IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-000711

WILLIAM LEE CARPENTER.....Petitioner,

v.

STATE OF SOUTH CAROLINA.....Respondent.

APPENDIX
Volume 2 of 2

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INDEX

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In the Court of Appeals

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RECORD ON APPEAL

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Volume II

I N D E X

I N D E X

I N D E X

EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV
	PLAINTIFF EXHIBITS (con't)		
S-21	[redacted]	11	313
S-22		11	315
S-23		11	316
S-24		11	315
S-25		11	316
S-26		11	35
S-27		11	35
S-28		11	37
S-29		11	37

EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV
	COURT EXHIBITS		
C-1	Jury Questionnaire		
C-2	Jury Questionnaire Answers		
C-3	Jury Questionnaire Answers		
C-4	Jury Questionnaire Answers		
C-5	Jury Questionnaire Answers		
C-6	Jury Charge		

we're clear about that, then anybody, of course, is welcome to stay in here that wants to. All right.

Anything else?

MS. SUSTAKOVITCH: No, ma'am.

THE COURT: Anything? You ready? All right.

(Jury enters at approximately 9:29 a.m.)

THE COURT: Good morning, ladies and gentlemen. We are now ready to begin with closing statements. All right.

MS. SUSTAKOVITCH: Thank you, Your Honor. May it please the Court.

THE COURT: Yes.

MS. SUSTAKOVITCH: Good morning, ladies and gentlemen. "I thought it was my fault." Do y'all remember those words? Do you remember who spoke them? That is who this case was about: a young boy and his sister who were sexually abused by their grandfather. What is this case about? What are we doing? This is a search for the truth; letting this child know that it wasn't his fault. He was right to tell.

This is a court of justice, and what we are all doing here is vitally important to the

Now, let's talk about this: What is reasonable doubt? It's not any and all doubts. It's not an unreasonable doubt. What reasonable doubt is, it's proof that is presented to you that leaves you firmly convinced that this defendant committed these crimes. That's it. It's not beyond any and all doubts, but firmly convinced in your heart that you believe you were presented with evidence that proves this defendant is guilty.

I want to go back through the elements, briefly, of CSC. Judge Verdin is going to instruct you on the law. If I say anything that sounds different, it's my apology. I don't mean to. She is the sole instructor of the law. I'm just going to give you a little bit about it so that we, as we go through, can understand again what you guys are going to be tasked with. Excuse me.

The elements of CSC in the first degree is when somebody engages in a sexual battery with a child under 11. All right. In this case, you have four counts of that being alleged by the state. So it's when this defendant, the state is alleging, has done a sexual battery on a

may have wondered why you had to see some of the evidence that you saw. Let me read you from CSC with a minor third. It says, "The state must prove the defendant did commit a lewd act on the body of a child under 16 with the intent of arousing or gratifying the lust and sexual desires of the defendant."

So you may have wondered yesterday, when I was cross-examining the defendant, why I had to show that picture. I know no one wants to see that again. But what we needed to talk about is that the defendant enjoys that, that he is getting sexual gratification for that. It is not a gratuitous reason to put it up there. It's an element of the crime that we have to prove to you. So you're going to have two counts of that. One time for the feces being put on Brenden's back and one time for the feces being put on Kaylynn's back.

You've got unlawful conduct towards a child. That's when a person in a role of responsibility over a child places a child in unreasonable risk, that would affect their physical or mental health. So the state is alleging in that that the two times that the

to see a wider -- excuse me, a wider time frame. The state doesn't have to prove exactly what day the abuse happened. Why is that? Because kids are -- excuse me, I have something -- kids are terrible historians at dates. So we don't have to tell you exactly what date it happened.

Let's get back to the essential question that you guys have to answer: Were [redacted] and [redacted] sexually abused by their grandfather? The evidence in this case, sadly, shows yes. The state has met its burden. We're going to go back through the evidence to prove that to you.

The starting point, Ladies and Gentlemen, is to realize that these crimes are just different. They happen in secret. Many times, in these cases, all you have is the testimony of a child. But in this case, you have so much more than that. Why is it that these cases are different and sometimes all you have is that testimony? Because they happen in secret. The abuser has the power and they are counting on the fact that no one is going to believe the words of a child.

It boils down to credibility and

important tenets: The burden of proof rests solely on the state. That never changes. Nothing in a trial will ever change that. The defendant doesn't have to prove anything.

But one thing does change when he testified. You know what it is? You get to judge his credibility just like everybody else. You get to consider what his motives are. You get to consider who has more motive to lie to you, who has more motive to be truthful with you. That's what changed.

In contrast, you think about [redacted] and [redacted] coming here -- was it Tuesday? -- and you saw [redacted] coming, crying as she walked in. You saw Brenden on the stand. I don't have to tell you what you saw; you saw it. And you contrast that with the forensic interviews, which I know were long, but we appreciate everybody bearing with us and watching them. It's just such a different environment than this whole courtroom. The children are able to tell more there. It's just different.

Let's think about his testimony and what the motive to be truthful to you was, yesterday. You heard from William and Dalina

His own testimony corroborates the victims' accounts of what happened to them. They tell you they had to pee in a bottle and drink their urine and than he drank it. He said on the stand he likes drinking urine -- other people's urine; I believe he said Gina's urine, not Brenden's, but Gina's.

The kids say he put feces on them during sexual activity. He says he enjoys that. He's been into it for 20-plus years. He also said the bathroom was small. Did you hear that? Who else did you hear that from? Brenden, in his forensic. He said that bathroom was small. Well, it is.

You boil this down -- as I said the first day, the defense always has a theory. I don't always know what it's going to be, but you see it start to build. Then it goes into a rabbit trail. As I told you in the opening, keep your eye on the ball.

What we have here -- what it looks like to me, is that the theory here is we have awful mom Dalina putting these kids up to this grand lie. Does anybody really think that what you've heard for the last three days is all some grand

straight up. Dalina said it was something about $700 towards a van. Dalina did not think any more about it. You remember her testimony. You can play it back. She didn't know about this and that, she and William didn't have a conversation about it.

Then you heard William. He was our last witness; right? William, you saw his demeanor. You can judge that. William says pretty much the same thing of this so-called inheritance. He was aware that there was money when the grandmother died and that part of it was in a van that he was going to get paid for, I believe. Something like that, but that's it. That's it. That is the rabbit trail. So that is what we're supposed to go over here and believe the last two years is all about. They want to take your eyes off all the logical points to go to one conclusion that this defendant sexually abused his children by making you look at a shiny object that goes in another direction.

Ladies and gentlemen, [redacted] knew sensory things that are way outside the knowledge of a 9- or a 10-year-old child. There's something you can't coach in a kid. If

he was trying to get in. Just -- this is just coming out in their disclosure. These are sensory descriptions that are beyond their mental capacity, unless you have experienced them, unless you've experienced what you're describing.

Let's go back through some of the evidence. I'm not going to talk too long. This is how a lot of these cases are reported. Someone goes into the police department. There's an initial report. This is a small municipality. It gets taken down by Parris and then is sent over to an investigator for more investigation. Okay.

The only thing I will say about the defense's expert, you know -- here's the thing: I wish in a world that when a child wanted to go report sexual assault that there was a SWAT team that came in and there's a...(Demonstrating)...and all of these people just popped up. But guess what? That's not how it happens.

You have kids disclosing on youth group trips or sitting on a back porch of their lake house. Or, I mean, just -- all the variety of ways that a child could potentially disclose

You heard it from Dalina Moore. She talked about [redacted]s issues with ADHD; how they moved in for financial reasons. She was honest about that. She said -- talked about her and Gina. They did have a relationship. They would leave home sometimes and come in impaired. I'm sure that wasn't something she wanted to talk about, but that's the truth. We had to talk about it.

She wasn't the best mom and I'm not -- at the time. She's doing better. DSS is closed. This is a better situation. But at the time, it wasn't the best situation. It was not this "Ozzie and Harriet" environment where all the kids got tucked in their beds and Granddad's reading to them every night. That's not what was happening, guys. And the evidence, I think, is going to support that.

You talk about the opportunity to abuse. You hear testimony that this defendant, there were times that they watched the children on grocery runs, when they went to the doctor's. Sometimes Dalina would be there and be impaired. There were times that this defendant and the co-defendant had children in their

embarrass this defendant, at all. Frankly, what he does, if that is totally with just adults not involving children, it's not our business; we don't care. We're not -- but when you involve children in it, that's the problem.

So we have the picture, and it's interesting. You heard the defendant testify. He talked about how the house was open wide and everybody is running around and you can hear stuff here, there, and everywhere; right? But then he talked about how, on Sunday morning now, when he and Gina were in the photo shoot in the bathroom, it was quiet. Nobody heard that. Just like nobody heard [redacted] when he was anally penetrating [redacted]

You heard from Investigator Perry about the computer searches where he searched multiple times for enemas that were involved in sex acts. We talked about the urine. That is all important evidence.

You know, the state just can't sugarcoat this case. Here is how I feel about it: We hate to talk about it. But if [redacted] and [redacted] had to live it, we can hear it; we can say it.

I go back to [redacted] testimony. You think

lady, she's going to ask you, [redacted] when [redacted] disclosed her abuse, why didn't you tell?' And then that's when you pop up and you just say, 'I thought it was my fault.'" You think that happened?

You think about [redacted] testimony. And you think about how she remembered an incident of vaginal penetration. Now kids -- she talked about a monkey; that's to mean her front part. I know we have to use words y'all probably don't like me saying; I don't like saying it either. But she described her vaginal part as a monkey. Kids -- one thing we know is, over time, they'll change what they call these parts, so don't get thrown off. She's talking about her vaginal and the defendant putting his penis in her vagina. She's talking about him putting his fingers in her vagina. It's very normal that kids would do that. They call it all kinds of things, actually.

She remembers putting it on her back and on her brother's back and how she had to scrub and clean it up and how -- we'll acknowledge there are some inconsistencies from the forensic interview, where she didn't remember here,

moved out, and that was it.

You heard Dr. Croswell testify about the examinations in this case. What she testified to was basically, if an exam comes back -- she can't say whether these kids were abused or not. That is absolutely not what she was brought in here to do cause she can't. What she's testifying to, which is fact, which is a child where there is a history of digital or penile penetration can still have a normal exam and there still be abuse; that that's -- you can still have those two things and it still be true. And she explained why that is.

Sometimes she explained the labial -- the labial fold -- I know this is a lot of graphic stuff -- but the penis is going in between the labial folds, it's not -- sometimes penetration for a child is not what we as grown-ups think of in an adult sense when you think of penetration. It's penetration, however slight. Then we talked about digital penetration. You're not going to have scars and tearing. And things are going to, she said, repair quickly.

I go to [redacted] forensic interview, and I go back to the sensory details. I'm trying to

As I mentioned to you, many times in CSC cases, nobody -- normally, nobody is watching abuse happen. That just doesn't happen. Normally, you have no witnesses to it and you go forward on a case from there. I, frankly, am not sure when [redacted] -- and y'all heard the interview -- you're all smart people -- what he actually saw and what he heard about [redacted] abuse. So I say to you, don't use that to prove her case; just use her own testimony, which was graphic, detailed and plenty to prove what needed to be proved -- proven.

You heard from Dr. Croswell when she talked about when she met with [redacted] again. Think about this, [redacted] -- she meets and has to do a forensic interview. Now, she has to go and meet the doctor. She's by herself. Mom and Dad are not there. She talks about it happening around Thanksgiving. She talks about her chief medical complaint being vaginal and digital penetration. She doesn't use digital, but a different word.

Then you hear her second forensic interview, consistent again; vaginal-penile contact, penetration, talks about the fingers

just bring out a couple of things: describes the tip of the condom. Just like that. "He put on a condom and it looked like this," and he did the tip. You remember that? He says he and his sister had to drink urine, as well. He talked about the poop on his back.

You heard Dr. Croswell testify about how anal penetration -- I know this is a lot for y'all to take in, but just that organ, it expands and contracts. And so there is nothing unusual to her that there is not tearing and scarring when you have a disclosure of anal penetration like that. I know for a lot of people, that's not what you think, but that's what the medical evidence you heard in this case is.

You heard from Shauna Galloway-Williams. She talked about how disclosure is a process and delayed disclosure is very common. You're often abused by someone you trust and you love. Sometimes kids are not actually able to describe what happened to them in the best words possible. Sometimes it's hard for boys to tell in a different way. But it all adds up to the fact that this is not some figment of their

is it for them to get their three lines down? It doesn't just pop out; and then when you think about the details and the disclosures that you saw.

Ladies and gentlemen, at the beginning of this trial, I asked you to keep your eye on the ball. That is what the defense is counting on. If just one of you takes your eye off the ball, if just one of you chases the shiny object, and in that moment of hesitation, whoever it is, look no further than [redacted] forensic interview; the first forensic, when asked, "Did you do anything to his pee pee?" She had to touch it. Tell me about that. You remember her saying "it felt slimy"? It felt slimy. It felt slimy. You can play that to the end of time and what you're hearing is a disclosure of sexual abuse.

