

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

**RECEIVED**

**Feb 17 2023**

**S.C. SUPREME COURT**

Certiorari to Pickens County

Honorable R. Scott Sprouse, Circuit Court Judge

---

AARON VAN HENDRIX,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001163

---

APPENDIX

---

LARA M. CAUDY  
Appellate Defender

ALAN WILSON  
Attorney General

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

TAYLOR Z. SMITH  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

## INDEX

|                                                                                            |     |
|--------------------------------------------------------------------------------------------|-----|
| INDEX .....                                                                                | i   |
| TRIAL TRANSCRIPT DATED JANUARY 25-28, 2016.....                                            | 1   |
| FINAL BRIEF OF APPELLANT .....                                                             | 618 |
| FINAL BRIEF OF RESPONDENT .....                                                            | 631 |
| <u>STATE V. AARON VAN HENDRIX</u> , 2019-UP-022 (S.C. Ct. App. filed January 9, 2019)..... | 659 |
| APPLICATION FOR POST-CONVICTION RELIEF .....                                               | 661 |
| RETURN.....                                                                                | 670 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 26, 2022 .....                     | 689 |
| RESPONDENT’S EXHIBIT #1 (PICTURE).....                                                     | 724 |
| RESPONDENT’S EXHIBIT #2 (PICTURE).....                                                     | 726 |
| RESPONDENT’S EXHIBIT #3 (PICTURE).....                                                     | 728 |
| ORDER OF DISMISSAL .....                                                                   | 729 |
| INDICTMENTS .....                                                                          | 753 |
| SENTENCE SHEETS .....                                                                      | 759 |

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016

501

TESTIMONY OF DEFENDANT HENDRIX - CROSS EXAM BY SOLICITOR

1 A. Yes, sir.

2 Q. Do you remember telling Marvin Nix  
3 about living at Stacy's house and it got kind  
4 of weird when the biological father Mark  
5 stayed there?

6 A. I remember saying that, yes.

7 Q. And you testified you know Jessie  
8 Riden is Stacy's sister?

9 A. Yes, sir.

10 Q. Do you remember telling Marvin that  
11 Jessie stayed there on occasion with you and  
12 Stacy?

13 A. She may have spent a night or two  
14 when her and her boyfriend weren't getting  
15 along.

16 Q. Do you remember when Marvin asked  
17 where Jessie lived that you told him at some  
18 motel?

19 A. Jessie? No, she stayed, I believe,  
20 two houses from Stacy and I.

21 Q. Do you remember telling Marvin Nix  
22 that Jessie was kind of crazy?

23 A. To put lightly, yes.

24 Q. At any point when you lived at  
25 Stacy's house, did you consume illegal drugs?

## State v. Aaron Hendrix and Stacy Riden

502

Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*

Jury Trial of January 25-28, 2016

## TESTIMONY OF DEFENDANT HENDRIX - CROSS EXAM BY SOLICITOR

1 A. No, I did not.

2 Q. At any point when you lived at  
3 Stacy's house, did you ever use methampheta-  
4 mine?

5 A. No, sir.

6 Q. Do you remember telling Marvin that  
7 Jessie, Stacy's sister lies about everything?

8 A. I'm not quite sure of everything,  
9 but she does lie a lot; yes.

10 Q. Okay. Do you remember telling  
11 Marvin that Jennifer, Stacy's other sister,  
12 would come over and bring guys?

13 A. Yeah, maybe a friend or two here and  
14 there.

15 Q. And when Marvin asked you would they  
16 be having sex in the open, you said that  
17 could have just been Jennifer being Jennifer?

18 A. I don't remember that.

19 Q. Okay.

20 SOLICITOR JONES: I beg the Court's  
21 indulgence.

22 CROSS-EXAMINATION CONTINUED

23 BY SOLICITOR JONES:

24 Q. Do you remember if Marvin asked you  
25 about Jennifer not wearing a shirt. And you

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016

503

TESTIMONY OF DEFENDANT HENDRIX - CROSS EXAM BY MR. HORLBECK

1           responded that would just be Jennifer  
2           being Jennifer?

3           A.   Possibly, yes.

4           SOLICITOR JONES:   No further  
5           questions, Your Honor.

6           THE COURT:       Any redirect?

7           MS. HORLBECK:       I haven't had a  
8           chance to ask any questions.

9           THE COURT:       I apologize.

10          MS. HORLBECK:       That's all right,  
11          Judge.   This will be brief.

12                           CROSS-EXAMINATION

13          BY MS. HORLBECK:

14          Q.   I couldn't hear your response.   Do  
15          you recall telling Officer Nix that Jessie  
16          acted kind of crazy?

17          A.   Yes.

18          Q.   All right.   All right.   So when you  
19          said crazy, do you mean like sexually-abused  
20          kids crazy?

21          A.   No, ma'am.

22          Q.   Do you mean like kiss your sisters  
23          on the lips crazy?

24          A.   No, ma'am.

25          Q.   Do you mean like roll around naked

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF LUANNE QUEEN - DIRECT BY MR. WARDER

504

1 or in various states of nudity or undress  
2 with your sisters and with a bunch of guys in  
3 the bed crazy?

4 A. No, ma'am.

5 MS. HORLBECK: That's all I have.  
6 Thank you.

7 THE COURT: Now any redirect?

8 MR. WARDER: No, Your Honor.

9 THE COURT: Thank you. You may  
10 step down.

11 (WITNESS STEPS DOWN)

12 THE COURT: Do you have any more  
13 witnesses?

14 MR. WARDER: Yes, sir. We'd call  
15 Annie Queen.

16 THE COURT: All right.

17 (WITNESS TAKES STAND)

18 LUANNE QUEEN, having been duly sworn to  
19 tell the truth, and nothing but the truth,  
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WARDER:

23 Q. Can you tell us how you fit in this?  
24 Do you know Aaron Hendrix?

25 A. He's my son.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF LUANNE QUEEN - DIRECT BY MR. WARDER

505

1 Q. Where do you live at?

2 A. I live in Dacusville.

3 Q. Is that where you lived at in 2011?

4 A. Yes.

5 Q. Did you meet the Lusk children?

6 A. Yes.

7 Q. And how did you meet them?

8 A. My son was involved in a relation-  
9 ship with their mother.

10 Q. Okay. And did he bring them to your  
11 house or did you go over there. How did you  
12 know them.

13 A. He brought them to my house about  
14 four or five times during the time that he  
15 was in the relationship with their mother.

16 Q. Did she come with him on those  
17 occasions?

18 A. The first I met them she was with  
19 them.

20 Q. Okay. And that was then followed by  
21 two or three occasions that she wasn't there?

22 A. Yes.

23 Q. Did the children seem happy, well  
24 cared for?

25 A. Yes.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF LUANNE QUEEN - DIRECT BY MR. WARDER

506

1 Q. Did he look after them?

2 A. Yes.

3 Q. Did they seem to be appropriately  
4 nourished?

5 A. Yes.

6 Q. Did you ever go over and visit at  
7 their house?

8 A. I went to their house twice, not to  
9 visit but just to pick Aaron up or pick them  
10 up to go somewhere.

11 Q. Was the house in an organized, clean  
12 fashion?

13 A. Yes.

14 Q. Did it look appropriate for the  
15 children?

16 A. Yes.

17 Q. And did you see Stacy with the  
18 children?

19 A. I've only seen her with the children  
20 probably two times.

21 Q. Okay. And was everything proper on  
22 those occasions?

23 SOLICITOR JONES: Objection, Your  
24 Honor. What does "proper" mean?

25 MR. WARDER: Proper ---

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF LUANNE QUEEN - CROSS EXAM BY SOLICITOR

507

1 THE COURT: Rephrase your question.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. WARDER:

4 Q. Did the children seem to be well  
5 nourished on those occasions?

6 A. Yes.

7 Q. And did she seem to be attentive?

8 A. Yes.

9 Q. And do you know when your son broke  
10 up with Stacy?

11 A. Oh, I think it was right before  
12 Christmas of 2012.

13 Q. Okay. Did he move back in with you  
14 when he moved out down there?

15 A. Yes.

16 Q. Okay. And they haven't been back  
17 together since then?

18 A. No.

19 Q. Thank you. Answer any questions...

20 THE COURT: Any cross?

21 SOLICITOR JONES: Just briefly, Your  
22 Honor.

23 CROSS-EXAMINATION

24 BY SOLICITOR JONES:

25 Q. Ms. Queen, you say you're Mr.

## State v. Aaron Hendrix and Stacy Riden

508

Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*

Jury Trial of January 25-28, 2016

## TESTIMONY OF LUANNE QUEEN - CROSS EXAM BY MS. HORLBECK

1 Hendrix's mother?

2 A. Yes.

3 Q. Do you love your son?

4 A. Oh, yes.

5 SOLICITOR JONES: No further  
6 questions, Your Honor.

7 MS. HORLBECK: Just briefly.

8 CROSS-EXAMINATION

9 BY MS. HORLBECK:

10 Q. Is Ms. McQueen?

11 A. Queen?

12 Q. Queen. So no Mc, just Queen.

13 A. (Affirmative nod)

14 Q. Okay. All right. Ms. Queen, just a  
15 few questions. On the occasions that you  
16 were with the children or that you saw the  
17 children, did you notice any bruises or like  
18 knife cuts on the children?

19 A. No.

20 Q. All right. Any signs of abuse?

21 A. No.

22 Q. Did you notice any cuts, bruises,  
23 scratches on their faces?

24 A. No.

25 Q. All right.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF LUANNE QUEEN - CROSS EXAM BY MS. HORLBECK

509

1 MS. HORLBECK: That's all I have.

2 Thank you.

3 THE COURT: Any redirect?

4 MR. WARDER: No redirect, Your  
5 Honor.

6 THE COURT: All right. Thank you.

7 (WITNESS STEPS DOWN)

8 THE COURT: Anything further, Mr.  
9 Warder?

10 MR. WARDER: No, sir.

11 THE COURT: You plan any  
12 additional?

13 SOLICITOR JONES: Your Honor, I do  
14 have one rebuttal witness.

15 THE COURT: All right. Ladies and  
16 gentlemen, I'm going to send you back just  
17 briefly. And then we'll come back in.

18 Again, do not deliberate about the  
19 case. No discussion whatsoever about it.  
20 Thank you.

21 (JURY OUT @ 12:25 P.M.)

22 THE COURT: All right. You say  
23 you have a short rebuttal?

24 SOLICITOR JONES: Yes, Your Honor,  
25 my questions ---

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016

510

TESTIMONY OF LUANNE QUEEN - CROSS EXAM BY MS. HORLBECK

1 THE COURT: You may not have said  
2 that or not, but that was what ---

3 SOLICITOR JONES: Yes, sir.

4 THE COURT: All right. Are you  
5 ready to proceed then?

6 SOLICITOR JONES: Yes, sir, Your  
7 Honor.

8 THE COURT: Okay. Anything before  
9 we hear that witness?

10 SOLICITOR JONES: Nothing from the  
11 State, Your Honor.

12 THE COURT: Anything from the  
13 Defendants?

14 MS. HORLBECK: No, Your Honor.

15 MR. WARDER: (No verbal response).

16 THE COURT: Our goal is to let's  
17 get through this witness and then we'll have  
18 a brief discussion about verdict forms and  
19 charges and then I'll work that up and send  
20 that to you and you work it over lunch.  
21 All right. If they're ready.

22 BAILIFF: Sir?

23 THE COURT: If they're ready bring  
24 them on in.

25 (JURY IN AT 12:30 P.M.)

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF MARK RIDEN - DIRECT EXAM BY SOLICITOR

511

1 THE COURT: All right. And at this  
2 point the State has a rebuttal witness. Mr.  
3 Jones?

4 SOLICITOR JONES: Thank you, Your  
5 Honor. The State calls Mr. Mark Riden.

6 (WITNESS TAKES STAND)

7 MARK RIDEN, having been duly sworn to  
8 tell the truth, and nothing but the truth,  
9 testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR JONES:

12 Q. Mr. Riden, how are you related to  
13 Stacy Riden?

14 A. I'm her dad.

15 Q. Do you have any other children?

16 A. Yes. Jennifer, Jessie, Courtney and  
17 Katie; all daughters.

18 Q. And where do you currently work?

19 A. All in One Insulation company.

20 Q. How long you been working there?

21 A. Ten years.

22 Q. Do you know who Mark Lusk is?

23 A. Yes.

24 Q. Who is that?

25 A. He's the father of my grandchildren.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF MARK RIDEN - DIRECT EXAM BY SOLICITOR

512

1 He was with Stacy for three years. Three of  
2 my grandchildren: Minor 2, Minor 3 and Minor 1

3 Q. And where do Minor 1 Minor 3 and  
4 Minor 2, where do they live now?

5 A. They live with me and my wife, Lisa.

6 Q. How long have they been living with  
7 you?

8 A. I'm going to say between two and a  
9 half to three years.

10 Q. Do you remember about when they  
11 moved in with you?

12 A. No, I don't. I'm not good with time  
13 frames but it's been probably two and a half  
14 years or three years.

15 Q. Was it around March of 2013?

16 MR. WARDER: Objection. He's  
17 leading, Your Honor.

18 THE COURT: Yeah. Rephrase your  
19 question.

20 SOLICITOR JONES: Yes, sir.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR JONES:

23 Q. When the children started staying  
24 with you for this long period of time,  
25 because they've been with you a long time,

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF MARK RIDEN - DIRECT EXAM BY SOLICITOR

513

1       how did that come about? How did the  
2       children get from Stacy's house to your  
3       house?

4           A. Well, one day Mark Lusk, the father  
5       of the children, called me and said, 'Mark,  
6       would you please go get the children.  
7       There's no food in the house. They're not  
8       eating. And there's just, you know, several  
9       people are coming in and out. And I think  
10      they're going to be hurt or they're going to  
11      starve to death if you don't get them.'

12           Q. And what did you do?

13           A. I talked to my wife, Lisa. I asked  
14      her if she'd go over and get them. And she  
15      said, yes. And we got them.

16           Q. How old are you?

17           A. Fifty-two.

18           Q. Fifty-two. And how old is your  
19      oldest child?

20           A. Thirty-two, thirty-one, she was born  
21      in '85.

22           Q. And what about your youngest child?

23           A. She's eleven. Katie.

24           Q. And after Stacy was charged with  
25      these crimes, did you ever talk to her about

## State v. Aaron Hendrix and Stacy Riden

514

Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*

Jury Trial of January 25-28, 2016

## TESTIMONY OF MARK RIDEN - CROSS EXAM BY MS. HORLBECK

1           it?

2           A.    Yes.

3           Q.    Did she ever tell you anything  
4 specifically about these allegations?

5           A.    She said they weren't true.

6           Q.    Did she elaborate on that at all?

7           A.    The only thing she would say is,  
8 "I had nothing to do with this, unless drugs  
9 influenced me somehow." And she was saddened  
10 that she missed the warning signs of the  
11 abuse from the other party.

12          Q.    So she told you that if she had  
13 anything to do with it, drugs influenced her?

14          A.    Yes.

15                SOLICITOR JONES: I beg the Court's  
16 indulgence. No further questions, Your  
17 Honor.

18                THE COURT: Cross-examination?

19                   CROSS-EXAMINATION

20                BY MS. HORLBECK:

21                Q.    All right. Mr. Riden, you're  
22 related to Stacy Riden in that you're her  
23 father, her biological father; is that  
24 correct?

25                A.    That's true.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF MARK RIDEN - CROSS EXAM BY MS. HORLBECK

515

1 Q. All right. And you're also the  
2 biological father of Jessie, Jennifer, and --  
3 I don't remember the ---

4 A. Courtney and Katie.

5 Q. And then you -- and it's a little  
6 bit hard to hear sometimes.

7 A. Okay.

8 Q. So if I mistake something, correct  
9 me. You also said that you have a -- your  
10 youngest child is how old?

11 A. Eleven.

12 Q. Oh, okay. So there is another child  
13 that you have?

14 A. Well, she's not in the home. She's  
15 with her mother.

16 Q. Okay. All right. All right, then.  
17 And you're fifty-two years old now?

18 A. That's correct.

19 Q. All right. Okay. And you testified  
20 that you spoke to Stacy after she'd been  
21 charged?

22 A. Yes.

23 Q. All right. And she was saddened  
24 that she missed the warning signs of abuse by  
25 the other party?

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF MARK RIDEN - REDIRECT BY SOLICITOR

516

1 A. Yeah.

2 Q. All right. The other party being?

3 A. Aaron Hendrix.

4 Q. All right.

5 MS. HORLBECK: That's all I have.

6 Thank you.

7 THE COURT: Mr. Warder?

8 MR. WARDER: I have no questions.

9 THE COURT: All right. Any  
10 redirect?

11 SOLICITOR JONES: Just briefly, Your  
12 Honor.

13 REDIRECT EXAMINATION

14 BY SOLICITOR JONES:

15 Q. After you got the children, did  
16 Stacy ever indicate to you that she wanted  
17 custody back?

18 A. Well, eventually ---

19 MS. HORLBECK: Objection ---

20 MR. WARDER: Objection.

21 MS. HORLBECK: --- relevance.

22 THE COURT: Yeah, I don't believe  
23 that was -- that's not proper redirect. So  
24 I'm going to sustain that.

25 SOLICITOR JONES: Yes, sir, Your

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF MARK RIDEN - REDIRECT BY SOLICITOR

517

1 Honor. No further questions.

2 THE COURT: All right. You may  
3 step down.

4 (WITNESS STEPS DOWN)

5 THE COURT: Is that the extent?

6 SOLICITOR JONES: That's the extent,  
7 Your Honor.

8 THE COURT: All right. All right.  
9 Ladies and gentlemen, we have concluded the  
10 part of the trial meaning that all of the  
11 evidence has been introduced and all the  
12 testimony.

13 That still doesn't mean you can  
14 start deliberations. You can't. That will  
15 come after closing arguments and after I have  
16 charged you on the law.

17 So what I'm going to do now is let  
18 you go to lunch. It is now 12:30. I'm going  
19 to ask that you be back in your jury room at  
20 2:00. At 2:00 we'll have you come out and  
21 we'll do closing argument and I will charge  
22 you on the law that applies to the case.

23 Let me again give you the four  
24 warnings:

25 You do not discuss this case among

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
TESTIMONY OF MARK RIDEN - REDIRECT BY SOLICITOR

518

1       yourselves or with anybody. That's very  
2       important.

3               Also, don't do any independent  
4       research or anything like because the only  
5       information you're supposed to be considering  
6       is what you get in here, you hear from the  
7       testimony that has been admitted or the law  
8       that I charge you.

9               Third, if there's any media  
10       coverage, social media, TV coverage,  
11       newspaper, anything like that, then you're  
12       not to consider that in any way. Please do  
13       not look at that or pay any attention to  
14       that.

15               Lastly, if you should be contacted  
16       by anyone, please notify the bailiff.

17               Otherwise, please have a good lunch  
18       and be back in your jury room at 2:00 for the  
19       final stage.

20                       (JURY OUT @ 12:35 P.M.)

21               THE COURT: All right. Let me  
22       just talk with the attorneys just briefly in  
23       the back to discuss the jury charges and  
24       verdict forms.

25                       (LUNCH RECESS)

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
HOUSEKEEPING - DISCUSSIONS

519

1 (DEFENDANT RIDEN PRESENT)

2 (DEFENDANT HENDRIX PRESENT)

3 THE COURT: All right. I have e-  
4 mailed the -- y'all should have both gotten  
5 the verdict form and the charges. And we'll  
6 first talk about -- if you'll pull the  
7 verdict form up. I know you had issue with  
8 one of those?

9 SOLICITOR JONES: Yes, Your Honor.  
10 I just had an issue with the -- for the  
11 criminal sexual conduct with a minor first,  
12 I would ask that the form just be for the  
13 entering of Guilty or Not Guilty. I think  
14 the follow-up question as to what specific-  
15 ally they find is really unnecessary.

16 THE COURT: Well, the statute  
17 specifically requires it.

18 SOLICITOR JONES: Requires ---

19 THE COURT: Yeah. Where is the  
20 statute? Again, that's why -- it says that  
21 the judge or the jury must make a specific --  
22 as to what's specific. And I think it has to  
23 do something with if they're ever charged  
24 later, if they're entitled to seek the death  
25 penalty. Let me look that up as to why they

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
HOUSEKEEPING - DISCUSSIONS

520

1       require that.

2               SOLICITOR JONES:   Okay.   Well, Your  
3       Honor, I wasn't aware of that and I wasn't  
4       aware that the statute required it, but you  
5       obviously know more than I do.

6               THE COURT:       No, I just -- hey, I  
7       just happened to read it.   The form that we  
8       got had those questions on there.   Let me  
9       pull that.

10              There's a list of them.   And I think  
11      that's -- all right.   If you look at 16-3-  
12      655, it says a person convicted of a  
13      violation of (a)(1), which is the (a)(1)(a),  
14      the sexual battery must be imprisoned  
15      etcetera.

16              In the case of -- in case of a  
17      person convicted at trial for violation of  
18      this section, the judge or jury must  
19      designate as part of the verdict whether the  
20      conduct that constitutes sexual battery  
21      involved sexual or anal intercourse by a  
22      person or intrusion by an object.

23              SOLICITOR JONES:   Okay.

24              THE COURT:       Actually, we looked it  
25      up as to why -- I mean, why would it --

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
HOUSEKEEPING - DISCUSSIONS

521

1 because it doesn't affect the sentence.

2 SOLICITOR JONES: Right.

3 THE COURT: And I can't imagine it  
4 would affect the amount of time that you  
5 would spend in jail because as much as you  
6 can anyway. But it has something to do,  
7 according to our research is if they ever get  
8 charged again and because of this finding,  
9 they can be subject to the death penalty or  
10 something, or life in prison, life without  
11 parole.

12 SOLICITOR JONES: Well, I understand  
13 your ruling then, Your Honor.

14 MS. HORLBECK: But there's not  
15 going to be anything about the death penalty  
16 on ---

17 THE COURT: No, no. The verdict  
18 form is -- did you get a copy of the verdict  
19 form?

20 MS. HORLBECK: I did, yes.

21 THE COURT: All right. So other  
22 than that, any objection to the -- anything  
23 else other than that, on the verdict form?

24 SOLICITOR JONES: Nothing else from  
25 the State, Your Honor.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
HOUSEKEEPING - DISCUSSIONS

522

1 THE COURT: All right. We'll go  
2 ahead and print the form. All right.  
3 Everybody have a chance to review the jury  
4 charge?

5 SOLICITOR JONES: Yes, Your Honor.

6 THE COURT: Any objections or  
7 notes or questions or any discussions about  
8 the jury charge?

9 MS. HORLBECK: None from Ms.  
10 Riden.

11 MR. WARDER: No, Your Honor.

12 SOLICITOR JONES: Nothing from the  
13 State, Your Honor.

14 THE COURT: I'll let her print  
15 those so that everybody has a verdict form  
16 before the jury comes in. Because what I do  
17 is give the foreperson verdict forms.  
18 Are all the jurors here?

19 BAILIFF: Yes, sir.

20 THE COURT: All right. Are we  
21 ready to bring the jury? Ready for closing  
22 argument? (No verbal response). Anything  
23 else from the State before we bring the jury  
24 in?

25 SOLICITOR JONES: Nothing else from

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
HOUSEKEEPING - DISCUSSIONS

523

1 the State, Your Honor.

2 THE COURT: Anything else from  
3 Defendant Riden?

4 MS. HORLBECK: No, Judge, just  
5 renew all previous Motions and objections.

6 THE COURT: All right.

7 MR. WARDER: Nothing further. I  
8 also renew all Motions.

9 THE COURT: All right. And I'll  
10 renew my decision to deny them. All right.  
11 If they're ready, bring them in.

12 BAILIFF: Yes, sir.

13 (JURY IN @ 2:05 P.M.)

14 THE COURT: Ladies and gentlemen,  
15 thank you. I hope everybody had a pleasant  
16 lunch. We're now to the final phase of the  
17 trial, what we'll be closing arguments by the  
18 attorneys.

19 Those are arguments or summaries and  
20 are not to be considered evidence. The  
21 evidence is what you heard here and you may  
22 make a determination of what that evidence to  
23 be.

24 This will be a summary provided by  
25 the attorneys. And then when they are

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

524

1 through, depending on how long it is, we may  
2 take, we may just take a stretch break and  
3 then I will charge you the law, what the law  
4 will be in the case.

5 At that point after I've charges you  
6 as to the law in the case, once I confirm  
7 that there are no additions or revisions, you  
8 will finally begin deliberations.

9 I ask at this point that you pay very  
10 close attention to what the attorneys have to  
11 say and then to what I have to say as far as  
12 the law in the case.

13 All right. Ms. Horlbeck?

14 CLOSING STATEMENT

15 BY MS. HORLBECK:

16 Good afternoon, ladies and gentle-  
17 men. I've had my electricity turned off and  
18 it's not something that happened when I was  
19 in my twenties. I am, I guess, one of those  
20 women that got married later in my life. So  
21 it actually happened when I first starting to  
22 see my husband. I'm not a spring chicken, so  
23 it's probably happened more recently than I  
24 even want or care to reveal. I don't know  
25 why I forgot to pay it. I just have no clue.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

525

1 But it happened.

2 My point is, is that all of us have  
3 come into this courtroom. We all come in  
4 with our blemishes and our skeletons and our  
5 mistakes and the stupid things that we do and  
6 the stupid people that we trust.

7 But this case is not about getting  
8 your electricity turned off. It's not about  
9 being a single mother. It's not about having  
10 a hard time making your financial ends meet.

11 And it's not about drug use that  
12 happened in 2013. The indictments -- the  
13 dates on this copy of the indictment are from  
14 2011, December 2011 to December 2012. Those  
15 are the dates. It's not about anything that  
16 happens in 2013.

17 This case is about, ladies and  
18 gentlemen, a well-meaning, loving family that  
19 wants these children, that disagree with how  
20 Ms. Riden lives her life. And they're  
21 willing to use the criminal justice system to  
22 wall her off from her children.

23 This is a wonderful system we have  
24 in this country. And there are some very,  
25 very fundamental principles the Judge has

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

526

1 already discussed with already in this case.  
2 And Judge Gravely will talk about it some  
3 more, those fundamental principles. But  
4 they're so important I'm going to just  
5 briefly touch on them again.

6 A major principle in our criminal  
7 justice system is the presumption of  
8 innocence. I told you during my opening  
9 statement that presumption of innocence  
10 covers you like a cloak. It covers everyone  
11 that stands on trial, whether you have  
12 blemishes, whether you have skeletons,  
13 whether you're a single mother, whether you  
14 began to use drugs after your children went  
15 to live with their grandparents, whether or  
16 not you had your electricity turned off.  
17 You're covered by the presumption of  
18 innocence, and it does not leave you.

19 It doesn't leave when you all go  
20 and have lunch or when you go take a break or  
21 when we go and argue Motions. It covers and  
22 remains covered today.

23 The only thing that removes the  
24 presumption of innocence is proof of guilt  
25 beyond a reasonable doubt. Judge Gravely

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

527

1 will instruct you about the meaning of  
2 reasonable doubt. But there's a number of  
3 ways to think about reasonable doubt. A  
4 reasonable doubt is just a doubt that you've  
5 got a reason for having.

