when the prosecutor argued sexual batteries other than fellatio and Mr. Dent objected:

> It is in the second interview where she says he made me lick his penis. *He put his own mouth on my private parts –*
>
> MR. GROSE: Objection. Variance to the indictment.
>
> THE COURT: I'll let you proceed. Objection noted for the record.
>
> MS. JOSEPH: [She] talked about *penetrating her vagina.* [She] talked about –
>
> MR. GROSE: Objection. Variance to the indictment.
>
> THE COURT: Subject to your objection. You may proceed.
>
> MS. JOSEPH: She talked about him *touching her private parts under her clothes.* Over and over again, she's making these disclosures in the second interview.[5]

---

[4] This Court should view this statement by the State as a concession that the indictment limited the prosecution to evidence of fellatio as the sole "sexual battery" to support a conviction of first-degree criminal sexual conduct with a monor.

[5] *But see* R. at 369-80 (J.M. testifying her grandfather never threatened her, never touched her underneath her clothing, and made her lick his private parts only once).

R. 713 (emphasis and footnote added).[6] Thus, without any evidence of fellatio during the time frame of indictment number 2014-GS-07-01673, as discussed in Question I, the only explanation of the jurors' verdict is that it was based on testimony that varied from the evidence presented to the grand jurors.

The State's brief, at pp. 12-13, relies on the trial judge charging the jurors "the definition of sexual battery exactly as it is written in S.C. Code Ann. § 16-3-651(h). The State's position overlooks the role of the trial judge instructing the jurors. As our Supreme Court has stated:

> The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury. If a jury instruction is provided to the jury that does not fit the facts of the case, it may confuse the jury. Only law applicable to the case should be charged to the jury. Instructions that do not fit the facts of the case may serve only to confuse the jury.

State v. Blurton, 352 S.C. 203, 207-08, 573 S.E.2d 802, 804 (2002). *Blurton* is a good example of a case where the trial court confused the jurors by providing a correct statement of that law that was not appropriate in the particular trial. Here, based on the

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[6] The State's brief, at p. 12, completely misstates the record by arguing, "The definition [of sexual battery] was not misleading or confusing because the jury was told by the trial judge and the State that fellatio was the specific sexual battery the State was seeking to prove." As seen, the Solicitor's closing argument contradicts this statement. The State's brief never identifies the portion of the record where the trial judge instructed the jurors that the only specific sexual battery that the State sought to prove is fellatio. Nor could it because the trial judge never made such a statement. In fact, Mr. Dent asked the trial judge to tell the jurors that the State was required to prove fellatio by limiting the jury instruction regarding sexual battery to fellatio. The only person that told the jurors that fellatio was the only specific sexual battery relevant under the indictment was counsel for Charles Dent. The contrary argument by the prosecutor and instruction by the trial judge "diminish[ed] appellant's attorney's credibility in the eyes of the jury." *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001) (improper for trial judge to substitute a correct definition of "reasonable doubt" for another correct definition of "reasonable doubt" after defense counsel relied on charge conference when making closing argument).

indictment, fellatio was the only sexual battery "applicable to the case," a legal argument the State concedes on appeal. *Cf. Jones*, 343 S.C. at 578, 541 S.E.2d at 821 (improper for trial judge to substitute a correct definition of "reasonable doubt" for another correct definition of "reasonable doubt" after defense counsel relied on charge conference when making closing argument).

The State's brief, at pp. 13-14, takes issue with Mr. Dent not moving to quash the indictments for first-degree criminal sexual conduct. Mr. Dent sought to limit the prosecution's argument and jury instructions to fellatio. The legal error occurred when the trial judge denied these requests. The criminal sexual conduct with minor indictments, on their face, are valid, alleging a complete offense and placing Mr. Dent on notice to defend allegations of fellatio. The Brief of Appellant, at p. 43, cited *Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011) and explained why the jury instruction created a variance in the indictment. The State's brief does not discuss *Bailey* at all.

Question III

Did the trial judge err by not excluding the testimony of Tessa Trask's when this testimony was based on her own theories and the record does not contain any evidence that her theories are reliable?

The State's brief, at pp. 14 and 16-18, tries to recast Mr. Dent's objection to Tessa Trask's testimony as merely objecting to her testimony about trauma. The record, however, demonstrates counsel for Mr. Dent consistently requested the trial judge convene a hearing, pursuant to *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (2015), in a

pretrial brief (R. 58), the pre-trial hearing (R. 183-91),[7] and during Ms. Trask's testimony to the jurors (R. 394-95), but the trial judge repeatedly denied that request.

The State's brief, at p. 14, argues Ms. "Trask did not testify about forensic interviewing and thus her testimony is distinguishable from the testimony warned against be our Supreme Court in *State v. Chavis*." This argument is without merit. The trial court's gatekeeping function applies to all expert testimony. *Watson v. Ford Motor Company*, 389 S.C. 434, 699 S.E.2d 169 (2010) (summarizing three-part procedure for qualifying expert witnesses). Even before *Chavis*, our Supreme Court applied this requirement to ***all*** nonscientific evidence. *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009) (trial court's gatekeeping function in assuring reliability of expert testimony applies to nonscientific evidence).

The State's brief, at pp. 18-19, argues Ms. Trask's testimony is consistent with the testimony approved by our Supreme Court in *State v. Jones*, 423 S.C. 631, 817 S.E.2d 268 (2018). In *Jones*, our Supreme Court merely affirmed this Court's opinion in *State v. Jones*, 417 S.C. 319, 790 S.E.2d 17 (Ct. App. 2016) and took "the opportunity to clarify the proper inquiry for determining whether a particular subject area falls outside the realm of lay knowledge, thus requiring expert testimony." 423 S.C. at 634, 817 S.E.2d at 269. Mr. Dent raises a different issue in this appeal, to wit: whether the trial court exercised its gatekeeping function regarding the reliability of Ms. Trask's testimony pursuant to *Chavis, Watson,* and *White.* In *Jones*, this Court approved the testimony of the prosecution's expert, Shauna Galloway-Williams, who did not testify in Mr. Dent's

[7] The State's brief, at pp. 16-17, argues the trial court exercised its gatekeeping function during the pre-trial hearing by accepting the prosecution's summary of Ms. Trask's proposed testimony. This procedure was insufficient and did not compy with *Watson* and *Chavis*.

case. Contrary to the State's assertion, Ms. Trask's testimony in Mr. Dent's trial was not identical to Ms. Galloway-Williams' testimony in *Jones*. Significantly, in *Jones*, "[t]he circuit court [] held an in-camera hearing during which the State proffered Galloway–Williams as an expert in child sex abuse dynamics to testify regarding delayed disclosures, the disclosure process, and behavioral characteristics of nonoffending caregivers." 417 S.C. at 325, 790 S.E.2d at 20. By convening such a hearing, the trial court in *Jones*, accordingly, avoided the error committed by Mr. Dent's trial judge.

The State's brief, at pp. 19-20, argues harmless error. The State concedes the standard of review for harmless error is whether this Court can say the error was "harmless beyond a reasonable doubt." Brief of Respondent at 19 (citing *State v. Thompson*, 252 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003)). As seen, in Question I above, the State concedes there was no direct evidence of fellatio occurring at the location that corresponds to the timeframe of the indictment for which the jurors convicted Mr. Dent of first-degree criminal sexual conduct of a minor. Also, there was no physical evidence of sexual abuse in this case. *Compare State v. Kromah*, 401 S.C. 340, 362, 737 S.E.2d 490, 501 (2013) ("Based on the entire record, including the physical evidence documented in this case, the challenged testimony could not reasonably have affected the result of the trial, so any error in its admission was harmless beyond a reasonable doubt.") *with State v. Anderson,* 413 S.C. 212, 219, 776 S.E.2d 76, 79 (2015) (finding "overwhelming" prejudice when the "case turned solely on the credibility of the minor and of Appellant. The minor testified to abuse by Appellant over a course of three to four years, while Appellant denied any improper conduct. There was no physical evidence of sexual abuse."). The trial court allowed Ms. Trask to testify that PTSD can

be mis-diagnosed as ADD, even though no expert that evaluated or treated J.M. testified she has been diagnosed with PTSD. Thus, this Court cannot say the error was harmless beyond a reasonable doubt.

Question IV

Did the trial judge err by allowing the prosecution to introduce State's Exhibits 1, 3, 4, 6, 11, 13, and 15 when the prosecution could not establish the chain of custody, the witness could not authenticate those images, the images were not relevant to guilt, and the prejudicial effect of those images and J.M.'s testimony about those images substantially outweighed any probative value.

As a threshold matter, the State's brief, at p. 21, concedes, "Victim opined that Appellant may have taken the photos but she couldn't be sure." J.M. never testified the photographs were unaltered, *i.e.* that any of the photographs are the same as any image ever taken of her. These images purportedly were taken with a digital camera. Our state's procedures recognize, "If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'" Rule 1001(3), SCRE. Here, there is no evidence the images introduced at trial accurately reflect the digital data. There is no testimony to reflect that the digital data had not been altered. *Cf. State v. Mitchell*, 399 S.C. 410, 421, 731 S.E.2d 889, 896 (Ct. App. 2012) ("A digital camera was used, and the photographs from the disk were testified to as being the same photographs that were on the deer camera."). The trial judge, in fact, did not allow Arthur Agee, a digital forensic examiner with "the electronic crimes task force as part of the Secret Service" in Hoover Alabama to testify about the photographs because he did not examine the devices purportedly containing the images. R. 500-539.