In closing, there are no winners here. There's no happy day here. Everybody is a loser in this situation. Sometimes the best thing you can have is justice. We tell our kids that monsters are not real. But sadly, for [redacted] and [redacted] the monster was real; and he was the grandfather. Thank you.

those questions. We've answered them consistent with the only verdict that makes sense here.

I'm going to show you how every criminal case in America works. There is, at some point, an allegation. There is a process that begins with that allegation.

The judge is going to instruct you, and our constitutional system tells you, that your default position, sitting in this courtroom, is this verdict...(Indicating). Unless you decide that the government has proven guilt beyond a reasonable doubt, then this is the process that you are going to engage in. There is an allegation and the verdict is not guilty.

The reason we use reasonable doubt is exactly this type of case. The indictment that the government has given you covers 730 days. And they have told you that they don't have to prove when it happened because children aren't good at telling when things happen. But imagine a system under which I would have to present evidence of 730 days and tell you which days someone was around, not around, at work, not at work. No one could do that. My job is extremely calendar-driven. So there are markers on most

of this case and they told you just now, that their job is to present evidence of guilt. And that is correct. They also told you that I was going to pick a defense from the Ferris wheel of defenses; there's always some theory; I'm going to try to get you on the rabbit trails; I'm going to try to distract you; I'm going to try to get you to take your eye off the ball. That is insulting and it is offensive, but not to me. It does not bother me a bit. I've been called everything under the sun by prosecutors. The weaker the case; the worse it is.

Who it's offensive to and who it's insulting to are the 14 of you. What they've essentially said is that, "Don't listen to whatever these guys say, cause they are just trying to play defense lawyer games." And they're hoping that you would have some bias against us, like most people do; that you'll disregard anything we say. They are hoping that you will think that the state holds a special position as a person who accurately portrays things and we're here to play hide the ball or we're here to distract you, smoke and mirrors. That isn't how this case developed. That isn't

solicitors' offices have paid her; just like the State of South Carolina has paid her; and just like judges have paid her. Because when those people need information, when they need tools, when they need a real way to evaluate something, they called on her so that she can tell you about some of the things that affect a child's disclosure process; so she can tell you about the critical importance of the reaction to the disclosure, the critical importance of how the disclosure is handled, where it occurs; when it occurs, who is present, who continues discussing allegations with the child.

The most important thing she said is, depending on the amount of validating information, the way children process information, they can actually believe something happened that didn't happen. And that answers an extremely important question: it answers why.

It's funny the way childs [verbatim] develop and the way people perceive what happens. So when the state gets up here and tells you that I have tried to plant -- that some scheme was concocted, it's interesting

rest assured that no witness in this trial, no witness for the State of South Carolina, no witness that's talked in that office is going to come talk to me. I have to do my interviewing right here in front of you.

I don't know what happened, but I do know that the family dynamics are important to this "why." Why would the children say it? And it's important to your decision because the state has gotten very into the idea that, "Well, why would they make it up?" You can ask that about anything.

We're going to talk about the children at the end. Like the prosecutor, I have children too, a young one and an older one. We're going to talk about how they process information, but we're not going to rely on your common sense or your gut feelings. We're going to use what Ms. Allen-Cook taught us yesterday from her experience and her expertise.

There's another tool that's important that I may not have assigned enough importance to, at times in my career. The most fearful part of any trial is what's getting ready to happen when we were going to take Mr. Lee Carpenter,

we're going to ask you to do; that you will look at this case fairly; that you will not believe the child; that you will not use your emotions; that you will not think that because we are defense lawyers, we are inherently bad and tricky.

The oath that you took, while it may have changed in form, is no different than oaths jurors took shortly after our Constitution and Alexander Hamilton tried a murder case, centuries ago. It's no different than the oath jurors took last week; that they're taking this week across the country; or that they will take. It is extremely important how you do your job, because to be honest, we live in a world where most people will do what they say; what they promise, and that's what we expect you to do. That's how we expect you to evaluate this case.

You've made a unique promise because you've promised "not guilty." You've promised the only way that position changes is by being convinced that these accusations are real and are true. That's very important because when the state was describing reasonable doubt, they said

like this, is to say how hard this was for the children; it must be true. I've sat on a witness stand before and it's hard for me. It's hard for any witness to come in here. We have to look at children in the role they play, which means, they don't get a special consideration, because if you do that, then you will have suspended the oath you took. You will have disregarded it and you will have said, "Well, they're kids, so we're not going to question what they said because they're kids."

As the path goes along, there are two things that are important in this case: There's the evidence that's collected or not collected, and there is the disclosure process that we heard about and how it develops. Neither of those two paths take you to a guilty verdict. When Ms. Sustakovitch said that in every case we talk about what should've been done, the investigation wasn't doing a good job. No. I could be more polite or diplomatic about it, but no, that's not true. I do not do that in every case.

In fact, in the courts of this state or other states that we have been in, there are

really, the only thing they've ever used were the children's stories. And they had too. There is no corroboration for what happened here.

It is important that our client turns over those computers because it accomplishes two things. The prosecutor was very fair in the way that she said that if they had had some type of video or something else, they would have given that to. And they don't. It's not some evidentiary trick that you missed. That's not there. It doesn't exist; just like no child porn exists in this case; just like no video of sex acts. You did hear her say, well, there were videos of sex acts. Those aren't here.

MS. SUSTAKOVITCH: Your Honor, I'm just going to object what we dealt with pretrial, that's way out...

THE COURT: All right. If you will just move on from that. Thank you.

MS. SUSTAKOVITCH: Thank you.

THE COURT: Go ahead.

MR. KENDRICK: What's also important about these computers that my client turned over is he knows he's going to have to sit somewhere and talk about his sex life. I don't know what

important, but we never heard about the reaction. No one ever asked her about her reaction; no one ever asked her what was going on in the three or four days before they made it to the police station; no one ever asked her what was going on in the two days before the police decided to become involved; and nobody asked her before the week or so where the Julie Valentine Center became involved. So in that critical part of the disclosure process, that beginning that had profound effects on the end of the process, we don't know what was happening.

But we can listen to the forensic interviews, and we can glean some of the things that were happening. Because the little girl was told there was a video. Now, as adults, if I were to tell you that I had a video of someone doing something and it was a person and they would say, "Well, I didn't do it, so you can't have the video," and you wouldn't worry too much. But children don't process information the same way. They don't logically understand things. So when you tell a child that you have a video of something, you've

wanted you to know where this happened; I just wanted you to see where it happened.

But then the state also says they don't really think that [redacted] saw anything. That's a good point to concede, based on the pictures you have. Because it is accurate that if he was looking through that door, like he said he was, he would not have been able to see what he says he saw. And you can look at the pictures and determine that as the door swings open like this, where you'd be able to see through it, the couch he claims these things were occurring on is further back, so he wouldn't have been able to see it. But that's not a concession that helps you get to a guilty verdict; it's a concession that almost, at this point, I can stop and there's no other way to look at this than not guilty.

Because once [redacted] tells his mom this story, the mom goes to [redacted] There is an entire group of people trained in interviewing children on allegations like this because of what Ms. Allen-Cook told you, the danger of doing it incorrectly and having a child believe something that didn't happen, which has

that told you to believe the children because who wants to come here and testify.

This is probably not some concocted conspiracy. Nobody knew they were going to end up in here in two years. Nobody knew they were going to have come in here and testify. Nobody knew they were going to have to go through any of this.

But the process itself, in this case, is feeding the story. Because as this time goes on -- we start with his forensic interview and we start with the things he said. We start with the fact that he mentions there were some kind of money problems going on because they were racking up the money. He mentions that they had to move out and that there was going to be a lawsuit coming around.

He talks about he heard Mom, Dad and [redacted] talking. Now, I don't know if any of that stuff happened, but he didn't imagine talks of a lawsuit, talks of money. He didn't imagine hearing [redacted] and his parents talking. It was being discussed in the house. So when he told the story, it was being discussed in the house. He was then hearing

penetration, she describes sitting down on a couch. And she says that her grandfather was standing over her and then penetrated her, something we know, mechanically, cannot happen. Because as she is sitting down on a couch, unfortunately, that doesn't really work because there's not a description of something that happened; it's a description of something that did not happen. That is not sensory detail, and that is not where you need to look here. You need to look at the real details; the logical details of this.

When we talk about witnesses and we talk about their demeanor, there is this sort of idea that maybe we would judge children a little bit differently. Maybe that's okay to some degree, but we still look at their demeanor. So when [redacted] is telling his story in the forensic interview, he's not holding back. He's not hiding anything. He's spitting out details. He's excited. He's hyper. He's telling her all kinds of things.

It's very clear that in that June interview, [redacted] has talked about this extensively with his parents. Because they talk

information. In each of these stories, there are inconsistencies, there are impossibilities, they aren't believable. They sound like a story describing something that didn't happen.

Months go by. Five months later, and there is another disclosure, along this process. This is [redacted] again. So it's not two separate additional disclosures, it's once again [redacted] saying, "Oh, let me tell you a new story. A very extreme story." When we listen to his forensic interviews, he's talking about how he's told his mom more stuff. All of this peeing and pooping took place in a full house with people there; doors open. He describes being bent over. He doesn't have any details. He can't really describe. The word he uses is "condom."

His details change. He says that his mom can tell you some more. They might know what happened, but I don't. He starts to tell this fantastic story about black people somewhere, doing something, everywhere, all over the streets. He says a very specific date of November 2nd where he's seen these black people everywhere, while they were driving around

didn't happen. That's a description. That's fantasy.

All of these things have been implanted and fed by the exact factors that Ms. Allen-Cook told you about yesterday, about validation, about the authority, about that there is a video of this. It must've happened in this child's mind. I don't need, want, or plan to call these children liars. Because what Ms. Allen-Cook told you yesterday, it's very possible that they actually believed it.

They aren't special witnesses. You evaluate them the way you're evaluating any of us. Does their story makes sense? Does their demeanor match up with everything else? If all of that falls into place, if everything works, if you don't have any doubts that are reasonable -- I agree with the state, I mean, I guess, it's not all doubt -- but if you are sure, swift, no hesitation, then and only then can you move away from this and this. (Indicating.) In this case, you don't have doubt.

The government told you, at the beginning of their case, that they were going to give you information to corroborate what they were

time when that statement was true. Maybe when my grandparents were growing up, that might have been true, but it's no longer true these days. We didn't go into a lot of details about it. We live in a social media world. We live in a world where children are exposed to all kinds of things on TV and the Internet. Nothing in this case has any uniqueness or has any reality to it or any link to the defendant.

The state told you there was sexual activity going on in the bathroom that no one heard, so that must have shown that it could be done quietly, but that actually supports us again. Remember that what was happening between Mr. Lee Carpenter and his girlfriend, now fiancé, was happening between two consenting, cooperating adults. None of the stories told by [redacted] involved that. They don't have any real details, other than that it was loud out there. What was happening? There was running around. There was talking. Door's open. The difference is that when Mr. Carpenter wanted privacy, he did it with a consenting adult, his partner, and they were quiet about it.

whether there's any sort of authority given to any type of story, children can become in an imaginative state.

So a better story would be: If you've ever been around children playing in an imaginary world, not memorizing something some teacher at their school gave them, but creating fantasy, creating play, creating imagination, creating a scary story, creating a pleasant story, you know that they can do it. Happens all the time.

In this case, there is no piece of evidence that shows guilt, so the state has not done its job. So if you are to do yours and honor the oath you took at the beginning of this trial, then you will have to return a verdict of not guilty.

THE COURT: Anything else?

MS. SUSTAKOVITCH: None from the State, Your Honor.

THE COURT: All right. Ladies and gentlemen, is anyone -- would anyone like a break at this point? I've still got my charge on the law to you. I'm going to -- I'm going to guess it's right about 20 to 25 minutes. If anybody would like to take a break before then,

the defendant a fair and impartial trial based upon the evidence presented and the law applicable to this case.

In this case, the State of South Carolina, through the circuit solicitor, has charged the defendant with the following criminal offenses: four counts of criminal sexual conduct with a minor in the first degree, two counts of criminal sexual conduct with a minor in the third degree, two counts of unlawful neglect of a child and two counts of exposing another to HIV. These allegations charging the defendant with these crimes are set forth in the indictments that have previously been explained to you.

The indictments are not evidence in this case and may not be considered by you as evidence against the defendant. The indictments will be in the jury room with you, but serve only one purpose, and that is to serve as the verdict forms on which your unanimous decisions will be written.

Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the

You are further instructed that it is a vital, important, and cardinal rule of law that every defendant in a criminal trial, no matter how serious the offense might be for which he stands charged, shall always be presumed innocent of that charge and that presumption of innocence shall be with the defendant from the moment of his arrest and throughout the course of the criminal process, and even throughout the course of the actual trial. The presumption of innocence shall be with the defendant, even as you go into the jury deliberation room to begin your deliberations and that presumption of innocence shall be with him there and be with him forever, unless you 12 jurors determine that he is no longer entitled to that presumption of innocence. It is only if, unless, and until you are satisfied of the defendant's guilt beyond a reasonable doubt that he would no longer be entitled to that presumption of innocence.