6 A reasonable doubt is a feeling --  
7 gosh, I just wish the government had more. I  
8 wish they had more evidence. I wish they had  
9 more to tell me. It's the feeling, 'gosh, I  
10 just don't know that the government's proven  
11 their case.' It's the feeling that Ms. Riden  
12 may not be guilty.

13 Judge Gravely will instruct you  
14 that if you have any doubts about whether or  
15 not Ms. Riden is guilty, you must resolve  
16 them in her favor and give her the benefit of  
17 the doubt. There are many reasons -- well,  
18 for that.

19 My final definition of reasonable  
20 doubt is a reason that you have for hesitat-  
21 ing to act or in this matter, hesitating to  
22 convict.

23 There are many reasons to hesitate  
24 to convict in this case. I don't have time  
25 to go over all of them, but I'm going to

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

528

1 touch the highlights. But under what you're  
2 entitled to consider the underlying them of  
3 custody in this case and the ensuing effort  
4 to separate Stacy from her children. You're  
5 entitled to consider all of that.

6 Thank goodness there are families  
7 that are there when other families need help.  
8 Please don't misunderstand me. I'm not  
9 criticizing this family. Thank goodness they  
10 were there to take these children when Stacy  
11 was at a low point in her life and needed  
12 help with these children.

13 But there's an underlying theme of  
14 custody that runs through this case and it  
15 started right at the beginning when the  
16 police were first called. There was a  
17 discussion that this family did not have  
18 court-Ordered custody of these children.  
19 There was advice from the police, from  
20 Officer Nix to contact DSS, to contact an  
21 attorney. So there's no mistaking there's  
22 that underlying theme of an effort to  
23 separate Stacy from her children.

24 There's no evidence of drug abuse  
25 from 2011 to 2012. And I'd say that I

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

529

1 understand what the children have said.  
2 But there's no evidence from other witnesses.

3 You heard Stacy's own father take  
4 the stand. He didn't testify about any  
5 observations that he'd made about Stacy being  
6 under the influence in 2011, 2012.

7 You have heard no evidence that  
8 Stacy was found in possession of any drugs or  
9 drug paraphernalia from 2011 to 2012.  
10 There's no convictions involving drugs from  
11 2000[sic] and 2012.

12 Indeed, you've heard from Ms. Riden  
13 herself who testified her drug use started  
14 and got -- or it escalated after the children  
15 left her and went to live with their grand-  
16 parents. So this started as a result of the  
17 children leaving.

18 There's no evidence of drug abuse  
19 in 2011. She was very candid, Ms. Riden was,  
20 about things going downhill after the time  
21 period that is laid out in these indictments.

22 The children's father testified. I  
23 think he was -- it was almost memorable when  
24 he said "Stacy's the best mother in the  
25 world. You won't find a better mother."

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

530

1 Ms. Queen saw Stacy during that time  
2 period that's listed in our indictments. She  
3 didn't mention any concerns that she had  
4 about Stacy being under the influence. And  
5 she'd seen her and the children. Didn't have  
6 any concerns about Stacy, didn't have any  
7 concerns about the way that Stacy's home was  
8 running. Didn't have any concerns with the  
9 children. And Ms. Queen did not observe any  
10 cuts on the children's arms that could have  
11 resulted from a knife cut. She did not  
12 observe any bruises or cuts or scrapes on any  
13 of the children's faces that I would assume  
14 you would see after being hit in the head  
15 with a helmet. None of those things were  
16 observed. These are all things that have  
17 been brought up in an effort to separate  
18 Stacy from her children.

19 You're entitled to consider the  
20 testimony of the children in this case.

21 Let's start with Minor 2. She, when  
22 she took the stand and testified, she was age  
23 five. You'll have to do the math. It  
24 sounded as if she was probably between twelve  
25 months and eighteen months during the time

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

531

1 period of 2011, 2012. You're entitled to  
2 wonder is a child of that age able to  
3 remember anything?

4 I asked her very clearly to  
5 describe how many rooms there were in her  
6 mom's house when she lived there. She said  
7 zero. I asked her also to tell me about the  
8 bathrooms and how many bathrooms that there  
9 were and she said zero. That is an indica-  
10 tion of this child's lack of memory. If she  
11 is unable to remember the place where she  
12 lives, does that call into question any of  
13 the things that she testified to?

14 And she didn't testify to much. She  
15 was not able to provide any detail. She was  
16 not able to say when. She was not able to  
17 describe any of the observations that a  
18 person -- things that a person would have  
19 observed if they'd truly been there. I'm not  
20 trying to say that the child is lying. She's  
21 tiny, she was very young. You are entitled  
22 to take all of that into consideration and  
23 her age into consideration as you weight the  
24 evidence in this case.

25 You're also entitled to consider

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

532

1 the evolving story that we've heard from the  
2 other two children, Minor 3 and Minor 1

3 The State's own expert, Ms.  
4 Carlberg, testified very clearly about  
5 coaching and the things that she was looking  
6 for to determine if coaching had occurred.  
7 She testified that she's looking for  
8 consistency, internal consistency in the  
9 story over time. She was looking for  
10 consistency in the who, the what, and the  
11 when and the where. Ladies and gentlemen, I  
12 submit to you there's a lack of consistency  
13 in those aspects of their stories.

14 The who changed dramatically.  
15 When you compare the testimony of the  
16 children in the forensic interviews that we  
17 watched on the screen, those children all  
18 described that their father was present and  
19 watching and laughing. That their aunts,  
20 Jennifer and Jessie were present and involved  
21 and rolling around in various states of  
22 undress, with various people that -- various  
23 adults that allegedly lived in the house at  
24 the time.

25 But as the children took the stand

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

533

1       they testified dad wasn't there. So our dad,  
2       Mark Lusk, was not there. Jennifer and  
3       Jessie weren't there.

4               There's a lack of consistency in  
5       the who in this case and you're entitled to  
6       consider that. There's an utter absence of  
7       evidence of evidence about the when. There's  
8       absolute -- none of the children were able to  
9       testify about when these things happened and  
10      that's important.

11             There's also a lack of consistency  
12      in the actual details. Details had changed.  
13      These things are important because the  
14      State's own expert said that they were.  
15      She's looking for internal consistency over  
16      time. She said that it's difficult for  
17      children to maintain a lie, that the children  
18      must know the subject matter and they have to  
19      be consistent with the who, what, when and  
20      where. If they're not consistent with the  
21      who, what, when and where, that's evidence of  
22      coaching.

23             Not coaching by Stacy who's had  
24      absolutely no contact with these children or  
25      not much since they went to live with their

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

534

1 grandparents.

2 Ms. Carlberg also testified that as  
3 a child gets older the child should be able  
4 to provide more detail, not less. You  
5 compare those videos that we saw yesterday  
6 and compare them, those videos to the  
7 testimony that we heard on the stand,  
8 drastically different. A drastic change in  
9 the who, the what, and the where and in  
10 absence of core contextual detail these  
11 experts are looking for. And when they see  
12 these things are missing, that's evidence of  
13 coaching. It's out of their own expert's  
14 mouth.

15 The details about penetration had  
16 changed. There was no detail about any of  
17 that on the stand.

18 There were no details about the  
19 smell.

20 There were no details about what  
21 they saw. There was no detail about anything  
22 that you see or genital on adult genitalia,  
23 which would include hair. And there was  
24 absolutely no testimony about any child  
25 seeing anything coming out of adult

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

535

1       genitalia.

2                   That's important. When a child's  
3       being coached, it's hard to give details.  
4       And as the child gets older, they should be  
5       able to give more detail.

6                   Other evidence of coaching. I  
7       don't know if you caught it -- well, I asked  
8       Minor 1 when she took the stand about a  
9       situation with the Barbie dolls. And she  
10      flatly denied that any Barbie dolls had been  
11      positioned at all, she denied that  
12      completely. However, in her videotaped  
13      interview when Ms. Shauna brought in the  
14      anatomical dolls, Minor 1 specifically said,  
15      'Oh, my grandmother has Barbies and we got  
16      them and positioned them. We've got Barbies  
17      at grandma's house. We got them and  
18      positioned the boy Barbie so he was lying  
19      down. The girl was on her knees. And then  
20      grandma asked us if this happened.'

21                   That's evidence of coaching. And  
22      you're entitled to consider that and also ask  
23      yourselves why this child is denying that  
24      this happened. This child is on the video-  
25      tape saying that this happened. Yesterday

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

536

1       when she testified it was as if it had never  
2       happened at all, but it did. And we know it  
3       happened because it's on the video. It's  
4       important for you to consider that. It's  
5       evidence of coaching.

6               Also on the video Minor 1 says "it  
7       is going to be a long time before we see our  
8       mother again." How would that child know  
9       that? How would that child know that? Why  
10      would this child have any idea about when she  
11      might see her mother again unless she's been  
12      able to talk about it? No one knows why that  
13      -- y'all are just going to have to consider  
14      that, but you're entitled to wonder how did  
15      this child get this information? And who did  
16      this child get this information from?

17             In the videos, my client Stacy, the  
18      children called her mom or mommy or mama.  
19      When these children took the stand, Stacy  
20      wasn't mom anymore. She was "Stacy." You're  
21      entitled to consider that and wonder where  
22      these children are learning to change her  
23      name. It's evidence of potential coaching  
24      and I'd just ask y'all to consider that.

25             Recall the physical exams that were

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

537

1 performed by the doctor who performed them.  
2 I can't think of her name. It might have  
3 been Bradshaw but -- the name escapes me.  
4 But you all saw her testify. She testified  
5 that she examined all three children. This  
6 happened, the dates of the examinations were  
7 March the 26<sup>th</sup>, 2014.

8 As part of all of the examinations  
9 she does a head to toe physical exam of the  
10 children. And she said that she did it  
11 because it's important to know if there's any  
12 injuries or scrapes or scars or healing scars  
13 or nothing on the child.

14 Also, she testified that as part of  
15 the exam they use what's known as a colpo-  
16 scope. And that's a machine that will  
17 magnify the genital area so that they can  
18 determine if there are any scars or wounds or  
19 tears or rips or anything in various stages  
20 of healing.

21 It's important to note that in  
22 Minor 3 exam, you can consider his testimony  
23 when he said he'd been cut with a knife and  
24 kicked in the genitalia and also whacked in  
25 the head, in the face, with a helmet. Yet

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

538

1       this doctor could find none of these things.  
2       There was no testimony that your skin heals  
3       real quickly and doesn't scar. There were no  
4       knife scars on Minor3. There were no scars  
5       where he had been hit in the head with a  
6       helmet. No scars of any kind on this child.  
7       And absolutely no damage to his genital area  
8       after it was blown up and magnified on the  
9       colposcope. No sign of any damage as a  
10      result of any kicking that Minor3 alleged when  
11      he was on the stand.

12               The same is true for Minor1 ; a  
13      completely normal genital exam, complete  
14      normal physical exam -- for both children.

15               Minor2, she had evidence of labial  
16      adhesion. I just want to remind you, and I  
17      know y'all heard this, but that is evidence  
18      of inflammation. The doctor testified that  
19      she was not able to testify about the  
20      etiology of the inflammation or the labial  
21      adhesion. I looked up "etiology" because I  
22      just don't know what it means and it means  
23      cause. So what she's saying is she's not  
24      able to determine the cause of that  
25      inflammation. She said it can be a result of

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MS. HORLBECK

539

1 poor toileting hygiene, not wiping after  
2 pottyng. It can also be a result of non-  
3 accidental and accidental trauma. She, this  
4 doctor, was not able to say that Minor 2  
5 physical exam or that that labial adhesion  
6 was a result of any sort of abuse. So I want  
7 to remind that to y'all.

8 She also discovered cavities. I'm  
9 not a dentist but you're certainly entitled  
10 to wonder when those cavities started in the  
11 child's mouth. At the time of the examina-  
12 tion, I believe that the evidence will show  
13 that the children had been in custody of the  
14 grandparents for about a year.

15 Why would a child lie about these  
16 things? I think the State's own expert  
17 provides us the answer to that. Coaching.  
18 There's an utter lack of consistency in the  
19 who, what and when in this case. There was a  
20 lack of detail. It is hard to give details  
21 when children have been coached. And as the  
22 children have gotten older they are unable to  
23 provide details. They're losing the ability  
24 to provide details in this case. All of  
25 that's happening because the family is

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

540

1 coaching them.

2 We have a wonderful criminal  
3 justice system in this state and in this  
4 country when it's applied correctly. But it  
5 cannot be utilized to sever a mother from her  
6 children just because she's single or because  
7 she is having a hard time making ends meet or  
8 because she gets the power turned off, or  
9 because she makes stupid decisions over who  
10 she dates and who she trusts.

11 You heard Stacy. She loves those  
12 children. She wouldn't do a thing to hurt  
13 those children and she would kill anybody  
14 that hurt those children. She's not guilty  
15 of these charges. We ask y'all to find her  
16 Not Guilty. Thank you.

17 THE COURT: Mr. Warder?

18 MR. WARDER: Thank you, Your Honor.

19 CLOSING STATEMENT

20 BY MR. WARDER:

21 I want to thank y'all for sitting  
22 here, watching all the videos, spending all  
23 your time. We greatly appreciate it.

24 This is my client's most important  
25 day. This is the day you will decide whether

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

541

1 he's guilty of doing an unspeakable crime or  
2 whether the proper verdict is the verdict of  
3 Not Guilty.

4 I want to talk to you just briefly  
5 about -- you've waited a long time. And I  
6 want to thank you before you get to  
7 deliberate and decide this case.

8 Now, let me say basically two things  
9 in defense of my client. We're not sure  
10 exactly which one's true. At first, it  
11 didn't happen at all or it didn't happen when  
12 my client was there. I say that because of  
13 several reasons but the -- supposedly the  
14 last statement we heard that Stacy had made  
15 was it was people around her and that it  
16 might have been drugs that was what  
17 influenced. But at the end, my client wasn't  
18 around. My client left and the situation  
19 deteriorated, if it happened at all.

20 And so we begin by deciding did it  
21 happen at all? And I submit to you the  
22 correct determination there will be that it  
23 did not happen at all.

24 And it doesn't make sense. It's  
25 your common sense, your everyday experience.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

542

1 My client lived there for about a year. He  
2 was involved in a relationship that lasted  
3 about a year. He moved in at some time and  
4 it was a considerable portion of that year  
5 that they lived together. The allegation is  
6 that it's not when he was alone with the  
7 children and no one was around. It's not  
8 when he was with one of the children and the  
9 others weren't there. Not when anything was  
10 secreted from the other children. The  
11 allegation is that they all got together and  
12 they did these things then. I think the  
13 children said about five times. Try that on  
14 for common sense. Is that the way somebody  
15 who's going to violate a child would do it,  
16 he would do it with the mother there, all the  
17 siblings there, and some other people in the  
18 house or when the father was there. Some  
19 stranger to the children, some other adults  
20 or maybe Stacy's sisters? This story is  
21 unbelievable. It's not the way things would  
22 happen. It's not the way people act. And I  
23 think that should cause you to question  
24 whether or not these events were really there  
25 or whether these are ideas and planted in the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

543

1 children's mind.

2 You know, these are people that at  
3 that age that can believe they saw Santa  
4 Claus and the Tooth Fairy.

5 This is a case that there's no  
6 evidence that this occurred physically. All  
7 we have is the word and the story is  
8 identical with each child. That, in and of  
9 itself, should cause some suspicion. Seldom  
10 is an event, so many events that go over a  
11 long period of time, be exactly the same by  
12 every child absent them getting together and  
13 planning before the event what's going to be  
14 said. They coached.

15 The dolls. Somebody had to -- I  
16 mean, that somebody had to demonstrate to the  
17 child before they went to the psychotherapist  
18 where the special dolls that had all the  
19 parts on them were, somebody would take the  
20 time with Barbie dolls and demonstrate with  
21 the children before that, means that the  
22 person must have wanted them to say that.

23 And that's why I say that if it  
24 happened after we left because we don't know  
25 what happened then. We can only testify for

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

544

1 the period of time we were there. My client  
2 moved out in December, I think it was March  
3 that the father found the needle and the  
4 electricity was off.

5 Everybody says it went down, and I  
6 think Stacy said that she felt alone. People  
7 who feel alone end up falling into drugs.

8 My client can't tell you what  
9 happened. Because my client can only account  
10 for the year that he was there, not the next  
11 year. That was after the period of time that  
12 they say it happened.

13 My client was arrested in 2014. He  
14 was first reported in I think December. He  
15 had been gone since December of '12, 2012.

16 Now, this is a case that you can't  
17 decide it just on inference. This is a case  
18 that His Honor will tell you will have to be  
19 proven beyond a reasonable doubt.

20 His Honor will define reasonable  
21 doubt. It's the kind of a doubt that would  
22 make you hesitate to act. Make you  
23 uncertain. Make you unsettled. Reasonable  
24 doubt is the evidence doesn't add up.  
25 Reasonable doubt might be that this is not

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

545

1       logical. In other words, a reasonable doubt  
2       is how you view the evidence and whether it  
3       would make you hesitate to act on what you --  
4       on your view of the evidence on the way you  
5       see it.

6               Now, if you imagine that in any  
7       important decision in your life somebody was  
8       trying to convince you to take action that  
9       had real consequences -- if a stockbroker was  
10      telling you where to invest your retirement  
11      portfolio and he was going to prove that  
12      beyond a reasonable doubt, you may no  
13      question. But if you had a feeling inside  
14      that maybe that wasn't where it ought to be  
15      and you didn't have a real reason outside of  
16      a general unsettled, hesitant feeling, that  
17      would be unreasonable doubt right there.

18             Now, when you prove some things  
19      there's many levels of proof that you can go  
20      to. In finding the reasonable doubt I have a  
21      chart that I've kind of set forth possible  
22      persuasive levels and in a criminal case a  
23      possible persuasive level would be the proof  
24      showed conclusively the defendant was not  
25      guilty. And if it was more evidence, a

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

546

1 little more than that, it could be highly  
2 unlikely, there could be some evidence. And  
3 if there was some more evidence that was in  
4 here, that could be less than likely, more  
5 evidence could come in. And you could say  
6 well, 'he's probably not guilty.' And then  
7 there would be more evidence that would come  
8 in and you could say 'oh, this exists but  
9 it's still unlikely.' A level could be a  
10 possibility that he's not guilty. A fair bit  
11 of evidence in there and you can come up with  
12 'sure' or even 'perhaps.' Or, 'we suspect  
13 it.' So much evidence come in you could say  
14 'he's probably guilty' or that his guilt is  
15 likely. And more could come in and you could  
16 say that guilt is highly likely. But all of  
17 them are not proof beyond a reasonable doubt.  
18 That is the highest level of proof we have.

19 For a policeman to stop an  
20 individual and question him, he needs an  
21 articulable suspicion. For a magistrate to  
22 issue a warrant, he's needs probable cause.  
23 For a jury to decide a civil case, render a  
24 judgement against you, they need the  
25 preponderance of the evidence. For somebody

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

547

1 to prove fraud and something like that and  
2 get punitive damages, they have to have a  
3 higher level of proof than that.

4 But none of them had to have guilt  
5 beyond a reasonable doubt. That is the  
6 highest level of proof the law requires.  
7 You know, in many case prosecutors try and  
8 say 'well, we don't have to prove it beyond  
9 all doubt.' No, that's true. You only have  
10 to prove it beyond reasonable doubt, only.  
11 Evidence so powerful that it would leave in  
12 your minds no reasonable doubt is evidence  
13 that you can convict on.

14 What juries do and what your job is  
15 to weigh the evidence. In other words you  
16 decide what evidence it is and what weight to  
17 give it. Now, that's a mental process. And  
18 only when it reaches the highest level is it  
19 proof beyond a reasonable doubt.

20 The English system where the common  
21 law came from, they don't use the words  
22 guilty and not guilty in reaching their  
23 verdicts. In England the case is still is  
24 decided whether or not it's a proven case or  
25 an unproven case. And I think those words,

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY MR. WARDER

548

1       that definition more tells the jury what  
2       they're doing. In other words, you all go  
3       back there and decide whether this is either  
4       a proven or an unproven case. And if you  
5       decide it's a proven case, then you'll decide  
6       whether it's proven beyond a reasonable  
7       doubt. Because a case that is proven must be  
8       proven so convincingly that it can leave you  
9       no reasonable doubt. His Honor will define  
10      those terms for you.

11               I ask you in this case to do the  
12      fair, the right, the just thing. Not return  
13      a verdict out of sympathy or emotion but  
14      return a verdict that speaks the truth,  
15      that's right, one that is fair to everybody.  
16      In this case, in the case of my client, the  
17      correct, the right and the just verdict would  
18      be a verdict of Not Guilty. Not guilty  
19      because it hasn't been proven beyond a  
20      reasonable doubt that it even happened,  
21      particularly not that it happened anytime my  
22      client was there. Thank you very much.

23               THE COURT:     Mr. Jones.

24               SOLICITOR JONES:   Thank you, Your  
25      Honor. Mr. Warder, Ms. Horlbeck.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

549

1

## CLOSING STATEMENT

2

BY SOLICITOR JONES:

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Y'all may not have seen this but on Wednesday when y'all -- got here at 9:00 and we had to start back at 12:30, I got to work and realized, because I'd gotten dressed without my wife's input, that I had on bright navy blue pants and a black jacket. I looked like an idiot. So I texted my wife and I said, 'Can you bring my jacket? I need your help.' She was at work. Didn't have time to go back home.

So I texted my mother who luckily lives around me and she's a little bit older and she's retired. I said, 'Hey can you help me out? Go to my house and get my navy jacket?' She said 'sure.' She got the jacket. About an hour later she dropped by the courthouse and gave me my jacket. And that's not the biggest deal in the world is it? It's not some huge favor or anything. I said 'thank you so much.' She said, 'Oh, don't worry about it.'

That's what mother's do; isn't it? They help their children. They take care of

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

550

1       their children. They look after their  
2       children. There's something about the bond  
3       between a mother and a child that honestly, I  
4       don't understand. I'll never be a mother.  
5       When that bond is broken, it's tragic.

6               And that's what this case is. It's  
7       tragic. The allegations in this case are  
8       horrific, aren't they? It's disgusting.  
9       It's almost the worst thing you can think of.  
10      Forced to perform sexual acts on your own  
11      mother as a child?

12             I haven't hit Aaron Hendrix yet.  
13      But he's just as guilty as Stacy Riden.

14             And these acts are -- this is one of  
15      the worst things that someone could have  
16      happen to them, forced to perform oral sex on  
17      your own mother. You may not want to believe  
18      that it's true. How could someone do this?

19             But there's one key in this case  
20      that makes you think, 'Oh, now I understand.  
21      Now, I understand why.' "If I did it, it was  
22      because of the drugs."

23             It just so happens that these  
24      children also found a needle in their house?  
25      They also said they saw their mother and

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

551

1 Aaron Hendrix doing drugs, taking drugs.  
2 Now, what is the children's knowledge of  
3 drugs and how they're used or how they say  
4 this was this particular type of drug -- 'I  
5 saw them using it.' They know they saw a  
6 needle. And they know that needle had blood.

7 I'm going to briefly go over these  
8 elements of the offenses again. I went over  
9 them in my opening and the Judge is going to  
10 talk about it when he gives you the  
11 instructions.

12 Now, both Aaron and Stacy are  
13 charged with criminal sexual conduct with a  
14 minor, first degree. Two of those charges.  
15 One is for Minor 3; one is for Minor 1

16 A defendant is guilty of criminal  
17 sexual conduct with a minor in the first  
18 degree if the defendant engages in sexual  
19 battery with the victim and that victim is  
20 under the age of eleven. There's no dispute  
21 these children were under the age of eleven.

22 So what is sexual battery? Sexual  
23 intercourse, oral sex, anal sex or any  
24 intrusion however slight into the genital or  
25 anal openings of the other person. Forcing

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

552

1 children to perform oral sex on her. Aaron  
2 Hendrix forcing the children perform oral sex  
3 on him, and then performing those acts on the  
4 children. Minor 1 also testified in her  
5 video statement that both Aaron and Stacy put  
6 their finger inside her. I'm going to go  
7 over their testimony, their statements in a  
8 minute.

9 A few things should stand out as to  
10 the oral sex. When Ms. Galloway-Williams  
11 asked those children what did you see, what  
12 did they say? They said it was furry. They  
13 saw hair. Does that sound like they're  
14 making it up to you? If someone were  
15 coaching those children is that the only  
16 detail they would give them? 'Make sure to  
17 say you saw it was furry on top. Make sure  
18 to say that you saw hair.'

19 Is that the only detail that some-  
20 body's going to give if they're coaching a  
21 child?

22 As to the elements of criminal  
23 sexual conduct with a minor in the third  
24 degree, "the actor is over fourteen years of  
25 age and..." -- these two people were over

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

553

1       fourteen years of age at the time "the victim  
2       was under sixteen years of age." We have no  
3       doubt as to the age of the child. And you  
4       have to "willfully and lewdly committed a  
5       lewd or lascivious act with the intent of  
6       arousing or gratifying the lust, passions or  
7       sexual desires of the actor or the child."

8               And this particular charge is for  
9       Minor2       , the five-year-old. And, again,  
10       that statute uses a lot of language that the  
11       Judge is going to go over with you. But it  
12       uses a lot of language to say if you touch  
13       someone under the age of sixteen with the  
14       intent of arousing your sexual desires or  
15       sexual pleasures.

16              Minor2 was five years old. It was  
17       obvious she was not articulating herself very  
18       well. In the interview you could see that as  
19       well. From everybody's personal experience,  
20       you know the difference between a five-year-  
21       old and a nine-year-old. All Minor2 was able  
22       to say was they touch her on a bad spot.

23              And as to the unlawful neglect just  
24       to Stacy Riden the charge of unlawful  
25       neglect. A defendant is guilty of unlawful

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

554

1 neglect if they're the parent or guardian of  
2 a child, which is not in dispute in this  
3 case, and they place the child at  
4 unreasonable risk of harm affecting the  
5 child's life or physical or mental health or  
6 safety. Or caused any bodily harm to the  
7 child so that the life or health of the child  
8 is in danger.

9 Willfully. This is for Stacy Riden  
10 as to all her children. Sex in front of the  
11 children. Sexually abusing the children.  
12 Doing drugs in front the children. Possibly  
13 exposing the children to sexually transmitted  
14 diseases. Think of the mental health of  
15 those children. For the rest of their lives,  
16 this isn't over. Think about how this  
17 affected the mental health of those children.

18 I also want to go over some  
19 testimony of the people that got up on the  
20 stand and testified. You remember in my  
21 opening I mentioned the word credibility.  
22 And that was an important aspect of this  
23 case. If somebody testified and in the back  
24 of your mind you're wondering, I want you to  
25 pay attention to what they were saying. Ask

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al.* and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

555

1       yourselves why would this person lie? What  
2       do they have to lose?

3               Aaron Hendrix testified. It's  
4       really obvious. You ask yourself the  
5       question, 'Well, why would this person lie?'  
6       What does he have to lose? You expect him to  
7       get on the stand and all of a sudden say,  
8       'you know what, I did it, it happened.' He  
9       had way too much to lose to do that.