The State's brief, at p. 20, argues:

> The State was not required to prove the chain of custody [of the photographs] because the State did not obtain the photos nor did they seek to prove the photos came directly from Appellant's camera or camcorder. At least some of the photos were obtained by Appellant and provided to the State. (R. 460-63).

The State's brief, at p. 21, then argues, "[S]ome of the photos Appellate claims were admitted in error were obtained by Appellant's expert, not the State." This argument is a complete misrepresentation of the record. Prior to trial, most of the digital forensic evidence in this case was located in Alabama. Mr. Dent retained an expert to travel to Alabama and examine the evidence. The photographs obtained by Mr. Dent's expert, that were provided to the Solicitor, were obtained from Arthur Agee. R. 460-65. The trial judge, as seen, suppressed the testimony of Mr. Agee because he could not authenticate the evidence. R. 535-39.

The State's brief, at p. 20, argues, "The State was not required to prove the chain of custody because the State did not obtain the photos nor did they seek to prove the photos came directly from Appellant's camera or camcorder." Yet, at pp. 20-21, the State argues, "[T]he photos were relevant because they depicted where the abuse took place and at least two of the photographs were sexualized images of Victim that demonstrated Appellant's inappropriate relationship with her." This contradiction is fatal to the State's position. None of the images depict Charles Dent engaging in any inappropriate relationship with J.M. The State's argument that the images are evidence of Mr. Dent's inappropriate relationship with his granddaughter is completely contingent on proving Mr. Dent took the images. Yet, the State did not properly authenticate the photoraphs.

Question V

Did the trial judge err by overruling Charles Dent's objections during the State's opening and the direct examination of John Camelo, thereby allowing Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience?

The State's brief, at pp. 25-26, argues, "Appellant misunderstands the restrictions placed on the State by the *Kromah, Jennings,*[8] and *Anderson* line of cases" (footnote added), apparently asserting the holdings in these cases are limited the testimony of forensic interviewers. However, "after *State v. Dawkins*[9] was decided in 1989, the law was 'clear that no witness may give an opinion as to whether the victim is telling the truth.'" *Thompson v. State*, 423 S.C. 235, 243, 814 S.E.2d 487, 491 (2018) (footnote added); *cf. Briggs v. State*, 421 S.C. 316, 806 S.E.2d 713 (2017) (same). This Court, therefore, must consider whether John Camelo's testimony conveyed to the jurors his belief that J.M. was a sexual assault victim. The prosecution improperly used his training as a police officer and private investigator and his experience as a victim of sexual assault to convey to the jurors his belief that J.M. had been sexually abused.

The State's brief, at p. 25, asserts Mr. "Camelo's observations were not based on his law enforcement experience but on his personal experience as a victim of sexual abuse and his experience raising a stepdaughter who was the same age as Victim." This assertion calls attention to three problems with Mr. Comelo's testimony. First, if the prosecution did not intend for the jurors to consider Mr. Camelo's law enforcement training, then there was no reason to elicit that background in his testimony. Second, Mr. Camelo's unfortunate experience as a victim of sexual abuse does not qualify him in

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[8] *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011).

[9] *State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989).

any way to provide opinion testimony about "red flags" of sexual abuse. Third, Mr. Camelo raising a stepdaughter does not qualify him in any way to provide opinion testimony about "red flags" of sexual abuse.

The State's brief, at p. 26, argues Mr. "Camelo was an outcry witness who testified to the time and places of Victim's first and second disclosures pursuant to rule 801(d)(1)(D) SCRE." If this assertion is correct, then there was no reason for the prosecution to elicit information about Mr. Camelo's law enforcement training, his experience as a victim of sexual abuse, and his experience as a stepfather. If this assertion is correct, then there was no reasons for Mr. Camelo to testify about "red flags" and proclaim, "I've had a lot of training." R. 258-60. If this assertion is correct, there would have been no reason for Charles Dent to object and move the trial judge to "limit" Mr. Camelo's testimony. R. 260-62.

Question VI

Did the trial judge err by denying Charles Dent his Sixth Amendment right to confront and cross-examine John Camelo about the real reasons why he ended the relationship with Lori Michelle Mayo?

The State's brief, at pp. 28-31, acknowledges Charles Dent right to cross-examine John Camelo about inconsistent statements. Rather, the State argues, "To the extent Appellant wished to impeach Camelo with a prior inconsistent statement, he would be unable to do so even if the trial judge allowed the question because Camelo never said he broke up with Mother because she was a stripper who smoke marijuana." This argument

overlooks Mr. Camelo's statement to prosecutors and the proffer of his cross-examination. R. 284-90, 297-99; Courts Exhibit 6.[10]

Question VII

Did the trial judge err by deviating from the jury instruction mandated by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013)?

The State's brief, at p. 31, concedes Charles Dent's "trial judge did not give the *Logan* charge verbatim." Rather, the State contends the circumstantial evidence instruction given in this case complies with *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997) and *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004). This argument overlooks two important facts. First, the instruction approved by our Supreme Court in *Grippon* and *Cherry* is no longer valid after *Logan*. Second, the *Logan* charge, if requested, instruction is mandatory. The State's brief, at 33, acknowledges, "Appellant requested that the trial judge read the exact [] jury charge articulated in *Logan*." By this acknowledgment, the State concedes the error of law.

This State's brief, at p. 34, asks this Court to excuse the error of law as harmless, arguing, "The evidence presented against Appellant at trial was direct evidence," contending, "The State presented little, if any, circumstantial evidence against Appellant." At this juncture, the State seemingly asks this Court to overlook the arguments it made in response to Question I. The State's argument that it proved fellatio at the location corresponding to the timeframe in the indictment for which is the jurors convicted Mr. Dent of first-degree criminal sexual conduct with a minor is entirely

[10] The State's brief, at p. 31, states, "To the extent that Appellant wished to elicit the sordid details about Mother's past [as a stripper and drug user], he was free to do so when he cross-examined Mother." Thus, the State concedes this evidence was admissible.

circumstantial, albeit not rising to the level of "substantial circumstantial evidence." Mr. Dent contested the prosecution's case, and the trial judge never instructed his jurors:

> [T]o the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.
>
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). This Court cannot say beyond a reasonable doubt that the error was harmless. *Thompson, supra.*

Question VIII

Did the trial judge err by not quashing the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the arrest warrants?

The State's brief, at pp. 24-25, argues, "The manner in which Appellant's arrest warrant was obtained is irrelevant to a determination of the sufficiency of the indictment" because "[i]n South Carolina, an indictment issued by the grand jury is generally required before an individual can be held to answer in any court for a criminal offenses." This argument overlooks the fact that our General Assembly can impose protections for an accused in addition to the grand jury process.[11] This Court should strictly construe the requirements set forth in S.C. Code §§ 16-15-305 and 435. "When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant." *Town*

[11] The State's brief, at p. 37, acknowledges the legislature intended additional protections, prior to arrest, by stating, "[I]t is likely the General Assembly specifically chose to impose a requirement that an arrest be sought for only three crimes. Any ambiguity must be construed in favor of Mr. Dent.

of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citing *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991)).

Question IX

Did the trial judge err by not suppressing State's Exhibits 1, 3, 4, 6, 11, 13, and 15 because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the search warrant and arrest warrants?

The State's brief, at p. 38, argues, "Appellant did not object to the introduction of the introduction of the photos on the grounds that the County Solicitor failed to request his *arrest warrants* for disseminating obscene material to a minor" (emphasis added). This argument ignores Mr. Dent's actual argument on appeal, to wit: "[T]he *search warrant* was sought based on information provided by Investigator LaVan—not the Solicitor. The trial judge erred by not suppressing this evidence." Brief of Appellant at p. 51 (emphasis added).

The State's brief, at p. 38-39, suggests this Court should overlook the requirements of S.C. Code §§ 16-15-305 and 435 because the "State never contended the aforementioned exhibits were obscene." This Court, however, cannot overlook the fact that these exhibits were obtained by the State pursuant to a search warrant that did not comply with the statute. This Court should strictly construe the requirements set forth in S.C. Code §§ 16-15-305 and 435. *Roberts* and *Blackmon, supra.*

Question X

Did the trail judge err by not directing the verdict on the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not satisfy the requirements of the statute.

The State brief, at pp. 40-42, argues this Court should excuse the prosecutions non-compliance with the statute because the prosecution did not introduce an obscene

photographs or videos but rather relied on the testimony of J.M. This Court should strictly construe the requirements set forth in S.C. Code §§ 16-15-305 and 435. *Roberts* and *Blackmon, supra.*

Question XI

Should this Court grant Charles Dent a new trial based on the cumulative error doctrine?