I remind you that during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I also have the

statement to a trial jury about the facts in a case. Since you, the jury, are the sole judge of the facts in this case, you're not to infer from what I have said during the progress of this trial in ruling on the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case. I do not. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury to determine. As jurors, it is your duty to determine the effect, value, weight, and truth of the evidence presented during this trial.

The state has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or preponderance of the evidence. In criminal cases, the state's proof must be more powerful than that. It must be beyond a reasonable doubt. Reasonable doubt is kind of doubt that would make a reasonable person

claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference, and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence; nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all of the evidence in the case. After weighing all the evidence if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means

and material matter in which the witness claims to be an expert and may also state the reasons for that opinion.

You should consider any expert opinion received in evidence in this case, and like any other evidence, give it the weight you think it deserves. If you decide that an opinion of an expert witness is not based on sufficient education and experience or if you conclude that the reasons given in support of the opinion is not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you're not required to accept an expert's opinion even though it is not contradicted.

In order to establish criminal liability, the state must also prove criminal intent. For a particular crime, the mental state required might be purpose, intent, knowledge, recklessness or criminal negligence. The state must prove criminal intent beyond a reasonable doubt. Criminal intent is a matter that must be

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 the intrusion is accomplished automatically for a medically recognized treatment or diagnostic purpose.

Second, the state must prove beyond a reasonable doubt that the victim was less than 11 years old at the time of the sexual battery. Consent, willingness, indifference or ignorance on the part of the minor victim, if any, as to what was taking place, does not, in any way, affect the charge of criminal sexual conduct with a minor.

The defendant is charged with two counts of criminal sexual conduct with a minor third degree. The state must prove beyond a reasonable doubt that the defendant lewdly and willfully committed or attempted to commit a lewd or lascivious act upon the body or its parts of a child under the age of 16, with the intent of arousing, appealing to, gratifying the lust, passions, sexual desires of the defendant or the victim.

prove beyond a reasonable doubt that the defendant had charge or custody of the child, was the parent or a guardian of the child or was responsible for the care and support of the child. A person responsible for the child's welfare includes a child's parent, guardian, or an adult who has assumed the role or responsibility of parent or guardian for a child, but does not necessarily have legal custody of the child. This does not include a person whose only role is as a caregiver or whose contact is only incidental with the child, such as a babysitter.

The state must also prove beyond a reasonable doubt that the defendant: one, placed the child at unreasonable risk of harm, either affecting the child's life, physical or mental health or safety; or two, unlawfully or maliciously did or caused to be done, any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered. The term "child" means a person under the age of 18.

The attorneys in this case have graciously agreed to allow you to have a written copy of

the indictments and sign your name as foreperson on each one. Please then -- you will turn on the light indicating that you have reached a verdict. At that time, we will receive you back into the courtroom.

Just a quick explanation. I think this will be self-explanatory, but, Mr. Foreperson, the verdict goes under this portion of "verdict" on each of the indictments. I ask that you now return to your jury deliberation room, but don't begin your jury deliberations quite yet. I have to take up some matters with the attorneys. It will be your signal to begin your deliberations when you receive the indictments, my copy of the charge, and the exhibits. All right.

I think you have a first and very important order of business when you get there, and that is to order your lunch. All right. So if you all will step to your jury deliberation room. Thank you so much for your service.

(Jury exits at approximately 11:04 a.m.)

THE COURT: Any objection to my charge on the law from the state?

MS. SUSTAKOVITCH: None from the state.

did not ask to be involved in this case; it was their duty as citizens to be involved. And so while the jury is in here, I'm going to demand that there be no reaction to the verdict whatsoever. They don't deserve that.

I'll excuse them just as soon as we've gotten their verdict. I'll excuse them and, of course, I'll speak to them back there, but I don't -- I don't want them to be subject to any kind of reaction or outburst whatsoever. And I'll have to deal with that very harshly if that happens.

THE BAILIFF: Are you ready for them?

THE COURT: Yes.

(Jury enters at approximately 3:27 p.m.)

THE COURT: Mr. Foreperson, it is my understanding the jury has reached a verdict; is that correct?

THE JUROR: Yes, we have.

THE COURT: Would you hand the indictments to the bailiff please.

(The verdict forms are handed to the Court.)

THE COURT: All right. The verdict forms appear to be in order and I ask you to publish them please.

we poll the jury.

THE COURT: All right.

Janine?

THE CLERK: Okay. The correct response will be either "yes" or "no" to this question: The verdict that was published was the verdict that you reached in you jury room. I ask you, was it your verdict then and is it your verdict now? I'm going to read out your juror number. It's yes or no.

Juror Number 185.

THE JUROR: Yes.

THE CLERK: Juror Number 144.

THE JUROR: Yes.

THE CLERK: Juror Number 210.

THE JUROR: Yes.

THE CLERK: Juror Number 30.

THE JUROR: Yes

THE CLERK: Juror Number 140.

THE JUROR: Yes.

THE CLERK: Juror Number 51.

THE JUROR: Yes.

THE CLERK: Juror Number 152.

THE JUROR: Yes.

THE CLERK: Juror Number 196.

(The Court goes off the record at approximately 3:31 p.m.)

(The Court goes on the record at approximately 3:41 p.m.)

THE COURT: All right. I spoke to the jury. For what it's worth, I will tell you that they were emotional, but they seemed resolute. We didn't discuss the case -- any particulars about the case. Both -- complimentary of both sides. All right. Very complimentary of both sides. Will the attorneys approach for just a moment.

(Bench conference is held off the record.)

THE COURT: All right. Would y'all like to proceed with sentencing? Is there anything else from the state?

MS. CLARK: None from the state, Your Honor.

THE COURT: All right. And I -- certainly, don't feel like you have to stay at the counsel table. If you want to come near, you're free to do that, as well.

MR. KENDRICK: No, we're fine, Your Honor. For the record, I have advised my client because our trial defense was that this did not

MR. KENDRICK: Yeah, he knows that that is my advice. If he want to do something different, I -- he certainly is aware of his rights.

THE COURT: Mr. Carpenter, is there anything you'd like to say, although your attorney has advised you not to?

MR. CARPENTER: No, ma'am.

THE COURT: All right. Exposure of a person HIV?

MS. SUSTAKOVITCH: That's 0 to 10, Your Honor.

THE COURT: Does he have credit for any time in jail?

MS. SUSTAKOVITCH: No, ma'am, Your Honor.

MR. KENDRICK: 68.

MS. SUSTAKOVITCH: Well, I'll double-check on that. If he says 68 days, that's fine.

THE COURT: Yeah.

MS. SUSTAKOVITCH: Yes, ma'am.

THE COURT: Mr. Carpenter, I know it's very little comfort to you at this moment, but I do want to say that I thought your attorney -- I thought all the attorneys in this case tried an outstanding case and I thought your

C E R T I F I C A T E

I, the undersigned, Teresa B. Johnson, 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 all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 8th day of January, 2019.

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

Teresa B. Johnson

Circuit Court Reporter

Defendant.

LEGAL ARGUMENT

This issue typically arises in murder cases, where gruesome crime scene and autopsy photos are introduced to inflame a jury. "Photographs which are calculated to arouse the sympathies of the jury are properly excluded if they are entirely irrelevant or not ***substantially necessary*** to show material facts or conditions." *State v. Edwards*, 194 S.C. 410, 411 (1940)(emphasis added). The emphasized language is important. Even arguably relevant photos, which are admitted under a fairly low bar, are properly excluded if there is not a real need to use them for proof of some material fact.

South Carolina courts have remained faithful to this tenet of the law, carefully policing the admission of photos that would arouse passion and prejudice in a jury. Based on this authority, as well as Rules 401 and 403 of the South Carolina Rules of Evidence, any such pictures are inadmissible.

Defendant respectfully requests this Honorable Court preclude the State from presenting any pictures not substantially necessary to show some material fact at issue in this case.

Respectfully Submitted,

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August 31, 2018
Greenville, South Carolina

this sexual preference. The introduction of this evidence is foreclosed by South Carolina law.

In *State v. Nelson*, the South Carolina Supreme Court was confronted with far more disturbing and relevant sexual preference evidence. 331 S.C. 1 (1998). In *Nelson*, the prosecution presented evidence at a criminal sexual conduct trial which showed the defendant was a pedophile. *Id.* at 4-5. The State attempted an end run around the rules of evidence by couching the evidence as "personality characteristic" evidence. *Id.* at 5.

The *Nelson* court saw through the charade, holding the introduction of the evidence was improper because its only purpose was to reflect on an aspect of the defendant's character. *Id.* at 6-7. In addition to the prejudicial nature of the evidence, the Court also found it of little probative value in the case. *Id.* at 9-10.

Defendant Carpenter faces the same issue in this case, though the State's evidence in the instant matter is both less probative and more prejudicial than the evidence at issue in *Nelson*. In a case involving sexual assault against a child, there is an inherent prejudice based on the cognitive bias of the common juror. Adding an unrelated sexual act that most people would find difficult to understand adds an element of prejudice that fundamentally denies the Defendant a fair trial.

Equally important, the probative value of this evidence is nearly nonexistent. Private sexual activity between consenting adults, regardless of its abnormality, is of no concern to the State. *Lawrence v. Texas*, 539 U.S. 558 (2003). As a result, the State in this case should be barred from presenting evidence of Defendant's sexual preferences.

Respectfully Submitted,

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LEGAL ARGUMENT

As a general matter, evidence of other crimes is inadmissible to show a Defendant acted in the same manner at a later time. *State v. Berry*, 332 S.C. 214, 218 (Ct.App. 1998). In order to admit this evidence, the State must show the Court similarities between the assaults as to time, place, means, and circumstances. *Id.* In fact, the *Berry* Court held that a consideration was the fifteen-month time difference between the assaults at issue in that appeal. *Id.*

In this case, there seem to be no similarities between the crimes, which counsels against admitting the prior bad act allegations. The South Carolina Supreme Court has required clear and convincing evidence of a prior bad act, along with a close degree of similarity or connection between the prior bad act and the crime. *State v. Bell*, 302 S.C. 18, 27 (1990).

Because the evidence proposed by the State is not supported by clear and convincing evidence, is not logically related to any part of the current case, has no similarities to the current case, and fits no *Lyle* exception, it must be excluded.

Respectfully Submitted,

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August 31, 2018
Greenville, South Carolina

I N D E X

P R O C E E D I N G S

(Proceedings begin on the 24th day of August 2018, at approximately 9:30 a.m.)

THE COURT: Just to lay all the cards on the table before we get going, I know a little bit about this case -- and you may know that, Mr. Kendrick -- because when Mr. Marchant was involved and Mr. Mitchell, we had sort of -- I think we had some motion hearings in it. Then, we also had it scheduled. And I think it's set for trial --

MR. KENDRICK: It's set 9/10, Your Honor. And actually, since we're here, I had spoken with Ms. Sustakovitch about filing pretrial motions as early as late next week ---

THE COURT: I understand.

MR. KENDRICK: --- to potentially have them heard before trial, if you want; at least, so that you will have them. I'm not asking for the solicitor to commit to the doing the same thing. But the defense motions, we are, at least as of now, planning on having those to you by Friday.

THE COURT: Okay. That's fine.

MR. KENDRICK: So that even if you don't

prosecution's case?

THE COURT: Is that just the prosecution?

MS. SUSTAKOVITCH: I would say -- I don't know how much you intend to put on.

MR. KENDRICK: Two to three days is the defense case.

THE COURT: Okay. Two to three days, and you think --

MS. SUSTAKOVITCH: And we possibly could get finished in the late Wednesday, early Thursday. If we have -- I agree with Mr. Kendrick. If we could, maybe the week right after Labor Day, orally present those motions ---

THE COURT: I got you.

MS. SUSTAKOVITCH: --- to Your Honor, that Wednesday or something like that.

THE COURT: Okay.

MS. SUSTAKOVITCH: And we could also give you the forensic interviews in the case, so that you have viewed them. Then, perhaps, Monday, the 10th, would just move a lot quicker. We can start out of the gate — if not in the morning, we could start after lunch on Monday and not lose that whole day with

into the next week, if I'm hearing everything right. I just want to lay all the cards on the table.

MS. SUSTAKOVITCH: I do not believe it will be a full week. If we have handled the pretrial matters and we get to move Monday, we'll move as quickly as possible.

THE COURT: Okay. All right.

MR. KENDRICK: Your Honor, I've cleared my schedule the following week, too. The only thing I'm worried about is, because of the nature of the defense witnesses I have, I don't want to be in a position where -- and I've had this happen -- of course, not here or with you -- but where the judge says, "Be done by Friday at lunch or else." I've never tested "or else." But I just think with the nature of what we're putting up, it may go into the following week by a day or so. I'm not interested in coming here on the weekends.

THE COURT: Okay.

MR. KENDRICK: As long as it doesn't put you out, we'll do --

THE COURT: No, okay. Just sometimes, folks -- because we used to do that. We used to

MS. SUSTAKOVITCH: Your Honor, I would just add. I -- if the defense does have an expert that they intend to call, we have noticed them of one expert that we intend to call. Just as a way that I handle these cases, and for judicial economy, I tell them that way in advance.