10              He did say that he lived there. He  
11       did say that he dated Stacy and he knew the  
12       kids. And through cross-examination, he told  
13       about the statement to Marvin Nix the  
14       investigator. That the sisters, Jennifer and  
15       Jessie, would come over there and one of them  
16       was kind of crazy. It wasn't unusual for her  
17       to have her shirt off. He also testified  
18       that he dressed up in women's clothes.

19              Stacy Riden also testified. And,  
20       again, what does she have to lose? Why would  
21       she lie? And what did Stacy tell us? The  
22       children are hers. She lived at that  
23       address. Aaron Hendrix lived with her for  
24       about a year.

25              I don't know if you remember but my

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016

556

CLOSING ARGUMENT BY SOLICITOR JONES

1 first question to her was what kind of drugs  
2 can you use a needle with? 'I don't know  
3 what you're talking about.' Remember that?  
4 First question. 'I don't what you'd use a  
5 needle with.' And then fifteen minutes later  
6 as I'm asking her questions, now all of a  
7 sudden she's hanging out with the wrong  
8 people to do drugs. And she gives me an  
9 answer what kind of drugs are used with  
10 needles.

11 She also testified that she knew her  
12 father and her stepmother came to get the  
13 children. What happened at that particular  
14 time to make them come get the children?  
15 And she didn't ask them to come get the  
16 children. Who asked? The biological father,  
17 Mark Lusk. We'll get to his testimony in a  
18 minute.

19 He testified that this was supposed  
20 to be temporary, the custody of the children  
21 with her father and stepmother.

22 Remember earlier in her testimony it  
23 was difficult to get somebody to watch the  
24 children. And then all of a sudden the  
25 biological father calls the parents -- excuse

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

557

1 me -- calls the grandparents and they can  
2 just take the children for good?

3 And we heard from Mark Lusk, the  
4 biological father. An interesting guy. I  
5 know a lot of people have drinking problems.  
6 I understand that. He also testified that he  
7 had seizures on occasions. He drinks until  
8 he passes out. He didn't go so far as to  
9 admit that he had blacked-out before, but I  
10 would argue that if you admit you have a  
11 drinking problem, that you have seizures,  
12 that you drink until you pass out, that there  
13 have also been times you might drink until  
14 you black out.

15 And what else happens when you  
16 drink too much? Your inhibitions go away.  
17 You might do things you wouldn't normally do.  
18 You might experiment with some drugs.

19 And what do we expect Mark Lusk to  
20 come in here and say? 'Yeah, I saw all of  
21 this happening and didn't do anything? Yeah,  
22 I knew these people were touching my  
23 children?' I mean, come on. What does he  
24 have to lose? A lot if he came in here and  
25 testified to that.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

558

1 But interestingly he did testify  
2 that he also found a needle at that  
3 residence; didn't he? I asked him to  
4 describe it. He calls it a syringe needle.  
5 What was a syringe needle doing over there?

6 Dr. Croswell testified. She was the  
7 physician who examined the children, did the  
8 physical examination, looking for signs of  
9 abuse. And she mentioned a study called  
10 Normal is Normal with regard to sexual abuse.  
11 Meaning that in only -- I believe it was  
12 three percent or less than three percent of  
13 cases of sexual abuse do doctors find signs  
14 of sexual abuse.

15 And why is that? She went into  
16 detail about the tissues in the genital area,  
17 specifically vaginal tissues heals very  
18 quickly. But also if it was just digital  
19 penetration and just oral sex, what type of  
20 signs of abuse do we expect to find?

21 However, Dr. Croswell also testified  
22 that in Minor2 she found labial adhesions.  
23 She described labial adhesions are the result  
24 of, one, that age not having a lot of  
25 estrogen plus some other event, some sort of

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

559

1 inflammatory event. It could have been poor  
2 hygiene, not wiping herself correctly or  
3 irritated or not wiping after using the  
4 restroom. It could have been that. An  
5 accident, falling on something or it could  
6 have been from trauma. It was not conclusive  
7 but it was one of those things.

8 Now let's look at the testimony of  
9 Minor 1 and Minor 3. Now, if you  
10 watched the children testify -- and I hope  
11 you remember what I mentioned in my opening  
12 about several core claims from the children:  
13 Their mother pulling Minor 1 hair.  
14 The children saw blood.  
15 They were touched and they found a needle.  
16 He would wear mama's shirt and he used to do  
17 his nails all the time with mama's nail  
18 polish.  
19 He put a bra on his head and one where mama  
20 wore hers.

21 And the reason I bring that up is  
22 because if it was just from the child, it  
23 might sound outlandish, like some of the  
24 other things they're saying. But that was  
25 corroborated by what Mr. Hendrix said and

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

560

1       then by what Stacy Riden said.

2               What else about Aaron, Shauna  
3       asked? 'He would play with us down here. He  
4       would rub a long time and stick a finger in  
5       the private area. One time mom was standing  
6       there laughing.' About ten minutes and fifty  
7       six seconds into that first video Minor 1  
8       says 'mama used to pull my hair when I tried  
9       to get up.' "Mama used to pull my hair when  
10      I tried to get up."

11             Minor 1 also said she was scared to  
12      tell. And I'll go over that in a minute when  
13      I talk about our expert's testimony, about  
14      delayed disclosures and why children don't  
15      tell people initially.

16             "Mama had to pull my hair down and  
17      he started shaking because I was trying to  
18      get up." Does that sound like something  
19      somebody coached this child to say? 'Make  
20      sure you say your mother pulled your hair and  
21      as he was touching your privates, he was  
22      shaking.' Are you serious? "Mama pulled my  
23      hair and she was laughing." This isn't  
24      something that I'm just saying over and over  
25      again. These are the multiple times that

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

561

1 this child has said that in those interviews.

2 "Why did you not tell anyone?"

3 'Mama and Aaron said don't tell anyone. They  
4 took their medicine a lot. Minor2 almost ate  
5 it one time, I stopped it.'

6 'What did he touch you there with?'

7 "His hands."

8 'Where did his finger go?' "Right  
9 here," and pointed to her privates.

10 "He was shaking. I was laying down  
11 and Aaron was on his knees." Is this another  
12 detail that she was told to say?

13 More testimony from Minor1 :

14 "Mama and Aaron made us put our mouths on  
15 their privates and she grabbed the back of my  
16 head like that." If you remember watching  
17 the video, Minor1 actually puts her hands on  
18 the back of her head.

19 And "we found needles in her car that had red  
20 stuff on it."

21 "We had to touch Aaron's privates and put our  
22 mouth on Aaron and mama's privates. We had  
23 to. They forced us. They grabbed our head."

24 How did you know to put your mouth down  
25 there?

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

562

1                    "They forced our head down there."  
2            *When you put your head down there, what did*  
3            *he do next?*

4                    "He opened my mouth and put it on  
5            *him."*

6            *What did it feel like?*

7                    "It was furry."

8            *What part?*

9                    "On top of it."

10           *Just another detail that somebody told her to*  
11           *say?*

12           *What did it feel like in your mouth?*

13                    "Weird."

14           *What other experience has that child had to*  
15           *compare this to?*

16           *What did he say?*

17                    "Do it. Do it. Do it. He opened my  
18           *mouth."*

19           *Who else had to do it?*

20                    "Minor2 and Minor3. We had to do it  
21           *to mama too."*

22           *How did you know to put your mouth on your*  
23           *mom's private?*

24                    "She told us to go toward it."

25           *What did you see?*

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

563

1 "Hair."

2 That's an important distinction from the  
3 previous question. The previous question was  
4 what did it feel like? She said furry. And  
5 later as describing the oral sex Shauna asked  
6 what did you see? Hair. Again, that must  
7 have just been another detail someone told  
8 her to say? 'Make sure you say it felt furry  
9 but you saw hair.'  
10 What did you have to do?

11 "We had to suck on it. She told us  
12 to do that. She said suck on it and bite  
13 it."

14 What was it like?

15 "Squishy. One time Aaron was  
16 messing with Minor2 and Aaron got a big apple  
17 to put in her mouth so she would not yell for  
18 help."

19 They said, "don't tell or they will  
20 kill us. Aaron and mama put their finger in  
21 us. They never clipped their nails. They  
22 cut us and it started bleeding."

23 What else is a child going to think  
24 if her privates starts bleeding? May have  
25 been cut before by something sharp. She sees

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

564

1 the blood. Something sharp must have cut  
2 her. It must have been her fingernail.

3 "We saw needles. They had blood on  
4 them. We were thinking they killed someone  
5 or something. We put it on each other and we  
6 did not know."

7 "They put their finger in us and  
8 that's when we started bleeding."

9 "She put her finger in us and rubbed  
10 us a very long time."

11 I know this is a lot but I'm going to  
12 read every bit of it, (reading):

13 "She put her finger in us and rubbed  
14 us for a very long time. We didn't like it.  
15 We tried to yell. We pulled her hair because  
16 we wanted her to stop. She put her mouth on  
17 us too."

18 *Did you see them do anything?*

19 "The S-word, sex."

20 I hope you're asking yourselves which one of  
21 those details that child was told to say.

22 On to Minor 3 testimony. Minor 3  
23 says unprovoked about the six-minute mark in  
24 his first video, "Aaron and mama did bad  
25 stuff to us. Pointed knives at us. They

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016

565

CLOSING ARGUMENT BY SOLICITOR JONES

1 threatened to kill us. She hit us and one  
2 time touched us in the front some -- and  
3 said, touched us some in the privates."

4 You remember what that expert said  
5 about how kids disclose things?

6 "She hit us. Touched us in the  
7 privates and mama and Aaron was holding  
8 Minor 1 hair down. Aaron was rubbing my  
9 privates. He was grabbing my hand to do it  
10 on him, but I would not let him. He would  
11 poke us on the privates and rub it."

12 *Has anyone else ever touched your*  
13 *privates?*

14 "Mama. She would rub it and poke  
15 it. In mommy's room, mommy and Jessie, who  
16 is the sister, was crossing their legs and  
17 arms around each other and they were  
18 kissing."

19 An interesting way to coach a child to  
20 say they saw people having sex. Almost  
21 sounds like the child isn't making it up at  
22 all because he's using his own language.

23 *Who did you tell?*

24 "My grandmother."

25 *Did you tell anyone else?*

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

566

1 "My papa and my aunt."

2 *Did you ever tell anyone else?*

3 He says "no, because they might  
4 think it's weird."

5 Remember that chain that expert talked  
6 about?

7 "Mama and Aaron said they will kill  
8 us if we tell anyone. Mama and Aaron  
9 would hold Minor 1 hair down. Aaron  
10 held her hair down like this and poked  
11 her in the privates. Aaron was digging  
12 in my privates. He was wiggling my front  
13 privates."

14 *Did he have you touch his privates?*

15 *How did it feel?*

16 "It felt weird. He touched Minor 1  
17 and Minor 2 privates and it started to  
18 leak. Coming out of their privates and  
19 on their legs."

20 Again, just another detail he was coached  
21 to say? 'Not only did you see your  
22 sister's bleeding from their privates,  
23 but remember to say you saw it run down  
24 their legs.'

25 THE COURT: All right. Let's wrap

1 | it up.

2 SOLICITOR JONES: Yes, sir. Your  
3 Honor.

4 CLOSING STATEMENT CONTINUED

5 BY SOLICITOR JONES:

6 And there were a lot of allegations  
7 and there are some core consistent claims  
8 that I brought to your attention:

|   |            |
|---|------------|
| 9 | Hair pull. |
|---|------------|

10 Blood coming from their privates.

11 Saw a needle that had blood on it.

12                   The expert testified about delayed  
13                   disclosure why kids don't tell immediately.  
14                   Some people wait until their adulthood to say  
15                   anything. Shame.

16           They don't want the person who did it to  
17       get into trouble because it's someone they  
18       love.

19           They don't want to interrupt their  
20   family.

21           They're threatened to be harmed if they  
22           say anything.

23 All of those things happened in this  
24 case.

25 That expert didn't read these files.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

568

1 She didn't talk to these children.

2 Those are verifiable examples of what  
3 happens to children who are abused sexually.

4 And in the two videos, the defense  
5 attorneys made a big deal about this, where  
6 the children gave a little bit of information  
7 initially. They disclosed more information  
8 during their medical exams and they had to  
9 come back for another interview. Just like  
10 the expert said, in the process of disclosure  
11 a tentative stage where they tell just a  
12 little bit of information, test the waters  
13 and see what happens.

14 Those threats that their mother and Aaron  
15 made to them did not happen. They did not  
16 kill them. So then we tell a little bit  
17 more.

18 And finally Mark Riden testified,  
19 the father of Stacy Riden. He testified that  
20 his daughter told him she didn't remember  
21 this but if it did happen, it was because of  
22 the drugs. Why would he come in here and say  
23 that? Why would he make that up? Why would  
24 he make that up when we have all of this  
25 other evidence of needles and drug abuse?

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

569

1 Is it just a big coincidence?

2 And as to the 'someone coached these  
3 children in order to get custody' -- one, why  
4 would they need to accuse Aaron Hendrix to  
5 get custody of children that aren't his? He  
6 was with these children for a year, maybe.  
7 He's not the biological father. He's not the  
8 stepfather. He has no claim to these  
9 children. Why would they accuse an ex-  
10 boyfriend of doing this if their goal was to  
11 get custody? That doesn't make any sense.

12 Another thing about custody, where  
13 was Stacy Riden? Her father and her step-  
14 mother didn't need to make these accusations  
15 to get custody. They had the children,  
16 didn't they? They had the children.

17 And when these allegations were made  
18 -- law enforcement told you they were made on  
19 December 29<sup>th</sup>. Law enforcement looked for  
20 Stacy. The first time they were able to talk  
21 to her was January 30<sup>th</sup>. That was somebody  
22 not related to this case at all.

23 And then Marvin Nix the investigator  
24 on this case couldn't find her after that.  
25 You don't think there are other avenues to

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

570

1       gaining custody of children with a mother  
2       like that? There are a whole lot easier than  
3       ruining three children's lives by telling  
4       them to get on that stand and say all this  
5       stuff about their mother.

6               It like I said before. We're going  
7       to go home today and try to forget about  
8       this. But this isn't over for those  
9       children.

10              As to reasonable doubt the Judge is  
11       going to give you a charge explaining what  
12       reasonable doubt is. That was a really nice  
13       board that the defense attorney brought over  
14       here that hand nothing to do with what the  
15       Judge is going to tell you. He's going to  
16       tell you what the law is. One thing the  
17       judge is going to say as to reasonable doubt  
18       is there are very few things in this world  
19       that we know with an absolute certainty. In  
20       criminal cases, the law does not require  
21       proof that overcomes every possible doubt.  
22       Beyond reasonable doubt is a very serious  
23       thing. I'm not saying that. The Judge is  
24       going to elaborate on it.

25              I also want you to remember when you

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CLOSING ARGUMENT BY SOLICITOR JONES

571

1       were sworn in as a jury and the clerk swore  
2       you in, you took an oath. Remember that?  
3       And you didn't swear to look for reasonable  
4       doubt. You swore to tell the truth. Because  
5       if reasonable doubt is here, you wouldn't  
6       have to look for it. It would be so big you  
7       couldn't stop thinking about it. But that's  
8       not what you're thinking about. Because the  
9       reasonable doubt is not here.

10               I leave you with this. As I was  
11       preparing to close in this case, I kept  
12       thinking about when I was a little kid I  
13       would go fishing with my grandfather on a  
14       regular basis. It was fun for me because I  
15       was, you know, seven, eight, nine years old  
16       going fishing. My grandfather would always  
17       want to get serious and tell me some life  
18       lesson that he wanted me to remember. I  
19       didn't remember all of them but there's that  
20       I do. He looked at me and said "Christopher,  
21       remember if you don't discipline yourself,  
22       one day somebody's going to do it for you."  
23       And today is the day for Stacy Riden and  
24       Aaron Hendrix.

25               THE COURT:     All right. Everybody

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

57.

1 stand up. Everybody okay for me to go  
2 ahead and do the charge? It's probably about  
3 fifteen to twenty minutes. So if anybody  
4 needs a break we can take it now. But  
5 otherwise, we'll go forward -- (jurors stand  
6 and stretch). All right. Everybody take  
7 your seat.

8 All right. This is the charge on  
9 the law. And this is -- and after I give you  
10 the law, you'll go back to your jury room and  
11 you will actually, you can begin discussing  
12 the case.

13 I realize the nature of these  
14 charges you're going to be discussing stuff  
15 among yourselves. Some of these type things  
16 that you wouldn't talk with, with your  
17 closest friend much less eleven other  
18 strangers. But that's the nature of these  
19 charges so it's very important for both, for  
20 all sides that you carefully discuss things  
21 and you consider the charges and all of the  
22 information you've heard here in the  
23 courtroom.

24 All right. As I indicated, there  
25 are two sets of indictments. There's two

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

573

1 Defendants.

2 There's the indictments against  
3 Stacy Riden. There's criminal sexual conduct  
4 with a minor first degree. And I will go  
5 into the elements of each of these. And  
6 there's two separate indictments for that.  
7 There's criminal sexual conduct with a minor  
8 third degree is a separate charge. And  
9 unlawful conduct toward a child. So you have  
10 four indictments for Stacy Riden.

11 Then for Aaron Hendrix he has  
12 indictment for criminal sexual conduct with a  
13 minor first degree and we've got two of those  
14 and one criminal sexual conduct with a minor  
15 third degree. And again, I'll go through the  
16 elements of those in a minute.

17 I want to stress to y'all very  
18 importantly that these indictments should not  
19 be considered in any way by you of any guilt  
20 or any inference like that for either of  
21 them. These are merely the papers which  
22 brings these charges before a court. Each  
23 indictment charges a separate criminal  
24 offense as to each Defendant, okay?

25 But the State has the burden of

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

574

1 proof beyond a reasonable doubt as to each  
2 element on each indictment for each  
3 Defendant. And that's important for you to  
4 remember.

5 The fact that the Defendants have  
6 been arrested and they've indicted them, been  
7 indicted on these charges, that's not to be  
8 considered by you because still the burden is  
9 on the State to prove beyond a reasonable  
10 doubt. And if they don't meet that burden, I  
11 will discuss with you in a few minutes, then  
12 you are to find the Defendant as to that  
13 indictment not guilty. So there's no  
14 presumption by the indictment itself.

15 As I indicated, there are two  
16 separate defendants in this case and multiple  
17 indictments. You're to consider each of  
18 these separately. The case of each defendant  
19 and the evidence and law concerning the  
20 defendant should be, you know, considered  
21 separately and individually, each indictment,  
22 as to each defendant. And when I go through  
23 the jury verdict form with you, it kind of  
24 gives you kind of an outline of how to do  
25 that.

1                   You can find one defendant guilty  
2                   and one not guilty. Your decision on one  
3                   should not control your verdict on any other  
4                   indictment or as to the other defendant. You  
5                   are to consider each defendant and each  
6                   indictment totally independent. They're not  
7                   connected and should not sway you on one or  
8                   the other.

9                   When more than one person is charged  
10               with a crime and the evidence warrants it,  
11               you may convict one and acquit the other.  
12               You can acquit on one indictment for one  
13               Defendant and acquit on the other. Again, it  
14               depends on what your view of the testimony  
15               and the evidence is.

16                   As to each defendant, you will  
17           consider the evidence and the law as I  
18           instruct you. And then you will write, again  
19           -- I will go through the actual verdict form  
20           with you. And you have to make a decision as  
21           to each indictment.

22 Now, one of the real important kind  
23 of premises of our criminal system is that  
24 everybody comes in this courtroom with the  
25 presumption of innocence. And that's not

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

576

1 merely just a legal term or just something  
2 made for TV-land. That's a very strong  
3 presumption. That's the basis for both our  
4 state and federal constitution. And what  
5 that does is a person comes in presumed  
6 innocent, that puts the burden on the State.

7 The State has to prove beyond a  
8 reasonable doubt each element of the charge  
9 beyond a reasonable doubt.

10 It's not up to the defendants in any  
11 way to prove that they're innocent of these  
12 charges.

13 The presumption of innocence stays  
14 with that person until you have determined  
15 that the State has met their burden beyond a  
16 reasonable doubt and that they're guilty of  
17 the charge. If you don't determine that,  
18 then that presumption of innocence prevails  
19 and a person is to be not guilty.

20 The presumption of innocence is  
21 often referred to it's like a robe of  
22 righteousness placed around the shoulders of  
23 a defendant. And until that robe has been  
24 stripped on that particular indictment on  
25 that particular defendant by you, the jury.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

577

1       So it's a substantial right until you have  
2       been satisfied that the evidence meets the  
3       burden of the State.

4                You've heard a lot about reasonable  
5       doubt. What is reasonable doubt? Reasonable  
6       doubt is the kind of doubt that would cause a  
7       reasonable person to hesitate to act.

8                Proof beyond a reasonable doubt is  
9       proof that leaves you firmly convinced of the  
10      defendant's guilt.

11              There are very few things in this  
12      world that you can know with absolute  
13      certainty. In criminal cases, the State does  
14      not have the burden to prove to you with  
15      absolute certainty or remove every possible  
16      doubt. But if based on your consideration of  
17      the evidence you're convinced, firmly  
18      convinced that a defendant is guilty of the  
19      crime(s) for which they are charged, then you  
20      must find the defendants guilty of that  
21      criminal charge.

22              But on the other hand you find that  
23      there's a real possibility that the defendant  
24      is not guilty, then you must give the  
25      defendant the benefit of the doubt as to that

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

578

1 charge and find him/her not guilty.

2 You and I play -- you, the jury and  
3 me as the Judge, we have two distinct roles  
4 in this process.

5 As you've seen it's my responsi-  
6 bility to preside over the trial, to rule on  
7 the evidence, to give you the law which apply  
8 to this charge.

9 You are the sole judge of the facts.  
10 You are to consider the evidence that was  
11 properly admitted and make a determination of  
12 what the facts are.

13 I, as the Judge, cannot have any  
14 input whatsoever as to the facts of the case.  
15 If anything I did throughout this trial  
16 inferred or made you think that I was  
17 commenting on the facts or had an opinion as  
18 to the facts, please disregard that because  
19 it's not -- it's your province to be the sole  
20 judge of what the facts are.

21 So you are to consider only the  
22 testimony and exhibits. I believe we only  
23 actually have -- the only exhibits outside  
24 the testimony were the videotapes themselves.  
25 But you are to consider everything that was

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

579

1 properly before you.

2 Also, as indicated, my duty is to  
3 charge you on the law. Now, you took an oath  
4 to follow the law that I have given you.  
5 It's not what you think the law is, not what  
6 you think the law should be, something you  
7 may have picked up from TV or something like  
8 that but the law is what I tell you. This is  
9 the law of the case. This is the law that  
10 you must apply when you go back in your juror  
11 room and begin deliberating.

12 In every case that's tried -- again,  
13 you're the exclusive judge of those facts.  
14 And you are to consider this carefully for  
15 the benefit of both parties.

16 You know, again, just because  
17 something I did makes you think I have an  
18 opinion of the facts, that is not the case.

19 As a juror it's your duty to weigh  
20 the effect, the value, the weight and the  
21 truth of all of the evidence that was  
22 presented to you during this trial.

23 In addition to the types of  
24 evidence, the testimony and exhibits, there's  
25 two types of evidence: direct and

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

580

1       circumstantial evidence.

2               Direct evidence is testimony of a  
3       person who claims to know something, actual  
4       knowledge of a fact, such as an eyewitness.  
5       It is evidence which immediately establishes  
6       that fact.

7               Circumstantial evidence is a little  
8       different. It's where a proof of a chain of  
9       events or circumstances to prove the fact, is  
10      evidence which immediately establishes  
11      collateral facts from which the main fact may  
12      be inferred. It is based on more of any  
13      inference than it is personal observation.

14              The law makes no distinction as to  
15      the weight or value of circumstantial  
16      evidence versus direct evidence. You are to  
17      consider all evidence and give it the weight  
18      that you feel is appropriate. There's no  
19      different burden on direct or circumstantial  
20      evidence. It is still evidence that is  
21      before you. And you are to give it the  
22      weight and the credibility and the value that  
23      you think is appropriate under the  
24      circumstances. And after weighing all the  
25      evidence if you are not convinced of the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

581

1       guilt of the defendant to these charges, then  
2       you must find the defendant not guilty as to  
3       those charges.

4               A very important part of your role  
5       as a juror is to determine the credibility or  
6       the believability of the witness or  
7       witnesses. Credibility simply means  
8       believability. It becomes your duty to  
9       analyze and to evaluate the evidence and  
10      determine which evidence convinces you of its  
11      truth.

12              In determining the believability of  
13      witnesses who have testified in this case,  
14      you may believe one witness over several  
15      witnesses or you may believe several  
16      witnesses over one witness. You may believe  
17      part of the testimony of a witness and reject  
18      the remaining part or you may reject the  
19      whole part or accept the whole part. You may  
20      believe the testimony of a witness and you  
21      may consider whether any witness has  
22      exhibited to you any interests or bias or  
23      prejudice or other motive in the case. And  
24      that's based on your own experience and your  
25      own common sense as to what weight or value

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

582

1 to give to each of the witnesses that  
2 testified and as to their credibility.

3 I think there were two, maybe three  
4 different individuals that were qualified as  
5 experts. And at that point, I also charged  
6 you on how you were to consider an expert  
7 witness and their testimony. But I want to  
8 review that with you.

9 The rules of evidence ordinarily  
10 does not permit a witness to testify as to  
11 opinions or conclusions. An exception of  
12 this rule is when someone has been designated  
13 as an expert witness, a witness who either by  
14 education, experience has some expertise in a  
15 particular art, science or in their field or  
16 profession, and they're called upon to make  
17 an opinion as to relevant material matters in  
18 their field, may state the reasons for their  
19 opinion.

20 You should consider any expert  
21 opinion received in this case like any other  
22 evidence. You give it the weight that you  
23 feel is appropriate. Now, if you decide that  
24 the opinion of an expert witness is not based  
25 on sufficient educational experience or you

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

583

1 conclude that reasons given to support that  
2 opinion are not sound or the opinion is  
3 outweighed by other evidence, then you may  
4 disregard that opinion entirely.

5 Again, it's up to you to determine  
6 what weight or value to give that testimony  
7 of that expert witness. And it's not to be  
8 given any greater weight than any other  
9 witness simply because he or she was  
10 determined to be an expert.

11 Further, you're not required to  
12 accept an expert's opinion even though it is  
13 not contradicted.

14 Now, I also need to give you a  
15 charge on testimony of children since it was  
16 involved in this case. During this trial,  
17 you've heard testimony from children. When a  
18 witness is a child you must determine, as  
19 with any other witness, whether that  
20 testimony is believable.

21 In deciding believability you may  
22 consider not only matters that I've already  
23 discussed with you about weighing credibility  
24 of witnesses, but you may also consider the  
25 age of the child. The child's ability to

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

584

1 observe and remember facts. And the child's  
2 ability to understand and answer questions.

3 Because young children may not fully  
4 understand what is happening here, it is up  
5 to you to decide whether the child or  
6 children understood the seriousness of  
7 appearing as a witness at this trial.  
8 Whether the child or children understood the  
9 questions, whether the child or children had  
10 a good memory, and whether the child or  
11 children understands the difference between  
12 lying and telling the truth.