The State's brief, at pp. 41-42, does not cite any authority for its arguments and, therefore, must be considered abandoned. *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.").

CONCLUSION

For the reasons set forth in the Brief of Appellant and this reply brief, this Court should reverse the trial judge and enter an order directing an verdict of acquittal on Indictment No. 2014-GS-07-01673 and reverse the trial judge and enter an order directing a verdict of acquittal two indictments for disseminating obscene material to a minor twelve years or younger. In the alternative, this Court should enter an order quashing those indictment. In the alternative, this Court should order a new trial.

Respectfully Submitted,

By _____

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646

Attorney for Appellant Charles Dent

November 4, 2019
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State,..... Respondent,

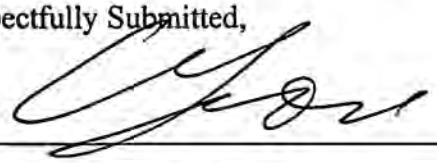
v.

Charles Dent, ... Appellant.

Rule 211, SCACR Certification

This Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,

By 

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Appellant

November 4, 2019
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Charles Dent, Appellant.

Appellate Case No. 2018-001257

Appeal From Beaufort County
Alex Kinlaw, Jr., Circuit Court Judge

Opinion No. 5850
Heard February 11, 2021 – Filed August 18, 2021

REVERSED AND REMANDED

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Jonathan Scott Matthews, both of Columbia; and Solicitor Isaac McDuffie Stone, III, of Bluffton, all for Respondent.

WILLIAMS, J.: In this criminal matter, Charles Dent appeals his convictions for first degree criminal sexual conduct (CSC) with a minor and disseminating obscene material to a minor. We reverse and remand for a new trial.

FACTS/PROCEDURAL HISTORY

In August 2014, Dent was arrested at his home in Alabama for various charges stemming from alleged sexual abuse of his granddaughter (Victim).[1] At the time of the alleged abuse, Victim lived in South Carolina with her mother and brother, and Dent would periodically stay with them.

In May 2014, Mother began dating John Camelo. Thereafter, Victim made an initial disclosure of abuse by Dent to Camelo. Camelo notified Mother, and Mother reported the abuse to law enforcement. Thereafter, Victim underwent a forensic interview at Hopeful Horizons regarding her initial disclosure. Following the interview, Victim made a second disclosure of abuse by Dent to Camelo and subsequently completed a second forensic interview.

A Beaufort County grand jury indicted Dent with two charges of first degree CSC with a minor and two charges of disseminating obscene material to a minor. Following a trial in May 2018, a jury found Dent guilty of both dissemination charges and one charge of first degree CSC, and the trial court sentenced him to an aggregate term of thirty years' imprisonment. Dent moved for a new trial, and the court denied his motion. This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court reviews the underlying matter for an abuse of discretion, which occurs when the findings of the trial court lack evidentiary support or are controlled by an error of law. *State v. Hopkins*, 431 S.C. 560, 568–69, 848 S.E.2d 368, 372 (Ct. App. 2020).

LAW/ANALYSIS

Dent contends the trial court erred in failing to charge the jury with the requested circumstantial evidence instruction established by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). We agree.

In *Logan*, our supreme court held that trial courts "should" instruct the jury with the following circumstantial evidence charge when requested by the defendant. *Id.* at 99, 747 S.E.2d at 452.

> There are two types of evidence which are generally presented during a trial—direct evidence and

[1] Dent also faced charges in Alabama for child pornography.

> circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.
>
> Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, *to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.*
>
> The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Id. (emphasis added).

"When requested, the *Logan* charge *must be given* in cases based in whole or part on circumstantial evidence." *State v. Herndon*, 430 S.C. 367, 371, 845 S.E.2d 499, 501 (2020) (emphasis added).

> Over the years, the circumstantial evidence charge in South Carolina has evolved significantly. In relevant part, it was initially required that circumstantial evidence point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. Subsequently, in response to guidance from the Supreme Court of the United States, the [c]ourt removed this requirement, instead ordering trial courts to instruct juries that circumstantial evidence must be given the same

> weight and treatment as direct evidence (the *Grippon*[2] charge).
>
> However, in *Logan*, the [c]ourt posited that there are different approaches used to analyze direct and circumstantial evidence. . . . Therefore, we held the trial court "should" give the specific charge provided in the *Logan* decision, . . . , when requested.

Id. at 371–72, 845 S.E.2d at 502 (citations and footnotes omitted). "Th[e *Logan*] holding does not prevent the trial court from issuing the circumstantial evidence charge provided in *Grippon* . . . . However, trial courts *may not exclusively rely* on that charge over a defendant's objection." *Logan*, 405 S.C. at 100, 747 S.E.2d at 452–53 (emphasis added).

"Notwithstanding the mandatory language in *Logan*, erroneous jury instructions remain subject to an appellate court's authority to 'consider[ ] the trial court's jury charge as a whole and in light of the evidence and issues presented at trial.'" *Herndon*, 430 S.C. at 371, 845 S.E.2d at 501–02 (alteration in original) (quoting *Logan*, 405 S.C. at 90, 747 S.E.2d at 448). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *State v. Adkins*, 353 S.C. 312, 319, 577 S.E.2d 460, 464 (Ct. App. 2003).

During the charge conference, Dent requested the trial court use the *Logan* charge for the instruction on circumstantial evidence. However, the court failed to do so, charging the jury as follows:

> Now, there are, also, two sources—or two types of evidence, rather. And I'm talking about now is there's direct evidence and circumstantial evidence. Direct evidence is the testimony of someone who claims to have direct and actual knowledge of a fact, such as an eyewitness. Direct evidence is evidence that if it is believed immediately establishes a fact.
>
> Circumstantial evidence. Circumstantial evidence is indirect evidence. Put another way, circumstantial

[2] *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997).

> evidence is proof of a chain of facts from which you could find that another fact exists, even though it has not been proven to you directly.
>
> The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. You may consider both kinds. And there's not a greater degree of certainty required for one over the other.

Following the charge, Dent objected and requested the trial court recharge the jury with the *Logan* instruction. The trial court overruled Dent's objection, finding the charge was sufficient.

We find the trial court erred in failing to grant Dent's request to charge the jury with the *Logan* instruction on circumstantial evidence. *See Logan*, 405 S.C. at 99, 747 S.E.2d at 452 ("[D]efendants should not be restricted from requesting a jury charge that reflects the requisite connection of collateral facts necessary for a conviction."). The evolution of this charge is apparent in our jurisprudence, and our supreme court has unambiguously directed trial courts to use the instruction if requested. *See Herndon*, 430 S.C. at 371, 845 S.E.2d at 501 ("When requested, the *Logan* charge must be given in cases based in whole or part on circumstantial evidence."). Although it is not error for trial courts to use previous iterations of a circumstantial evidence charge, rather than utilizing the *Logan* instruction verbatim, it is mandatory for the trial court to update the charge as necessary. *See Logan*, 405 S.C. at 100, 747 S.E.2d at 452–53 ("Th[e *Logan*] holding does not prevent the trial court from issuing the circumstantial evidence charge provided in *Grippon* . . . . However, trial courts *may not exclusively rely* on that charge over a defendant's objection." (emphasis added)). Therefore, the trial court additionally erred in failing to supplement the charge, after Dent's renewed objection, to include reference to the requisite connection of circumstantial facts necessary for a conviction. There was no physical evidence, and the State spent substantial time in summation explaining to the jury that the case was "about circumstantial evidence." Further, the State read part of the trial court's planned charge on circumstantial evidence to the jury, noting that Dent "didn't want to read out the [planned] definition of circumstantial evidence." Considering the circumstantial nature of the evidence, we find these errors prejudiced Dent.[3]

[3] Because this finding is dispositive, we decline to address Dent's remaining issues on appeal. *See State v. Hepburn*, 406 S.C. 416, 428 n. 14, 753 S.E.2d 402, 408 n.

CONCLUSION

Accordingly, we reverse the trial court and remand the matter for a new trial.

REVERSED AND REMANDED.

HILL, J., concurs.

THOMAS, J., dissenting: I respectfully dissent. I find the trial court erred in failing to supplement the jury charge, after Dent's renewed objection, with the requested circumstantial evidence instruction established by *Logan*. However, I find the error committed by the trial court was ultimately harmless. The State's case consisted of direct and circumstantial evidence. While the amount of direct versus circumstantial evidence presented was close, the evidence was not "almost exclusively circumstantial" like in *Herndon*. *See Herndon*, 430 S.C. at 373, 845 S.E.2d at 500-03 (holding the trial court's failure to give the requested *Logan* charge was not harmless error when the State's case against the defendant was "almost exclusively circumstantial"). I also find the trial court's instruction, as a whole, properly conveyed the applicable law. *See Logan*, 405 S.C. at 90-91, 747 S.E.2d at 448 ("A jury charge is correct if, when read as a whole, the charge adequately covers the law."). In *State v. Jenkins*, 408 S.C. 560, 572-73, 759 S.E.2d 759, 766 (Ct. App. 2014), this court found no reversible error in the trial court's jury instruction on circumstantial evidence, applying the harmless error analysis and explaining, "Our supreme court has excluded the 'reasonable hypothesis' language from the circumstantial evidence instruction now required by *Logan*, recognizing that this language is unnecessary." The *Jenkins* court also found "any error in the omission of other language from the *Logan* instruction was harmless beyond a reasonable doubt because the trial court's instruction, as a whole, properly conveyed the applicable law." *Id.* at 572-73, 759 S.E.2d at 766; *see Logan*, 405 S.C. at 94 n. 8, 747 S.E.2d at 449 n. 8 ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." (citation omitted)); *id.* (concluding any error in the trial court's jury instructions was harmless because the trial court "clearly instructed the jury regarding the reasonable doubt burden of proof" and its jury instruction, "as a whole, properly conveyed the applicable law." (citations omitted)); *see also State v. Drayton*, 411 S.C. 533, 545-46, 769 S.E.2d 254, 261

14 (2013) (declining to review remaining issues when its determination of a prior issue was dispositive of the appeal).