So I would just ask, as a professional courtesy here, that if they do have an expert, that we are notified of that, so it doesn't slow everything down and we could just move. To me, it sounds like that's possibly what we've got, if it's somebody that's in a different trial across the country. So I would just ask that they would notice the state, so we can move on.

THE COURT: Okay.

MR. KENDRICK: We will certainly extend all the professional courtesy that we can.

THE COURT: Okay.

MR. KENDRICK: So I have told Ms. Sustakovitch, I'm going to meet with her late next week.

THE COURT: I got you.

MR. KENDRICK: Depending on what happens between right this second and then, I'm happy

wanted -- and I -- Ms. Sustakovitch, I wanted to ask you this question: When did you extend an offer in this case? Or, if there was an offer.

MS. SUSTAKOVITCH: Your Honor, Mr. Fletcher Smith was the attorney of record from the beginning of this case in June 2016, when the initial charges were brought ---

THE COURT: Uh-huh.

MS. SUSTAKOVITCH: --- and then in December -- or maybe it was November 2016, additional charges were brought. Mr. Smith and I -- he was here -- have negotiated back and forth. The exact date of that offer, I'm not certain, but he was given one in 2016, '17.

THE COURT: Okay.

MS. SUSTAKOVITCH: I would say, last fall, probably around, maybe, September, before Mr. Marchant even entered into representation, Mr. Smith and I were talking again about a final offer, based on some additional things that I'd been told in the case. And then, Your Honor, as you see, Mr. Marchant entered in representation, I believe, November of last year, 2017.

been mine from the beginning. I've handled it the same with Mr. Fletcher Smith. Then, when Mr. Lucas Marchant came into the case, I've been handling it the same.

Essentially, I just believe these children are abused, and I'm trying to be just and fair and move forward with the case. The solicitors never asked me to prosecute this guy harder or different or anything like that. The autonomy about the direction of the case rests with me and what I think is the fair and just thing.

And I would also just add, if there ever additional evidence in a case that would ever change the state's perspective that we don't know, we always welcome that to come in to help inform us. So no, Your Honor.

THE COURT: Thank you. I appreciate it. Okay.

Mr. Kendrick, I see your concerns, I do, in your motion; and I certainly see your position about this. I'm hard-pressed to find any reason to disqualify the solicitor's office in the 13th circuit, in this case. I would have concerns if an offer was pulled or if an offer was not extended until -- until Mr. Marchant

concern and explain to you, sort of, where I fall, because I'm in a bad spot here. I didn't wake up last week and decide to file this motion because I'm a jerk. I have been considering and asking questions for months now.

Mr. Marchant is not involved in this case. He turned it over to me before we understood this issue, so I don't think there's some concern that he's trying to manipulate the case. He doesn't have anything to do with it anymore. The client understands that. The client's fine with that.

THE COURT: Sure.

MR. KENDRICK: Mr. Smith is fine with that. I'm fine with that. But I file FOIA requests, typically, when I'm getting ready to sue somebody; and that was my initial concern. I asked the person who filed the request. They said nope. I said, "Okay. Well, what is it? Why are you asking?"

And because -- like I lay out on the motion, there's a very specific sort of focus in the response. But I -- in full candor to the court, I cannot disagree with the position you

Mr. Carpenter was very correct in his response, that I have known Lucas Marchant for decades. I share an office with him now.

THE COURT: Sure.

MR. KENDRICK: We're close friends. But he also knows me and knows that that has very little to do with how I handle my cases --

THE COURT: I understand.

MR. KENDRICK: -- and won't -- didn't, when he was here in this office; and won't, if he ever ends up back. But the point being that, Mr. Carpenter is my number one concern.

THE COURT: Absolutely.

MR. KENDRICK: If we lose this trial, there's no question he's going to prison for a long time, and I have to know that I have done everything I'm supposed to do when I walked into court that Monday morning. And that's where this motion came from.

Out of respect for what you just said, I think that is a -- I think you have made a factual finding based on the testimony from the assistant solicitor. I wouldn't, under any circumstances, dispute what she says, or want to cross her on it. And I believe when I report

involvement by the -- anyone running against the city solicitor, that I do find that there's been -- there's no reason to disqualify the 13th Circuit Solicitor's Office. I also agree with you that, if some reason comes to light or there is something that comes up, we'll certainly cross that bridge when we come to it, but I would never expect that from the three of you all sitting here. I would be shocked beyond shocked.

That being said, I'm going to respectfully deny your motion. If you need -- during the trial, outside the presence of the jury, if you feel it's necessary to put this motion on the record again, I certainly understand that; and we'll deal with it, you know, in frankly, a summary fashion then, if you feel like you need to protect your record with that. All right.

MR. KENDRICK: Thank you very much, Your Honor.

THE COURT: Anything else from either side?

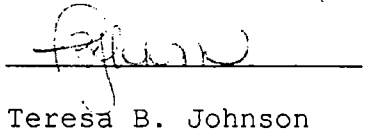
MS. SUSTAKOVITCH: No, ma'am.

THE COURT: All right. Thank y'all so much.

CERTIFICATE

I, the undersigned, Teresa B. Johnson, 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 all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 7th day of February 2019.

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



Teresa B. Johnson

Circuit Court Reporter

INDEX

I N D E X

P R O C E E D I N G S

(Proceedings begin on the 6th day of September 2018, at approximately 10:07 a.m.)

THE COURT: Well, I'm glad this worked out. Thank y'all so much for getting together. All right. Well, it looks like you've got a number of motions. One thing I want to tell you is we did start watching the forensic interviews, but have not completed that yet. But I'd be happy to hear arguments on that matter, if you'd like. And then -- but I'm just going to leave it to y'all what order you want to start.

MS. SUSTAKOVITCH: Yes. May it please the Court, Your Honor, if I may.

THE COURT: Yes.

MS. SUSTAKOVITCH: I'll try to be brief. The first two motions -- and this is the matter of the State versus William Lee Carpenter, Jr. Your Honor, just for the record, he is scheduled for trial on Monday, September 10, under five counts of criminal sexual conduct with a minor in the first degree. The indictment numbers are listed on the motions. Your Honor, do you need a copy of those

THE COURT: Sure.

MR. KENDRICK: But obviously, if I did, it would be evidence of third-party guilt, not Rape Shield evidence ---

THE COURT: Well ---

MR. KENDRICK: --- since the children are under ago, so --

THE COURT: --- I -- I'll just say this: If we get to -- if we get to any point in the trial where you think anything that you want -- that you're looking to introduce or ask any questions -- and I know the caliber of attorney you are, you would -- you would definitely do this. But if you would just at least request a bench conference so we can discuss whether or not that evidence would be admissible.

MR. KENDRICK: Fair enough, Your Honor. I guess, just for the record, I will accept the solicitor's representations that they don't have knowledge of any other sexual conduct on these children. That would be very relevant, has not been disclosed. And my file in this case, I can't imagine them not disclosing something so big.

THE COURT: Well, it -- and it looks like

is no allegation that the father has ever done anything to these children. And we would ask -- and that could have been a tongue-and-cheek -- just conversation with us, honestly. But I wanted to bring it up to make sure that that is not going to be tried -- that the defense is not going to try to go there.

Also, there is a prior conviction -- I do anticipate the children's father testifying, Your Honor. His name is William Lee Carpenter, III.

THE COURT: Uh-huh.

MS. SUSTAKOVITCH: And this defendant is William Lee Carpenter, Jr. There is a prior conviction on his record from 2000, where, I believe, he was 19 and he got charged with CSC with a minor.

THE COURT: Uh-huh.

MS. SUSTAKOVITCH: It got pled down to an assault and battery first. We can put this back on the record right before he testifies, but that is not an impeachable offense. And I would ask that that not be brought in.

THE COURT: And you said it was from when?

MS. SUSTAKOVITCH: 2000.

THE COURT: Absolutely. And I will just tell you -- I will just say this: You know, I think all three of us know each other pretty well. If -- if, at any point, you feel like the door has been opened, on either side, to any -- any question along those lines, I'd ask that you please approach the bench first and let's iron it out. Especially in a case that we think it's going to take as long and as we think it's going to take, we don't want to start over; so all right.

MS. SUSTAKOVITCH: Thank you, Your Honor. Just briefly to that point, Mr. Kendrick and I did talk. We believe our cases will be shorter than what we had relayed to Your Honor.

THE COURT: Oh. Okay. Great.

MS. SUSTAKOVITCH: We're trying to streamline. Mr. Kendrick, I believe, said his might be two and a half days, but he's thinking it would be more like a day or so?

MR. KENDRICK: I think one. But, you know, it would be hard -- it would be hard to take two full days. I think we could probably do it in one, which, I think, with the solicitor having streamlined, I have arranged for some

them for Court's exhibits?

THE COURT: No, I don't think so, at this point.

MS. SUSTAKOVITCH: Okay.

THE COURT: (Reviewing.)

MS. SUSTAKOVITCH: Judge, I did want to put on the record -- because I think you have to look at this case from a totality of the evidence standpoint. And the reason I included a summary, Judge, of the evidence that was collected during the search warrant in this case is: I want the Court to know that the state is trying to be very conservative, trying to be very intentional, and not trying to dill the lily here with what we're trying to put into evidence.

I would like, if Your Honor would be so inclined -- from an appellate point of view, if there is a conviction, I do think the record needs to be complete. I would show you -- we'd like to mark it, if we could. This would be an exhibit of -- these are 135 photographs that the state is not seeking to introduce of general coprophiliac activity between just random people. I don't know who those people

won't even be present at the trial.

MS. SUSTAKOVITCH: The last item that we would like to have marked: Your Honor, Jim Perry -- Investigator Jim Perry -- I want to give him the right title -- Your Honor, when he went through the computer, it's an exhaustive process. I can call him as a witness if Your Honor would like to put him on the record and we could go through that. He prepared, and this has been provided to defense counsel, I believe it's like 89 pages of bookmarked sites.

We went to a relevance standpoint of when you hear the evidence in this case, are those sites that were visited related to enemas, because the victim [redacted] says that a douche was inserted in his rectum, made him defecate, and then feces put on him, and then anal sex happened. So these would be bookmarks where --

THE COURT: But you're not seeking to introduce these at trial?

MS. SUSTAKOVITCH: Not this document. But what we did want to seek to introduce -- and this would be the bookmarked sites, Judge, where they're talking about -- they're talking about enemas. And then Investigator Perry

not apparent. It's not like those cases where you -- you know -- excuse the words, I guess, garden-variety vaginal sex or anal sex or oral sex. The intent behind that is apparent, so the state doesn't have to really prove that. And that's what the cases are saying. They're saying you don't need to prove intent in that scenario. But this one is just a different animal. It's a different case.

Honestly, in all the years I've prosecuted, I've never come across one. I can find no case law related to coprophilia and how a court would deal with it. It's just not a regular sex act that you can draw the commonsense intent. And what I would say is: It is outside of the common knowledge of a jury that anybody would be sexually aroused by rubbing feces on a child's back. I just believe that.

The basis of the CSC third charge is that that happened. And as we mentioned, the enema in the rectum. Your Honor, unlike those commonly understood sex acts, this type of physical contact where you're incorporating feces is outside the common knowledge that a Greenville County juror would have to

It almost sounds fantastical. If you have no knowledge of this, you know, until you have one look at a picture like that, it's hard to describe.

THE COURT: Let me ask you this ---

MS. SUSTAKOVITCH: Yes, ma'am.

THE COURT: --- so let's just say that for purposes of showing intent for CSC third, that wouldn't -- at least one of these pictures is admissible. And I believe in your motion you said the defendant is recognizable somewhat in one of these photographs, and it appears that that's the case. I have not seen his ankles, but it appears that that's the case here. What would be the reason that I would need to allow the research on the computer? Is that where we're going with this? I mean, I assume you're talking about both photographs and the research. Am I understanding you right?

MS. SUSTAKOVITCH: Yes.

THE COURT: So if the photograph comes in and we see that this particular individual appears to be engaged in some sexual activity related to coprophilia, then what would be the reason that the jury would need to hear about

problem, I think, that people have: If you take the emotion out of this, if you take the "it's feces," "it's urine," if you take that out and you just intellectually look at it and you're intellectually honest about it, say you had a case where you have a man and a woman and they were engaged in sex and part of their sex acts with each were to take tomatoes or fruit, something like that, cut them in half and rub them on their bodies, that arouse them; okay, then they continue to have sex acts; and then, long and behold, you have a grandchild that one day discloses, "Granddad took a tomato and he rubbed it on my back and he did this to me. And after that, he sexually abused me," I submit to this court, that every day of the week, that testimony should and would come in.

So I think what we're having trouble with and we should be having this argument is just the concept of feces. But when you make the step in the process go back from that analogy, I think -- I believe that that testimony would come in as highly probative. Judge, it is prejudicial. But every piece of evidence is prejudicial or it's not -- it's not relevant.

I'll just -- I'm looking through Jim Perry and what we intending to show in his line of testimony. We were going to talk about the phone; whatever pictures, if Your Honor allows them, of the bathtub. The reason I think those are important is also -- you know, it goes to the date and time when those pictures were made.