13 In addition, young children may be  
14 influenced by the way that questions are  
15 asked. It is up to you to decide whether the  
16 child or children understood the questions  
17 asked and give it the weight that you feel is  
18 appropriate.

19 Now I'm going to discuss with you  
20 the elements of the charges that are listed  
21 on the indictments. The first one is first  
22 degree criminal sexual conduct with a minor.  
23 And as indicated there are two indictments as  
24 to each defendant of that charge.

25 The defendants have been charged

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

585

1 with first degree criminal sexual conduct  
2 with a minor. The State must prove beyond a  
3 reasonable doubt as to each charge and each  
4 element that the defendant from that  
5 indictment engaged in sexual battery with the  
6 victim.

7 A sexual battery is defined as  
8 sexual intercourse, cunnilingus, fellatio,  
9 anal intercourse or any intrusion however  
10 slight of any part of a person's body or of  
11 any object into the genital or anal openings  
12 of another person's body, except when the  
13 intrusion is accomplished for medically-  
14 recognized treatment for diagnostic purposes.

15 The State must then prove beyond a  
16 reasonable doubt that the victim was less  
17 than eleven years old at the time of the  
18 sexual battery.

19 If you have a reasonable doubt that  
20 the State has met its burden on the proof on  
21 the elements on first degree criminal sexual  
22 conduct with a minor, then you should also  
23 consider the lesser included offense of  
24 sexual conduct with a minor third degree.

25 Now, in this case you have two

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

586

1 charges for criminal sexual conduct first  
2 degree for each defendant.

3 In addition you have the charge  
4 separately against each defendant of criminal  
5 sexual conduct third degree. That's  
6 concerning one of the victims.

7 But you can also, when you're  
8 considering the criminal sexual conduct first  
9 degree, there's a principle known as lesser-  
10 included offense. And this is where you may  
11 determine that the State has not met its  
12 burden on each element of first degree. So  
13 you must then consider as to those two  
14 indictments, well they didn't meet the burden  
15 as to first degree criminal sexual conduct,  
16 did they meet the burden of the lesser  
17 included offense or of third degree?

18 So that's under the principle for  
19 those two what's called lesser-included  
20 offenses. And the elements of lesser  
21 included third degree, criminal sexual  
22 conduct third degree is if an actor is over  
23 the age of fourteen years and the actor  
24 willfully and lewdly commits or attempts to  
25 commit a lewd or lascivious act upon with the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

587

1 body or its parts of a child under sixteen  
2 years of age with the intent of arousing,  
3 appealing to or gratifying the lust, the  
4 passions or sexual desires of the actor or  
5 the child.

6 When considering this charge "lewd"  
7 means obscene, lustful, indecent or  
8 lecherous. Lascivious means tending to  
9 incite lust, lewd, indecent, obscene or  
10 tending to deprave the morals in respect to  
11 sexual relations. And, again, my outline on  
12 the verdict form will help you go through  
13 that a well.

14 If you have any reasonable doubt as  
15 to whether the State has shown all of the  
16 elements of the lesser included-offense you  
17 must find the defendant on those indictments  
18 not guilty.

19 There's also an indictment as to  
20 Stacy Riden for unlawful conduct toward a  
21 child. And there's a separate set of  
22 elements that the State must prove beyond a  
23 reasonable doubt. The State must first prove  
24 beyond a reasonable doubt that the defendant,  
25 Stacy Riden, had charge or custody of the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

588

1 child or children, was the parent or guardian  
2 of that child or children or was responsible  
3 for the care and support of the child.

4 A person responsible for a child's  
5 welfare includes, of course, the child's  
6 parent, guardian or foster parent. An  
7 operator, employer or caregiver of a public  
8 or private residential home, institution,  
9 agency, or daycare center or adult who  
10 assumed the role for responsibility of a  
11 parent or guardian.

12 The State must prove beyond a  
13 reasonable doubt that a defendant who is  
14 charged with unlawful conduct placed the  
15 child in unreasonable risk of harm affecting  
16 the child's life physical or mental health or  
17 safety. Unlawfully or maliciously did or  
18 caused to be done any bodily harm to the  
19 child so that the life or the health of the  
20 child is in danger or likely to be in danger,  
21 or willfully abandoned the child.

22 So those are three -- any of those  
23 three, the State has to prove in order for  
24 you to meet their burden on the charge of  
25 unlawful conduct toward a child.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

589

1 Abandon. The definition of  
2 "abandon" means that the defendant willfully  
3 deserted the child or willfully surrendered  
4 physical possession of the child without  
5 making adequate arrangements for the child's  
6 needs or continuing care of the child.

7 A "child" is defined as a person  
8 under the age of eighteen.

9 All right. Mr. Foreman, I am going  
10 to at this time, I'm going to hand a draft of  
11 this verdict form to you. There's two  
12 separate verdict forms.

13 First of all, as to each indictment,  
14 I have listed the initials because, you know,  
15 and if you have any questions about that  
16 after you get back there for the initials,  
17 BL, ML, and Kinloch, representing the  
18 children.

19 Let's start off with the verdict  
20 form for Stacy Riden. And, again, the top  
21 part is just the caption of the case and  
22 indictment number.

23 The first one is as to the charge of  
24 first degree sexual conduct with a minor, BL.  
25 And the indictment number 2015-224: 'We, the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

590

1 jury, unanimously find the Defendant, Stacy  
2 Carol Riden..." -- you need to check one of  
3 these, okay.

4 Don't infer anything by the order.  
5 They have to be in some order. But you  
6 either check on that one guilty of first  
7 degree criminal sexual conduct with a minor  
8 or, if you do not feel that the State has met  
9 their burden as to that charge, then that's  
10 where you drop down to the lesser included  
11 offense and you must determine whether the  
12 State has met its burden of the lesser  
13 included offense of third degree criminal  
14 sexual conduct with a minor. And if you find  
15 that on that particular indictment as to  
16 victim BL, then you must find them not  
17 guilty.

18 Next, the statute requires that you  
19 determine why -- if you find that she is  
20 guilty of first degree criminal sexual  
21 conduct, the very first one, you make  
22 specific findings of which one of the sexual  
23 batteries apply. And that's because the  
24 statute requires that on this. And there's  
25 three: cunnilingus, fellatio, and any

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

591

1 intrusion however slight into any part of his  
2 genitals or anal openings or any object being  
3 inserted into his genital or anal opening.

4 Then you go to the next indictment  
5 as to the charge of first degree criminal  
6 sexual conduct with a minor, NL. And, again,  
7 you make the same analysis there. You start  
8 off with the analysis as to the first degree  
9 criminal sexual conduct. If you don't think  
10 the State's met its burden, drop down to the  
11 lesser-included offense. And then if you  
12 find that they have not met the burden there,  
13 then it's not guilty. But if you find that  
14 they have, the State has met its burden, then  
15 you would check the appropriate blank.

16 Then, again, since we're talking  
17 about first degree criminal sexual conduct,  
18 the State requires that you make a specific  
19 finding as to one or more of the sexual  
20 batteries that apply.

21 Then the third one there is third  
22 degree criminal sexual conduct with a minor  
23 KL. And now that one you don't have a lesser  
24 included offense because that is the lesser  
25 included offense. And that is if you feel

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

592

1 the State has met its burden then you find,  
2 then you check the guilty box. If you find  
3 that the State has not met its burden then  
4 you check not guilty.

5 And then the final charge as to  
6 Stacy Riden, that is unlawful conduct towards  
7 a child. And, again, this one does not have  
8 a lesser-included offense. It's either  
9 guilty of unlawful conduct toward the child  
10 if you find the State has met its burden as  
11 to each element of that or you find they have  
12 not, it's not guilty.

13 When you have reached a unanimous  
14 decision on each of those four elements, you  
15 have to check one of the boxes for guilty or  
16 not guilty. And then make specific findings  
17 on two of them if appropriate. And then once  
18 you've done each of those, then you would  
19 date it and sign it on the back page.

20 The analysis for Aaron Hendrix is  
21 the same. It is pretty much identical --  
22 well, it is identical except for it does not  
23 have the final indictment as to unlawful  
24 conduct of a child.

25 The first one is the first degree

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

593

1 criminal sexual conduct with a minor, BL as  
2 the victim. And it has the same reanalysis  
3 there.

4 The second charge, first degree  
5 criminal sexual conduct with the victim, NL.  
6 And you have the same analysis there.

7 And then the final is the third  
8 degree, which is -- does not have a lesser  
9 included offense. It's third degree criminal  
10 sexual conduct with a minor KL. And then you  
11 must check either guilty or not guilty.

12 Again, once you've made the  
13 determination there, you would sign in the  
14 space as foreperson and date that, okay?

15 Now, it's very important that, you  
16 know -- and like I said I think that the way  
17 the verdict form is set out it will kind of  
18 help you with your discussion.

19 It is the foreperson's duty is to  
20 lead the discussion. But when you make the  
21 final decision -- your decision has to be  
22 unanimous. That means all twelve of you have  
23 to agree on the verdict on each indictment,  
24 okay? It's not 'well, the majority of us  
25 feel this way' and all of that. It's all

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

594

1 twelve, unanimous decision.

2 And unfortunately, and let me just  
3 explain to the alternates. Your role in this  
4 matter has been very important because if  
5 something had happened to one of the other  
6 jurors, they weren't able to make it, got  
7 sick. Sometimes we've gotten into trials and  
8 they realize like, 'oh, I know one of the  
9 parties or one of the witnesses' and we've  
10 had to excuse that juror. If we didn't have  
11 an alternate then the trial would be -- we'd  
12 have to start over. So it's very important.  
13 And I know that you've sat here very  
14 diligently for the last three days, but  
15 you're not allowed to participate in the  
16 deliberation. But, again, I don't want you  
17 to think that your role was not very serious  
18 in this matter.

19 All right. What we'll do now is I'm  
20 going to send you back to your jury room but  
21 I don't want you to deliberate quite yet.  
22 Leave the verdict form there on the jury  
23 rail.

24 I've got to talk with the attorneys  
25 and make sure that there's nothing that I

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

595

1 missed on the charge or something I told you  
2 incorrectly. And if so, I will bring you  
3 back out. If I have given you everything  
4 that I need to and there are not any changes,  
5 then what I will do is have the bailiff bring  
6 you the verdict forms, okay?

7 He's going to exchange those verdict  
8 forms for the alternates. At that point, the  
9 alternates will step out of the jury room.

10 At that point, you can begin your  
11 deliberation.

12 If you have any questions at any  
13 time, Mr. Foreman, I'll ask that you write  
14 them down. You should have paper and pen in  
15 your room. You write a note, date it and  
16 sign your name and you give it to the  
17 bailiff. The bailiff will bring it to me.  
18 And then I will let you know how I need to  
19 respond to that, okay? If you have any  
20 questions or anything like that, then you  
21 need to knock on the door and let the bailiff  
22 know.

23 Now, once you have completed your  
24 deliberations and y'all have come up with a  
25 unanimous verdict as to each indictment, at

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CHARGE BY THE COURT

596

1       that point, you will knock on the door and  
2       let the bailiff know. And then you will  
3       await further instructions from us. So with  
4       that being said, again, I'm going to ask  
5       everybody including the alternates to go back  
6       in your jury room at this time. Wait for the  
7       signal of the jury verdict forms to release  
8       the alternates. At that point you can  
9       finally begin discussions about the case.  
10      And again, if you'll retire to your jury  
11      room.

12                               (JURY OUT AT 3:30 P.M.)

13               THE COURT:     All right. Any  
14       objections, exceptions from the State on the  
15       charge?

16               SOLICITOR JONES:   Nothing from the  
17       State, Your Honor.

18               THE COURT:     Any objections,  
19       exception or additions from Defendant Riden?

20               MS. HORLBECK:       No, sir.

21               THE COURT:     Okay. From Defendant  
22       Hendrix?

23               MR. WARDER:     No, Your Honor.

24               THE COURT:     All right.

25               MS. HORLBECK:       Regarding the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

597

1 exhibits, I did want to make sure that  
2 the videos were not going back.

3 THE COURT: Right. We're not  
4 going to send those back. If they do decide  
5 they need to review them, then we'll bring  
6 them out here since there are portions  
7 redacted.

8 All right. If I could have -- hand  
9 those verdict forms to the bailiff. All  
10 right. If you will -- let's make sure we've  
11 got the -- let me look at it right quick.  
12 Let me make sure that you don't have two.  
13 All right. Yeah. That's good. All right.  
14 And ask the alternates to come out and I'll  
15 be glad to speak with the alternates.

16 (JURY IN DELIBERATION @ 3:52 P.M.)

17 (ALTERNATE JURORS EXCUSED)

18 THE COURT: All right. We will be  
19 at-ease until further notice.

20 (COURT IN RECESS)

21 (NOTIFIED OF JURY QUESTION @ 4:50 P.M.)

22 (DEFENDANT RIDEN PRESENT)

23 (DEFENDANT HENDRIX PRESENT)

24 THE COURT: We have a note from  
25 the jury asking if they can have the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

598

1 transcripts of the testimony. I am writing a  
2 note back that says "we do not have  
3 transcript but can replay any portions of  
4 testimonies that you request." And that's  
5 all we can really do with that. Is that  
6 agreeable with everyone?

7 SOLICITOR JONES: That's fine with  
8 the State, Your Honor.

9 MR. WARDER: Yes, Your Honor.

10 MS. HORLBECK: That's fine.

11 THE COURT: All right. My  
12 response is, "We do not have transcripts but  
13 can replay portions of testimony requested in  
14 the courtroom." Because I want to make sure  
15 they understand it's in here and not back  
16 there.

17 All right. Any objections to that  
18 from the State?

19 SOLICITOR JONES: Nothing from the  
20 State, Your Honor

21 THE COURT: Any objection to that  
22 from the Defendant Riden?

23 MS. HORLBECK: No objection from  
24 Ms. Riden.

25 MR. WARDER: No, Your Honor.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

599

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

THE COURT: All right.

(SO MARKED AS COURT'S EXHIBIT 2)

(RESPONSE DELIVERED TO JURY ROOM)

(COURT IN RECESS)

(NOTIFIED OF JURY QUESTION @ 5:15 P.M.)

(DEFENDANT RIDEN PRESENT)

(DEFENDANT HENDRIX PRESENT)

THE COURT: We have another question about -- I believe in light of this question that I probably need to bring them out and just read the statutes or the charge that I read to them previously.

COURT REPORTER: That's Court's Exhibit 3, Your Honor.

(SO MARKED AS COURT'S EXHIBIT 3)

THE COURT: The portion that talks about first degree sexual conduct with a minor, third degree, and then unlawful neglect of a child. I'm just going to read that portion.

Tell the jury we need to bring them out here to do that, please?

BAILIFF: Yes, sir.

(JURY IN @ 5:15 P.M.)

THE COURT: All right. Ladies and

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

600

1 gentlemen, the question we have is, "Can we  
2 get a description of first and third degree  
3 criminal sexual conduct with a minor as well  
4 as unlawful conduct towards a child?"

5 And, of course, we can't send that  
6 back there to you. We need to do it on the  
7 record. So what I was going to do was review  
8 that portion of my charge that discussed the  
9 elements of those three charges. Is that  
10 what you're looking for?

11 FOREPERSON: Yes, sir.

12 THE COURT: All right. Okay.  
13 We'll start off with -- and all I'm reading  
14 is just the elements here, (reading:

15 Criminal sexual conduct with a  
16 minor first degree, the actor engaged in  
17 sexual battery with the victim and the victim  
18 was less than eleven years of age.

19 The statute defines "sexual battery"  
20 as sexual battery as sexual intercourse, oral  
21 sex, anal sex, or any intrusion however  
22 slight into the genital or anal openings of  
23 another person.

24 So that's the criminal sexual  
25 conduct with a minor, first degree.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

601

1                   Criminal sexual conduct with a minor  
2                   third degree is the actor or the defendant is  
3                   over fourteen years of age and the victim is  
4                   under sixteen years of age and the actor  
5                   willfully and lewdly commits a lewd or  
6                   lascivious act with the intent of arousing or  
7                   gratifying the lust, passions or sexual  
8                   desires of the actor or the child.

9                   Criminal sexual conduct with a minor  
10                  third degree is essentially touching someone  
11                  under the age of sixteen with the intent of  
12                  arousing your sexual desire, your sexual  
13                  passions or that of the child.

14                  So those are the elements of first  
15                  degree criminal sexual conduct and third  
16                  degree. And the State has the burden of  
17                  proving as to each element of those charges  
18                  beyond a reasonable doubt.

19                  Then the other charge is unlawful  
20                  conduct toward a child, (reading):

21                  The State must prove beyond a  
22                  reasonable doubt that a defendant who is  
23                  charged with unlawful conduct placed the  
24                  child in unreasonable risk of harm affecting  
25                  the child's life physical or mental health or

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

602

1       *safety. Unlawfully or maliciously did or*  
2       *caused to be done any bodily harm to the*  
3       *child so that the life or the health of the*  
4       *child is in danger or likely to be in danger,*  
5       *or willfully abandoned the child.*

6               Would that cover what the elements  
7       you're looking for?

8               FOREPERSON:    Yes, sir.

9               THE COURT:     All right. At this  
10       point then if you'll retire back to your jury  
11       room and continue deliberations and just let  
12       us know if you have any additional questions.

13               (JURY OUT @ 5:20 P.M.)

14               THE COURT:     All right. Are there  
15       any exceptions or objections from the State?

16               SOLICITOR JONES: Nothing from the  
17       State, Your Honor.

18               THE COURT:     Any exceptions or  
19       objections from Defendant Riden?

20               MS. HORLBECK:    No, sir.

21               THE COURT:     Defendant Hendrix?

22               MR. WARDER:    No, Your Honor.

23               THE COURT:     All right. We'll be  
24       at-ease until we hear further.

25               (COURT IN RECESS)

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

603

1 (NOTIFIED OF JURY QUESTION @ 5:40 P.M.)

2 (DEFENDANT RIDEN PRESENT)

3 (DEFENDANT HENDRIX PRESENT)

4 THE COURT: This note is just,  
5 "Can we have another verdict form?" They  
6 filled in the wrong blank and just want  
7 another form printed. I mean, what I'm going  
8 to do is send them -- I have two copies. I'm  
9 just going to send them two blank. I don't  
10 know which ones they did. I'm just going to  
11 send them two blank verdict forms back. And  
12 then we can question them on that when they  
13 get in here to make sure it's correct.  
14 Any problems with that from the State?

15 SOLICITOR JONES: Nothing from the  
16 State, Your Honor.

17 THE COURT: Anything from  
18 Defendants?

19 MS. HORLBECK: No.

20 THE COURT: Of course I left them  
21 on my desk, my copies.

22 COURT REPORTER: That note would be  
23 Court's Exhibit 4.

24 THE COURT: All right.

25 (SO ENTERED AS COURT'S EXHIBIT 4)

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

604

1 THE COURT: Would anybody -- would  
2 y'all like to -- these are the two. These  
3 were my copies that I used while I was going  
4 through them. There's nothing on them.  
5 They're just a blank -- anybody want to  
6 review them?

7 SOLICITOR JONES: No, sir.

8 THE COURT: All right. Okay.

9 (COURT IN RECESS)

10 (NOTIFIED OF JURY QUESTION @ 6:15 P.M.)

11 (DEFENDANT RIDEN PRESENT)

12 (DEFENDANT HENDRIX PRESENT)

13 THE COURT: Another note. On this  
14 one the foreman says they found a typo in our  
15 verdict form. And what it is, is on the one  
16 for Aaron on part three it does not have a  
17 blank for Guilty and one for Not Guilty. In  
18 reprinting, we did not catch that. So we  
19 will reprint it with the appropriate blanks  
20 and send that back so that they can check and  
21 blank and not have to write it in. Here is  
22 what we will send back if you want to look at  
23 it, (counsel review). Any objections to  
24 that?

25 MR. WARDER: No, sir.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

605

1 THE COURT: We didn't catch that.  
2 Should have had something for them to check,  
3 so we will send this back. Luckily, our  
4 foreperson is smarter than we are. Any  
5 objection from the State?

6 SOLICITOR JONES: Nothing from the  
7 State, Your Honor.

8 THE COURT: Anything from  
9 Defendant Riden. I know it doesn't affect  
10 you.

11 MS. HORLBECK: No objection.

12 THE COURT: Defendant Hendrix?

13 MR. WARDER: No objection.

14 THE COURT: All right. Send this  
15 back and tell them this is the final.

16 COURT REPORTER: You want me to  
17 mark this?

18 THE COURT: Yes.

19 COURT REPORTER: The prior note was  
20 Court's Exhibit 5.

21 (SO ENTERED AS COURT'S EXHIBIT 5)

22 COURT REPORTER: This is Court's  
23 Exhibit 6.

24 (SO ENTERED AS COURT'S EXHIBIT 6)

25 THE COURT: All right. We'll be

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

606

1 at ease until we hear from the jury.

2 (COURT IN RECESS)

3 (JURY NOTIFICATION @ 6:25 P.M.)

4 (DEFENDANT RIDEN PRESENT)

5 (DEFENDANT HENDRIX PRESENT)

6 THE COURT: All right. It's my  
7 understanding we have a verdict. All right.  
8 We're going to bring the jury out.

9 Again, I want to caution everyone to  
10 just remain seated at this point. I don't  
11 want any outburst. We have deputies here  
12 that will take anybody out that gets  
13 disruptive. This is not the time. This has  
14 been a very difficult for all sides. So I  
15 would ask that everybody keep their  
16 composure.

17 (JURY IN @ 6:25 P.M.)

18 THE COURT: Mr. Foreman, I under-  
19 stand you've reached a verdict?

20 FOREPERSON: Yes, sir.

21 THE COURT: If you'll hand it to  
22 the clerk for his review.

23 FOREPERSON: (Tenders).

24 CLERK: (Tenders verdict form to  
25 the judge)

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
JURY IN DELIBERATION

607

1  
2 THE COURT: (Upon review). All right.  
3 Publish the verdict.

4 CLERK: This is the State of South  
5 Carolina versus Stacy Carol Riden, indictment  
6 numbers 2015-GS-39-223, 224, 225, and 226.

7 As to the charge of first degree  
8 criminal sexual conduct with a minor, <sup>Minor 3</sup>,  
9 indictment number 2015-GS-39-0224, (reading):  
10 "We, the jury, unanimously find the  
11 Defendant, Stacy Carol Riden, guilty of first  
12 degree criminal sexual conduct with a minor.  
13 We, the jury, unanimously do find the  
14 Defendant committed the following acts upon  
15 <sup>Minor 3</sup> *Fellatio*."

16 As to the charge of first degree  
17 criminal sexual conduct with a minor, <sup>Minor 1</sup>  
18 indictment number 2015-GS-39-225, (reading):  
19 "We, the jury, unanimously find the  
20 Defendant, Stacy Carol Riden, guilty first  
21 degree criminal sexual conduct with a minor.  
22 We, the jury, unanimously find that the  
23 Defendant committed the following acts upon  
24 <sup>Minor 1</sup>: *Cunnilingus* and any intrusion however  
25 slight into any part of her genitals or her

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
VERDICTS

608

1        *anal openings or any object being inserted*  
2        *into her genital or anal openings."*

3                As to the charge of third degree  
4        criminal sexual conduct with a minor, <sup>Minor 2</sup>  
5        Indictment number 2015-GS-39-226, (reading):  
6        "We, the jury, unanimously find the  
7        Defendant, Stacy Carol Riden, guilty of third  
8        degree criminal sexual conduct with a minor."

9                As to the charge of unlawful conduct  
10       towards a child, indictment number 2015-GS-  
11       39-223, (reading): "We, the jury,  
12       unanimously find the Defendant, Stacy Carol  
13       Riden, guilty of unlawful conduct towards a  
14       child."

15               This is the State of South Carolina  
16       versus Aaron Van Hendrix.

17               As to the charge of first degree  
18       criminal sexual conduct with a minor, <sup>Minor 3</sup>  
19       Indictment number 2015-GS-39-22, (reading):  
20       "We, the jury, unanimously find the  
21       Defendant, Aaron Van Hendrix, guilty first  
22       degree criminal sexual conduct with a minor.  
23       We, the jury, unanimously do find the  
24       Defendant committed the following acts upon  
25       <sup>Minor 3</sup> *Fellatio and any intrusion however*

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
VERDICTS

609

1       *slight into any part of his genital or anal*  
2       *openings or any object being inserted into*  
3       *his genital or anal openings."*

4               As to the charge of first degree  
5       criminal sexual conduct with a minor, <sup>Minor 1</sup>  
6       indictment number 2015-GS-39-227, (reading):  
7       *"We, the jury, unanimously find the*  
8       *Defendant, Aaron Van Hendrix, guilty of first*  
9       *degree criminal sexual conduct with a minor.*  
10       *We the jury unanimously do find the Defendant*  
11       *committed the following acts upon* <sup>Minor 1</sup>;  
12       *Cunnilingus and any intrusion however slight*  
13       *into any part of her genital or anal openings*  
14       *or any object being inserted into her genital*  
15       *or anal openings."*

16               As to the charge of third degree  
17       criminal sexual conduct with a minor, <sup>Minor 2</sup>  
18       indictment number 2015-GS-39-228, (reading):  
19       *"We, the jury, unanimously find the Defendant*  
20       *Aaron Hendrix guilty."*

21               Is this your verdicts and still your  
22       verdicts so say you all by raising your right  
23       hands.

24               (JURORS UNANIMOUS AFFIRMATIVE RESPONSE)

25               CLERK:   Thank you very much.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016

610

## VERDICTS

1 THE COURT: All right. Anything  
2 else from the jury from the State?

3 SOLICITOR JONES: Nothing from the  
4 State, Your Honor.

5 THE COURT: Anything from  
6 Defendant Hendrix?

7 MR. WARDER: No, Your Honor.

8 THE COURT: Anything on behalf of  
9 Defendant Riden?

10 MS. HORLBECK: No, Your Honor.

11 THE COURT: All right. Ladies and  
12 gentlemen, thank you for your service. I  
13 know this was very difficult trial. Y'all  
14 spent a lot of time listening to the evidence  
15 and I do appreciate that.

16 At this time I'm going to ask that  
17 you go back to your jury room. And you're  
18 free to go. If anybody would like to stay  
19 around or have any questions of me, I'd be  
20 glad to answer anything you have.

21 (JURY DISMISSED @ 6:30 P.M.)

22 THE COURT: Let me just step back  
23 here with the jury right quick. Have you got  
24 the sentencing sheets ready?

25 SOLICITOR JONES: Yes, sir, Your

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
VERDICTS

611

1 Honor.

2 (JURY RELEASED)

3 (DEFENDANT RIDEN PRESENT)

4 (DEFENDANT HENDRIX PRESENT)

5 THE COURT: All right. Are we  
6 ready for sentencing everyone, on behalf of  
7 the State?

8 SOLICITOR JONES: The State's ready,  
9 Your Honor.

10 THE COURT: Defendants, would  
11 y'all come forward.

12 (DEFENDANT RIDEN AND COUNSEL APPROACH)

13 (DEFENDANT HENDRIX AND COUNSEL APPROACH)

14 THE COURT: All right. I'll be  
15 glad to hear from you?

16 MS. HORLBECK: Judge, I don't  
17 have a lot to add. I think you've gotten a  
18 good sense of the facts and we've heard from  
19 the jury. We just ask that the Court  
20 consider the minimum in this case.