(Ct. App. 2015) (determining there was no reversible error in the trial court's failure to include the "reasonable hypothesis" language in its circumstantial evidence jury charge when the trial court's instruction "as a whole, properly conveyed the applicable law"), *aff'd in result and vacated in part on other grounds by State v. Drayton*, 415 S.C. 43, 780 S.E.2d 902 (2015); *State v. Lynch*, 771 S.E.2d 346, 358, 412 S.C. 156, 178 (Ct. App. 2015) (finding the trial court did not commit reversible error in refusing Lynch's requested circumstantial evidence charge because his requested charge was based on the "reasonable hypothesis" language, which the supreme court found unnecessary in *Logan*). Therefore, I would affirm the trial court.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge
Appellate Case No. 2018-001257

THE STATE, Respondent,

vs.

CHARLES DENT, Appellant.

PETITION FOR REHEARING

On August 18, 2021, in a divided opinion, a majority of this Court reversed Appellant's convictions for first degree criminal sexual conduct with a minor and disseminating obscene material to a minor by finding the trial judge erred in failing to charge the jury with the requested circumstantial evidence instruction established by State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). State v. Dent, Opinion No. 5850 (S.C. Ct. App. filed August 18, 2021) (Howard Adv. Sh. No. 28). A majority of this Court further ruled the trial judge's error was prejudicial to Appellant considering the circumstantial nature of the evidence. The State respectfully submits this Court misapprehended or overlooked relevant facts in the record and case law in reaching the conclusions in the majority opinion. Accordingly, pursuant to Rule 221(a), SCACR, this Court should grant the petition for rehearing and hold the trial judge's failure to charge the jury with the Logan instruction was harmless because the evidence presented against Appellant was almost exclusively direct and not circumstantial. Furthermore, this Court should hold that the trial judge's instruction, as a whole, properly conveyed the applicable law and correctly instructed the

jury on reasonable doubt and the presumption of innocence. For this reason also, this Court should find the trial judge's failure to give the Logan charge was harmless error. Therefore, this Court should affirm Appellant's convictions and sentences.

Evidence against Appellant was Direct, Not Circumstantial

In support of its conclusion that Appellant was prejudiced by the trial judge's failure to read the Logan charge, the majority asserts "There was no physical evidence, and the State spent substantial time in summation explaining to the jury that the case was 'about circumstantial evidence.' Further, the State read part of the trial court's planned charge on circumstantial evidence to the jury, noting that [Appellant] 'didn't want to read out the [planned] definition of circumstantial evidence.'" State v. Dent Opinion No. 5850 (S.C. Ct. App. filed August 18, 2021) (Howard Adv. Sh. No. 28 at 80). Contrary to the majority's opinion, the State's case against Appellant was based almost entirely, if not entirely, on direct evidence. The majority correctly identified that there was no physical evidence against Appellant, however the testimony presented against Appellant was direct evidence nonetheless. Because the State's case against Appellant was predominantly based on direct evidence, the trial judge's failure to read the Logan instruction was entirely harmless.

In Logan our Supreme Court defined direct evidence as evidence that "directly proves the existence of a fact and does not require deduction." Logan 405 S.C. at 99, 747 S.E.2d at 452. Here, Appellant was charged with, and convicted of, first degree criminal sexual conduct with a minor and disseminating obscene material to a minor. Contrary to the majority's conclusion, the evidence against Appellant was almost entirely, if not entirely, direct. The State proved that Appellant committed first degree criminal sexual conduct with a minor through Victim's eyewitness testimony at trial and Victim's second recorded forensic interview. Victim testified

that she was forced to perform fellatio on Appellant. (R. 377). Victim repeated this accusation in her second forensic interview. (State's Exhibit #17). Victim's eyewitness testimony directly proves the existence of the fact that Appellant forced Victim to perform fellatio and does not require a deduction. Therefore, Victim's testimony was direct evidence of Appellant's guilt. Appellant acknowledged as much when he told the jury in closing argument "Certainly, things like testimony, eyewitness accounts are what we call direct evidence." (R. 727, lines 3-5)

The State proved that Appellant disseminated obscene materials to Victim through Victim's testimony at trial and Victim's first forensic interview. (R. 376-77, State's Exhibit #16). This too was direct evidence of Appellant's guilt. Victim's testimony directly proved that Appellant forced Victim to view photos of his penis and pornographic videos and did not require deduction. Indeed, Appellant emphasized that the State's only evidence proving dissemination of obscene material came from the testimony of Victim, when he told the jury in his opening statement and closing argument that the State could not produce pictures of Appellant's penis or pornographic videos. (R. 251, 732-33). In regards to the pornography, Appellant specifically told the jury in closing "And once again, we've had some testimony, but we haven't had anything that has confirmed or corroborated showing of pornography." (R. 733, lines 9-11). Thus, Appellant seemed to acknowledge at trial that the evidence against him was entirely direct, particularly in regards to the crime of disseminating obscene material to a minor[1].

---

[1] As with all eyewitness testimony, the jury was asked to make a credibility finding regarding the weight to be given to Victim's testimony. Here, the trial judge provided the following instruction regarding credibility: "I also told you at the beginning of the case that evidence consists of several things. The first is sworn testimony, and the second is exhibits. You judge the credibility of the evidence. And you, as jurors, would have to necessarily gauge the credibility or believeability of the evidence presented. That's within your purview....But I will tell you that you may also consider in deciding credibility of the witnesses testimony in such a way that you believe everything that they say, or you would believe nothing a witness says. You may believe parts of a witnesses testimony, and disbelieve the other part of a witnesses testimony." (R. 755

Tellingly, on appeal, Appellant was unable or unwilling to provide examples of how the State's case was based on circumstantial evidence in either his 52 page final brief or his 15 page reply brief. (Final Brief of Appellant 49-50; Final Reply Brief of Appellant 12-13). Rather, Appellant asserts in a conclusory fashion "In this case, the State relied on a combination of direct and circumstantial evidence." (Final Brief of Appellant 49-50). The majority adopts Appellant's conclusory reasoning and does not specify how the evidence against Appellant was circumstantial other than to criticize the State's brief focus on circumstantial evidence in its rebuttal closing argument and the State's attempt to quote the trial judge's jury instruction. However, a closer examination of the record reveals the State spent very little time in closing addressing circumstantial evidence.

Far from "spending substantial time in summation" explaining that Appellant's case was about circumstantial evidence, the State merely responded in their rebuttal argument to Appellant's specious assertion during his closing argument that the State "rel[ied] on a lot of circumstantial evidence." (R. 727, lines 2-3). In fact, the State spent the entirety of their primary closing argument telling the jury about the direct evidence against Appellant and never once used the words "circumstantial evidence" in an argument that spanned 17 pages of the record. (R. 706-23). When the State did address Appellant's circumstantial evidence argument, the solicitor merely explained that the State didn't have direct evidence of Appellant's crimes in the form of "photos of [Victim] licking [Appellant's] penis" or "[Victim's] clothes covered in [Appellant's] semen" because sexual assaults occur in secret. (R. 748). The solicitor correctly noted that

---

lines 16-21 and 25—R. 756 lines 1-5). The fact that the jury was asked to make a credibility finding does not diminish the status of Victim's eyewitness testimony as direct evidence. The jury necessarily had to determine whether they believed Victim's testimony, but Victim's testimony was direct evidence of Appellant's guilt nonetheless because it directly proved Appellant forced Victim to perform fellatio and view pornographic materials and it did not require a deduction.

Appellant told the jury he would not quote what the trial judge's circumstantial evidence charge would be[2], but to the extent that the State "read part of the trial court's planned charge on circumstantial evidence to the jury", as the majority alleges, the solicitor merely told the jury: "Crimes may be proven by circumstantial evidence. The State can rely on direct evidence, circumstantial evidence, or some combination of the two. The Judge is going to read that to you." (R. 748, lines 8-11). The solicitor's anodyne statement was not a quote from the trial judge's eventual instruction to the jury, but is a correct statement of law that does not conflict with the instruction recommended in Logan. (R. 756, lines 10-25 – R.757 line 1).