THE COURT: Okay.

MS. SUSTAKOVITCH: Because I do believe in this case what you're going to hear, and I can't predict the future, but this is how these cases always go: "This defendant did not have the opportunity to do this. He was never home. He worked all the time." So these pictures were taken on a Sunday. That's important. The pictures were taken on a Sunday at 9:59 a.m. in the bathroom at their house with all the people there.

It just goes to show -- and you're going to see, Your Honor, this happened -- this whole situation is a mess. It is a cluster of a mess. The parents were not being good parents during this. Nobody was. Every party here is at fault. And these children are caught up in it.

jury the full picture that they know -- if you look at the vast majority of evidence we are not putting in, you know, it would be testimony that -- I think I phrased it, he -- did you search any key words relevant to the facts of this case to see what came up? He got one result for urine and multiple hits -- we don't even have to say 500. We could say multiple hits for, quote, piss. And then what about enemas? And he would say that he did find multiple sites where enemas were used in sexual acts. That would be what the state is seeking to elicit.

THE COURT: This video you're talking about ---

MS. SUSTAKOVITCH: Yes, ma'am.

THE COURT: --- what's the -- what would -- I'm just asking what the state would seek -- how the state would seek to describe that video.

MS. SUSTAKOVITCH: However Your Honor -- honestly, Judge, whatever Your Honor wants us to say. I -- I'm not -- I want to be able to show that there's a video of the two of them engaged in some form at this time being made at

the children -- the mother was probably passed out on drugs. I don't know. But it would have been at the time that some of this activity was happening.

THE COURT: Okay. Yes, sir.

MR. KENDRICK: Your Honor, it is simple. The answer is right in the text of 404(b). The solicitor, essentially, gave you an analogy to tell you that the reason they want to put this evidence in is because it will show on a later particular occasion, the defendant acted in conformity with that trait.

So that's admissible if I do certain things; so for example -- I'll give you the defense and I'll let the solicitor hear the defense. The defense is: He didn't do it. Never happened. That's our defense. If I were to put him up there and he were to say, "I think it happened. I didn't do it, though," -- or if I called another witness who said that -- if he were to say, "I did it, but it wasn't criminal. I was doing it for some other purpose," like the solicitor cites in her motion: medical, disciplinary, whatever the case may be; "I did it, but I did it on accident. It wasn't

Your Honor, you almost couldn't ever keep a bad act out because, "I didn't commit this murder." "Well, we're going show you about the prior murder he committed because that means he did commit it." Because they always have the burden of intent. But in this particular case, Your Honor, how do I argue that he had sexual relations with a child unintentionally? It's not -- it's not possible. So it doesn't --

THE COURT: I think we're -- we're off track here. And I don't want to make their -- argument for the state, but they need to show that there's some sexual gratification from this; this touching includes some form of sexual gratification.

The state's arguing that, you know, just -- you know, that the average juror, presumably, would hear about -- you know, that this -- that spreading fecal matter on a child gave the defendant sexual gratification. And the jury might not understand that that touching was sexual -- would have been, if proved, sexually gratifying. So they are -- they're saying they have to prove that -- that he got some sexual pleasure out of doing this in order to satisfy

be able to put up an officer to say, "Yeah. I found this, so he had" -- so who's going to -- who's going to make that connection? Nothing the state seeks to introduce makes that connection. So we almost end up in a now different problem, that you're going to put evidence in that seems unexplained because you've made the argument that it's not understandable to the jury.

THE COURT: Well, I think you're crossing into that they need some sort of expert witness to explain a clearly sexual position with, presumably, the defendant's ankle in the picture. That -- I mean, I don't think a jury needs some sort of explanation as to what's going on there.

MR. KENDRICK: For the record though, that's another portion of our argument is that the state has essentially admitted that this evidence is going to be outlandish to the jury is almost what they said. But they're going to put it in anyway with no one to explain it. And we object to that, but also understand Your Honor's ruling.

THE COURT: No, I understand. And I'm not

because -- I just know." So we have that -- we have that problem.

Then, we get into -- so I guess, I move to exclude coprophilia, in general. And I think I've made that argument.

THE COURT: You have. Right.

MR. KENDRICK: It's irrelevant, Your Honor. It's not -- it's not relevant to these charges. And there is one incident where they talk about this. There are multiple other incidents that do not involve coprophilia, so it doesn't leave the state sort of not being able to tell their story. So we -- that's our first objection.

Our second objection is: If you let it in, then what is the scope of how it comes in? In other words, who is going to -- and maybe that's a better way for me to phrase this. I'm not necessarily -- I mean, I think an expert fits the mold, but who is going to say this is a sexual gratification situation? I guess they're going to have to say, "I looked at the websites myself and, I guess, people go on here and maybe this gets them going." I don't know. Who's going to?

judge to explain what you're looking at in that picture, but I really think a picture is worth a thousand words and you don't need an expert to explain to you what is being shown in that picture.

And when you look at her smiling -- there's two things: You look at her smiling. You see his ankle. You look at the other one where she looks completely wasted, which I think the evidence is going to show in this case that she probably was. The co-defendant was into drugs. She would take a lot of pills to even engage in this.

So we just did not feel that you -- some things don't need explanation in that respect, I don't believe. But the mother of the children and the father of the children would say they have first-hand knowledge from this defendant that he is into coprophilia, if that is an issue.

THE COURT: I don't know that that's what Mr. Kendrick's getting at.

MR. KENDRICK: No. I mean, I guess the -- right. Now, we're going down -- maybe further down the hole. Obviously, they have hearsay

"Is somebody covered in feces?

"Yeah."

But where do they go from there? That's maybe the concern I have that we kind of have some evidence that I think is irrelevant. But if it is relevant, nobody can explain why.

THE COURT: Well, the jury is the decider of fact.

MR. KENDRICK: But who's going to say that that picture reflects my client's sexual gratification?

THE COURT: That's for the finder of fact to do. All right. All right. I'm not entirely sure -- I can tell you so far as the website searches, I'm going to really, really limit that. I'm not exactly sure where I'm going to draw that line, but I'm going to draw the line somewhere to summarily say something along the lines of multiple searches for enemas or something like that. And that's assuming that we feel like we can tie the defendant to this particular computer or that Investigator Perry has some information along those lines. Okay.

So far as, you know, urine, again, another -- if I allow it, it's going to probably be a

calling a witness from the LEC that would show on one of his booking photos that he has an Aquarius band. We also have a photograph of him standing with the kids -- I don't know if I'm entering that -- with the Aquarius band.

THE COURT: Okay. I just find it's a necessary element. I, you know, just quickly to refresh myself, I pulled up CSC with a minor third degree. "A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over 14 years old and the actor willfully and lewdly commits or attempts to commit a lewd act or a lascivious act upon or with the body or its parts of a child under 16 years of age with the intent of arousing, appealing or gratifying the lusts, passions, or sexual desires of the actor of the child." I think this is absolutely necessary and the state has to be able to introduce that to prove that element of CSC third degree.

And I do -- I have done a 404 analysis and I have done a 403 analysis, and I do certainly find that the probative value outweighs the prejudicial value or the prejudicial effect of that particular evidence. And I'm happy to mark

the children would have no knowledge of it because he kept his room locked and they couldn't get in there. So that testimony is -- the state does plan on doing a short *Jackson v. Denno* on Monday for that brief bit of testimony related to that. I believe it's about a minute and a half long where he is taking ownership of those pictures that were on that phone.

THE COURT: All right. All right. Mr. Kendrick?

MR. KENDRICK: The only thing I would say, Your Honor, is just to be fair, if -- I guess, the pictures are coming in through maybe Investigator Perry at trial, since this is not a final ruling, for the purpose of the record, it may be cleaner for me to, just before he gets called, give you a very concise summary of our objections for the record and then leave it at that.

THE COURT: Absolutely. And let me -- let me be clear. I don't know that you and I have had a trial. We've had lots of hearings and lots of things like that.

MR. KENDRICK: That's right.

THE COURT: I don't know if we've ever had

the normal standard under State versus Whitner, not qualifying her as an expert. She's just going to be bare-bones getting those interviews in, if Your Honor finds that they meet the requirements of 17-23-175.

I would want to say that, as an officer of the court, one of the videos was concerning to me; and defense counsel and I talked about it. I honestly have not had a case where I had two victims and four forensics; so I'm trying to feel my way through this as well.

The children were initially interviewed in the summer of 2016 after [redacted] this defendant's granddaughter, had told her brother that this -- that her granddad had abused her. And during that interview, she said that there were two incidents where she was abused. [redacted] was also interviewed, Your Honor. And you have that video. He does not state that he was abused in that interview. And as you watch it, I think you're going to see what I see, which is, I -- I am not certain -- and I do not intend to try to tell this jury they need to rely on [redacted] seeing anything. You know, it's [redacted] testimony about what she says happened

attention. What I didn't want to have happen is that the jury feel like we're hiding something from them. So I was asking Mr. Kendrick what his thoughts were.

THE COURT: Okay. Yes, sir.

MR. KENDRICK: And I thought about it. And they all got to come in, Your Honor, I think is our position, if any of them are coming in. In other words, if, for some reason, you found three videos admissible, but this first one we're talking about inadmissible under the statute, then we would seek to introduce it under another rule of evidence.

But, hopefully, I will not come to regret this: We think that all four would have to be moved into evidence. I don't disagree with what the solicitor is saying, but that would not be a reason for it to not come in. It may not match the statute, but it would have to come in, I guess -- it would have to come in as a prior, maybe, inconsistent statement or -- I don't know.

MS. SUSTAKOVITCH: We don't disagree with that.

THE COURT: Okay. What's that?

them --

THE COURT: Okay. But you're saying that, if after reviewing them, even if one of them -- even if that one in question might not track the statute completely, like, in other words, the state couldn't necessarily admit it, you wanted it admitted for completeness?

MR. KENDRICK: Correct.

THE COURT: And -- okay. All right. Okay. And it sounds like the state doesn't oppose that.

MS. SUSTAKOVITCH: No, ma'am.

THE COURT: All right. All right.

MS. SUSTAKOVITCH: The last thing, Judge, the defense counsel and I briefly mentioned this. Normally, we try to agree -- I try to agree on redactions. So I guess we could take that up Monday morning. I do think that there are some things that need to be redacted from each one of those interviews that should come out --

THE COURT: Okay.

MS. SUSTAKOVITCH: --- in fairness to this defendant. And if Your Honor sees some, just let us know. But I know that there is a mention

understand that I have, you know, waived that objection if it goes to a higher court.

THE COURT: Yeah.

MR. KENDRICK: If it's a mistake --

THE COURT: Yeah. We're going to have to be real clear on the record if we let that in.

MR. KENDRICK: No. Your Honor, listen, I don't think -- I don't think -- I may open myself up to a proceeding down there, but I'm not going to try to be tricky. We're -- we're here for one result. You know, I understand the danger of making certain decisions. So I would ask that, maybe Monday morning, if we go through the things the state doesn't think should come in ---

THE COURT: Uh-huh.

MR. KENDRICK: --- maybe we'll agree by then.

THE COURT: Okay.

MR. KENDRICK: But at this point, I do not see anything that, you know --

THE COURT: Sounds like that would be a good idea for y'all to have a conversation. And if y'all want to talk about it with me tomorrow, of course, I'm around tomorrow or

THE COURT: Okay.

MR. KENDRICK: My understanding is that it will only come up if I, you know, somehow open the door to it. But it's my understanding that they're not going to have a witness slide it in: "Oh. By the way, he did this one other time."

THE COURT: That would have been my ruling if ---

MR. KENDRICK: Okay.

THE COURT: --- it had not -- just for the record, if it had not been agreed upon.

MR. KENDRICK: So the two other things I have, Your Honor, that I didn't file a written -- not written motions, they're probably more like housekeeping.

THE COURT: Sure.

MR. KENDRICK: So I think we talked about scheduling. It's possible that I will not be able to start my defense until Wednesday, which I think will line up with what we're doing.

THE COURT: That's fine.

MR. KENDRICK: The other thing, Your Honor, and this is sort of a unique situation for me. I'm aware that it happens in

do, I need to probably keep going because I think there is -- there is both a logistical problem and a constitutional problem.

THE COURT: Well, you know what I've -- you know what I've done in cases like this before: Sometimes I have -- I haven't revoked their bond. It's just they don't have a bond, once we swear the jury. But what I have done is I've set a trial bond. And bonding companies, especially if the defendant had some relationship with them, have been, in my experience, very willing to go on a trial bond, you know, for a week or whatever. So you know, I might end up doing something like that, but probably something very low. But, you know, set a trial bond of some kind, and then keep him on the monitor.

MR. KENDRICK: Okay. So our position would be to make arrangements with the bonding company so that we could effect that.

THE COURT: Uh-huh.

MR. KENDRICK: And the reason, Your Honor, is: I do think it -- it's always been my position that bond ends upon resolution of the case, and I think I've got a plain language

us Monday morning.

THE COURT: Great.