21 THE COURT: All right. Anything  
22 on the State on behalf of Ms. Riden?

23 SOLICITOR JONES: Your Honor, Ms.  
24 Riden has one pending charge with our office.  
25 That would be it as to her actual record.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
VERDICTS

612

1  
2 But I would ask that the sentence reflect  
3 that the children need substantial time to go  
4 through their adolescence and through their  
5 adulthood without having to worry about Ms.  
6 Riden being in public and to send a message  
7 to the children that what happened to them is  
8 unacceptable in this community and that she  
9 will be punished for it.

10 And at the appropriate time, Ms.  
11 Roper would like to read something on --  
12 would like to speak on behalf of the victims.

13 THE COURT: Yeah. Let me hear  
14 from both of them, then I'll hear from them  
15 on behalf of the victims.

16 SOLICITOR JONES: Yes, sir.

17 THE COURT: All right. Mr.  
18 Warder, I'll be glad to hear from you on  
19 behalf of your client.

20 Again, I'm sorry. I'll be glad to  
21 listen to Ms. Riden too.

22 MS. HORLBECK: Judge, I would add  
23 a little bit more about her work history.  
24 She had a long, long career at McDonald's.  
25 She worked her way up. Started off at the

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
IMPOSITION OF SENTENCES

613

1 bottom. And then she was a department  
2 manager. She worked for them for -- it was  
3 over a decade, I believe -- and did quite  
4 well. After that job ended she worked for a  
5 short time for Jardon Plastics. I think they  
6 had to let her go. She worked for them  
7 through a temp agency. And the temp agency  
8 let her go because of these charges that were  
9 pending. But we just ask Your Honor to take  
10 that into consideration as well.

11 THE COURT: All right. Mr.  
12 Warder.

13 MR. WARDER: Your Honor, my client  
14 had no criminal record at this time, Your  
15 Honor. He's worked most of his life. He's,  
16 in many respects, you know, a fine young man.  
17 This case has obviously been a big blemish  
18 upon his record and the jury has found him  
19 guilty now. And if you gave him the minimum,  
20 it's a substantial sentence. Eighty-five  
21 percent carries with it, of course. Plus all  
22 of the other, registration factors and GPS

23 THE COURT: All right. Mr.  
24 Hendrix, I'll be glad to hear from you?

25 MR. WARDER: Nothing at this time,

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
IMPOSITION OF SENTENCES

614

1 Your Honor.

2 THE COURT: All right. I'll be  
3 glad to hear form the victim advocate.

4 MS. ROPER: Your Honor, the  
5 victims' family has asked me to address the  
6 Court on their behalf and on behalf of  
7 Minor 1 , Minor 3 and Minor 2.

8 Your Honor, they would just respect-  
9 fully ask that Your Honor sentence the  
10 defendants to the maximum amount of time  
11 possible. These victims will live with the  
12 actions of these Defendants and the removal  
13 of their innocence for the rest of their  
14 lives. Thank you.

15 THE COURT: All right. Anything  
16 else from anybody?

17 SOLICITOR JONES: Nothing from the  
18 State, Your Honor.

19 MS. HORLBECK: No, Your Honor.

20 MR. WARDER: No, sir.

21 THE COURT: And we would go on the  
22 record. On behalf of Ms. Riden and Mr.  
23 Hendrix, as I'm sure your attorneys have told  
24 you, that you have ten days in which to  
25 appeal this verdict or this sentence. Just

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al*-and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
IMPOSITION OF SENTENCES

615

1 to make sure that we have that on the record.

2 All right. As to Stacy Riden, 2015-  
3 225, criminal sexual conduct first degree.  
4 The sentence of the Court is committed to the  
5 State Department of Corrections for twenty-  
6 five (25) years.

7 On the 2015-224, that is that you  
8 also committed to the State Department of  
9 Corrections for a term of twenty-five (25)  
10 years. That's to run concurrent.

11 On 2015-226, that's criminal sexual  
12 conduct third degree, that you will be  
13 committed to the State Department of  
14 Corrections for fifteen (15) years, to run  
15 concurrent.

16 Also all those will be on the  
17 registry.

18 As to unlawful neglect of child,  
19 that's 2015-223, that's ten (10) years, to be  
20 consecutive.

21 A total of thirty-five years.

22 On Aaron Hendrix, 2015-229, criminal  
23 sexual conduct first degree. The Defendant  
24 shall be committed to the Department of  
25 Corrections for twenty-five (25) years.

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
IMPOSITION OF SENTENCES

616

1 Sexual registry. Will have credit for the  
2 time served up to this point.

3 On 2015-227, that's a criminal  
4 sexual conduct first degree. That's twenty-  
5 five (25) years to run concurrent.

6 And on 2015-228, criminal sexual  
7 conduct third degree. The sentence of the  
8 Court is committed to the Department of  
9 Corrections for twelve (12) years and that's  
10 to be consecutive.

11 Good luck to you.

12 (TRANSCRIPT CONCLUDED)  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

State v. Aaron Hendrix and Stacy Riden  
Case No. 15-GS-39-0227 *et al* -and- 15-GS-39-0223 *et al*  
Jury Trial of January 25-28, 2016  
CERTIFICATE OF COURT REPORTER

617

STATE OF SOUTH CAROLINA        )  
                                                      )     CERTIFICATE  
COUNTY OF GREENVILLE        )

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13<sup>th</sup> Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the jury trial held in the within action heard on January 25-28, 2016, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Greenville, South Carolina  
March 31, 2016

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

AARON VAN HENDRIX,

APPELLANT

APPELLATE CASE NO 2016-000208

\_\_\_\_\_  
FINAL BRIEF OF APPELLANT  
\_\_\_\_\_

**RECEIVED**  
JAN 24 2018  
SC Court of Appeals

DAVID ALEXANDER  
Appellate Defender

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

ATTORNEY FOR APPELLANT

## TABLE OF CONTENTS

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF CONTENTS.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | i  |
| TABLE OF AUTHORITIES .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | ii |
| STATEMENT OF ISSUE ON APPEAL.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 1  |
| STATEMENT OF THE CASE.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 2  |
| ARGUMENT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |    |
| The trial court erred in granting the State's request, over<br>appellant's objection, to redact portions of the children's forensic<br>interviews where they alleged their father and his girlfriend were<br>present during sexual abuse, participated in the sexual abuse, and<br>were told about the sexual abuse where this evidence was relevant<br>as it tended to disprove the children's claims because the father<br>testified in appellant's case that if he had known about any abuse,<br>the defendants "would not be here. They would be dead," and its<br>removal violated the rule of completeness..... | 3  |
| CONCLUSION.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 9  |

**TABLE OF AUTHORITIES****Cases**

|                                                                         |   |
|-------------------------------------------------------------------------|---|
| <u>State v. Cabrera-Pena</u> , 361 S.C. 372, 605 S.E.2d 522 (2004)..... | 8 |
| <u>State v. Stukes</u> , 416 S.C. 493, 787 S.E.2d 480 (2016).....       | 7 |

**Rules**

|                     |      |
|---------------------|------|
| Rule 106, SCRE..... | 7, 8 |
| Rule 401, SCRE..... | 7    |

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in granting the State's request, over appellant's objection, to redact portions of the children's forensic interviews where they alleged their father and his girlfriend were present during sexual abuse, participated in the sexual abuse, and were told about the sexual abuse where this evidence was relevant as it tended to disprove the children's claims because the father testified in appellant's case that if he had known about any abuse, the defendants "would not be here. They would be dead" and its removal violated the rule of completeness?

**STATEMENT OF THE CASE**

On June 9, 2015, appellant was indicted in Pickens County for two charges of first degree criminal sexual conduct with a minor and one charge of third degree criminal sexual conduct with a minor. R. 573 – 578. On January 25, 2016, appellant was tried along with his co-defendant, Stacy Carol Riden, before the Honorable Perry H. Gravely and a jury. R. 1. Christopher Jones represented the State. R. 1. Richard Warder represented appellant. R. 1. Caroline Horlbeck represented the co-defendant. R. 1. The jury convicted appellant. R. 556, l. 15 – 557, l. 20. Judge Gravely sentenced appellant to concurrent terms of twenty-five years' imprisonment on the first degree CSC charges and a consecutive term of twelve years' imprisonment on the third degree CSC charge. R. 563, l. 22 – 564, l. 10. This appeal follows.

### ARGUMENT

The trial court erred in granting the State's request, over appellant's objection, to redact portions of the children's forensic interviews where they alleged their father and his girlfriend were present during sexual abuse, participated in the sexual abuse, and were told about the sexual abuse where this evidence was relevant as it tended to disprove the children's claims because the father testified in appellant's case that if he had known about any abuse, the defendants "would not be here. They would be dead," and its removal violated the rule of completeness.

In this child sex case, the State's case rested primarily upon the complainants' allegations in their forensic interviews. (State's Ex. 1-4). The children's testimony was summary and brief and the State relied on the forensic interviews for the details of the abuse. Three children, a brother and two sisters, alleged that appellant and his co-defendant, Stacy Riden ("Riden") molested them, often with both participating in the abuse at the same time. R. 141, l. 23 – 206, l. 14. The children were very young at the time of trial: the brother was nine; the older sister was nine; the younger sister was five. R. 142, ll. 5 – 7. R. 168, ll. 7 – 10. R. 195, ll. 21 – 22.

Appellant testified in his own defense and vigorously denied molesting Riden's children. R. 443, l. 13 – 446, l. 6. Appellant was Riden's boyfriend and he moved in with her and her children. R. 442, ll. 15 – 443, l. 16. Appellant lived at Riden's house from January or February 2012 until December 2012. R. 444, l. 19 – 445, l. 2. Appellant moved out because he and Riden "had come to a mutual agreement that it was not working for us." R. 447, ll. 1 – 5. Appellant remembered that the house always had food and power and the utilities were always on. R. 447, l. 17 – 448, l. 2. He did not know if anyone else moved in with Riden after he moved out. R. 448, ll. 3 – 6.

The children's biological father, Mark Lusk ("Lusk"), would sometimes stay at the apartment when appellant lived there. R. 449, ll. 2 – 6. Riden's sister, Jessie, would also stay at the house when she and her boyfriend fought. R. 449, ll. 7 – 15. The solicitor asked appellant if he told the police that "Jessie was kind of crazy." R. 449, ll. 21 – 23. Appellant responded, "To put it lightly, yes." R. 449, ll. 21 – 23. Appellant also told the police that another of Riden's sisters, Jennifer, would "bring guys" to Riden's house. R. 450, ll. 10 – 14.

Riden did not show up for the first day of the trial. R. 401, ll. 10 – 16. She denied that appellant ever molested her children. R. 418, ll. 17 – 419, l. 13. She admitted that after she and appellant broke up her life went "downhill." R. 419, ll. 14 – 16. She began using drugs. R. 419, ll. 17 – 19. Lusk stayed with Riden after appellant left and brought his girlfriend and her two children. R. 420, ll. 8 – 15. Lusk's brother would also come over to Riden's house while she was at work. R. 420, l. 23 – 421, l. 8.

In the videos, the children described various sexual acts, including both Riden and appellant performing oral sex and forcing the children to perform oral sex on them. (State's Ex. 1-4). The children also said that their father and Jennifer witnessed and participated in the abuse. (State's Ex. 1-4). After completing the forensic interviews, their grandparents took them to Disneyworld. R. 162, ll. 12 – 21.

The videos were redacted on the motion of both the co-defendant and the solicitor. R. 92, l. 17 – 114, l. 7. Near the end of the colloquy with the trial judge about the redactions, the solicitor asked that portions of the videos where the children discuss their father's role in the abuse be redacted. R. 111, ll. 3 – 20. The solicitor cited no legal theory to support the redaction of this information. R. 111, ll. 3 – 20. The trial judge said, "Oh, okay. Yeah. I think that would be appropriate to redact back." R. 111, ll. 21 – 23.

Appellant objected. R. 111, l. 24 – 112, l. 5. Appellant argued that what the children claimed about their father was relevant to his defense. R. 111, l. 24 – 112, l. 5. Trial counsel stated, “And I guess when they ask is the father there, you know, the child says the father is there. The father is going to testify he was not there.” R. 112, ll. 1 – 5. The judge originally stated that “Anything to where the children said when something was going on father was there and mother was there” would be allowed because it was relevant to a charge of unlawful neglect against Riden. R. 112, ll. 6 – 12. The judge then ruled that “just general stuff about the father, I don’t think that would be appropriate on these videos.” R. 112, ll. 13 – 15.

The State originally intended to electronically redact the videos. R. 316, ll. 2 – 13. The electronic redaction did not work. R. 316, ll. 2 – 13. The solicitor was forced to manually stop and start the video. R. 316, ll. 2 – 13. Appellate counsel for both appellant and the State contacted the solicitor concerning what portions were redacted from the video and he provided an affidavit which the parties have agreed shows the times of the videos that were redacted. R. 567 – 573. The entire unredacted videos were admitted into evidence in the trial and have been transported to this Court.

The redacted portions of the videos contain allegations that the father, Jennifer, and Jessie were all aware of the abuse. (State’s Ex. 2, 4). In the sister’s video dated April 11, she states that Lusk was present on an occasion when the abuse occurred, but appellant and Riden quickly put on their clothes to keep them from knowing. (State’s Ex. 2, between 25:30 and 28:38). The children told their father, but he did nothing. (State’s Ex. 2, between 25:30 and 28:38). The sister also told the interviewer that Lusk and Jennifer saw appellant and Riden abuse the children. (State’s Ex. 2, between 34:57 and 39:10). Lusk and Jennifer sat on the couch and laughed while appellant and Riden molested them. (State’s Ex. 2, between 34:57 and 39:10).

The father and Jennifer also began abusing the children because they thought it was funny to copy appellant and Riden. (State's Ex. 2, between 34:57 and 39:10). The forensic interviewer asked the sister why she did not report the father's abuse in an earlier interview and the child said she forgot. (State's Ex. 2, between 34:57 and 39:10). The child said Riden was also touching the children with the father and they thought it was funny. (State's Ex. 2, between 45:35 and 45:53).

In the redacted portions of the brother's forensic interview, the interviewer asks if the father was there during the abuse and the child says he was standing there watching. (State's Ex. 4, between 49:25 and 52:40). The father did not participate in the abuse, but watched and laughed. (State's Ex. 4, between 49:25 and 52:40). Jessie also witnessed appellant and Riden abuse the children. (State's Ex. 4, between 49:25 and 52:40). The father witnessed more than one instance of abuse. (State's Ex. 4, between 49:25 and 52:40).

Appellant called the father, Mark Lusk, as his first witness. R. 424, ll. 4 – 5. Lusk testified that he never saw any abuse at Riden's house. R. 426, ll. 9 – 11. Lusk found a drug needle at Riden's house after appellant moved. R. 426, l. 12 – 427, l. 9. He never saw appellant use drugs. R. 427, ll. 13 – 16. After appellant moved out, Lusk said the conditions in the house went "Downhill." R. 427, l. 17 – 21. The power and water were turned off, there was not much food in the house, and the "furniture was just piled in the living room." R. 428, ll. 1 – 6. Lusk asked Riden's mother to take the children. R. 428, ll. 7 – 22. When Riden's attorney asked whether Lusk and appellant were on such good terms that they would get into bed together, Lusk replied "Hell no. Excuse my language but, no." R. 436, ll. 9 – 12. Lusk emphatically testified about what would have happened if he had known or seen any abuse of his children: "They would not be here. They would be dead." R. 429, ll. 5 – 8.

The court erred in excluding the portions of the video in which the children claim the father was involved in the abuse. The children's claims were relevant, and therefore admissible. Rule 401, SCRE. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. The fantastic claim that Lusk participated and watched the abuse of his children by another man made the children's allegations less credible. Furthermore, the children's claims made the father an important witness. Whether he witnessed the abuse was at issue in this trial and the jury was entitled to compare the credibility of Lusk against the children's allegations. Because appellant testified and denied the abuse, the children's credibility was the central matter in the trial. State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) (reversing in a sex case because it "hinged on credibility").

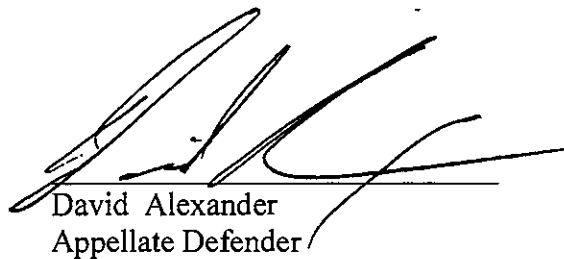
The children also contradicted their interviews in their trial testimony. The brother said, "I don't think so," when he was asked if his father was present when the abuse occurred. R. 165, ll. 5 – 11. He denied that his father was present and laughing during the abuse. R. 165, ll. 14 – 19. When the older sister was asked if her father was there, she replied, "He was but he didn't see this ever happen." R. 185, ll. 8 – 14. She also denied that her father brought his girlfriend to the house. R. 186, ll. 6 – 8. The children's contradictory statements on the videos certainly would have affected their credibility.

Furthermore, excluding these portions of the videos violates the rule of completeness and impaired appellant's defense. Rule 106, SCRE. "When a writing, or recorded statement, or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered

contemporaneously with it.” Rule 106, SCRE. See also State v. Cabrera-Pena, 361 S.C. 372, 605 S.E.2d 522 (2004). The Court in Cabrera-Pena ruled that the exclusion of favorable portions of a defendant’s recorded statement when unfavorable portions were admitted violated “fundamental fairness.” Id. at 379, 605 S.E.2d at 525. The same reasoning applies to appellant’s case. The redaction of the children’s more fantastic claims—that essentially their mother, father, mother’s boyfriend, and father’s girlfriend all participated in sex acts with these children at the same time—rendered the children’s remaining claims more believable. This Court should reverse.

**CONCLUSION**

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.



David Alexander  
Appellate Defender

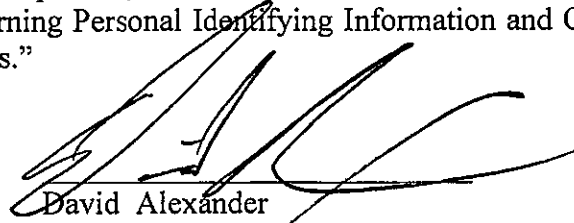
ATTORNEY FOR APPELLANT

This 24th day of January, 2018.

**CERTIFICATE OF COUNSEL**

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 24, 2018.



David Alexander  
Appellate Defender

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

ATTORNEY FOR APPELLANT

**RECEIVED**

JAN 24 2018

SC Court of Appeals

**ORIGINAL**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Pickens County  
Honorable Perry H. Gravely, Circuit Court Judge  
Appellate Case No. 2016-000208

---

**RECEIVED**  
JAN 22 2018  
SC Court of Appeals

THE STATE,

Respondent,

vs.

AARON VAN HENDRIX,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

---

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Assistant Attorney General

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

WILLIAM W. WILKINS, III  
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325  
Greenville County Courthouse  
Greenville, SC 29601  
(864) 467-8282

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Pickens County  
Honorable Perry H. Gravely, Circuit Court Judge  
Appellate Case No. 2016-000208

---

THE STATE,

Respondent,

vs.

AARON VAN HENDRIX,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

---

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Assistant Attorney General

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

WILLIAM W. WILKINS, III  
Solicitor, Thirteenth Judicial Circuit

305 East North Street, Suite 325  
Greenville County Courthouse  
Greenville, SC 29601  
(864) 467-8282

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

|                                                                                                                                                                                                                                                                                                                                                                                                                                                 |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES .....                                                                                                                                                                                                                                                                                                                                                                                                                      | ii |
| STATEMENT OF ISSUE ON APPEAL.....                                                                                                                                                                                                                                                                                                                                                                                                               | 1  |
| STATEMENT OF THE CASE.....                                                                                                                                                                                                                                                                                                                                                                                                                      | 2  |
| STATEMENT OF FACTS .....                                                                                                                                                                                                                                                                                                                                                                                                                        | 3  |
| ARGUMENT.....                                                                                                                                                                                                                                                                                                                                                                                                                                   | 14 |
| Appellant's appellate challenge to the trial judge's decisions<br>regarding the redaction of the forensic interview recordings was<br>not properly preserved for appellate review because the specific<br>arguments Appellant is currently asserting on appeal were never<br>presented to or ruled upon by the trial judge and are vastly<br>different from the arguments and statements actually made by<br>defense counsel during trial. .... | 14 |
| CONCLUSION.....                                                                                                                                                                                                                                                                                                                                                                                                                                 | 22 |

## TABLE OF AUTHORITIES

### Cases:

|                                                                                          |        |
|------------------------------------------------------------------------------------------|--------|
| <u>Duncan v. State</u> , 281 S.C. 435, 315 S.E.2d 809 (1984). .....                      | 21     |
| <u>Ex parte McMillan</u> , 319 S.C. 331, 461 S.E.2d 43 (1995). .....                     | 19     |
| <u>Gaddy v. Douglass</u> , 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004). .....            | 16     |
| <u>I'On, L.L.C. v. Town of Mt. Pleasant</u> , 338 S.C. 406, 526 S.E.2d 716 (2000). ..... | 16, 20 |
| <u>In re Walter M.</u> , 386 S.C. 387, 688 S.E.2d 133 (Ct. App. 2009). .....             | 20     |
| <u>State v. Adams</u> , 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). .....              | 17, 20 |
| <u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006). .....                       | 15     |
| <u>State v. Bailey</u> , 298 S.C. 1, 377 S.E.2d 581 (1989). .....                        | 17     |
| <u>State v. Benton</u> , 338 S.C. 151, 526 S.E.2d 228 (2000). .....                      | 20     |
| <u>State v. Bixby</u> , 388 S.C. 528, 698 S.E.2d 572 (2010). .....                       | 15     |
| <u>State v. Dunbar</u> , 356 S.C. 138, 587 S.E.2d 691 (2003). .....                      | 17     |
| <u>State v. Fleming</u> , 254 S.C. 415, 175 S.E.2d 624 (1970). .....                     | 17     |
| <u>State v. Freiburger</u> , 366 S.C. 125, 620 S.E.2d 737 (2005). .....                  | 16     |
| <u>State v. Gaster</u> , 349 S.C. 545, 564 S.E.2d 87 (2002). .....                       | 15     |
| <u>State v. Gee</u> , 262 S.C. 373, 204 S.E.2d 727 (1974). .....                         | 21     |
| <u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005). .....                       | 21     |
| <u>State v. Gulledge</u> , 321 S.C. 399, 468 S.E.2d 665 (Ct. App. 1996). .....           | 20     |
| <u>State v. Gunn</u> , 313 S.C. 124, 437 S.E.2d 75 (1993). .....                         | 21     |
| <u>State v. Hamilton</u> , 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001). .....           | 21     |
| <u>State v. Head</u> , 330 S.C. 79, 498 S.E.2d 389 (Ct. App. 1997). .....                | 20     |
| <u>State v. Johnson</u> , 363 S.C. 53, 609 S.E.2d 520 (2005). .....                      | 16     |

|                                                                                                                               |        |
|-------------------------------------------------------------------------------------------------------------------------------|--------|
| <u>State v. Kelley</u> , 319 S.C. 173, 460 S.E.2d 368 (1995). .....                                                           | 15     |
| <u>State v. McDonald</u> , 343 S.C. 319, 540 S.E.2d 464 (2000). .....                                                         | 15     |
| <u>State v. Morris</u> , 307 S.C. 480, 415 S.E.2d 819 (Ct. App. 1991). .....                                                  | 17     |
| <u>State v. Oglesby</u> , 384 S.C. 289, 681 S.E.2d 620 (Ct. App. 2009). .....                                                 | 21     |
| <u>State v. Parris</u> , 387 S.C. 460, 692 S.E.2d 207 (Ct. App. 2010). .....                                                  | 19     |
| <u>State v. Patterson</u> , 324 S.C. 5, 482 S.E.2d 760 (1997). .....                                                          | 17     |
| <u>State v. Prioleau</u> , 345 S.C. 404, 548 S.E.2d 213 (2001). .....                                                         | 16     |
| <u>State v. Rogers</u> , 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004). .....                                                  | 16     |
| <u>State v. Sampson</u> , 317 S.C. 423, 454 S.E.2d 721 (Ct. App. 1995). .....                                                 | 18     |
| <u>State v. Sheppard</u> , 391 S.C. 415, 706 S.E.2d 16 (2011). .....                                                          | 20     |
| <u>State v. Sinclair</u> , 275 S.C. 608, 274 S.E.2d 411 (1981). .....                                                         | 21     |
| <u>State v. Stokes</u> , 345 S.C. 368, 548 S.E.2d 202 (2001). .....                                                           | 22     |
| <u>State v. Stone</u> , 376 S.C. 32, 655 S.E.2d 487 (2007). .....                                                             | 21     |
| <u>State v. Thomason</u> , 355 S.C. 278, 584 S.E.2d 143 (Ct. App. 2003). .....                                                | 17     |
| <u>State v. Torres</u> , 390 S.C. 618, 703 S.E.2d 226 (2010). .....                                                           | 15     |
| <u>State v. Wiles</u> , 383 S.C. 151, 679 S.E.2d 172 (2009). .....                                                            | 21     |
| <u>State v. Williams</u> , 409 S.C. 455, 761 S.E.2d 770 (Ct. App. 2014). .....                                                | 21     |
| <u>Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.</u> , 368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006). ..... | 16, 19 |

**Other Authorities:**

|                                                                                    |    |
|------------------------------------------------------------------------------------|----|
| JEAN HOFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA (3rd ed. 2016). ..... | 16 |
|------------------------------------------------------------------------------------|----|

**STATEMENT OF ISSUE ON APPEAL**

Appellant's appellate challenge to the trial judge's decisions regarding the redaction of the forensic interview recordings was not properly preserved for appellate review because the specific arguments Appellant is currently asserting on appeal were never presented to or ruled upon by the trial judge and are vastly different from the arguments and statements actually made by defense counsel during trial.

### STATEMENT OF THE CASE

In May of 2014, Appellant Aaron Van Hendrix was arrested following an investigation into allegations he and an accomplice sexually abused the accomplice's three minor children. In June of 2015, the Pickens County Grand Jury indicted Appellant for two counts of first-degree criminal sexual conduct with a minor and one count of third-degree criminal sexual conduct with a minor. On January 25, 2016, a jury trial was commenced in the Pickens County Court of General Sessions with the Honorable Perry H. Gravely, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor along with a consecutive term of imprisonment of twelve years for third-degree criminal sexual conduct with a minor. Appellant then filed a timely notice of appeal.<sup>1</sup>

---

<sup>1</sup> Appellant's accomplice, Stacy Carol Riden, was indicted for two counts of first-degree criminal sexual conduct with a minor, one count of third-degree criminal sexual conduct with a minor, and one count of unlawful conduct towards a child, and Riden, who was not initially present for trial, was tried together with Appellant. Like Appellant, Riden was convicted as indicted, and the trial judge sentenced Riden to concurrent terms of imprisonment of twenty-five years for each count of first-degree criminal sexual conduct with a minor and fifteen years for third-degree criminal sexual conduct with a minor along with a consecutive term of imprisonment of ten years for unlawful conduct towards a minor.