In Logan, our Supreme Court endeavored to "articulate for the benefit of the bench and bar a circumstantial evidence charge reflecting the proper balance between the State's burden and the jury's responsibility." Logan, 405 S.C. at 94-95, 747 S.E.2d at 450. However, the Supreme Court ultimately held the trial judge's error in that case was harmless because the trial judge properly instructed the jury on reasonable doubt and the instruction, as a whole, properly conveyed the applicable law. Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

The Supreme Court recently addressed the failure to give a Logan instruction in State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020). The Court found the trial judge's failure to give the Logan instruction was reversible error because the evidence against Herndon "was almost exclusively circumstantial." Herndon 430 S.C. at 373, 845 S.E.2d at 502. However, the Court "acknowledge[d] there may be a case in which a trial court's failure to give the Logan charge might be harmless error." Id.

This court's dissenting opinion correctly noted the evidence against Appellant "was not 'almost exclusively circumstantial' like in Herndon." State v. Dent Opinion No. 5850 (S.C. Ct.

[2] Appellant told the jury "I'm not going to try to quote the exact words as to what [the trial judge is] going to say." (R. 726, lines 22-23).

App. filed August 18, 2021) (Howard Adv. Sh. No. 28 at 80). Here, the evidence against Appellant was **almost exclusively direct**. Because so much of the evidence against Appellant was direct, Appellant's case is precisely the kind of case the Supreme Court envisioned in Herndon where the failure to give the Logan instruction would be deemed harmless error. This Court should grant the petition for rehearing and determine the trial judge's failure to give the Logan instruction in Appellant's case was harmless error.

Jury Instructions Correctly Conveyed the Law

The dissent also correctly found the trial judge's "instruction, as a whole, properly conveyed the applicable law." State v. Dent Opinion No. 5850 (S.C. Ct. App. filed August 18, 2021) (Howard Adv. Sh. No. 28 at 80). Here the trial judge provided a thorough and correct instruction to the jury on the definition of reasonable doubt and Appellant's presumption of innocence. The trial judge provided the jury the following instruction on reasonable doubt and the presumption of innocence:

> [Appellant], in these four indictment, has plead not guilty. And that puts the burden of proof solely and squarely upon the shoulders of the State. And he can only be convicted if all 12 of you agree that the State has proven each and every element of the charges against [Appellant] beyond a reasonable doubt.
> ....
>
> [Appellant] is presumed innocent. And that presumption of innocence is not some legal technicality. It is a fundamental right that all of you – every person enjoys in this country. And it can only be removed if the State convinces you with proof beyond a reasonable doubt as to every element of a crime.
>
> What is a reasonable doubt? A reasonable doubt is defined as the kind of doubt that would cause a reasonable, sincere, honest, and conscientious person to hesitate to act in an important matter in their own affairs. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.
>
> ....

> If based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crimes charged, you should find the Defendant guilty. If, on the other hand, you think that there is a real possibility that the Defendant is not guilty, you should give the benefit of the doubt and find him not guilty.

(R. 758-59, lines 5-10, lines 18-4, lines 10-15). The trial judge's instruction on reasonable doubt substantially mirrored the language given by the trial judge in Logan[3]. Notably, after citing the trial judge's reasonable doubt instruction in Logan, the Supreme Court held the "trial court's jury instruction, as a whole, properly conveyed the applicable law." Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

In addition to the Supreme Court finding that the failure to give a Logan charge was harmless error in Logan, this Court has found such a failure harmless on multiple occasions. As the dissent correctly identified, this Court previously held a trial judge's failure to include language from the Logan charge was harmless in State v. Jenkins, 408 S.C. 560, 759 S.E.2d 759 (Ct. App. 2014), State v. Drayton, 411 S.C. 533, 769 S.E.2d 254 (Ct. App. 2015), *aff'd in result and vacated in part on other grounds by* State v. Drayton, 415 S.C. 43, 780 S.E.2d 902 (2015), and State v. Lynch, 412 S.C. 156, 771 S.E.2d 346 (Ct. App. 2015). Notably, in both Jenkins and Drayton this Court found the failure of the trial court to include language from Logan in its jury instruction was harmless in light of the trial judge's reasonable doubt instruction, because the jury instruction, as a whole, properly conveyed the applicable law. See Jenkins 408 S.C. at 573-

[3] The trial judge in Logan provided the following instruction on reasonable doubt: "Proof beyond a reasonable doubt is proof that leaves you firmly convinced if the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty...You should weigh all the evidence in this case, and, after weighing the testimony, you are not convinced of the defendant's guilt beyond a reasonable doubt, you must find the defendant not guilty...The burden of proof remains on the state to prove guilt beyond a reasonable doubt." Logan, 405 S.C. at 94 n.8, 747 S.E.2d at 449 n.8.

74, 759 S.E.2d at 766 ("As our supreme court ultimately concluded in Logan, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law."); See also Drayton, 411 S.C. at 546, 769 S.E.2d at 261 ("As this court concluded in Jenkins, we conclude the trial court's instructions in the present case, as a whole, properly conveyed the applicable law.").

Because the trial judge in Appellant's case properly instructed the jury on the reasonable doubt burden of proof and Appellant's presumption of innocence, the trial judge's instruction, as a whole, properly conveyed the applicable law. This Court should find, like our Supreme Court in Logan and this Court in Jenkins and Drayton, that the trial judge's failure to give the Logan instruction was harmless error.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, and find the trial judge's failure to give the Logan instruction was harmless error because the State's evidence against Appellant was almost exclusively direct and not circumstantial and because the trial judge's instruction, as a whole, properly conveyed the applicable law. This Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

BY: Scott Matthews
Scott Matthews
S.C. Bar No. 101464
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

August 26, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge
Appellate Case No. 2018-001257

THE STATE, Respondent,

vs.

CHARLES DENT, Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Petition for Rehearing on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This 26th day of August, 2021.

LEIGH ANN STONE
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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Sep 02 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State, ...Respondent,

v.

Charles Dent,.....Appellant.

RETURN TO STATE'S PETITION FOR REHEARING

On August 18, 2021, this Court unanimously held that the trial judge filed to give the jury instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013) and *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020). A majority of this Court further held:

> There was no physical evidence, and the State spent substantial time in summation explaining to the jury that the case was "about circumstantial evidence." Further, the State read part of the trial court's planned charge on circumstantial evidence to the jury, noting that Dent "didn't want to read out the [planned] definition of circumstantial evidence." Considering the circumstantial nature of the evidence, we find these errors prejudiced Dent.

Slip Opinion, at 6. The dissent would have held the error harmless. *Id.*, at 7-8. On August 26, 2021, the State petitioned for rehearing ("State's Petition"). Although conceding the trial judge erred by denying Mr. Dent the *Logan* charge, the State, relying on the dissent, argued the error was harmless. By letter dated August 27, 2021, this Court requested Mr. Dent respond to the State's motion. This return follows.

STANDARD OF REVIEW

"In criminal cases, this court reviews errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous." *State v. McBride*, 416 S.C. 379, 385, 786 S.E.2d 435, 438 (Ct. App. 2016). "Thus, on review, the court is limited to determining whether the trial court abused its discretion." *Id.* "An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law." *Id.*

"The law to be charged to the jury is determined by the evidence presented at trial. . . . , [and] a trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "The evidence presented at trial determines the charged jury instruction. The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict." *State v. Blurton*, 352 S.C. 203, 207, 573 S.E.2d 802, 804 (2002) (internal citations and quotations omitted). "A jury charge is no place for purposeful ambiguity." *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), *holding extended by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

"In reviewing jury charges for error, [an appellate court] must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Mattison*, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (quoting *State v. Adkins,* 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct.App.2003)). "Errors, including erroneous jury instructions, are subject to harmless error analysis." *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578 (citing *Belcher*, 385 S.C. at 611, 685 S.E.2d at 809). "When considering whether an error with respect to a jury instruction was harmless, [an appellate court] must determine

beyond a reasonable doubt that the error complained of did not contribute to the verdict." *Id.* (internal quotations omitted).

DISCUSSION

As a threshold matter, the State concedes the trial judge did not provide the *Logan* charge. *See, e.g.*, Brief of Respondent, at 31; State's Petition, at 1-2. The question, therefore, becomes whether this Court can conclude the error is harmless beyond a reasonable doubt. *See Burdette, supra.* Like the dissent, the State's position rests on its contention the evidence against Charles Dent was direct and not circumstantial. The State's own arguments do not support its position because (a) the Solicitor at trial argued the jurors should convict Mr. Dent based on circumstantial evidence and (b) the Brief of Appellant relied on circumstantial evidence when urging this Court to affirm the convictions.