MR. KENDRICK: I assume that part of your ruling would certainly turn on whether Mr. Carpenter is there Monday morning. So that will -- we know he's going to be here, but I'm sure you want to wait until you see that to set the trial bond. But I'll have Catch 22 here, too, to do what we need to do, so we don't end up kind of trying to figure out how to talk to him during trial; so thank you.

THE COURT: Does the state have any objection to my setting a trial bond in this case?

MS. SUSTAKOVITCH: No, ma'am.

THE COURT: I mean, I know that's an old, old-timey concept.

MS. SUSTAKOVITCH: No. I just would defer to Your Honor -- what Your Honor would like to do. Normally, they are taken into custody. But we understand, Your Honor.

THE COURT: Okay.

MR. KENDRICK: I've actually only had that happen in one case, and it was here. But I tried many, many more and that's never been an

scheduling purposes, is meet back up, see if there's anything last minute we can take care of before we do jury qualification. And then, of course, I know y'all are going to want to be there for jury qualification.

And then, maybe, select a jury. Don't swear them, but let them go. And then bring them back at some reasonable time in the afternoon, one or two o'clock, and start then. Does the state feel like that would work with what you are planning on introducing --

MS. SUSTAKOVITCH: Yes, ma'am.

THE COURT: -- or witnesses you are planning on calling?

MS. SUSTAKOVITCH: Yes, ma'am.

THE COURT: Okay. I've got an issue I want to bring up.

Do you have something you wanted to...

MS. SUSTAKOVITCH: No, ma'am.

THE COURT: Oh, okay. I just didn't want to jump the line. Okay. I've been thinking about voir dire in this case -- or, I guess, if I were in Charleston, "voir dire" -- but I've been thinking about that in this case. I'll just state, it's going to be tricky; a little

about this defendant's dad being a Marine and owning that store. And it just seemed to be -- I guess this is a motion in limine to exclude that, but I don't know if we need to have a voir dire question related to if they know that family.

I'm not from Greenville. I'm from Newberry. So I don't know how big that is, you know, if that is such a landmark in Greenville that there are going to be people that just automatically know it.

MR. SMITH: Your Honor, it was a landmark on Main Street for years. And I was -- well, I was friends with his parents for years and all the older guys, who kind of, like, brought me through Greenville. But it might be relevant to find out if anybody, you know, frequented the store, were friends with the people, it might be relevant from a voir dire standpoint.

THE COURT: Sure. And I have to say, I'm from Seneca, so I'm not -- you know, I'm not familiar with it, but I'm happy to ask a question. If you -- either side wants it, I'd just ask you to, you know, give me some written -- written voir dire that I can voir dire.

that. Mr. Smith reminds me, I guess, there may -- there may be some relevance to -- I don't know about his dad being a Marine and stuff, but there may be some relevance to the family relationship and it kind of depends on trial. So maybe I shouldn't "blanket" agree.

THE COURT: Well, before you go into anything like that --

MR. KENDRICK: Absolutely. What we would do is: When we put Mr. Carpenter on the stand, if we do, then we can address that. I mean, you know, it might be done a lot sooner than that. You never know. But as to your first question, Your Honor, I think we should have regular voir dire, like in a death penalty case, on every trial, like many states do. So I am all for the most voir dire you will allow us. And if it is -- if you would allow written questions to the panel, then I think that's great. I will get them to you tomorrow by noon.

THE COURT: If y'all want to -- if y'all want to propose it, like I said, I haven't done it before, but if y'all want to -- if y'all want to propose something like that, then I'm happy to take a look at it. I'm pretty limited

THE COURT: --- turning to you. You're fine.

He's fine. I just want to say a word to him on the record.

You've got outstanding lawyers. I know they've been talking to you all throughout preparing for trial about whether or not you're going to testify. I just want to say to you that we don't know how fast this trial is going to go and that decision could come up sooner than you think. So I just want to go ahead and say to you, while I've got you here for a moment, that needs to be a conversation you're having with your attorneys all throughout. I just don't want you to get caught flat-footed. They're going to talk to you about this and they've been talking to you about this, I know. But I just want you to have that in mind. All right?

THE DEFENDANT: Yes, ma'am.

THE COURT: Anything -- anything you use for purpose of impeachment so far as criminal convictions?

MS. SUSTAKOVITCH: No.

THE COURT: None?

Josh, let me -- well, Fletcher's got my cell number.

You got my cell number, don't you, Fletcher?

MR. SMITH: Yes, ma'am.

THE COURT: I thought you did. I'm sure.

MR. SMITH: Thank you, Your Honor.

THE COURT: Okay. Good. So both sides have got my cell number. Call me if you need me or call my office or call my cell.

MR. SMITH: Or your law clerk.

THE COURT: Okay. All right.

(Proceedings conclude at approximately 11:05 a.m.)

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Appellate Case No. 2018-001745

The Honorable Letitia H. Verdin, Circuit Court Judge

The State of South Carolina .....Respondent,

v.

William Lee Carpenter.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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Counsel for Appellant

March 6, 2020

TABLE OF CONTENTS

STATEMENT OF THE CASE

William Lee Carpenter was indicted by the Greenville County grand jury for two counts of criminal sexual conduct first degree, two counts of exposing another to HIV, and two counts of criminal sexual conduct third degree. He was tried before the Honorable Letitia H. Verdin and a jury between September 10- 13, 2018. He was convicted and sentenced to 30 years for both counts of criminal sexual conduct in the first degree, 10 years for each count of exposing another to HIV, and 15 years for both counts of criminal sexual conduct in the third degree. The sentences were ordered to run concurrently. Carpenter was represented by Joshua Kendrick and Christopher Leonard. The State was represented by Christy Sustakovitch and Candace Clark.

This appeal timely follows.

Relevant Facts

William Lee Carpenter was convicted of the sexual abuse of two of the four grandchildren who were living with him, his girlfriend, and his son and daughter-in-law during a two-year period. ROA 96. Complicating the trial of this case is that Carpenter has unusual sexual preferences that, though legal, the State exploited in its attempt to prove Carpenter guilty of the crimes against his grandchildren, even though these sexual preferences were irrelevant and highly prejudicial. As Carpenter ultimately explained to the jury during his testimony, he is a "submissive" sexual partner who also is a coprophilic, or someone who receives sexual arousal from feces.

were too many people in the house for this kind of activity to have been occurring. Supp ROA 22. The State argued:

> Honestly, in all the years I've prosecuted, I've never come across one. I can find no case law related to coprophilia and how a court would deal with it. It's just not a regular sex act that you can draw the commonsense intent. And what I would say is: It is outside of the common knowledge of a jury that anybody would be sexually aroused by rubbing feces on a child's back. I just believe that.
>
> The basis of the CSC third charge is that that happened. And as we mentioned, the enema in the rectum. Your Honor, unlike those commonly understood sex acts, this type of physical contact where you're incorporating feces is outside the common knowledge that a Greenville County juror would have to understand that that act, in and of itself, would ever bring [gratification], which is one of the elements of CSC third. . .
>
> It almost sounds fantastical. If you have no knowledge of this, you know, until you have one look at a picture like that, it's hard to describe.

Supp ROA 16, l. 10- 18, l. 4.

The State made a conscious decision not to use an expert to explain this subject matter to a jury since "a picture is worth a thousand words . . ." Supp ROA 34, l. 3.[1]

The Computer Searches

The State also wanted to introduce Carpenter's computer searches into "urine" and "piss" into evidence to prove intent. The State argued:

> So the state is not offering to prove that he [is] some kind of deviant person, or character evidence at all, Your Honor. The issue here is that the intent behind this defendant's actions, when he put feces on their back, is not apparent. It's not like those cases where you—you know—excuse the words, I guess, garden-variety vaginal sex or anal sex or oral sex. The intent behind that is apparent, so the state doesn't have

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[1] This photograph is so inflammatory, in fact, that the trial court sealed it at some point, and undersigned counsel had to request this Court, on June 20, 2019, order the Greenville County Clerk of Court's Office to allow counsel to access it.

were 1) because it has the burden of proving the elements of CSC third degree, and 2) to prove intent under SCRE, Rule 404(b). Supp ROA 29. The trial court judge found the probative value of the photograph illustrating Carpenter's girlfriend covered in excrement outweighed its prejudicial value. Supp ROA 37. Per her ruling from the bench, she conducted both a SCRE, Rule 404 analysis and a SCRE, Rule 403 analysis. Supp ROA 38.

Before the start of the trial, the parties renewed objections to this testimony and clarified the scope of what evidence would be admitted. ROA 24-28.

The Trial

The State offered the following evidence at trial: James Parris, an officer with the Traveler's Rest Police Department, testified that he received a report of a possible sexual assault on June 4, 2016. ROA 107-08. The children's mother, Dalina Moore and two children came to the police department around 8:00pm that evening. ROA 108. At that point, only her daughter was the complainant. ROA 108. Ms. Moore was very distraught, and the officer wrote her statement for her. ROA 109. He did not talk to the child. ROA 110. Officer Parris then forwarded the case to Tim Kelly, who became the lead investigator on the case. ROA 111. Ms. Moore and her children left the police station around 9:30pm. ROA 115.

Tim Kelly, the Captain of the Traveler's Rest Police Department also testified. ROA 117. At the time of these events, he was an investigator. ROA 117. On June 6, 2016 he was forwarded Parris's initial report. He then contacted the Julie Valentine Center and set up forensic interviews with the two children. ROA 118. Kelly

and Carpenter was charged with additional crimes. ROA 136. Kelly recommended the children have medical examinations. ROA 137.

On cross-examination law enforcement admitted that Carpenter was highly cooperative. Carpenter told law enforcement about an additional computer tablet he had in the trunk of his car, and a computer he had his place of business. ROA 140-41. Law enforcement never interviewed any of Carpenter's family members, or his neighbors, or any of his associates. ROA 142.

Kelly testified on cross-examination that he later became aware of some of the male child's serious psychological conditions. He had some cursory knowledge of his history but did not know the details. ROA 152.

The parties stipulated that Carpenter is HIV+ and was on notice of that status at the time of these alleged events. ROA 156.

Investigator Jim Perry of the Greenville County Sheriff's Office also testified. ROA 156. He is currently an investigator in the computer crimes investigation unit. ROA 157. He retrieved photographs from Carpenter's cell phone. ROA 160. The State moved State's Exhibit #14 into evidence, again over defense counsel objection and published it to the jury. ROA 161. It was the picture of Carpenter's co-defendant and girlfriend, Regina Owens nude in the bathtub and covered in feces. The picture's date was June 28, 2015. ROA 162.

Investigator Perry also testified to searches that Carpenter conducted on his computer. ROA 164. There was a single search hit for "urine." ROA 164. There were multiple search hits for "piss." ROA 165. He got multiple hits for "enema." ROA 165.

in the morning, and would get home late in the evening, sometimes after 9:00pm. ROA 198. Carpenter and Owens would be left alone with the children if they had to go to the grocery store, if they had an occasional date, or if Moore had a doctor's appointment and her husband had to take her to it. ROA 198.

Moore admitted she was not a very good parent. ROA 199. She and Ms. Owens also had a sexual relationship. ROA 200. They had sexual relations at the home, and also at other places. ROA 200. Moore testified she was "most likely" drunk or high when they had sex. ROA 201. DSS has been involved with the family. ROA 201. Moore and her family moved from Carpenter's home sometime in March 2016. ROA 202. There were times the children would stay at home with Carpenter and Owens while they searched for a house to rent in Pickens. ROA 203.

Around June 2016, Moore testified she became aware that her daughter claimed she had been abused. ROA 204. Her son told her that he had witnessed something while they were living at Carpenter's house. Based on what her son told her, they went to the Traveler's Rest Police Department. ROA 204.

Moore's daughter, according to Moore's testimony, told her she had been the victim of a sexual assault in Carpenter's bedroom around Thanksgiving. ROA 205. She did not know which year around Thanksgiving these events allegedly occurred. ROA 205. Several months after the daughter's disclosure, her son made his alleged disclosure. ROA 208. She took him to the doctor because she was concerned about his health. He was experiencing hallucinations and hearing voices. He would urinate in the corners of their home. ROA 209. He had nightmares and anger issues. ROA

normal with a small issue attributed to a form of irritation. ROA 271-72. She tested negative for any sexually transmitted diseases. ROA 273.

Dr. Croswell examined the young male on November 21, 2016 after a referral by the Traveler's Rests Police Department. ROA 274. During this interview, he disclosed that he was sexually abused in the anal area. ROA 276. She performed her physical, and his results were normal. ROA 276. He also tested negative for HIV. ROA 277.

The male child testified before the jury after Dr. Crosswell. ROA 290. At the time of his testimony, he was nearly 13 years old. ROA 290. He testified he was touched inappropriately in his grandfather's bathroom. ROA 295. He claimed that his grandfather put a syringe in his butt. ROA 295. He did not know if anyone else was in the room when this happened. ROA 296. After that, poop came out of his butt and it was rubbed all over his back. ROA 297. He then claimed his grandfather anally penetrated him. ROA 297. The male child also claimed that his grandfather made him drink his own urine. ROA 297.