### STATEMENT OF FACTS

On December 29, 2013, Deputy Adam McJunkin of the Pickens County Sheriff's Office travelled to the residence of Mark and Lisa Riden ("Grandfather" and "Grandmother") in response to allegations the couple's three minor grandchildren had been sexually abused by Stacy Carol Riden, who was the children's biological mother, and Appellant Aaron Van Hendrix, who was Riden's former live-in boyfriend.<sup>2</sup> (R. pp. 143-145; pp. 169-170; p. 174; p. 197; p. 202; pp. 207-208; p. 240; p. 384). At that time, the children – a seven-year-old boy ("Victim 1"), the boy's seven-year-old twin sister ("Victim 2"), and the twins' three-year-old younger sister ("Victim 3") – were living at their grandparents' residence and had been residing there for approximately eight or nine months, but they had previously resided with Appellant and Riden at a mobile home located in Easley, South Carolina. (R. pp. 142-144; pp. 154-155; p. 169; p. 175; p. 177; pp. 195-196; pp. 201-203; p. 211; p. 261; p. 383; p. 392; p. 396; p. 460).

After the allegations arose, Investigator Marvin Nix of the Pickens County Sheriff's Office began an investigation into the reported sexual abuse and referred the children to the Julie Valentine Center, a child abuse and sexual assault recovery center, for forensic interviews. (R. pp. 237-238; pp. 240-241; p. 255; p. 260; p. 298). Following the referral, Shauna Galloway-Williams, the executive director of the Julie Valentine Center, interviewed Victim 2 in February of 2014. (R. p. 50; p. 301). During the interview, Victim 2 indicated she previously lived with Appellant and Riden and asserted Riden physically abused her and did other "bad stuff" during that time. (State's Ex. # 1 (Victim 2's First Interview Recording)). Specifically, regarding the other "bad stuff," Victim 2 recounted Riden held her down by her hair while Appellant rubbed and digitally penetrated her vagina over her clothing in front of Victim 1 and Victim 3. (State's

---

<sup>2</sup> Grandmother was the children's step-grandmother while Grandfather was the children's maternal grandfather. (R. p. 239; p. 459).

Ex. # 1). Additionally, Victim 2 stated Appellant and Riden regularly talked about sex in front of them, watched pornographic movies, engaged in sex acts in front of her, took a lot of pills and “medicine,” and pulled her into the shower on one occasion while they were using it together. (State’s Ex. # 1). Furthermore, she indicated Riden told her not to reveal the abuse, and she noted Appellant sometimes wore Riden’s clothing and used her nail polish. (State’s Ex. # 1).

Thereafter, in March of 2014, Galloway-Williams interviewed Victim 1 and Victim 3. (R. p. 50; p. 201). During Victim 1’s interview, Victim 1 stated Appellant and Riden did bad things to him and his siblings. (State’s Ex. # 3 (Victim 1’s First Interview Recording)). Specifically, Victim 1 recounted Appellant rubbed and poked his “privates,” touched him underneath his clothing, and tried to make him touch his “privates” on multiple occasions, and he indicated Riden rubbed and poked his privates as well. (State’s Ex. # 3). He also stated Riden held both him and Victim 2 down while Appellant sexually abused them, and he indicated his father observed the abuse once. (State’s Ex. # 3). Additionally, he recounted Riden was physically abusive towards him along with Appellant, and he indicated Riden sometimes forced them to watch a pornographic movie. (State’s Ex. # 3). Furthermore, Victim 1 indicated Appellant and Riden threatened to kill them if they revealed the sexual abuse. (State’s Ex. # 3). Similarly, during Victim 3’s interview, Victim 3 recounted Appellant touched her “down there” and made her touch him “down there” in Riden’s presence. (State’s Ex. # 5 (Victim 3’s Interview Recording)). Additionally, she vacillated somewhat on whether Riden inappropriately touched her but indicated she thought she did. (State’s Ex. # 5). Victim 3 also stated she observed Riden hold Victim 1 down so Appellant could touch his groin area. (State’s Ex. # 5).

Following the interviews, Dr. Mary Croswell, a medical doctor and an expert in child abuse pediatrics, conducted a physical examination of each of the children. (R. pp. 269-271; pp.

279-280). In examining Victim 1 and Victim 2, Dr. Croswell found nothing abnormal. (R. pp. 274-278; p. 281; p. 293). However, in examining Victim 3, Dr. Croswell found labial adhesions in Victim 3's vaginal area, which potentially could have resulted from non-accidental trauma but also could have resulted from accidental trauma or other causes.<sup>3</sup> (R. pp. 284-285).

Thereafter, Galloway-Williams again conducted a forensic interview of Victim 1. (R. p. 307). During the second interview, Victim 1 stated Appellant and Riden touched his and his siblings' "privates," sucked on them, licked them, and made them do reciprocal acts, and he recounted he witnessed the sexual abuse being committed upon Victim 2 and Victim 3. (State's Ex. # 4 (Victim 1's Second Interview Recording)). He further indicated Appellant and Riden put their fingers into his buttocks. (State's Ex. # 4). Additionally, he recounted he observed Appellant and Riden injecting themselves with needles, stated he observed bleeding from his siblings' "privates" after they were digitally penetrated, and again confirmed Appellant and Riden threatened to kill them if they revealed the abuse. (State's Ex. # 4). He also stated his father observed the abuse occur on some occasions but did nothing to stop it. (State's Ex. # 4). Furthermore, as to why he did not reveal all the details of the abuse during the first interview, Victim 1 indicated he failed to do so because he was scared. (State's Ex. # 4).

Likewise, Galloway-Williams also conducted a second interview of Victim 2. (R. p. 307). During that interview, Victim 2 recounted Appellant and Riden performed oral sex on her and her siblings and forced her and her siblings to perform oral sex on them. (State's Ex. # 2 (Victim 2's Second Interview Recording)). Additionally, Victim 2 indicated she and her younger sister bled from their vaginas after they were digitally penetrated, and she stated Appellant and Riden showed them pornographic movies. (State's Ex. # 2). Victim 2 further

---

<sup>3</sup> During the examination of Victim 3, Dr. Croswell also found evidence of cavities and more dental breakdown than expected for someone Victim 3's age. (R. pp. 282-284; p. 291).

revealed her father witnessed the sexual abuse without intervening, and she indicated her father and one of Appellant's sisters inappropriately touched her on one occasion. (State's Ex. # 2). Furthermore, Victim 2 stated she did not fully reveal the abuse during the first interview because she was scared and nervous. (State's Ex. # 2).

Meanwhile, Investigator Nix met with both Appellant and Riden, and he interviewed each of them in regard to the allegations of sexual abuse. (R. p. 242; p. 244; pp. 246-247). During the interview with Riden, Riden denied the allegations and indicated she was surprised by them. (R. pp. 244-245). However, she confirmed Appellant had lived with her and her children for a period of time and also noted the children's father had stayed with them sometimes. (R. pp. 245-246). Similarly, during the interview with Appellant, Appellant did not make any admissions regarding the sexual abuse. (R. pp. 247-250). However, Appellant acknowledged he wore Riden's clothing on one occasion while he was residing with her and her children for a period of time. (R. pp. 247-248; p. 250; p. 260). He further indicated the children's father stayed with them sometimes, and he stated one of Riden's sisters took her clothes off at the residence on one occasion. (R. pp. 248-249).

At the conclusion of the investigation into the sexual abuse allegations, Investigator Nix arrested both Appellant and Riden. (R. pp. 250-251; p. 259). Appellant and Riden were subsequently indicted for numerous charges, including multiple counts of criminal sexual conduct with a minor, and their cases were jointly called to trial. (R. p. 10; pp. 75-76; pp. 573-578).

At the outset of trial, defense counsel for both Riden and Appellant objected to the admission of any of the recordings of the five forensic interviews conducted of the minor victims, and testimony was presented from Galloway-Williams in order to establish the

admissibility of those recordings. (R. pp. 25-27; pp. 31-40). Following the presentation of that testimony, the trial judge indicated he would personally review the recordings. (R. p. 41). At that point, Appellant's defense counsel asserted his objection to the recordings was based on the fact the recordings – when taken together – allegedly established “things” were placed into the children's minds by their caregivers, and he contended the recordings should be found to be inadmissible as a matter of law for that reason.<sup>4</sup> (R. pp. 42-43). Riden's defense counsel then objected to the recordings as unconstitutional, violative of Riden's Sixth Amendment rights, unduly prejudicial in light of the “playful interactions” involving the children, inadmissible as impermissible hearsay, and improperly corroborative and bolstering. (R. pp. 45-47). Riden's defense counsel further argued Victim 3's recording should be excluded as insufficiently trustworthy in light of the fact Victim 3 stated she only thought the things involving Appellant happened. (R. pp. 46-47). Following those contentions, Appellant's defense counsel moved to join all Riden's defense counsel's motions and objections and further asked to be considered to have joined in all Riden's defense counsel's future motions and objections as the trial went forward unless he explicitly stated he did not wish to join in a particular one, and the trial judge indicated he had no problem with Appellant's defense counsel's request. (R. p. 56).

Thereafter, as the trial continued forward, the trial judge indicated he had reviewed the forensic interview recordings, found the recordings of Victim 1's and Victim 2's interviews satisfied the requirements for admission, and ruled the recording of Victim 3's interview was inadmissible because it allegedly lacked sufficient coherence. (R. p. 66; pp. 88-89; p. 92). The trial judge then discussed redactions that had been proposed by Riden's defense counsel with the

---

<sup>4</sup> Earlier, in objecting to the admission of any of the recordings, Appellant's defense counsel had contended the recordings were “leading and suggestive” and noted Victim 3 indicated she was unsure about whether the sexual abuse involving Riden really happened at one point during a forensic interview. (R. p. 27).

parties. (R. p. 91; pp. 565-566). During the discussion, the trial judge agreed for various portions of the recordings to be redacted, including portions containing statements related to the children's father.<sup>5</sup> (R. pp. 96-98; pp. 102-108; pp. 110-111). However, the trial judge rejected Riden's defense counsel's request for other portions to be redacted, including portions in which the children recounted they personally witnessed their siblings being abused. (R. pp. 93-94; pp. 97-101; pp. 104-110).

As the discussion regarding redactions continued, the solicitor noted the trial judge had not yet ordered a portion of the recording of Victim 2's second interview to be redacted in which Victim 2 indicated her father had touched her, and the solicitor requested for that portion of the recording to also be redacted in light of the fact the other portions related to father were being redacted at defense counsel's request. (R. p. 111). In response, the trial judge indicated he believed it "would be appropriate to redact that." (R. p. 111). At that point, Appellant's defense counsel stated: "Your Honor, part of what you're redacting about the father it seems to me is relevant to my defense. And I guess when they ask is the father there, you know, the child says the father is there. The father is going to testify he was not there." (R. pp. 111-112). The trial judge then responded:

Well, I'm going to allow anything to where the children said when something was going on father was there and mother was there because I think that goes to the unlawful neglect claim of the mother, because she didn't, you know, when he was doing things. But as far as just general stuff about the father, I don't think that would be appropriate on these videos.

---

<sup>5</sup> When the trial judge directed several portions of the recordings involving statements related to the victims' father to be redacted at Riden's defense counsel's request, defense counsel for Appellant did not raise any objections or make any other comments about the matter as he had earlier stated he would do if he did not wish to join in Riden's defense counsel's motions and objections. (R. p. 56; pp. 105-108).

(R. p. 112). Following that statement, the trial judge asked the parties if there was “[a]nything further” in regard to the recordings, and Riden’s defense counsel simply renewed her earlier objections while Appellant’s defense counsel remained silent. (R. p. 112).

Subsequently, the trial proceeded forward, and the children testified about the sexual abuse they suffered at the hands of Appellant and Riden. (R. pp. 142-206). During his testimony, Victim 1 recounted Appellant and Riden inappropriately touched his and his sisters’ “privates” and forced him to perform oral sex on them, and he indicated they threatened to kill him if he revealed the abuse. (R. pp. 144-147; p. 150). Additionally, Victim 1 recounted – during questioning from Appellant’s defense counsel – his father was sometimes present at the home he lived in during the time period in which the abuse was occurring, but Victim 1 specifically indicated he did not believe his father was actually present when the abuse occurred and was not there laughing when the abuse was happening. (R. pp. 164-165). Similarly, Victim 2 recounted Appellant and Riden touched her “privates,” made her touch their “privates,” and made her perform oral sex on them. (R. pp. 169-170). She further indicated she saw Appellant and Riden touch her siblings’ “privates,” and she stated she did not reveal the abuse because Appellant and Riden threatened her. (R. pp. 170-173). Furthermore, she indicated – during questioning from Appellant’s defense counsel – her father was sometimes present at the home she lived in at the time of the sexual abuse but never actually witnessed the sexual abuse occur. (R. pp. 173-174). Likewise, Victim 3 recounted she was inappropriately touched on a “bad place” by Appellant and Riden. (R. pp. 197-198).

Following the children’s testimony, the law enforcement officers who responded when the sexual abuse was disclosed testified about the details of their investigation and about the

statements made by both Appellant and Riden.<sup>6</sup> (R. pp. 207-211; pp. 237-266). Additionally, Dr. Croswell testified about her findings during her physical examinations of the children, and she noted it was “[q]uite rare” for physical findings to be made in child sexual abuse cases. (R. pp. 269-286; pp. 291-293). Furthermore, Galloway-Williams informed the jury she conducted forensic interviews of the children, and the recordings of the four interviews of Victim 1 and Victim 2 were admitted into evidence over objection and played for the jury with redactions. (R. pp. 298-304; pp. 306-307; p. 310). In particular, a single portion of one the recordings in which Victim 1 stated his father watched the sexual abuse occur sometimes and laughed when it happened was redacted and not shown to the jury.<sup>7</sup> (R. pp. 567-572; State’s Ex. # 4). Likewise, portions of one the recordings in which Victim 2 stated her father was informed of the sexual abuse and did nothing, her father observed the sexual abuse being committed by Appellant and Riden, and her father engaged in the sexual abuse along with Riden’s sister were redacted and were not played for the jury.<sup>8</sup> (R. pp. 567-572; State’s Ex. # 2). However, other portions of the recordings in which Victim 1 indicated his father knew about and observed the sexual abuse being committed by Appellant and Riden and did nothing to stop it were not redacted and were

---

<sup>6</sup> During Investigator Nix’s testimony, he specifically noted no one – including the victims’ father and Riden’s sisters – other than Appellant and Riden was arrested and charged in connection to the abuse of the victims. (R. pp. 259-260).

<sup>7</sup> Specifically, that portion begins approximately fifty minutes and thirty-five seconds into the recording of Victim 1’s second interview. (State’s Ex. # 4).

<sup>8</sup> Specifically, those portions begin approximately twenty-five minutes and fifty seconds, approximately forty-two minutes and fifty seconds, approximately forty-four minutes and thirty seconds, and approximately forty-five minutes and thirty-five seconds into the recording of Victim 2’s second interview. (State’s Ex. # 2). Notably, the first of those portions was redacted specifically at Riden’s defense counsel’s request, and Appellant’s defense counsel had earlier joined in all Riden’s defense counsel’s motion and objection unless expressly stated otherwise. (R. p. 56; p. 99; pp. 565-566).

played for the jury.<sup>9</sup> (R. pp. 567-572; State's Ex. # 3; State's Ex. # 4). Similarly, others portions of the recordings in which Victim 2 stated her father observed the sexual abuse being committed by Appellant and Riden and responded solely by laughing, her father was informed of the sexual abuse and did not do anything in response, her father and Riden's sister were present when she and the other victims were shown inappropriate movies, and her father sometimes slept in the same bed with Appellant and Riden were not redacted and were played for the jury.<sup>10 11</sup> (R. pp. 567-572; State's Ex. # 1; State's Ex. # 2).

Thereafter, the solicitor continued forward with the State's case and called Christine Carlberg to the witness stand. (R. p. 318). During her testimony, Carlberg – who had no contact with the victims, had not seen any recordings of the victims' statements, and had not read any statements from the victims – was qualified as an expert in child abuse dynamics. (R. pp. 328-

---

<sup>9</sup> Specifically, those portions begin approximately thirteen minutes and forty-five seconds into the recording of Victim 1's first interview and approximately twenty-five minutes and forty seconds into the recording of Victim 1's second interview. (State's Ex. # 3; State's Ex. # 4).

<sup>10</sup> Specifically, those portions begin approximately twenty minutes and forty seconds into the recording of Victim 2's first interview and approximately thirty-nine minutes and thirty seconds, approximately forty-one minutes and ten seconds, approximately forty-one minutes and forty seconds, and approximately forty-six minutes and five seconds into the recording of Victim 2's second interview. (State's Ex. # 1; State's Ex. # 2)

<sup>11</sup> After the redacted recordings were played for the jury, defense counsel for Riden noted a portion of Victim 1's second interview where the child mentioned statements made by Grandmother was supposed to have been redacted but was not. (R. p. 310). As a result, Riden's defense counsel moved for a mistrial, for the testimony to be stricken, or for a curative instruction to be given to the jury. (R. p. 310). In response, the trial judge agreed to give a curative instruction as requested but indicated he did not believe a mistrial was necessary under the circumstances. (R. p. 310). Defense counsel for Riden then noted a portion of the recording where Victim 1 discussed "horror movies" he had seen was inadvertently not played for the jury, and the trial judge indicated he would have that portion played. (R. pp. 311-312). Thereafter, the trial judge advised the jurors a portion of one of the recordings that was supposed to have been redacted was mistakenly played for them and asked them to disregard anything mentioned in the recordings in regard to what someone else said. (R. p. 316). Following those remarks, counsel for all parties, including Appellant, specifically indicated they had no objections. (R. p. 317). The portion of the recording of Victim 1's interview that was inadvertently not played was then played for the jury. (R. pp. 317-318).

329; pp. 331-332). Upon being qualified as an expert, Carlberg generally discussed delays in disclosure of sexual abuse and explained general concepts related to the disclosure process, grooming, and coaching for the jury. (R. pp. 330-362).

At the conclusion of Carlberg's testimony, the solicitor rested the State's case, and Riden testified in her own defense. (R. pp. 365-366; p. 380). During her testimony, Riden denied the allegations in total, stated she never touched or rubbed her children's genitals in an inappropriate manner, claimed she would never perform digital penetration or oral sex on her children, and indicated she did not know why the allegations were being made or if the children were coached. (R. pp. 380-383; p. 391; pp. 395-396). Additionally, she indicated she never observed anyone else, including Appellant, engage in inappropriate interactions with the children, stated she would have killed Appellant if she discovered he was abusing her children, and denied Appellant ever sexually abused the children. (R. p. 383; pp. 385-386; p. 396; p. 419).

Following Riden's testimony, Riden rested her case, and Appellant also elected to testify in his own defense. (R. p. 421; p. 442). During his testimony, Appellant – like Riden – completely denied the allegations and claimed the children were not sexually assaulted. (R. pp. 445-446; p. 448). However, Appellant conceded he had no idea what happened in the home after he moved out in December of 2012. (R. p. 444; pp. 447-448).

In addition to Appellant's testimony, Mark Lusk, who was the children's biological father, testified as a part of Appellant's defense.<sup>12</sup> (R. p. 424; p. 452). During Lusk's testimony, Lusk indicated he never saw anything inappropriate occurring at Riden's residence when Appellant and the children were living there. (R. p. 426; p. 429). He also specifically denied he

---

<sup>12</sup> Luanne Queen, who was Appellant's mother, also testified in Appellant's defense, indicated she interacted several times with Appellant and the children, and noted the children always seemed happy and free of signs of physical abuse or injury. (R. pp. 452-456).

ever sexually abused the children or witnessed anyone sexually abusing the children. (R. pp. 436-437; p. 441). Furthermore, Lusk denied ever getting into a bed with Appellant, and he unsubtly implied he would have killed anyone he saw hurt or do anything inappropriate to his children. (R. p. 429; p. 436).

Thereafter, Appellant rested his case, and the State called Grandfather in reply. (R. p. 457; p. 459). During his testimony, Grandfather confirmed Lusk asked him to come and get the children because there was no food in Riden's house, people were coming and going from that location, and Lusk was afraid the children would starve or be hurt if they were not removed from the home. (R. p. 461). He further stated he spoke with Riden after she was arrested and she denied the charges. (R. pp. 461-462). However, Grandfather indicated Riden stated she was influenced by drugs if she had anything to do with the allegations and expressed remorse about missing warning signs regarding Appellant. (R. p. 462; p. 464).

Following the presentation of that evidence and testimony, the parties presented their closing arguments to the jury, the trial judge instructed the jury on the law, and the case was submitted to the jury. (R. pp. 472-545). Subsequently, after deliberations, the jury convicted both Appellant and Riden of all the indicted charges. (R. pp. 555-557). The trial judge then imposed aggregate terms of imprisonment of thirty-seven years on Appellant and thirty-five years on Riden. (R. pp. 563-564).

## ARGUMENT

**Appellant's appellate challenge to the trial judge's decisions regarding the redaction of the forensic interview recordings was not properly preserved for appellate review because the specific arguments Appellant is currently asserting on appeal were never presented to or ruled upon by the trial judge and are vastly different from the arguments and statements actually made by defense counsel during trial.**

Appellant contends the trial judge committed reversible error by ordering the redaction of the portions of one of the forensic interview recordings in which “the children claim[ed] the father was involved in the abuse.”<sup>13</sup> In support of that contention, Appellant maintains the evidence of Lusk's abuse of the children was relevant because it was “fantastic” and, thus, made the children's allegations less credible. Additionally, Appellant maintains the question of whether Lusk “witnessed the abuse” was at issue during trial, and, therefore, the jury was entitled to compare Lusk's credibility to the credibility of the children. Furthermore, Appellant maintains the exclusion of the challenged portions of the forensic interview recordings violated the rule of completeness and impaired his defense due to the fact the children's “more fantastic claims” were redacted. Importantly though, none of those arguments was raised to the trial judge. Instead, during trial, defense counsel moved for the exclusion of all the forensic interview recordings in their entirety and sought the redaction of multiple portions of the recordings, including portions related to the victims' father's action, before indicating he believed portions establishing the victims claimed their father was “there” during the abuse were relevant to Appellant's defense and should be played for the jury. Significantly, at that point, the trial judge agreed for the portions establishing the victims stated their father was present during the abuse to be played for the jury, and Appellant's defense counsel did not raise any further objections or

---

<sup>13</sup> Although Appellant appears to be suggesting “the children” collectively claimed their father participated in the abuse, Victim 2 was the only one of the children to ever make such a claim at any point during the forensic interviews. (State's Ex. # 1; State's Ex. # 2; State's Ex. # 3; State's Ex. # 4; State's Ex. # 5).

arguments. Under those circumstances, the trial judge responded to the arguments actually raised by Appellant's defense counsel during trial and granted the relief that defense counsel sought, and Appellant's defense counsel acquiesced in the trial judge's ruling. As a result and because the appellate arguments Appellant is now seeking to raise on appeal were never presented to the trial judge, Appellant's appellate challenge to the trial judge's decisions regarding the redaction of the recordings was not properly preserved for appellate review and cannot appropriately be considered or addressed for the first time on appeal. Appellant's convictions should be affirmed.

### **STANDARD OF REVIEW**

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Trial judges have considerable discretion in ruling on the admission or exclusion of evidence, and an appellate court will not reverse a trial judge's ruling on evidentiary matters absent a clear abuse of that discretion resulting in prejudice to the defendant. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."); see also State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

### ANALYSIS

In South Carolina, issue preservation requirements are a fundamental component of appellate procedure. Gaddy v. Douglass, 359 S.C. 329, 350, 597 S.E.2d 12, 23 (Ct. App. 2004). The key purpose of those requirements is “to give the trial court a fair opportunity to rule on the issues, and thus provide [the appellate court] with a platform for meaningful appellate review.” Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Significantly, the application of issue preservation requirements ensures the trial court has an opportunity “to rule properly after it considered all relevant facts, law, and arguments.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (emphasis added).

In order for an issue to be preserved for appellate review pursuant to our issue preservation requirements, the issue must have been: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004); see also JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 185 (3rd ed. 2016) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005).

Regarding the requirement for sufficient specificity, an issue must be raised in a sufficiently specific manner to call attention to the **exact error** to the trial court. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005); see State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (“[A]n objection should be sufficiently specific to bring into focus

the precise nature of the alleged error so it can be reasonably understood by the trial judge.”

(emphasis added)). Importantly, “[a] party need not use the exact name of a legal doctrine in order to preserve it[.]” State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003).

However, in order for an issue to be preserved for review, “it must be clear that the argument has been presented on that ground.” Id. Critically, “[w]here an objection and the ground therefor is not stated in the record, there is no basis for appellate review.” State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991); see State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970) (“It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal.”).

Moreover, in order for an issue to properly be preserved for appellate review, a party cannot raise one argument in support of an issue at trial and then raise a different argument in support of that issue to the appellate court. State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989); see State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) (“[A] party cannot argue one theory at trial and a different theory on appeal.”); State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) (“[A] defendant may not argue one ground below and another on appeal.”). Significantly, on appeal, an appellant is limited solely to the grounds raised at trial. See State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (“Appellant is limited to the grounds raised at trial.”).

In the case sub judice, Appellant is contending on appeal the trial judge reversibly erred by redacting portions of the one of the recordings of the victims’ forensic interviews in which the victims claimed their father was involved in the sexual abuse. In seeking a reversal of his conviction on that basis, Appellant maintains: (1) the children’s “fantastic” claims regarding abuse perpetrated by their father were relevant to their credibility; (2) those claims were relevant

to the question of whether Lusk witnessed the abuse; and (3) the exclusion of those claims violated the rule of completeness and impaired his defense in light of their “fantastic” nature.

However, during trial, Appellant’s defense counsel did not raise a specific objection to the trial judge’s decision to redact the portion of Victim 2’s second forensic interview recording in which Victim 2 indicated Lusk and Riden’s sister also engaged in the sexual abuse. Similarly, Appellant’s defense counsel did not raise an objection to the redaction of any part of the forensic interview recordings pursuant to the rule of completeness. Likewise, Appellant’s defense counsel did not argue to the trial judge Victim 2’s statements related to her father’s and Riden’s sister’s participation in the sexual abuse were significant to Appellant’s defense based on their relevance to the children’s credibility or based on their allegedly “fantastic” nature.

Instead, during the course of trial, Appellant’s defense counsel merely raised an unsuccessful objection to the admission of all the forensic interview recordings in their entirety on grounds totally unrelated to Lusk’s actions before successfully seeking and obtaining – through his request to be considered to have joined in all Riden’s counsel’s motion and objections unless expressly stated otherwise – the redaction of various portions of the forensic interview recordings, including portions directly related to Lusk.<sup>14</sup> Aside from that, the only other action on the part of Appellant’s defense counsel related to the trial judge’s decisions regarding the redaction of the forensic interview recordings came in response to the solicitor’s request for the portion of one of the forensic interview recordings that contained Victim 2’s statements about her father’s participation in the sexual abuse to be also redacted. Specifically, when the solicitor made that particular request and the trial judge indicated he agreed with it,

---

<sup>14</sup> Notably, Appellant is not pursuing on appeal defense counsel’s trial objection to the admission of all the forensic recordings in their entirety and, therefore, has abandoned that particular objection for appellate purposes. See *State v. Sampson*, 317 S.C. 423, 427, 454 S.E.2d 721, 723 (Ct. App. 1995) (finding unchallenged and unappealed rulings are the law of the case).