A. This Court correctly held the Solicitor relied on circumstantial evidence.

"Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness." *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. "Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact." *Id.* The State argues its "case against [Mr. Dent] was based almost entirely, if not entirely, on direct evidence" and the Solicitor "merely responded to Mr. Dent's 'specious assertion' the prosecution" relied "on a lot of circumstantial evidence." State's Petition, at 2, 4. This Court, therefore, must consider the State's reliance on circumstantial evidence at trial. In addressing Mr. Dent's closing argument, the Solicitor argued:

> And he started talking about circumstantial evidence. And he said the Judge would talk to you about circumstantial evidence. And he didn't want to read out the definition of circumstantial evidence that the Judge is going to read. But I'm going to do that because circumstantial evidence is

> frequently viewed as a dirty word, I think. If you guys – you know – it's viewed as not being serious. But – and I'm going to read it.
>
> Crimes may be proven by circumstantial evidence. The State can rely on direct evidence, circumstantial evidence, or some combination of the two. The Judge is going to read that to you.
>
> Circumstantial evidence is evidence. And it's not a lesser type of evidence. And why – why is this case about circumstantial evidence? Why do we not have photos of Jaelynn licking the Defendant's penis? Why do we not have Jaelynn's clothes covered in the Defendant's semen? We don't have that because of the ***grooming*** process. Because sexual assault cases, these type of cases, they do not happen out in broad daylight with witnesses. They happen in private homes. They happen between two people who have a power difference. And that's what happened here. It happened when Jaelynn was alone with the offender.
>
> It happened in a private home. It happened after months of ***grooming***. And that is why we must rely on circumstantial evidence.

Tr. 727-29 (emphasis added).

The Solicitor thus equated "circumstantial evidence" and "grooming." In doing so, the State sought to prove a "chain of facts and circumstances indicating the existence of a fact," *Logan*, 405 S.C. at 96, 747 S.E.2d at 451—*i.e*. that grooming was evidence of criminal sexual conduct. The State, in fact, heavily relied on "grooming"—and, therefore, circumstantial evidence—during its initial closing argument. *See, e.g.* Tr. 696 (discussing Tessa Trask's testimony about "grooming"); 697 ("grooming is his normalized sexual touch though exposure"); 698 (discussing the process of grooming); 698 (linking grooming to delayed disclosure). The Solicitor followed up her discussion of grooming by reminding the jurors about John Comelo's testimony about "red flags" he claimed he witnessed regarding the child complaining witness. Tr. 698. The Solicitor next discussed testimony of Lori Mayo and Mr. Comelo that the State claimed evidenced "outward signs of abuse" and "trauma" that the child exhibited in this case. Tr. 698-99. In fact, the prosecution's use

of Mr. Comelo's testimony prompted Mr. Dent to address circumstantial evidence during his closing argument. Immediately after referencing circumstantial evidence, Mr. Dent addressed the allegations of "sexualized behavior" alleged in the child's relationship with Mr. Comelo. Tr. 707.

During her initial closing, the Solicitor also discussed the photographs that were entered onto evidence. Tr. 699-700. These photos are not direct evidence of any of the crimes for which Mr. Dent was convicted. Indeed, Mr. Dent challenges the admission of the photographs on appeal as not relevant and unduly prejudicial. Brief of Appellant, at 46-47, 52, and Reply Brief of Appellant, at 8-10, 14. The State, in fact, acknowledged these photographs "were not offered to prove [Mr. Dent] was guilty of disseminating obscene material to a minor," but rather, "The aforementioned exhibits are photos of Victim, at least some of which, the State argued were sexualized and thus demonstrated the inappropriate relationship [Mr. Dent] had with Victim." Brief of Respondent, at 38. In relying on the photographs in this manner, the State once again sought to prove a "chain of facts and circumstances indicating the existence of a fact." *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. Thus, without using the words "circumstantial evidence," the State argued the photographs were circumstantial evidence supporting a conviction for first-degree criminal sexual conduct with a minor.

B. On Appeal, the State relies on circumstantial evidence.

As seen in Section A above, the prosecution relied on circumstantial evidence at trial, and the State acknowledged in its brief to this Court that it introduced photographs of the child as circumstantial evidence to support the criminal sexual conduct conviction. On appeal, the State also relied on circumstantial evidence when urging this Court not to direct

a verdict of acquittal regarding the charge of first-degree criminal sexual conduct with a minor. *See, e.g.,* Brief of Respondent, at 8-9 (arguing the jurors could infer fellatio occurred "during the relevant timeframe in indictment 2014-GS-07-1673" based on inferences drawn from the child's vague and inconsistent statements), 9 ("The logical implication of Victim's second forensic interview is that she performed fellatio on Appellant more than one time and at least one of those incidents happened at the first townhouse during the time frame limited in indictment 2014-GS-07-1674"), and 10 (arguing inferences from "a broad question by the assistant solicitor: 'But do you remember anything about what was done to you while you lived in *those houses?* '" (emphasis supplied by State's brief)). In arguing inferences in this manner, the State once again sought to prove a "chain of facts and circumstances indicating the existence of a fact." *Logan*, 405 S.C. at 96, 747 S.E.2d at 451. Thus, without using the words "circumstantial evidence," the State argued these inferences as circumstantial evidence supporting a conviction for first-degree criminal sexual conduct with a minor.

CONCLUSION

For the foregoing reasons, this Court should deny the State's petition for rehearing. Because the evidence presented at trial supported a jury instruction on circumstantial evidence, the trial judge was obligated to provide the *Logan* instruction. The State concedes this legal error. Based on this record, it is impossible for this Court to "determine beyond a reasonable doubt that the error complained of did not contribute to the verdict." *Burdette*, 427 S.C. at 496, 832 S.E.2d at 578. The Solicitor argued the State's view of the circumstantial evidence during her closing. Although avoiding the use of the term

"circumstantial evidence," the State relies on circumstantial evidence when urging this Court to affirm the conviction for first-degree criminal sexual conduct.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Charles Dent

September 2, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State, ...Respondent,

v.

Charles Dent,.....Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS),[1] as reflected below, on the date reflected below:

Jonathan Scott Matthews, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
smatthews2@scag.gov

By s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

September 2, 2021
Greenwood, South Carolina

[1] A copy of the email is attached to the certificate of service filed with this Court.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State, ...Respondent,

v.

Charles Dent,.....Appellant.

CROSS-PETITION FOR REHEARING

On August 18, 2021, this Court reversed the trial court from not providing the jury instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013) and *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020). This Court summarily disposed of Mr. Dent's reaming issues on appeal by holding:

> Because this finding is dispositive, we decline to address Dent's remaining issues on appeal. *See State v. Hepburn*, 406 S.C. 416, 428 n. 14, 753 S.E.2d 402, 408 n. 14 (2013) (declining to review remaining issues when its determination of a prior issue was dispositive of the appeal).

State v. Dent, No. 2018-001257, 2021 WL 3641728, at *3, fn. 1 (S.C. Ct. App. Aug. 18, 2021). On August 26, the State petitioned for rehearing. Pursuant to Rule 221(a), SCACR, Charles Dent also petitions for rehearing because this Court did not decide the remaining issues raised by Mr. Dent on appeal. In doing so, this Court overlooked or misapprehended that two of these issues are dispositive in the same manner as the dispositive issue in

Hepburn and the reaming eight issues require this Court's guidance because those issues are capable of repetition at trial.

STANDARD OF REVIEW

> In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following:
>
> > (1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.
> >
> > (2) The Court of Appeals need not address a point which is manifestly without merit.

Rule 220(b), SCACR.

DISCUSSION

A. Dispositive Issues.

In *Hepburn,* our supreme court reversed a conviction for homicide by child abuse and "direct[ed] a verdict of acquittal." *Hepburn*, 406 S.C. at 442, 753 S.E.2d at 416. Because of the directed verdict, the remaining issues alleging error during the trial became moot. Stated another way, the directed verdict was dispositive of the entire case. Here, Mr. Dent raises two issues regarding the trial court's denial of his directed verdict motions,

which would be dispositive of the State's charges against Mr. Dent, thereby rendering a new trial on these charges unnecessary.

Question I asked this Court to hold "trial judge err[ed] by not directing a verdict of acquittal on Indictment No. 2014-GS-07-01673 when the State failed to present any evidence that "fellatio on the Defendant by J.M." occurred during the time frame of the indictment." Brief of Appellant, at 41-43; Reply Brief of Appellant, at 1-3. If this Court agrees with Mr. Dent and enters a directed verdict, then double jeopardy will bar the State from prosecuting Mr. Dent a second time for first-degree criminal sexual conduct with a minor. U.S. Const. Am. V; S.C. Const. Art. I, § 12. Given the variance between the indictment and the evidence presented at trial, not deciding this issue would give the State a "free pass" by allowing them to seek an amended indictment from the grand jury.

Question X asked this Court to hold "the trial judge err[ed] by not directing the verdict on the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not satisfy the requirements of the statute." Brief of Appellant, at 51-52; Reply Brief of Appellant, at 14-15. If this Court agrees with Mr. Dent and enters a directed verdict, then double jeopardy will bar the State from prosecuting Mr. Dent a second time for disseminating obscene material to a minor. U.S. Const. Am. V; S.C. Const. Art. I, § 12.

This Court, accordingly, should issue a written opinion regarding Questions I and X because these issues are dispositive and would

B. Issue Capable of Repetition at Trial.

This Court's guidance is needed because the remaining eight issues are capable of repetition during a new trial.