Amber Hiott, a licensed professional counselor from the Julie Valentine Center, testified. ROA 307. She conducts forensic interviews in cases where there is a question of sexual assault. ROA 308. She first conducted her interviews of the children on June 14, 2016. ROA 310. She conducted a second interview on November 10, 2016. ROA 310. During the June 14, 2016 interviews, the female child disclosed sexual abuse; the male child did not. ROA 313. On November 10, 2016, she

Charleston. ROA 405. Carpenter testified that he received an inheritance when his mother passed. ROA 407.

Moore and the children moved in with him in February or March of 2014. ROA 408. Regina Owens moved in shortly afterwards. The house is a little over 2300 square feet. ROA 409. When the family moved in, it was "just sound and noise everywhere, kids everywhere." ROA 420, ll. 10-11. The house has a lot of wood floors, and everything echoes. ROA 420. Carpenter testified he was at the house most Sundays, but other than that, it was a rare occasion. ROA 421. During the week, he would get home from work around 8:00 and 9:30pm. ROA 421. Carpenter denied that he used crack cocaine, meth, or pills. Instead, he said he liked to have a joint or two in the evenings when he got home, and after the kids were in bed. ROA 424.

Carpenter testified he did not take off for long vacations over Thanksgiving. He would take the day off but would go back to work on Friday and Saturday. ROA 426. For Thanksgiving, they would have Carpenter's sister and brother-in-law come over. They would cook and have a big meal in the middle of the day. There was a large crowd at the house. ROA 426.

Moore and Carpenter's son prepared to move out in early 2016. They wanted their own home and were tired of being clumped in the house in one group. ROA 427. He gave his son a talk about being financially responsible. He thought their money problems were largely of their own doing; he wanted his son to be self-sufficient. ROA 428. It appeared there were money issues. Carpenter testified that his son and daughter-in-law informed Carpenter they found a trailer down the road from him,

Next, Carpenter testified to his unusual sex life. ROA 433. He also testified that he has had "ED" for 15 to 18 years and that he has not had a functional erection in over six years. ROA 436. Again, Carpenter denied that he sexually abused his two grandchildren. ROA 440. On cross-examination, he testified that he never "sat alone at the house with those kids." ROA 443, l. 25- 444, l. 1.

On cross-examination, the State, once again put up Exhibit #14 to ask Carpenter questions about it. The Solicitor started asking him questions about his being aroused by it, completely unrelated to anything relating to claims of sexual abuse against his grandchildren. ROA 445. The judge asked the State to make the photograph unavailable to the jury as they approached the bench for a sidebar. ROA 446. Again, the State asked Carpenter about Regina Owens' sexual satisfaction reflected in the photograph, a topic completely unrelated to the allegations of abuse. ROA 446. Then, she wanted to know "what is it about urine that you enjoy?" ROA 447. She then asked a series of questions about Carpenter's sexual activity with consenting adults, again completely unrelated to the allegations of abuse against the children. ROA 448. The Solicitor then asked Carpenter about his enjoyment of enemas and feces. ROA 449. She asked how he would use enemas on other consenting adults. ROA 449.

After closing arguments and the jury charge, the jury began their deliberations at 12:13pm. They reached a verdict at 3:20pm. ROA 577. Carpenter was found guilty on all charges. ROA 578. The court sentenced Carpenter to 30 years for criminal sexual conduct with a minor first degree, 10 years for exposing another to HIV, and

inadmissible under SCRE, Rule 404(b) and was unduly prejudicial. *See State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991) (even relevant and otherwise admissible evidence may be excluded for undue prejudice).

Repeatedly, the State argued for the admission of this evidence as necessary to prove "intent." Like the defendant in *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998), a case defense counsel cited in his pre-trial motion, Carpenter's defense in this case was that he did not do it, "making it highly questionable whether the element of intent was a material issue in the case." *Id.* at 12, 722. As the South Carolina Supreme Court held in *Nelson*, "In the trial of sex offenses, extrinsic evidence of intent is admissible only in those cases where there is no challenge to the occurrence of the physical contact itself, but the intent of the actor is at issue because the nature of the contact is subject to varying interpretations" *Nelson*, 331 S.C. 1, 11 (quoting *People v. Bagarozy*, 132 A.D. 2d 225, 235, 522 N.Y.S. 848, 854 (1987)). *See also State v. Tizard*, 897 S.W.2d 732, 744 (Tenn. Crim. App. 1994) (evidence of sexually explicit videotapes and booklet, found in defendant's home, not probative of intent: "[T]o the extent that the ultimate inference sought to be drawn by the state, *i.e.*, the defendant's intent to commit a sexual battery upon the victim, must be derived from initial inferences about the defendant's character traits circumstantially drawn from the questioned evidence, such evidence's probative value on the ultimate inference is greatly attenuated"). Here, Carpenter testified on his own behalf and adamantly denied he inappropriately touched his grandchildren. This evidence relating to coprophilia was inadmissible to show "intent" and its admission rendered Carpenter's

have been without the photograph. Instead, it improperly signaled to the jury that Carpenter had strange sexual fetishes, leading a jury to make the improper inference that he, therefore, is capable of pedophilia, too in violation of SCRE, Rule 404(b). The act portrayed in the photograph was consensual conduct by two adults and did not tend to prove that Carpenter abuses children. It was improper, and the court erred in allowing it to be admitted into evidence.

The State's decision to highlight this evidence contributed to its prejudicial effect in this case. During its cross examination of Carpenter, as discussed earlier, the State kept the photograph on a projector as it grilled Carpenter about acts he has engaged in with consenting adults. The State's cross-examination of Carpenter using this photograph belies its claims that it needed to introduce the photograph to "educate" the jury or to meet its burden of "proving intent." Respectfully, this Court should grant Carpenter a new trial.

III. The trial court judge erred in allowing the State to introduce evidence of computer searches conducted on Carpenter's computer related to his sexual preferences when those searches were irrelevant to the charges against him, unduly prejudicial, and interjected Carpenter's character as an issue in this case.

For the same reasons that the admission of evidence of Carpenter's sexual proclivities and the photograph of Regina Owens covered in feces was improper, so too was the admission of computer searches that related to Carpenter's sexual fetishes but did not tend to prove that Carpenter abused his grandchildren. This evidence was irrelevant pursuant to SCRE, Rule 403 and improperly placed Carpenter's character into evidence in violation of SCRE, Rule 404(b). Again, this

MR. KENDRICK: It's our position that a courthouse is open to a constitutional trial and that any closing of the courtroom would be a structural defect.

THE COURT: Uh-huh.

MR. KENDRICK: So we would object to a witness being able to—allowed to control who is in and out of the courtroom, outside of any particular sequestration order. That being said, we understand your ruling.

THE COURT: All right. Very well. And as I said, I think there's certainly a great deal of precedent in the state for making a courtroom somewhat more conducive. There have even been situations where the defendant has been out of the view of the witness, either by something physical or by being put in another courtroom or things like that. I think this is a minor imposition, so we'll do that. All right.

ROA 181-182.

The law on this issue is clear—there is a presumption that a trial shall be open to all members of the public. The right to an open trial may give way in certain instances to other rights or interests such as a defendant's right to a fair trial, or the government's interest in inhibiting disclosure of sensitive information. The United States Supreme Court, in *Waller v. Georgia*, 467 U.S. 39 (1984) set out the standards courts must apply before excluding the public from any stage of a criminal trial:

> [T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.

The trial judge's obligations on this point are beyond dispute: "The conclusion that trial courts are required to consider alternatives to closure even when they are not offered by the parties is clear not only from this Court's precedents but also from

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March 18, 2020.

TABLE OF CONTENTS

Other Authorities

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Appellant on four counts of first degree criminal sexual conduct (CSC) with a minor, two counts of exposing another to HIV, two counts of third degree CSC with a minor, and two counts of unlawful conduct. (Indictments) He proceeded to trial before the Honorable Letitia H. Verdin and a jury between September 10-13, 2018. The jury found him guilty as charged. (T.579; R.579). He was sentenced to a total of thirty years in prison with sentences for each charge to run concurrent. (T.585; R.585). This appeal follows.

ARGUMENT

I. The trial court properly admitted evidence, including the photograph of Appellant's girlfriend covered in feces and the computer searches, because the State had to demonstrate the intent behind Appellant's actions and that the actions were of a lewd and lascivious nature. Further, the admission of the evidence is entirely harmless given the extensive testimony by Appellant regarding his own fetishes and sexual interests which went far beyond that admitted by the State.

Appellant contends the trial court erred in admitting evidence and testimony related to his coprophilia because it violates Rules 403 and 404(b), SCRE, and was not relevant in this case. Initially, several portions of Appellant's arguments on appeal are not properly preserved for review on appeal. Additionally, the testimony and other evidence was necessary due to the unusual sexual behavior exhibited by the defendant and the claims by the victims which would not be understood by a jury and deemed outlandish without the admission of the evidence. As a result, the trial court properly allowed the State to present limited evidence demonstrating Appellant utilized feces and urine in his sexual activities.

Preservation

Initially, the State notes that much of Appellant's arguments are not properly preserved for review on appeal. Much of the discussion regarding the admission of the photograph and searches performed by Appellant occurred during a pretrial hearing. During that hearing, Appellant objected on grounds of relevance, Rule 403 and Rule 404(b). (9/6T.26-36; S.R.26-36). At the beginning of trial, the evidence was again briefly discussed. The trial court reminded Appellant: "I certainly acknowledge that you need to continue to preserve that objection to this." (T.27; S.R.27). Appellant recognized this need. (T. 28; S.R.28).

one ground at trial and another on appeal). As a result, the only issues preserved are relevance and Rule 403 as they relate to the admission of the photograph.

Merits

On the merits, the State submits both the photograph and testimony were properly admitted to rebut any possible defenses raised by Appellant and to demonstrate Appellant's intent and motive regarding the use of the enema on the male victim and the smearing of the feces on both child victims was of a sexual nature even though that is against the common sense and understanding of the jury. The evidence was highly probative and, while certainly graphic and disgusting, not unduly prejudicial in light of the nature of the crime for which Appellant was accused.

First, the evidence was relevant and probative because the average person would never believe someone obtained sexual gratification from anything to do with feces or urine—an element of the offense of third degree CSC with a minor the State was required to prove. In this case both the third degree CSC with a minor charges related to the smearing of feces on the children. In order to establish third degree CSC, section 16-3-655(C) provides:

> A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the **intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor** or the child.

S.C. Code Ann. § 16-3-655(C) (Supp. 2018) (emphasis added).

The prior act of Appellant's girlfriend photographed in a sexual manner while covered in feces demonstrates that the use of feces arouses, appeals to, or gratifies the lust, passion, or sexual desires of Appellant. No average juror would believe that seeing someone smeared in

probative of whether the defendant was a pedophile. The court found that pedophilia was "not of a 'character issue' but a 'personality characteristic.'" Id. at 5, 501 S.E.2d at 718.

The South Carolina Supreme Court found the evidence was solely admitted to show propensity to commit the crimes against the minor victims. The argument that motive or intent was shown through the evidence was found to be "a cleverly disguised way of asserting Petitioner committed the crimes because he has a propensity to commit sexual offenses." Id. at 12, 501 S.E.2d at 722. The evidence admitted in Nelson demonstrated Nelson was a pedophile, and the only reason the Court found to admit evidence Nelson was a pedophile was to show his propensity to commit crimes against children.

This case is clearly distinguishable because the State is not seeking to admit evidence which demonstrates a "character issue" or a "personality characteristic." In Nelson, the offered evidence was relevant only to show that the defendant was a pedophile. The fact that the defendant was a pedophile spoke only to his propensity to commit the charged offense, and evidence thereof was inadmissible. In the instant case, the evidence is being admitted because the average person would never believe anyone would obtain sexual gratification from smearing feces on another person; however, this is exactly what the State sought the jury to find.

In deciding Nelson, the Court relied in part on State v. Smith, 617 N.E.2d 1160 (Ohio App. 1992), cert. denied, 612 N.E.2d 1244 (1993), from the Ohio Court of Appeals. In Smith, the Ohio Court of Appeals found "the question of motive is generally relevant in all criminal trials, even though the prosecution need not prove motive in order to secure a conviction." Id. at 1172 (quoting State v. Curry, 330 N.E.2d 720 (Ohio 1975)). The Ohio Court then found the admission of the prior bad act evidence was not necessary to establish the general motive behind the crime of gross sexual imposition because the defendant's motive or intent was not a material

Code Ann. § 16-3-655(C). In all criminal prosecutions, "[t]he government must prove beyond a reasonable doubt every element of a charged offense." Victor v. Nebraska, 511 U.S. 1, 5, 114 S.Ct. 1239, 127 L.Ed.2d 583 (1994) (citing In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)); see Dervin v. State, 386 S.C. 164, 168, 687 S.E.2d 712, 713 (2009) ("Due process requires the State to prove every element of a criminal offense beyond a reasonable doubt." (citing State v. Brown, 360 S.C. 581, 595, 602 S.E.2d 392, 400 (2004))). If the argument Nelson stands for the proposition the State need not prove intent during its case in chief is accepted, then the State is in effect entitled to a directed verdict on an issue. The South Carolina Supreme Court recently confronted a similar situation in State v. Odom, where the Court found taking judicial notice of a driver's license birthdate "was tantamount to a directed verdict on the element of the accused's age, a practice which is clearly forbidden." State v. Odom, 412 S.C. 253, 267, 772 S.E.2d 149, 156 (2015). As one of the elements the State is required to prove is that Appellant smeared feces on the children with the intent to arouse or satisfy his sexual gratification, the State is allowed and required to put forth the evidence presented in this case.