Appellant's defense counsel responded by asserting an unspecified "part" of the matter the trial judge was redacting related to Lusk "seem[ed]" to be relevant to Appellant's defense before identifying the part he perceived to be significant to the defense as the part in which the children indicated Lusk was merely present at the time of the abuse. At that point, the trial judge specifically indicated he was going to allow the matter Appellant's defense counsel had just identified as significant, which was any part in which the children said their father was present "when something was going on," and defense counsel did not raise any further objections when presented with the opportunity to do so. Thus, the trial judge agreed to allow the presentation of the portions of the forensic interview recordings Appellant's defense counsel identified as pertinent to the defense, and Appellant's defense counsel acquiesced in that ruling in light of the fact he made no further requests for relief or arguments related to the trial judge's redaction decisions. See Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (finding a party cannot acquiesce to a ruling on an issue during trial and then complain of an error with the issue on appeal); see also State v. Parris, 387 S.C. 460, 465, 692 S.E.2d 207, 209 (Ct. App. 2010) ("When the defendant receives the relief requested from the trial court, there is no issue for the appellate court to decide.").

Because Appellant's defense counsel did not raise any of the arguments Appellant is now attempting to raise on appeal, the trial judge judge was wholly denied an opportunity to consider, address, or rule upon those arguments in deciding the evidentiary issues involved in the trial. See Queen's Grant, 368 S.C. at 372-373, 628 S.E.2d at 919 ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." (citations omitted)). Critically, without first giving the trial judge an opportunity to consider his claims regarding the redaction of the forensic

interview recordings and the applicability of the rule of completeness, Appellant is precluded from raising such claims for the first time on appeal. See State v. Sheppard, 391 S.C. 415, 424, 706 S.E.2d 16, 20 (2011) (“This argument . . . was not raised to the trial judge; therefore, the issue is not preserved for appellate review.”); see also I’On, 338 S.C. at 422, 526 S.E.2d at 724 (“The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred.”); cf. State v. Benton, 338 S.C. 151, 156-157, 526 S.E.2d 228, 231 (2000) (finding Benton’s challenge to the trial judge’s refusal to give a requested charge was not preserved for appellate review where Benton “argued one ground in support of a circumstantial evidence charge at trial (State only presented circumstantial evidence of intent) and argues another ground in support of the charge on appeal (palm print is circumstantial evidence).”); Adams, 354 S.C. at 380, 580 S.E.2d at 795 (declining to address one of the grounds raised on appeal in support of Adams’ mistrial motion when that particular ground was never presented to the trial judge). As a result, Appellant’s appellate challenge to the trial judge’s ruling on the redaction of the forensic interview recordings is not properly preserved for appellate review and simply cannot appropriately be raised or addressed for the first time on appeal. See In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) (“Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review.”); see also State v. Head, 330 S.C. 79, 87, 498 S.E.2d 389, 393 (Ct. App. 1997) (instructing an appellate court “cannot address unpreserved errors”); cf. State v. Gulledge, 321 S.C. 399, 404-405, 468 S.E.2d 665, 669 (Ct. App. 1996) (“Gulledge . . . argues the State did not prove she had the resources to pay \$210,000.00 in restitution and the trial court failed to state its findings and the underlying facts and circumstances of

them. Because this argument was neither raised to nor addressed by the trial court, we need not deal with it.” (citation omitted)). Appellant’s convictions should be affirmed.<sup>15</sup>

---

<sup>15</sup> Because Appellant’s defense counsel wholly failed to raise the arguments Appellant is now raising on appeal, the trial judge obviously never ruled upon those particular arguments, which makes it somewhat difficult to respond to or address the merits of Appellant’s appellate claims. See State v. Stone, 376 S.C. 32, 36, 655 S.E.2d 487, 488-489 (2007) (“Because Appellant did not argue these grounds in support of his objection at trial, Appellant’s argument is not preserved for review. . . . **If a pitch was never thrown at trial, we cannot review whether the trial court made the proper call.**” (emphasis added)); see also State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) (“Only matter that has been ruled on below can be reviewed[.]”). However, in light of the fact the jury was tasked with determining whether the State had proven beyond a reasonable doubt Appellant and Riden had sexually abused the victims as opposed to whether Lusk or some other party had also sexually abused the victims, the trial judge could have potentially excluded the portion of the lone forensic interview recording containing a reference to abuse committed by Lusk on a variety of different grounds, including on the ground it could have served to confuse the jury about the actual issues that needed to be resolved during the trial. See State v. Wiles, 383 S.C. 151, 158, 679 S.E.2d 172, 176 (2009) (instructing evidence, including relevant evidence, must be excluded from trial if its probative value is substantially outweighed by the danger of unfair prejudice); State v. Williams, 409 S.C. 455, 466, 761 S.E.2d 770, 777 (Ct. App. 2014) (“[T]he evidence could have confused the issues at trial or misled the jury as to the sexual misconduct in question.”); State v. Oglesby, 384 S.C. 289, 294, 681 S.E.2d 620, 622 (Ct. App. 2009) (instructing Rule 106 of the South Carolina Rules of Evidence only requires the admission of “that portion of the remainder of any statement which explains or clarifies the previously admitted portion”); see also State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 593-594 (Ct. App. 2001) (“A trial judge’s balancing decision under Rule 403 should not be reversed simply because an appellate court believes it would have decided the matter otherwise because of a differing view of the highly subjective factors of the probative value or the prejudice presented by the evidence. If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” (citations omitted)), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, to the extent that portion of the recordings was pertinent to the impeachment of the victims’ testimony, the portions of the recordings Appellant’s defense counsel identified to the trial judge as being pertinent to the issue of impeachment were, in fact, played for the jury and the jury heard the victims state Lusk observed the sexual abuse during their forensic interviews while also hearing the victims’ and Lusk’s trial testimony indicating the opposite was true, which rendered any error in the exclusion of the evidence Appellant now contends on appeal would have had additional impeachment value insignificant and harmless. See State v. Sinclair, 275 S.C. 608, 610, 274 S.E.2d 411, 412 (1981) (“Inasmuch as the appellant obtained the only relief he sought, this court has no issue to decide.”); see also State v. Gunn, 313 S.C. 124, 137-138, 437 S.E.2d 75, 82 (1993) (instructing “[t]he exclusion of impeaching evidence is not prejudicial where it has no meaningful impact on a witness’s credibility” and finding no error in the exclusion of impeachment evidence during the trial of Gunn and his co-defendants in light of the abundance of other impeachment evidence that existed in the case); Duncan v. State, 281 S.C.

## CONCLUSION

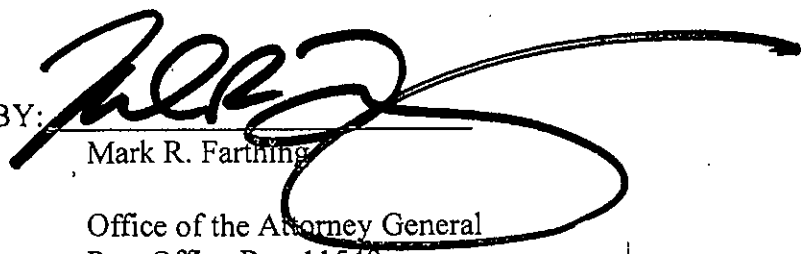
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Assistant Attorney General

WILLIAM W. WILKINS, III  
Solicitor, Thirteenth Judicial Circuit

BY: 

Mark R. Farthing

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 22, 2018

---

435, 439, 315 S.E.2d 809, 811 (1984) (“[T]he **additional** impeaching evidence of the inconsistent statement would not have had a meaningful impact on Davis’ credibility. Reversal is not required.” (emphasis added)); cf. State v. Stokes, 345 S.C. 368, 374, 548 S.E.2d 202, 205 (2001) (“[E]ven assuming *arguendo*, as Stokes claims, that the redacted portions of his statement were relevant to demonstrate the victim voluntarily accompanied them on the night of her murder, any error in the redaction is harmless. Both Stokes’ letter and the testimony of Norris Martin amply demonstrate that Connie Snipes voluntarily went with Stokes and Syphrette to Branchville, and that she willingly walked into the woods with Martin and Stokes. Accordingly, the jury was well aware that she had accompanied them voluntarily, and Stokes had failed to demonstrate any prejudice from the redactions.”).

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Pickens County  
Honorable Perry H. Gravely, Circuit Court Judge  
Appellate Case No. 2016-000208

RECEIVED

JAN 22 2018

SC Court of Appeals

THE STATE,

Respondent,

vs.

AARON VAN HENDRIX,

Appellant.

CERTIFICATE OF COUNSEL

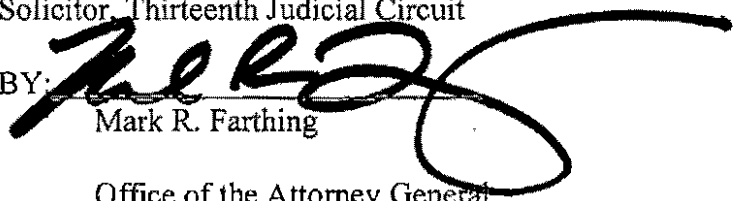
The undersigned certifies this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Assistant Attorney General

WILLIAM W. WILKINS, III  
Solicitor, Thirteenth Judicial Circuit

BY:

  
Mark R. Farthing

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 22, 2018

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

State of South Carolina, Respondent,

v.

Aaron Van Hendrix, Appellant.

Appellate Case No. 2016-000208

---

Appeal From Pickens County  
Perry H. Gravely, Circuit Court Judge

---

Unpublished Opinion No. 2019-UP-022  
Heard December 3, 2018 – Filed January 9, 2019

---

**AFFIRMED**

---

Appellate Defender David Alexander, of Columbia, for  
Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Mark Reynolds Farthing, both of  
Columbia; and Solicitor William Walter Wilkins, III, of  
Greenville, for Respondent.

---

**PER CURIAM:** Aaron Van Hendrix appeals his convictions of two counts of criminal sexual conduct with a minor (CSCM) in the first degree and one count of CSCM in the third degree. We affirm pursuant to Rule 220(b), SCACR, and the

following authorities: *State v. Brewer*, 411 S.C. 401, 406, 768 S.E.2d 656, 658 (2015) ("The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." (quoting *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012))); *State v. Cope*, 405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013) ("[T]o be admissible, evidence of third-party guilt must be 'limited to such facts as are inconsistent with [the defendant's] own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence.'" (alteration by court) (quoting *State v. Gregory*, 198 S.C. 98, 104, 16 S.E.2d 532, 534 (1941))); *Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen & Assocs.*, 347 S.C. 545, 559, 556 S.E.2d 718, 726 (Ct. App. 2001) ("Generally, there is no abuse of discretion where the excluded testimony is merely cumulative of other evidence proffered to the jury.").

**AFFIRMED.**

**HUFF, SHORT, and WILLIAMS, JJ., concur.**

## FORM 5

STATE OF SOUTH CAROLINA

County of Pickens

IN THE COURT OF COMMON PLEAS

Aaron Van Hendrix 2015 AUG 14 A 8:52 2019-CP-39-1044Full name and prison number (if any) of Applicant  
SCDC# 366876

v.

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Pickens County Courthouse,  
214 East Main Street, Pickens, SC 29671
3. Name(s) of co-defendant(s) (if any) Stacy Carol Riden
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2015GS3900227-Criminal Sexual conduct w/minor 1st degree
  - (b) 2015GS3900228-Criminal Sexual conduct w/minor 3rd degree

- (c) 2015 GS 3900229 - criminal sexual conduct w/minor 1<sup>st</sup> degree.
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1/28/16. 25 years concurrent.
- (b) 1/28/16. 12 years consecutive. Central registry of child abuse.
- (c) 1/28/16. 25 years concurrent. Central registry of child abuse.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ☒ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes. I appealed from the judgment of conviction.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Pickens County Courthouse.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. All convictions were affirmed.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Heard December 3, 2018 - Filed January 9, 2019.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Answer on reverse side of this page.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_

Answer to #8(d) i:

State-v-Brewer, 411 S.C. 401, 406, 768 S.E. 2d 656, 658 (2015) ("The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." (quoting State-v-Black, 400 S.C. 10, 16, 732 S.E. 2d 880, 884 (2012))); State-v-Cope, 405 S.C. 317, 341, 748 S.E. 2d 194, 206 (2013) ("To be admissible, evidence of third-party guilt must be limited to such facts as are inconsistent with [the defendant's] own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence" (alteration by court) (quoting State-v-Gregory, 198 S.C. 98, 104, 16 S.E. 2d 532, 534 (1941))); Commerce Ctr. of Greenville, Inc. v. W. Powers McElveen and Assocs., 347 S.C. 545, 559, 556 S.E. 2d 718, 726 (Ct. App. 2001). ("Generally, there is no abuse of discretion where the excluded testimony is merely cumulative of other evidence proffered to the jury.").

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Council
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Answer on reverse side of this page.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct appeal.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals, P.O. Box 11629 Columbia, SC 29211
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

Answer to #11(a):

① A hearing problem during trial

② I was not advised of the severity of the charges against me nor the amount of time they carry.

③ I provided counsel with the picture that Natalie drew and wrote "I love You Aaron" on. She testified to having not drawn it so it certainly could have been used in trial in my favor.

(c) the disposition thereof:

i. All convictions were affirmed.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. January 9, 2019.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
- \_\_\_\_\_
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Richard Warder  
Greenville, S.C.
- ii. David Alexander P.O. Box 11589  
Columbia, S.C. 29211
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Richard Warder - Plea of not guilty, trial and  
Sentencing
- ii. David Alexander - Appeal from judgment of conviction
- iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

I am Seeking complete overturn of my case or at the very least a retrial.

20. Are you now under sentence from any other court that you have not challenged?

No.

CLERK OF COURT  
RICHMOND COUNTY  
SOUTH CAROLINA

JUN 14 8:57

STATE OF SOUTH CAROLINA )

County of \_\_\_\_\_ )

VERIFICATION.

I, Aaron Van Hendrix, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Aaron Hendrix

SWORN to and subscribed before me this 25<sup>th</sup> day of July, 2019.

Luchean Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Aaron Van Hendrix, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Aaron Hendrix  
Applicant

SWORN or affirmed to and subscribed before me this  
25<sup>th</sup> day of July, 2019.

Ludman Bryant  
Notary Public

My Commission Expires: May 26, 2020

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

2019 AUG 14 A 8:57

|                                  |   |                                     |
|----------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA          | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF PICKENS                | ) | FOR THE THIRTEENTH JUDICIAL CIRCUIT |
|                                  | ) |                                     |
| Aaron Van Hendrix, SCDC #366876, | ) | Case No. 2019-CP-39-1044            |
| Applicant,                       | ) |                                     |
| v.                               | ) | <b>RETURN AND MOTION FOR A MORE</b> |
|                                  | ) | <b>DEFINITE STATEMENT</b>           |
| State of South Carolina,         | ) | <b>(COUNSEL APPOINTED)</b>          |
| Respondent.                      | ) |                                     |
|                                  | ) |                                     |
|                                  | ) |                                     |

In response to the post-conviction relief (PCR) action commenced by Aaron Van Hendrix (Applicant) on August 14, 2019 the State makes this return:

### **I. FACTS & PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections.. In June of 2015, the Pickens County Grand Jury indicted Applicant for two counts of first-degree criminal sexual conduct with a minor (2015-GS-39-0227, -0229) and one count of third-degree criminal sexual conduct with a minor (2015-GS-39-0228).

On January 25, 2016, Applicant and the accomplice proceeded to a jury trial before the Honorable Perry H. Gravely. Richard Warder, Esquire (Counsel) represented Applicant and Assistant Solicitor Christopher Jones prosecuted the case.

#### **A. Pre-Trial**

Applicant was arrested on June 18, 2012, following an investigation into allegations he and Stacy Carol Riden, Applicant's former girlfriend, sexually abused Riden's three children: a seven-year-old boy ("Victim 1"), the boy's seven-year-old twin sister ("Victim 2"), and the twins' three-year-old younger sister ("Victim 3") (R. 143-145; 169-170; 174; 197; 202; 207-208; 240; 384).

At the outset of trial, defense counsel for both Riden and Applicant objected to admission of any of the recordings of the five forensic interviews conducted of the minor victims. (R. 25-27). Testimony was presented from Shauna Galloway-Williams, the executive director of the Julie Valentine Center who interviewed the children, in order to establish the admissibility of those recordings. (R. 31-40). Following the presentation of that testimony, the trial judge indicated he would personally review the recordings. (R. 41). At that point, Applicant's defense counsel asserted his objection to the recordings was based on the fact the recordings – when taken together – allegedly established “things” were placed into the children's minds by their caregivers, and he contended the recordings should be found to be inadmissible as a matter of law for that reason.<sup>1</sup> (R. 42-43). Riden's defense counsel then objected to the recordings as unconstitutional, violative of Riden's Sixth Amendment rights, unduly prejudicial in light of the “playful interactions” involving the children, inadmissible as impermissible hearsay, and improperly corroborative and bolstering. (R. 45-47). Riden's defense counsel further argued Victim 3's recording should be excluded as insufficiently trustworthy in light of the fact Victim 3 stated she only thought the things involving Applicant happened. (R. 46-47). Following those contentions, Applicant's defense counsel moved to join all Riden's defense counsel's motions and objections and further asked to be considered to have joined in all Riden's defense counsel's future motions and objections as the trial went forward unless he explicitly stated he did not wish to join in a particular one, and the trial judge indicated he had no problem with Applicant's defense counsel's request. (R. 56).

---

<sup>1</sup> Earlier, in objecting to the admission of any of the recordings, Applicant's defense counsel had contended the recordings were “leading and suggestive” and noted Victim 3 indicated she was unsure about whether the sexual abuse involving Riden really happened at one point during a forensic interview. (R. p. 27).

Thereafter, as the trial continued forward, the trial judge indicated he had reviewed the forensic interview recordings, found the recordings of Victim 1's and Victim 2's interviews satisfied the requirements for admission, and ruled the recording of Victim 3's interview was inadmissible because it allegedly lacked sufficient coherence. (R. 66; 88-89; 92). The trial judge then discussed redactions that had been proposed by Riden's defense counsel with the parties. (R. 91; 565-566). During the discussion, the trial judge agreed for various portions of the recordings to be redacted, including portions containing statements related to the children's father.<sup>2</sup> (R. 96-98; 102-108; 110-111). However, the trial judge rejected Riden's defense counsel's request for other portions to be redacted, including portions in which the children recounted they personally witnessed their siblings being abused. (R. 93-94; 97-101; 104-110).

As the discussion regarding redactions continued, the solicitor noted the trial judge had not yet ordered a portion of the recording of Victim 2's second interview to be redacted in which Victim 2 indicated her father had touched her, and the solicitor requested for that portion of the recording to also be redacted in light of the fact the other portions related to father were being redacted at defense counsel's request. (R. 111). In response, the trial judge indicated he believed it "would be appropriate to redact that." (R. 111). At that point, Applicant's defense counsel stated: "Your Honor, part of what you're redacting about the father it seems to me is relevant to my defense. And I guess when they ask is the father there, you know, the child says the father is there. The father is going to testify he was not there." (R. 111-112). The trial judge then responded:

Well, I'm going to allow anything to where the children said when something was going on father was there and mother was there because I think that goes to the unlawful neglect claim of the mother,

---

<sup>2</sup> When the trial judge directed several portions of the recordings involving statements related to the victims' father to be redacted at Riden's defense counsel's request, defense counsel for Applicant did not raise any objections or make any other comments about the matter as he had earlier stated he would do if he did not wish to join in Riden's defense counsel's motions and objections. (R. p. 56; pp. 105-108).

because she didn't, you when, when he was doing things. But as far as just general stuff about the father, I don't think that would be appropriate on these videos.

(R. 112). Following that statement, the trial judge asked the parties if there was "[a]nything further" in regard to the recordings, and Riden's defense counsel simply renewed her earlier objections while Applicant's defense counsel remained silent. (R. p112).

### **B. Summary of Evidence Adduced at Trial**

On December 29, 2013, Deputy Adam McJunkin of the Pickens County Sheriff's Office travelled to the residence of Mark and Lisa Riden ("Grandfather" and "Grandmother") in response to allegations the couple's three minor grandchildren had been sexually abused by Riden and Applicant.<sup>3</sup> (R. 143-145; 169-170; 174; 197; 202; 207-208; 240; 384). At that time, the children were living at their grandparents' residence and had been residing there for approximately eight or nine months, but they had previously resided with Applicant and Riden at a mobile home located in Easley, South Carolina. (R. 142-144; 154-155; 169; 175; 177; 195-196; 201-203; 211; 261; 383; 392; 396; 460).

After the allegations arose, Investigator Marvin Nix of the Pickens County Sheriff's Office began an investigation into the reported sexual abuse and referred the children to the Julie Valentine Center, a child abuse and sexual assault recovery center, for forensic interviews. (R. 237-238; 240-241; 255; 260; 298). Following the referral, Galloway-Williams interviewed Victim 2 in February of 2014. (R. 50; 301). During the interview, Victim 2 indicated she previously lived with Applicant and Riden and asserted Riden physically abused her and did other "bad stuff" during that time. Specifically, regarding the other "bad stuff," Victim 2 recounted Riden held her down by her hair while Applicant rubbed and digitally penetrated her vagina over her clothing in

---

<sup>3</sup> Grandmother was the children's step-grandmother while Grandfather was the children's maternal grandfather. (R. 239; 459).

front of Victim 1 and Victim 3. Additionally, Victim 2 stated Applicant and Riden regularly talked about sex in front of them, watched pornographic movies, engaged in sex acts in front of her, took a lot of pills and “medicine,” and pulled her into the shower on one occasion while they were using it together. Furthermore, she indicated Riden told her not to reveal the abuse, and she noted Applicant sometimes wore Riden’s clothing and used her nail polish. (State’s Ex. # 1 (Victim 2’s First Interview Recording)).

Thereafter, in March of 2014, Galloway-Williams interviewed Victim 1 and Victim 3. (R. 50; 201). During Victim 1’s interview, Victim 1 stated Applicant and Riden did bad things to him and his siblings. Specifically, Victim 1 recounted Applicant rubbed and poked his “privates,” touched him underneath his clothing, and tried to make him touch his “privates” on multiple occasions, and he indicated Riden rubbed and poked his privates as well. He also stated Riden held both him and Victim 2 down while Applicant sexually abused them, and he indicated his father observed the abuse once. Additionally, he recounted Riden was physically abusive towards him along with Applicant, and he indicated Riden sometimes forced them to watch a pornographic movie. Furthermore, Victim 1 indicated Applicant and Riden threatened to kill them if they revealed the sexual abuse. (State’s Ex. # 3 (Victim 1’s First Interview Recording)).

Similarly, during Victim 3’s interview, Victim 3 recounted Applicant touched her “down there” and made her touch him “down there” in Riden’s presence. Additionally, she vacillated somewhat on whether Riden inappropriately touched her but indicated she thought she did. Victim 3 also stated she observed Riden hold Victim 1 down so Applicant could touch his groin area. (State’s Ex. # 5 (Victim 3’s Interview Recording)).

Following the interviews, Dr. Mary Croswell, a medical doctor and an expert in child abuse pediatrics, conducted a physical examination of each of the children. (R. 269-271; 279-280). L.

examining Victim 1 and Victim 2, Dr. Croswell found nothing abnormal. (R. 274-278; 281; 293). However, in examining Victim 3, Dr. Croswell found labial adhesions in Victim 3's vaginal area, which potentially could have resulted from non-accidental trauma but also could have resulted from accidental trauma or other causes.<sup>4</sup> (R. 284-285).

Thereafter, Galloway-Williams again conducted a forensic interview of Victim 1. (R. 307). During the second interview, Victim 1 stated Applicant and Riden touched his and his siblings' "privates," sucked on them, licked them, and made them do reciprocal acts, and he recounted witnessed the sexual abuse being committed upon Victim 2 and Victim 3. He further indicated Applicant and Riden put their fingers into his buttocks. Additionally, he recounted he observed Applicant and Riden injecting themselves with needles, stated he observed bleeding from his siblings' "privates" after they were digitally penetrated, and again confirmed Applicant and Riden threatened to kill them if they revealed the abuse. He also stated his father observed the abuse occur on some occasions but did nothing to stop it. Furthermore, as to why he did not reveal all the details of the abuse during the first interview, Victim 1 indicated he failed to do so because he was scared. (State's Ex. # 4 (Victim 1's Second Interview Recording)).

Likewise, Galloway-Williams also conducted a second interview of Victim 2. (R. p. 307). During that interview, Victim 2 recounted Applicant and Riden performed oral sex on her and her siblings and forced her and her siblings to perform oral sex on them. Additionally, Victim 2 indicated she and her younger sister bled from their vaginas after they were digitally penetrated, and she stated Applicant and Riden showed them pornographic movies. Victim 2 further revealed her father witnessed the sexual abuse without intervening, and she indicated her father and one of Applicant's sisters inappropriately touched her on one occasion. Furthermore, Victim 2 stated she

---

<sup>4</sup> During the examination of Victim 3, Dr. Croswell also found evidence of cavities and more dental breakdown than expected for someone Victim 3's age. (R. 282-284; 291).

did not fully reveal the abuse during the first interview because she was scared and nervous. See Ex. # 2 (Victim 2's Second Interview Recording)).

Meanwhile, Investigator Nix met with both Applicant and Riden, and he interviewed each of them in regard to the allegations of sexual abuse. (R. 242; 244; 246-247). During the interview with Riden, Riden denied the allegations and indicated she was surprised by them. (R. 244-245). However, she confirmed Applicant had lived with her and her children for a period of time and also noted the children's father had stayed with them sometimes. (R. 245-246). Similarly, during the interview with Applicant, Applicant did not make any admissions regarding the sexual abuse. (R. 247-250). However, Applicant acknowledged he wore Riden's clothing on one occasion while he was residing with her and her children for a period of time. (R. 247-248; 250; 260). He further indicated the children's father stayed with them sometimes, and he stated one of Riden's sisters took her clothes off at the residence on one occasion. (R. 248-249).

At the conclusion of the investigation into the sexual abuse allegations, Investigator Nix arrested both Applicant and Riden. (R. 250-251; 259). Applicant and Riden were subsequently indicted for numerous charges, including multiple counts of criminal sexual conduct with a minor, and their cases were jointly called to trial. (R. 10; 75-76; pp. 573-578).

Thereafter, the solicitor continued forward with the State's case and called Christine Carlberg to the witness stand. (R. 318). During her testimony, Carlberg—who had no contact with the victims, had not seen any recordings of the victims' statements, and had not read any statements from the victims—was qualified as an expert in child abuse dynamics. (R. 328-329; 331-332). Upon being qualified as an expert, Carlberg generally discussed delays in disclosure of sexual abuse and explained general concepts related to the disclosure process, grooming, and coaching for the jury. (R. 330-362).