First, Question II asked this Court to hold the trial court "err[ed] by not limiting the definition of sexual battery to 'fellatio' when 'fellatio on the Defendant by J.M.' was the only sexual battery alleged in the indictment." Brief of Appellant, at 43-44; Reply Brief of Appellant, at 3-5. Although the State defends the trial judge's ruling on appeal, the State tacitly admits the error by acknowledging it was required to prove fellatio in order to survive Mr. Dent's directed verdict motion. *See, e.g.,* Brief of Respondent, at 8-11. As our supreme court recently reminded:

> The primary purpose of an indictment is threefold: to put the defendant on notice of the elements of the offense; to allow him to decide whether to plead guilty or stand trial; and to enable the trial court to know what judgment to pronounce following a conviction.

State v. Lewis, No. 2019-001815, 2021 WL 3520852, at *7 (S.C. Aug. 11, 2021) (citing *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)). Here, Mr. Dent relied on the indictment's limitation to a single sexual battery. As seen above, Mr. Dent is concerned the failure to decide this issue will give the State a "free pass" to seek an amended indictment. If the State does not seek an amended indictment, then this issue likely will be repeated during a new trial.

Question III asked this Court to "exclude[e] the testimony of Tessa Trask's when this testimony was based on her own theories and the record does not contain any evidence that her theories are reliable." Brief of Appellant, at 44-46; Reply Brief of Appellant, at 5-8. Without this Court's guidance, the State will call Ms. Trask during a new trial, and this issue will repeat itself.

Question IV asked this Court to hold "the trial judge err by allowing the prosecution to introduce State's Exhibits 1, 3, 4, 6, 11, 13, and 15 when the prosecution could not establish the chain of custody, the witness could not authenticate those images, the images

were not relevant to guilt, and the prejudicial effect of those images and J.M.'s testimony about those images substantially outweighed any probative value." Brief of Appellant, at 46-47; Reply Brief of Appellant, at 8-10. Question IX asked this Court to hold "the trial judge err by not suppressing State's Exhibits 1, 3, 4, 6, 11, 13, and 15 because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the search warrant and arrest warrants." Brief of Appellant, at 52; Reply Brief of Appellant, at 14. If this Court agrees with Mr. Dent, then the State will not be allowed to use these exhibits during a new trial.

Question V asked this Court to hold "the trial judge err[ed] by overruling Charles Dent's objections during the State's opening and the direct examination of John Camelo, thereby allowing Mr. Camelo to offer opinions about whether J.M. was a victim sexual abuse based on his training, education, and experience." Brief of Appellant, at 57-48; Reply Brief of Appellant, at 10. Question VI asked this Court to hold "the trial judge err[ed] by denying Charles Dent his Sixth Amendment right to confront and cross-examine John Camelo about the real reasons why he ended the relationship with Lori Michelle Mayo." Brief of Appellant, at 48-49; Reply Brief of Appellant, at 11. Because it is difficult to imagine the prosecution not calling Mr. Camelo during a new trial, this Court should provide guidance about the appropriate limits of Mr. Comelo's direct testimony and permissible areas of his cross-examination.

Question VIII asked this Court to hold "the trial judge err by not quashing the two indictments for disseminating obscene material to a minor twelve years of age or younger because the State did not follow the procedures set forth in S.C. Code §§ 16-15-305 and 435, which require the Solicitor's Office to apply for the arrest warrants." Brief of

Appellant, at 50-51; Reply Brief of Appellant, at 13-14. As seen at trial and during this appeal, the State has a different interpretation of this statue. Thus, if the Sate seeks to retry Mr. Dent, then this issue will be repeated in a new trial. This Court therefore, should provide a statutory interpretation.

Mr. Dent also asked this Court to consider the cumulative error doctrine. Brief of Appellant, at 52; Reply Brief of Appellant, at 15.

This Court should issue a written opinion addressing these issues because thes issues are capable of repetition at a new trial.

CONCLUSION

For the foregoing reasons, this Court should issue a written opinion addressing the remaining issues raised by Mr. Dent on appeal.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Charles Dent

September 2, 2021
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State, ...Respondent,

v.

Charles Dent,.....Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS),[1] as reflected below, on the date reflected below:

Jonathan Scott Matthews, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
smatthews2@scag.gov

By s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

September 2, 2021
Greenwood, South Carolina

[1] A copy of the email is attached to the certificate of service filed with this Court.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge
Appellate Case No. 2018-001257

THE STATE, Respondent,

vs.

CHARLES DENT, Appellant.

RETURN TO CROSS-PETITION FOR REHEARING

On September 2, 2021, Appellant filed a cross-petition for rehearing in the above referenced case. By letter dated September 3, 2021, this Court requested the State provided a return to Appellant's petition. The State's return to Appellant's cross-petition for rehearing follows.

Appellant begins his cross-petition by astutely noting that Rule 220(b) SCACR does not require the Court of Appeals to "address a point which is manifestly without merit." Rule 220(b) SCACR. Accordingly, this Court did not err in refusing to address the remaining ten issues raised on appeal by Appellant because they are each manifestly without merit. However, if this Court wishes to address Appellant's remaining issues, notwithstanding this Court's decision reversing Appellant's convictions based on the trial judge's failure to give the instruction

required by State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), Appellant's convictions should be affirmed for the following reasons[1]:

The first issue raised on appeal by Appellant is whether the trial court erred in refusing to direct a verdict of acquittal for Indictment number 2014-GS-07-1673. This issue was and remains manifestly without merit. At trial, Victim testified she was forced to perform fellatio on Appellant. (R. 377, State's Exhibit #17). The jury heard additional details regarding the fellatio from Victim's second forensic interview, including Victim's description of Appellant's semen. (State's Exhibit #17). While there was a discrepancy in the number of times Victim alleged she was forced to perform fellatio on Appellant in her forensic interview versus what she testified to at trial[2], evidence was nonetheless presented from which a reasonable juror could find Appellant guilty under Indictment number 2014-GS-07-1673. The trial judge properly recognized the existence of the evidence presented and allowed the jury to determine the weight of that evidence.

The second issue Appellant raised on appeal is whether the trial judge properly charged the complete statutory definition of sexual battery during his charge to the jury. Like Appellant's other issues, this issue is manifestly without merit. The trial judge properly charged the complete definition of sexual battery as found in S.C. Code § 16-3-651(h). Therefore, the trial judge charged the complete and correct law of South Carolina. This complete definition was not misleading, because the State clearly argued in opening statement and closing argument that it was seeking to prove Appellant forced Victim to perform fellatio. (R. 247, 715, 722). Furthermore, the trial judge read the specific language of the indictments which specified fellatio

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[1] For a more detailed discussion of the reasons this Court should affirm Appellant's remaining issues, please see the Final Brief of Respondent p. 8-31 and p. 34-43.

[2] Notably, neither the State nor Appellant asked Victim to clarify this discrepancy while she was on the witness stand. (R. 378-90).

as the sexual battery the State was seeking to prove in jury qualifications. (R. 146-47). Therefore, the trial judge did not err in reading the complete definition of sexual battery.

The third issue Appellant raised on appeal is whether the trial judge erred in admitting the testimony of Tessa Trask. This issue is likewise manifestly without merit. As previously argued in the State's Final Brief, Appellant did not preserve this issue for appeal because Appellant only objected to Trask's definition of trauma. To the extent, Appellant objected to the remainder of Trask's testimony, Trask properly testified as a blind expert on general topics related to child sexual abuse. Even if the trial judge erred in admitting Trask's testimony, the error was entirely harmless because Trask never offered an opinion on Victim's credibility or the truth of her disclosure. (R. 404).

The fourth issue raised by Appellant is whether the trial judge erred in admitting State's Exhibit numbers 1, 3, 4, 6, 11, 13, and 15. Contrary to Appellant's multiple assertions of error regarding the photographs, the photos were relevant, did not require a chain of custody, they were properly authenticated by Victim, and their probative value was not substantially outweighed by the danger of unfair prejudice. Victim properly authenticated each photo as a depiction of her during her time living in Beaufort County, South Carolina. (R. 570-79). Furthermore, the State did not seek to prove the photos were taken from Appellant's camera or computer and therefore the State was not required to prove a chain of custody. Indeed, the photos were not explicitly sexual and as Appellant noted in his closing argument, the State could not definitively prove who took them nor were they relevant to the two charges of disseminating obscene material to a minor. (R. 730-32). Therefore, the probative value of the photos was not substantially outweighed by the danger of unfair prejudice.

The fifth issue raised by Appellant asked this court to consider whether the trial judge erred in overruling Appellant's objections to the testimony of John Camelo. This issue is also manifestly without merit. Here, Camelo did not testify as a forensic interviewer nor did he offer an opinion on the credibility of Victim's disclosure. Camelo testified as an outcry witness under Rule 801(d)(1)(D) SCRE and he described his personal observations of sexual behavior by Victim. Camelo's observations were based on his personal experience as a victim of sexual abuse and his experience raising a stepdaughter who was the same age as Victim. (R. 270).