Additionally, the State sought to prove a sexual battery occurred when Appellant inserted an enema into his grandson. A sexual battery includes the insertion of an object. However, there is also an exception in the statute: "'Sexual battery' means . . . 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) (Supp. 2018). The insertion of an enema has a clear medically recognized basis for treatment of constipation. The State had to prove the insertion of the enema by Appellant into the grandson was not for purposes of treatment, but was instead a sexual battery being committed on the child. Appellant's online

evidence.); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (any error in admission of evidence cumulative to other unobjected to evidence is harmless).

Appellant testified:

> A I am a bisexual, submissive bottom.
> ....
> Q When you say "submissive," what does -- what does it mean to be a submissive?
> A I like to give up control to someone I can trust. I have a whole world out there that feels like you have to control all of the world around you all the time. My release comes from turning over that control to a dominant figure that I can trust, and doing what they say and following their instructions ....
> Q Do you have any interest in dominant sex?
> A No. I am strictly a submissive.
> Q When you say you are a "bottom," what does that mean?
> A That means if there's any penetration going on, I want it to be me.
> ....
> Q When did you first get involved in sexual activity where feces or urine would have been incorporated?
> A 20 years ago or so.
> Q Did it just start all of a sudden all of the time?
> A No. I just -- I had a lover that was into it. He introduced me into it some. As a submissive, that is one more form of subjugation and degradation that shows I'm willing to give up and subjugate myself to whatever that dominant wants.
> Q And I don't know -- again, talking about personal things, that submissiveness, are you just in general -- do you like waste products, feces and urine? Or is it something else?
> A I mean, it's -- I'm submissive in any matter of whatever the dominant tells me to do. That's just another part of the subjugation and degradation that goes along with a submissive experience.

(T.434-436; R.434-436). Appellant's discussion clearly went well beyond anything the State put into evidence. His testimony did not stop there, but continued to describe in great detail the creation of the photo admitted by the State:

> Q So the government showed us this picture that was on your telephone. Let's start -- I'm not going to make -- not going to look at it again, but that was a picture you had on your cell phone; right?

II. The trial court did not abuse its discretion in removing a family member from the courtroom during one of the victim's testimony because, as the court explained, it was the least disruptive means of making the courtroom more conducive for the child victim's testimony.

Appellant maintains the trial court erred in requiring his brother-in-law to step out while the female child victim testified. The trial court did not abuse its discretion in asking one person to step out, while maintaining an otherwise open courtroom, during the testimony of the child victim. The action was done to protect the psychological well-being of the child as well as to foster a more conducive environment for her testimony. Additionally, the closure was not a complete closure, but only a partial closure, which properly considered both the interest in closure as well as the defendant's right to a public trial.

The Sixth Amendment provides that in a criminal prosecution, the accused shall enjoy a public trial. U.S. Const. amend. VI. The Fourth Circuit Court of Appeals has explained:

> Today, the constitutional right to a public trial remains grounded in the belief that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings, and that contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power. The central aim of a criminal proceeding [is] to try the accused fairly and the public trial guarantee serves the purpose of ensuring that judge and prosecutor carry out their duties responsibly . . ., encourag[ing] witnesses to come forward[,] and discourag[ing] perjury. Hence, [t]he right to a public trial is not only to protect the accused but to protect as much the public's right to know what goes on when men's lives and liberty are at stake, for a secret trial can result in favor to as well as unjust prosecution of a defendant.

Bell v. Jarvis, 236 F.3d 149, 165 (4th Cir. 2000) (internal quotation marks and citations omitted). However, the right to a public trial is not absolute. See Waller v. Georgia, 467 U.S. 39 (1984).

In Waller, the entire courtroom was closed to all members of the public. The United States Supreme Court held that the right to a public trial may give way if:

closure against those opposing it." Drummond v. Houk, 797 F.3d 400, 404 (6th Cir. 2015). Looking at the rationale of the partial closure cases, the Courts have nearly unanimously determined "partial closures do not implicate the same fairness and secrecy concerns as total closures." See Osborne, 68 F.3d at 99.

In the instant case, the trial court properly balanced the interests of the defendant to an open and public trial, with the sensitivity of the testimony of the victim and the ability for an eleven year old victim to testify at trial. The trial court acknowledged the existence of other possible remedies, including the victim testifying by closed circuit television from another room. Instead, the court chose the option that was clearly the least disruptive means and created the least imposition on anyone, especially the defendant.

The trial court was clearly concerned with the child victim's ability to testify. He was informed the child victim was bothered by the person's presence and in order to safeguard the child victim's welfare while she testified, he asked the brother-in-law to step out for the single witness. The United State Supreme Court has found safeguarding the psychological well-being of a minor to be a compelling interest. Globe Newspaper Co. v. Superior Court for Norfolk Cty., 457 U.S. 596, 607, 102 S. Ct. 2613, 2620, 73 L. Ed. 2d 248 (1982). It should also be noted that South Carolina has a statutory requirement for the circuit court to properly consider the witness testifying: "The circuit or family court must treat sensitively witnesses who are very young, elderly, handicapped, or who have special needs by using closed or taped sessions when appropriate." S.C. Code Ann. § 16-3-1550 (Supp. 2018).

Further, when looking at the test enunciated by the Ninth Circuit, the trial court clearly utilized the narrowest means possible to satisfy that purpose when he asked a single person to exit the courtroom—allowing all other members of the public and especially the defendant to

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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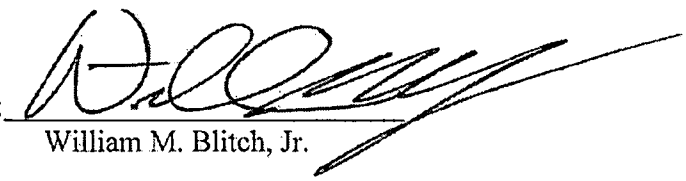
BY: 
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ATTORNEYS FOR RESPONDENT

April 24, 2020

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

William Lee Carpenter, Appellant.

Appellate Case No. 2018-001745

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2021-UP-182
Submitted April 1, 2021 – Filed May 19, 2021

AFFIRMED

Fletcher N. Smith, Jr., of Law Firm of Fletcher N. Smith, Jr., LLC, of Greenville, and Elizabeth Anne Franklin-Best, of Elizabeth Franklin-Best, P.C., of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, and Senior Assistant Deputy Attorney General William M. Blitch, Jr., of Columbia, for Respondent.

PER CURIAM: Appellant's convictions are affirmed. We find the trial court did not abuse its discretion in admitting the evidence regarding Appellant's sexual

States Supreme Court gave strict standards for complete courtroom closures in *Waller v. Georgia*, 467 U.S. 39 (1984), the majority of jurisdictions have found "that *Waller's* stringent standard does not apply to partial closures, and have adopted a less demanding test requiring the party seeking the partial closure to show only a 'substantial reason' for the closure." *United States v. Osborne*, 68 F.3d 94, 98–99 (5th Cir. 1995); *see also United States v. Sherlock*, 962 F.2d 1349, 1357 (9th Cir. 1989) (establishing a two-part test for partial courtroom closure: (1) whether there is a substantial reason for a partial closure, and (2) whether the closure is "narrowly tailored to exclude spectators only to the extent necessary to satisfy the purpose for which it was ordered"). Furthermore, South Carolina law requires trial courts to provide special considerations for witnesses that are "very young." *See* S.C. Code Ann. § 16-3-1550(E) (2015). Given the requirements of section 16-3-1550(E) and that the partial closure was limited to asking one person (Appellant's brother-in-law) to leave the courtroom during the testimony of one witness (one of the alleged victims), the partial closure was substantially justified and narrowly tailored.

AFFIRMED.[1]

LOCKEMY, C.J., and HUFF and HEWITT, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

TABLE OF CONTENTS

ARGUMENTS

I. The issue of the improper admission of the obscene photograph pursuant to 404(b) of the South Carolina Rules of Evidence is properly preserved. Additionally, the improper admission of the search terms and results is likewise preserved.

Respondent argues that objections to the obscene photograph and the search terms and results from appellant's computer are not properly preserved. Respectfully, this is inaccurate. Respondent's brief fails to note that these issues were exhaustively argued during a pre-trial hearing on September 6, 2018. Supp ROA 26-38. Additionally, trial counsel filed written motions specifically raising a 404(b) objection to the admission of the photographs, as well as motions to prevent the State from discussing appellant's sexual preferences altogether. ROA 593. At the conclusion of the hearing on September 6, 2018, the trial court judge indicated that the material was admissible, and that she had made her ruling based on both 404(b) grounds and 403. Supp ROA 38.

Photographic evidence

When the evidence was admitted during trial, counsel renewed his objection. The State argues that because counsel mentioned relevance and Rule 403, but did not mention 404(b) that he therefore abandoned that claim. That is an ambiguous reading of the objection. Trial counsel stated: "Your Honor, we previously objected for relevance and—under Rule 403, and *renew those previous grounds.*" ROA 161, ll. 5-7 (emphasis added). The passage reads as though counsel intended to communicate that ground raised before and argued extensively earlier were on-going. It is clear—

II. Appellant is entitled to prevail on the merits of his claims.

The obscene photograph showing a woman covered in feces as part of an erotic experience should not have been admitted at appellant's trial, and appellant was prejudiced by its admission. Indeed, the trial court recognized its highly inflammatory quality by sealing the photograph at some point during these proceedings. In transporting this exhibit to this Court, it has remained under seal. Respondent argues that showing the jury this exhibit was necessary because "the average person would never believe someone obtained sexual gratification from anything to do with feces or urine" without it. Respondent's Brief, p. 6. But the State could have used expert testimony to make that point without the need to show the jury this picture. But, as appellant argued in his initial brief, the State made the conscious decision not to use an expert but to rely on the photograph since "a picture is worth a thousand words..." Supp ROA 34, l. 3. To the extent that this Court finds this evidence probative at all, surely the State had other means of conveying to the jury what coprophilia is without subjecting them to such a shocking picture. The picture was gratuitous and shocking, and appellant was prejudiced by its improper admission.

Respondent also argues that computer searches were admissible because appellant could have raised a certain defense—that an enema could have had a medically recognized purpose and therefore its use was not illegal. But, appellant did not raise that defense. His defense was, categorically, that he did not do it. Had appellant raised that defense, perhaps the State could have offered testimony in

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March 18, 2020.

alone would have been sufficient for the state to make this argument had that been its sole intention.

In *State v. Collins*, 409 S.C. 524, 763 S.E.2d 22 (2014) the South Carolina Supreme Court found harmless the court's admission of pictures of a child mauled by a dog. In that case, however, the pathologist had never seen an attack by animals of this type and he took the pictures "*for [documentation purposes*" (emphasis added in original). In that case, the nature and the extent of the physical injuries were "in contention by the defense." *Id.* at 27, 533. Other witnesses testified that the dog was not dangerous, had never run at people in an aggressive manner, and had always been given an abundance of food. *Id.* In short, the Court found the photographs were admissible because they assisted in determining a point that was at issue in the case. In Petitioner's case, he never asserted that he did not have strange sexual fetishes. He openly admitted that to the arresting officer. He also testified before the jury that he did! This point was never in contention. The photograph did not make it any more or less likely that Petitioner sexually abused children. It did make it more likely that he had strange sexual fetishes, but that was not the issue in the case. The photograph only served to corroborate that Petitioner has novel sexual fetishes, not that he was a pederast. *See* 409 S.C. at 30, 763 S.E.2d at 539 (Kittredge, J. *concurring)* ("The primary if not sole, purpose of these horrific photographs was to inflame the passions of the jury. The detailed and graphic testimony of the pathologist was more than sufficient to enable the State to establish the elements of the offense.")

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Appellate Case No. 2018-001745

The Honorable Letitia H. Verdin, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

William Lee Carpenter.....Appellant.

CERTIFICATE OF SERVICE

Counsel hereby certifies that she has served a copy of this Petition for Rehearing on William Blitch of the South Carolina Attorney General's Office by sending it to him via email at WBlitch@scag.gov on this date, May 20, 2021.

/s/ Elizabeth Franklin-Best

May 20, 2021.

The South Carolina Court of Appeals

The State, Respondent,

v.

William Lee Carpenter, Appellant.

Appellate Case No. 2018-001745

ORDER

After careful consideration of the petition for rehearing, 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.

James E. Lockemy C.J.

Thomas C. Young J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Fletcher N. Smith, Jr., Esquire
Elizabeth Anne Franklin-Best, Esquire
William M. Blitch, Jr., Esquire
The Honorable Letitia H. Verdin