Appellant also alleged the trial judge erred in not allowing Appellant to ask John Camelo about why he broke up with Victim's mother. Appellant baselessly speculates that the jury must have assumed Camelo broke up with Mother because of Victim's allegations of sexual abuse. However, as Appellant's subsequent questions *in camera* questions of Camelo revealed, Appellant merely wished to impeach Mother by asking Camelo whether Mother was a stripper who used Marijuana. (R. 286). Appellant's line of questioning was completely irrelevant to the ultimate issue at trial and the State's objection to Appellant's questions was properly sustained.

Appellant's eighth issue on appeal asked this Court to consider whether the trial judge erred in refusing to quash indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 because the Solicitor's office did not apply for the underlying arrest warrants associated with each indictment. This issue is also manifestly without merit. The manner in which Appellant's arrest warrant was obtained is irrelevant to a determination of the sufficiency of the indictment. A defect in an arrest warrant is not a proper ground for quashing an indictment. However, even if the trial judge could have quashed the indictment based on a defect in the arrest warrant, there were no defects in Appellant's arrest warrants for dissemination of obscene material to a minor. Appellant claims S.C. Code § 16-15-435(A) requires a circuit solicitor to apply for an arrest

warrant rather than a police officer. However, S.C. Code § 16-15-435(A) explicitly does not apply to the statute Appellant was charged with violating, S.C. Code § 16-15-355. Therefore, the requirement that a circuit solicitor apply for an arrest warrant is inapplicable to the charge of disseminating obscene material to a minor.

Appellant's ninth issue on appeal asked this Court to consider whether the trial judge erred in admitting State's Exhibits #1, #3, #4, #6, #11, #13, and #15 because the Solicitor's office did not apply for the underlying arrest warrants for indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672. As an initial matter this issue was not preserved for appeal because Appellant did not object to the admission of the aforementioned exhibits on this basis. Even if preserved, this issue is manifestly without merit. As previously argued, the photographs that Appellant complains of were not admitted to prove Appellant disseminated obscene material to a minor. Appellant admitted this much in his closing argument. (R. 730-32). However, even if the photos were relevant to proving Appellant disseminated obscene material to a minor, S.C. Code § 16-15-435(A) explicitly does not apply to S.C. Code § 16-15-355.

Appellant also asked this Court to determine whether the trial judge erred in failing to direct a verdict for Appellant on for indictment numbers 2014-GS-07-1671 and 2014-GS-07-1672 in his tenth issue presented to this Court. This issue is manifestly without merit. As previously argued S.C. Code § 16-15-435(A) explicitly does not apply to S.C. Code § 16-15-355, therefore it is irrelevant which agency sought arrest warrants for Appellant. Also, the State proved Appellant disseminated obscene material through Victim's testimony at trial and her first forensic interview. (Tr. 356-57, State's Exhibit #16). Therefore, the trial judge did not err in denying Appellant's motion for a directed verdict.

Appellant's final remaining issue is whether Appellant should have been granted a new trial based on the cumulative error doctrine. As an initial matter, Appellant failed to preserve this issue for appeal. Appellant did not argue the cumulative error doctrine to the trial judge during the trial, but rather raised it for the first time in a post-trial motion. Even if Appellant properly preserved this issue for appeal, Appellant abandoned the issue by raising it in a conclusory and unsupported manner in his final brief. Finally, Appellant's trial was not rendered unfair by any errors, cumulative or otherwise and Appellant has failed to identify any errors entitling him to a new trial.

CONCLUSION

For all of the foregoing reasons, the State requests the panel deny Appellant's cross petition for rehearing. However, if the panel grants the cross petition, the State requests this Court affirm Appellant's convictions on each remaining issue.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit

BY: Scott Matthews
Scott Matthews
S.C. Bar No. 101464
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 9, 2021

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable Alex Kinlaw, Jr., Circuit Court Judge
Appellate Case No. 2018-001257

THE STATE, Respondent,

vs.

CHARLES DENT, Appellant.

PROOF OF SERVICE

I, Leigh Ann Stone, certify that I have served the within Return to Cross Petition for Rehearing on Appellant by email to the address listed in AIS and with a copy of the same to be deposited in the United States mail, postage prepaid, addressed to:

E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood, SC 29646

I further certify that all parties required by Rule to be served have been served.
This 9th day of September, 2021.

LEIGH ANN STONE
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State, ...Respondent,

v.

Charles Dent,.....Appellant.

REPLY TO STATE'S RETURN TO CROSS-PETITION FOR REHEARING

On September 2, 2021, this Court requested the State file a return to Charles Dent's cross-petition for rehearing (herein after "Cross-Petition" and "State's Return"). On September 9, 2021, the State filed its return. This reply follows.

The State askes this Court not to decide the remining issues raised by Mr. Dent's appeal to this Court. *E.g*. Return, at 1-2 ("if this Court wishes to address [Mr. Dent's] remaining issues, notwithstanding this Court's decision reversing [his] convictions bases on the failure of the trial judge's failure [sic] to give the instruction required by *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013), [then his] convictions should be affirmed").[1] Ironically, if this Court grants the State's petition for rehearing, then this Court necessarily

[1] The State's argues Mr. Dent's remaining issues "are each manifestly without merit" and then argues why this Court should reject Mr. Dent's remaining arguments. Mr. Dent respectfully disagrees that his remaining issue are without merit. Because this Court has not called for additional briefing, Mr. Dent relies on his arguments set forth in his Brief of Appellant and Reply Brief of Appellant.

would have to rehear the remaining issues raised by Mr. Dent's appeal. This Court could resolve the State's inconsistent positions by viewing the State's opposition to it addressing Mr. Dent's other issues and abandonment of its petition for rehearing.

The State's Return militates in favor of denying its petition for rehearing on the merits. The State once again acknowledges "there was a discrepancy in the number of times Victim alleged she was forced to perform fellatio on Appellant in her forensic interview verses what she testified to at trail."[2] Return, at 2. This acknowledgment must be viewed in context of the absence of any testimony—*i.e*. direct evidence—alleging fellatio occurred when the child lived at the residence during the timeframe of indictment number 2014-GS-07-01673. Without using the term "circumstantial evidence," the State continues to argue it presented circumstantial evidence "from which a reasonable juror could find Appellant guilty under Indictment number 2014-GS-07-1673." *Id.*

The State continues to argue its trial exhibits 1, 3, 4, 6, 11, 13, and 15 where not "relevant to the two charges of disseminating obscene material to a minor."[3] State's Return, at 3 (citing R. 730-32). The State's return never explains why these photographs were relevant. As this Court is aware, the State contends these photographs are evidence of the sexualized relationship between the child and her grandfather, thereby relying on these photographs as circumstantial evidence of first-degree criminal sexual conduct with a minor without using the term "circumstantial evidence."

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[2] The State further acknowledges the Solicitor never asked the child "to clarify this discrepancy while she was on the witness stand." State's Return, at 2, fn. 2.

[3] In the same sentence, the State acknowledges it "could not dispositively prove who took" the photographs. State's Return, at 3. This admission—combined with the admission these charges are not relevant to the other two charges—militates in favor of grating Mr. Dent a new trial on this additional issue.

Finally, Mr. Dent's cross-petition for rehearing argues two of the undecided issues are "dispositive in the same manner as the dispositive issue in *Hepburn*[4] and the reaming eight issues require this Court's guidance because those issues are capable of repetition at trial." Cross Petition, at 1 (footnote added). The State's Return never addresses this ground for deciding the two issues that would bar retrial. Nor could it because Mr. Dent correctly explains why these issues could be dispositive of the entire case.

CONCLUSION

For the reasons set forth in Mr. Dent's cross-petition for rehearing and this reply, this Court should issue a written opinion addressing the remaining issues raised by Mr. Dent on appeal.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for Charles Dent

September 13, 2021
Greenwood, South Carolina

[4] *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402 (2013).

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2018-001257

The State, ...Respondent,

v.

Charles Dent,.....Appellant.

Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS),[5] as reflected below, on the date reflected below:

Jonathan Scott Matthews, Esquire
S.C. Attorney General's Office
PO Box 11549
Columbia, SC 29211
smatthews2@scag.gov

By s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

September 13, 2021
Greenwood, South Carolina

[5] A copy of the email will be attached to the certificate of service filed with this Court.

The South Carolina Court of Appeals

The State, Respondent,

v.

Charles Dent, Appellant.

Appellate Case No. 2018-001257

ORDER

After careful consideration of the petition for rehearing filed by Appellant, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams J.

D. Garrison J.

I adhere to my dissent.

Paula H. Thomas J.

Columbia, South Carolina

cc:
E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Jonathan Scott Matthews, Esquire

FILED
Oct 18 2021

Isaac McDuffie Stone, III, Esquire
The Honorable Alex Kinlaw, Jr.

The South Carolina Court of Appeals

The State, Respondent,

v.

Charles Dent, Appellant.

Appellate Case No. 2018-001257

ORDER

After careful consideration of the petition for rehearing filed by Respondent, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. Bruce Williams J.

D. Garrison J.

I adhere to my dissent.

Paula A. Thomas J.

Columbia, South Carolina

cc:
E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Jonathan Scott Matthews, Esquire

FILED
Oct 18 2021

Isaac McDuffie Stone, III, Esquire
The Honorable Alex Kinlaw, Jr.