At the conclusion of Carlberg's testimony, the solicitor rested the State's case, and Riden testified in her own defense. (R. 365-366; 380). During her testimony, Riden denied the allegations in total, stated she never touched or rubbed her children's genitals in an inappropriate manner, claimed she would never perform digital penetration or oral sex on her children, and indicated she did not know why the allegations were being made or if the children were coached. (R. 380-383; 391; 395-396). Additionally, she indicated she never observed anyone else, including Applicant, engage in inappropriate interactions with the children, stated she would have killed Applicant if she discovered he was abusing her children, and denied Applicant ever sexually abused the children. (R. 383; 385-386; 396; 419).

Following Riden's testimony, Riden rested her case, and Applicant also elected to testify in his own defense. (R. 421; 442). During his testimony, Applicant—like Riden—completely denied the allegations and claimed the children were not sexually assaulted. (R. 445-446; 448). However, Applicant conceded he had no idea what happened in the home after he moved out in December of 2012. (R. 444; 447-448).

In addition to Applicant's testimony, Mark Lusk, who was the children's biological father, testified as a part of Applicant's defense.<sup>5</sup> (R. 424; 452). During Lusk's testimony, Lusk indicated he never saw anything inappropriate occurring at Riden's residence when Applicant and the children were living there. (R. 426; 429). He also specifically denied he ever sexually abused the children or witnessed anyone sexually abusing the children. (R. 436-437; 441). Furthermore, Lusk denied ever getting into a bed with Applicant, and he unsubtly implied he would have killed anyone he saw hurt or do anything inappropriate to his children. (R. 429; 436).

---

<sup>5</sup> Luanne Queen, who was Applicant's mother, also testified in Applicant's defense, indicated she interacted several times with Applicant and the children, and noted the children always seemed happy and free of signs of physical abuse or injury. (R. 452-456).

Thereafter, Applicant rested his case, and the State called Grandfather in reply. (R. 457; p. 459). During his testimony, Grandfather confirmed Lusk asked him to come and get the children because there was no food in Riden's house, people were coming and going from that location, and Lusk was afraid the children would starve or be hurt if they were not removed from the home. (R. 461). He further stated he spoke with Riden after she was arrested and she denied the charges. (R. 461-462). However, Grandfather indicated Riden stated she was influenced by drugs if she had anything to do with the allegations and expressed remorse about missing warning signs regarding Applicant. (R. 462; p. 464).

Following the presentation of that evidence and testimony, the parties presented their closing arguments to the jury, the trial judge instructed the jury on the law, and the case was submitted to the jury.

### **C. Verdict & Subsequent Proceedings**

On January 28, 2016, the jury returned a verdict of guilty all three indictments. Judge Gravely sentenced Applicant to concurrent terms of imprisonment of twenty-five years' imprisonment for each count of first-degree criminal sexual conduct with a minor and a consecutive term of twelve years' imprisonment for third-degree criminal sexual conduct with a minor.

On February 2, 2016, Counsel Warder filed a timely notice of appeal. Appellate Defender David Alexander perfected Applicant's appeal by briefing the following issues for the Court of Appeals:

- I. Whether the trial court erred in granting the State's request, over appellant's objection, to redact portions of the children's forensic interviews where they alleged their father and his girlfriend were present during sexual abuse, participated in the sexual abuse, and were told about the sexual abuse where this evidence was relevant as it tended to disprove the children's claims because

the father testified in appellant's case that if he had known about any abuse, the defendants "would not be here. They would be dead" and its removal violated the rule of completeness?

Following briefing and oral arguments, the Court of Appeals affirmed Applicant's convictions in an unpublished opinion on January 9, 2019. *State v. Van Hendrix*, Op. No. 2019-UP-022 (S.C. Ct. App. filed Jan. 9, 2019). The case was remitted back to the circuit court on January 25, 2019. Applicant commenced this PCR action on August 14, 2019.

## **II. CURRENT APPLICATION**

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

1. Ineffective Assistance of Counsel
  - a. "A hearing problem during trial;"
  - b. "I was not advised of the severity [*sic*] of the charges against me nor the amount of time they carry;" [and]
  - c. "I provided council [*sic*] with the picture that [N.L.] drew and wrote, 'I love you Aaron' on; she testified to having not drawn it so it certainly could have been used in trial in my favor"

Applicant requests relief as follows:

"I am seeking complete overturn of my case or at the very least a retrial."

Attached herewith and incorporated by reference are the Pickens County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, including the trial transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

### **III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL**

#### **A. Motion for a More Definite Statement**

The State submits Applicant's claims of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has completely failed to provide any specific facts to support such claims. For example, Applicant's claim of an alleged "hearing problem during trial" is entirely vague. The State requests Applicant, through counsel, provide specific claims and facts to support these vague allegations. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."). Thus, the State moves to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel pursuant to Rule 12(e), SCRCP.

#### **B. Ineffective Assistance of Trial Counsel, Generally**

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of

such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that “the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S. Ct. 1473, 1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

*Strickland*, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel

will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” or whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony

in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules. [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

To the extent Applicant claims he was not advised of the seriousness of the charges and the possible consequences, Applicant fails to show how he was prejudiced by this alleged deficiency. While a defendant pleading guilty must be advised of such information, this requirement does not apply to a defendant who is pleading not guilty by asserting his constitutional right to a jury trial. *See Boykin v. Alabama*, 395 U.S. 238 (1969) (holding that because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently); *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (explaining that, in order to knowingly and voluntarily plead guilty, the defendant must have a full understanding of the consequences of the plea, including the nature and crucial elements of the offense(s); the maximum and any mandatory minimum penalty; and the nature of the constitutional rights being waived).

As to Applicant's allegations regarding Counsel's failure to introduce into evidence a drawing allegedly given to Applicant by Victim, Applicant makes a mere conclusory allegation that this drawing would have helped his case. Thus, Applicant failed to show deficiency by Counsel or any resulting prejudice in this regard.

### **C. Conclusion and Action Requested**

The State submits Applicant can satisfy neither requirement of *Strickland*. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegation. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court"). Thus, the State moves to require Applicant to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRCP.

### **IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS**

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to

continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

#### **V. GENERAL DENIAL**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

#### **VI. CONCLUSION**

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section III, and thereafter convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

*[Signature on following page]*

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS  
Assistant Attorney General

By:   
ATTORNEYS FOR THE STATE  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

January 22, 2020

STATE OF SOUTH CAROLINA )

COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS

2019-CP-39-1044

AARON VAN HENDRIX, #366876 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent. )  
\_\_\_\_\_

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Don A. Thompson, Esquire**  
**107 Smithwood Court**  
**Simpsonville, SC 29681**

DATED this 22<sup>nd</sup> day of January, 2020.

Camille Henry  
 Camille Henry, Legal Assistant  
 For Respondent

State of South Carolina  
County of Pickens

Court of Common Pleas

|                   |   |                      |
|-------------------|---|----------------------|
| Aaron V. Hendrix  | ) |                      |
|                   | ) |                      |
| Plaintiff,        | ) | Transcript of Record |
| v.                | ) | 2019-CP-39-01044     |
|                   | ) |                      |
| The State,        | ) |                      |
|                   | ) |                      |
| <u>Defendant.</u> | ) |                      |

January 26, 2022  
Pickens, South Carolina

B E F O R E:

The Honorable R. Scott Sprouse, Judge.

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

Don A. Thompson, Esquire  
Attorney for the Applicant

Lillian L. Meadows, Esquire  
Attorney for the Defendant

Lisa Scott  
Circuit Court Reporter

I N D E X

| <u>WITNESS</u>                          | <u>PAGE</u> |
|-----------------------------------------|-------------|
| Aaron Hendrix                           |             |
| Direct examination by Mr. Thompson..... | 6           |
| Cross-examination by Ms. Meadows.....   | 14          |
| Redirect examination by Mr. Thompson... | 16          |
| Richard Warder                          |             |
| Direct examination by Ms. Meadows.....  | 18          |
| Cross-examination by Mr. Thompson.....  | 25          |
| Redirect examination by Ms. Meadows.... | 27          |

- - -

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>     | <u>ID.</u> | <u>EVD.</u> |
|------------|------------------------|------------|-------------|
| 1          | Respondent's - Picture |            | X           |
| 2          | Respondent's - Picture |            | X           |
| 3          | Respondent's - Picture |            | X           |

- - -

P R O C E E D I N G S

- - -

THE COURT: Okay. Do we have everybody?

MR. THOMPSON: I believe so.

MS. MEADOWS: Yes.

THE COURT: All right. Well, let the Attorney General call the case.

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

This matter is *Aaron Van Hendrix v. The State of South Carolina*, Docket No. 2019-CP-39-1044. During its June 2015 term, the Pickens County Grand Jury indicted Mr. Hendrix for two counts of first degree CSC with a minor and one count of third degree CSC with a minor.

On January 25, 2016, Mr. Hendrix and his codefendant proceeded to a jury trial before Judge Gravely. Richard Warder, Esquire, represented Mr. Hendrix and Assistant Solicitor Christopher Jones prosecuted the case.

The jury convicted Mr. Hendrix as indicted, and Judge Gravely sentenced him to concurrent terms of 25 years for each first degree CSC with a minor charge and a consecutive 12-year sentence for third degree CSC with a minor. Mr. Hendrix's convictions

1        were then affirmed by the Court of Appeals.

2                On August 14, 2019, Mr. Hendrix filed a timely  
3        application for PCR. He is present today and  
4        represented by Mr. Thompson. And it's the State's  
5        understanding that Mr. Hendrix is going forward on  
6        the following claims raised in his initial  
7        application: Ineffective assistance of counsel  
8        based on a hearing problem during trial; ineffective  
9        assistance of counsel because he was not advised of  
10       the severity of the charges against him or the  
11       sentence he could receive; ineffective assistance of  
12       counsel because he provided counsel with a picture  
13       that one of the victims allegedly drew and wrote "I  
14       love you, Aaron" on it and that this victim  
15       testified at trial she had not drawn this picture  
16       and that it could've been used in the Applicant's  
17       favor.

18               THE COURT: Okay. Mr. Thompson, is that a  
19       correct statement of the issues that your client  
20       intends to raise?

21               MR. THOMPSON: It is, Your Honor.

22               THE COURT: All right. Mr. Thompson, call your  
23       first witness.

24               MR. THOMPSON: Thank you, Your Honor. We would  
25       call Mr. Hendrix.

1 THE COURT: All right. Mr. Hendrix, raise your  
2 right hand.

3 THE APPLICANT: (Complying.)

4 THE COURT: Do you swear to tell the truth, the  
5 whole truth, and nothing but the truth so help you  
6 God?

7 THE APPLICANT: Yes, Your Honor.

8 THE COURT: All right. State your name for the  
9 record, please, sir.

10 THE APPLICANT: Aaron Van Hendrix.

11 THE COURT: All right. Mr. Thompson, your  
12 witness.

13 MR. THOMPSON: Thank you.

14 AARON VAN HENDRIX,  
15 having been produced and first duly sworn as a  
16 witness on behalf of the Applicant, then testified  
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. THOMPSON:

20 Q. Mr. Hendrix, where are you located now?

21 A. Lieber Correctional Institution.

22 Q. Okay. And what are you in there on? What kind  
23 of charges?

24 A. Criminal sexual conduct.

25 Q. Okay. You are on with three charges; is that

1 correct?

2 A. Yes, sir, it is.

3 Q. What kind of -- what kind of sentences did you  
4 receive?

5 A. I received 25 years band -- was consecutive, I  
6 believe, together, on two criminal sexual conduct  
7 first degrees. And the criminal sexual conduct  
8 third degree was a separate 12-year sentence.

9 Q. Okay. Consecutive to the 25?

10 A. No. It's -- it's -- yeah. Yeah.

11 Q. Okay. You got two 25-year sentences that were  
12 concurrent, right?

13 A. Yes. That's correct.

14 Q. Okay. Now, did this arise out of a situation  
15 where you were living with a young lady?

16 A. Sir? What was that?

17 Q. All right. This -- these all three happened  
18 out of the same residence; is that correct?

19 A. Yes, sir.

20 Q. And it was, I think, a set of twins and another  
21 child; is that correct?

22 A. Yes, sir.

23 Q. Okay. And you were living with their mother at  
24 the time; is that right?

25 A. Yes, sir.

1 Q. Okay. Now, when you were charged in this case,  
2 did you have an attorney?

3 A. No. Not -- not at the very beginning.

4 Q. Okay. Who was the first attorney you got?

5 A. I barely remember his name. He wasn't my  
6 attorney long because he found a conflict of  
7 interest.

8 Q. Okay. And After he found the conflict of  
9 interest, was another attorney appointed or did you  
10 hire somebody?

11 A. I hired somebody.

12 Q. And who did you hire?

13 A. I hired Richard Warder.

14 Q. Okay. Now, did he represent you from the point  
15 you hired him until the trial was over?

16 A. Yes, sir.

17 Q. So he represented you through trial; is that  
18 correct?

19 A. Yes, sir.

20 Q. All right. Now, you chose to go to trial; is  
21 that correct?

22 A. Yes, sir.

23 Q. Okay. Did you discuss that with Mr. Warder?

24 A. Yes, I did.

25 Q. Okay. One of the issues that you raised in

1        your application is that you were not advised of the  
2        severity of the charges against you nor the amount  
3        of time they could carry. Did you discuss that with  
4        Mr. Warder?

5        A.     No.

6        Q.     He never told you what -- how much time you  
7        could get?

8        A.     No.

9        Q.     All right. Had you known the severity of the  
10       charges and the amount of time you could get, would  
11       that have changed your opinion as to whether you  
12       wanted a trial or not?

13       A.     I had -- now, looking back, I would like to say  
14       yes.

15       Q.     It would've given you something to think about;  
16       is that correct?

17       A.     Yes, sir.

18       Q.     All right. Now, another issue that you've  
19       raised, you said -- and you're going to have to  
20       explain this one. You said there was a hearing  
21       problem during trial. What do you mean by that?

22       A.     There was a point where -- I -- I don't -- I  
23       don't remember what was said, but I believe the  
24       judge was speaking and my lawyer, Richard Warder,  
25       had to ask him to repeat it because he couldn't hear

1        what he said. And I have no idea how much he missed  
2        or what he did hear or didn't hear.

3        Q.    Okay. But it wasn't a hearing problem on your  
4        part?

5        A.    No.

6        Q.    Okay. Now, when you went trial, did you have a  
7        codefendant?

8        A.    Yes, sir.

9        Q.    And who was that?

10       A.    Stacy Riden.

11       Q.    Is she the mother of the children?

12       A.    Yes, sir.

13       Q.    Okay. Were y'all tried together?

14       A.    Yes, sir.

15       Q.    Okay. Did she have an attorney?

16       A.    Yes, sir.

17       Q.    Okay. Was that attorney Mr. Warder also?

18       A.    No, sir. It was a -- I believe it was a Public  
19       Defender from Greenville County. I can't quite  
20       place her name.

21       Q.    So you each had separate attorneys?

22       A.    Yes, sir.

23       Q.    All right. Now, the last issue you raised in  
24       your post-conviction application is -- deals with a  
25       picture that Minor 1 drew. Who is Minor 1 :?

1 A. Minor 1 is one of the twins.

2 Q. Okay. One of the alleged victims?

3 A. Yes, sir.

4 Q. Okay. Tell us about that picture. How did it  
5 come about?

6 A. Honestly, I don't remember exactly what  
7 prompted me to give it to my lawyer, but...

8 Q. Well, how did you get it?

9 A. Well, I got it because Minor 1 drew it for me.

10 Q. Okay. And when was it that she drew it?

11 A. I couldn't -- I couldn't say an exact date. It  
12 was some time during the year I lived with her.

13 Q. Okay.

14 A. It's one of many.

15 Q. So it wasn't something she gave -- drew for you  
16 and gave to you after you got arrested?

17 A. No.

18 Q. Okay. And was there anything written on it?

19 Was there anything written on the picture?

20 A. Yes. I had -- I had thought she wrote "I love  
21 you" on it.

22 Q. Okay.

23 A. But I know it was something to the effect of  
24 that "you're my friend" or "I love you." One of the  
25 two.

1 Q. Now, during your trial, was she questioned  
2 about that picture?

3 A. She was.

4 Q. And who questioned her?

5 A. I believe it was my codefendant's lawyer.

6 Q. Okay. Did your lawyer -- did your lawyer  
7 question her about it?

8 A. Not that I remember, no.

9 Q. Okay. Was that picture admitted into evidence  
10 that you know of?

11 A. No, sir. I never saw it, not at the trial.

12 Q. Do you think that it should've been admitted  
13 into evidence?

14 A. Yes.

15 Q. And why is that? Do you think it would've --  
16 why do you think that picture is important in your  
17 case?

18 A. It wouldn't be by itself. The testimony,  
19 although it's leading, but, you know, put together  
20 with all my other issues, I believe if that picture  
21 had been there to show the Court that it really was  
22 drawn and at least it could've shown that she did  
23 actually draw it.

24 Q. Okay. Do you believe it would've affected her  
25 credibility during the trial?

1 A. Certainly. Yes.

2 Q. Okay. And you gave that picture to your  
3 attorney; is that correct?

4 A. Yes.

5 Q. And you told him that she had drawn it; is that  
6 correct?

7 A. That's right. Yes, sir.

8 Q. And nothing was done with it other than the  
9 codefendant's counsel questioned the girl about it;  
10 is that correct?

11 A. That's correct.

12 Q. All right. Do you think the credibility of the  
13 young lady, Minor 1, was crucial in your trial?

14 A. Yes, sir.

15 Q. Okay. Do you believe that this picture may  
16 have affected her -- impeached her credibility?

17 A. Yes, sir.

18 Q. Okay. Now, is there anything else concerning  
19 any of these three issues that I haven't covered  
20 with you dealing with the hearing problem or the  
21 severity of the charges not being advised by it or  
22 the penalty or the picture that -- that you think  
23 I've missed and you need to advise the Court of?

24 A. I can't think of anything else on those, no.

25 MR. THOMPSON: Okay. Thank you. Answer any

1 questions Ms. Meadows may have.

2 CROSS-EXAMINATION

3 BY MS. MEADOWS:

4 Q. All right. Mr. Hendrix, so it's your testimony  
5 today that Mr. Warder never discussed these charges  
6 with you or the sentences they carried?

7 A. He did not discuss the sentences. I know that  
8 much.

9 Q. Okay. But you said if you had known about the  
10 potential sentence you received, it would've given  
11 you something to think about regarding whether to go  
12 to trial. So I guess, were there any plea offers?

13 A. Yes, ma'am.

14 Q. Do you recall what they were?

15 A. (Nonverbal response.)

16 Q. Was that a "no"?

17 A. It would've given me something to think about  
18 and talk to my family, and it's possible they  
19 would've talked me into a plea.

20 Q. Okay.

21 A. I couldn't say for sure.

22 Q. Okay. But there weren't any plea offers made  
23 that you were aware of?

24 A. Oh, yes. There were two that I was made aware  
25 of. I believe one was 15 years and another was

1           12 years.

2           Q.     Okay. And why did you reject those plea  
3           offers?

4           A.     I felt very sure that there was no way they  
5           could convict me.

6           Q.     Okay. All right. And then regarding this  
7           picture, did you see the victim draw it or did she  
8           just give it to you?

9           A.     You're asking if I saw her draw it?

10          Q.     Yes.

11          A.     I can't -- I can't remember if I actually saw  
12          her draw it.

13          Q.     Okay. You know, basically, what I'm asking is,  
14          you know, she testified that she didn't draw it. So  
15          had it been admitted, how could you have shown that  
16          she did draw it?

17          A.     I suppose I couldn't.

18          Q.     Okay. And then your last claim is about the  
19          hearing problem. Do you know where, like, in the  
20          transcript that happened?

21          A.     Sorry. I can't remember where.

22          Q.     Okay. And then -- so, basically, Mr. Warder  
23          could not hear what the judge said so he asked Judge  
24          Gravelly to repeat himself?

25          A.     Yes, ma'am.

1 Q. Okay. And then I assume Judge Gravely repeated  
2 what he had just said?

3 A. Yes, ma'am.

4 Q. Okay. So in that regard, you know, how was  
5 Mr. Warder ineffective when he, you know, did end up  
6 hearing what the judge said?

7 A. Well, he had a hearing aid. So, I mean,  
8 there's a lot I don't understand, and then all of a  
9 sudden he couldn't hear. How long was that? Did he  
10 not hear anything that whole morning? Did he just  
11 decide to say something? I have no way of telling  
12 how much he missed.

13 MS. MEADOWS: Okay. Nothing further, Judge.

14 THE COURT: Mr. Thompson, any redirect?

15 MR. THOMPSON: I've got one question, Judge.

16 REDIRECT EXAMINATION

17 BY MR. THOMPSON:

18 Q. Minor 1 , when y'all were living together,  
19 didn't you and Minor 1 draw pictures together?

20 A. Yes.

21 Q. And you did quite often; is that correct?

22 A. Yes, sir.

23 Q. And would you recognize her drawing and her  
24 handwriting?

25 A. I -- I believe I could.

1 Q. Okay. You testified in the trial; is that  
2 correct?

3 A. Yes, sir.

4 Q. And when you testified, that picture wasn't  
5 given to you to see if you could recognize it; is  
6 that correct?

7 A. No. The picture wasn't there.

8 MR. THOMPSON: Okay. Nothing further.

9 THE COURT: Anything further from this witness?

10 MR. THOMPSON: No, sir.

11 MS. MEADOWS: No, sir.

12 THE COURT: All right. Thank you. Thank you,  
13 Mr. Hendrix.

14 THE APPLICANT: Thank you, Your Honor.

15 THE COURT: Mr. Thompson, call your next  
16 witness.

17 MR. THOMPSON: That would be the Applicant's  
18 case, Your Honor.

19 THE COURT: All right. Ms. Meadows.

20 MS. MEADOWS: All right. The State calls  
21 Richard Warder.

22 MR. WARDER: Can you hear me now?

23 THE COURT: Yes. Yes, sir. Mr. Warder, raise  
24 your right hand.

25 MR. WARDER: (Complying.)

1 THE COURT: Do you swear to tell the truth, the  
2 whole truth, and nothing but the truth so help you  
3 God?

4 MR. WARDER: Yes, sir, I do.

5 THE COURT: All right. State your name for the  
6 record, please, sir.

7 MR. WARDER: Richard Warder.

8 THE COURT: All right. Ms. Meadows, your  
9 witness.

10 RICHARD WARDER,  
11 having been produced and first duly sworn as a  
12 witness on behalf of the Respondent, then testified  
13 as follows:

14 DIRECT EXAMINATION

15 BY MS. MEADOWS:

16 Q. All right. Good afternoon, Mr. Warder. How  
17 long have you been practicing law?

18 A. Since '74, so it would be 48 ---

19 Q. Okay.

20 A. --- years.

21 Q. Okay. And how much of that has been criminal  
22 law?

23 A. For all of it.

24 Q. All of it? I'm sorry.

25 A. Yes. It's all I've done.

1 Q. Okay. Do you know roughly how many cases  
2 you've tried over the course of your career?

3 A. No, I don't. Easy guess, it would be just a  
4 speculative guess. I really don't know.

5 Q. Okay. So you were retained to represent  
6 Mr. Hendrix, correct?

7 A. Yes, I was.

8 Q. Do you recall about how long -- long that was  
9 before his trial in 2016?

10 A. Several months, but, no, I don't recall an  
11 actual amount.

12 Q. Okay. And, roughly, how many times did you  
13 meet with him over the course of your representation  
14 in preparation for trial?

15 A. In preparation, we would've met four or five,  
16 but there would've been an additional period of  
17 meetings during that just to status it and check up  
18 on where the case was or I would check on something  
19 to do.

20 Q. Okay. And during any of these meetings, did  
21 you discuss, you know, the severity of the charges  
22 and the potential sentence he was facing?

23 A. Well, I'm confident we did. I wouldn't discuss  
24 the plea offer without discussing the benefits of  
25 doing that. Though I don't have any direct

1       recollection, I would tell you that usually in every  
2       case I can remember when I tell a client of the plea  
3       offer, I explain to him what the sentence would be  
4       so he could judge whether or not he wanted to take a  
5       plea offer or he didn't.

6       Q.     Right. And then Mr. Hendrix testified there  
7       was a 15-year plea offer and a 12-year plea offer;  
8       is that correct?

9       A.     He tells me that's it, and I know there was  
10      some plea offer. I do not now have a recollection  
11      what we were talking about now.

12     Q.     Okay. And do you recall why he rejected these  
13      plea offers?

14     A.     I'm drawing a blank on why he rejected the plea  
15      offer. What are the -- I'm not sure I understand  
16      the meaning of the question.

17     Q.     I was just wondering did you -- you know, what  
18      did you advise Mr. Hendrix about the plea offers and  
19      why did he ultimately choose to go to trial instead?

20     A.     Yes, ma'am. I should've explained what I  
21      perceived as a risk to have gone out and what I  
22      perceived as the benefit of taking the 15-year  
23      sentence.

24     Q.     Right. Okay. Now, as to this picture  
25      Mr. Hendrix alleges he gave you. Do you recall

1 discussing this with Mr. Hendrix or him giving you  
2 that picture?

3 A. I do recall him giving me the picture. Today,  
4 in the last minute, I -- we went through everything  
5 and I found the picture.

6 Q. Okay. And, you know, he doesn't mention in the  
7 PCR conviction why he thought this could've been  
8 failed -- favorable, but I guess it was -- he  
9 testified it was that it could've impeached her  
10 credibility, but did you think -- you know, when  
11 he -- when he gave it to you, did you think there  
12 was any way it could've helped his case?

13 A. I don't think the picture would've -- would've  
14 been useful. He gave me with it, I think two  
15 valentines. It was a -- the notes -- the notation  
16 "I love you" on it. And he gave me a piece of paper  
17 that I don't know if you can see that. You probably  
18 can't, but, you know, my camera is out here.

19 Q. Okay.

20 A. I'm going to focus on the piece of paper and  
21 it's got the notation, "Although I keep growing one  
22 inch at a time, I will always be your valentine."  
23 And he gave me another drawing. I don't know if you  
24 can see it. It's a Band-Aid drawn on a red heart  
25 and it's got a little pencil scratched, "I love

1       you -- I love you, Aaron," at the top.

2       Q.     Okay.

3       A.     He gave me what I believe is the picture. He  
4       wanted to introduce -- it's a picture that has a sky  
5       kind of drawn in blue. It's got two little girls  
6       going in over here that -- I don't know. It  
7       could've been her sister. And it's got what I guess  
8       is a house that looks a lot like a penis.

9       Q.     Okay.

10      A.     And -- and that, I think, is it.

11            MS. MEADOWS: Okay. Your Honor, I would move  
12      to introduce these -- all of these drawings as  
13      exhibits.

14            MR. THOMPSON: No objection. Judge, you need  
15      to ---

16            THE COURT: Thank you, Mr. Thompson. Thank  
17      you. I muted myself to keep the hammering going, in  
18      fact, and I forgot to un-mute. So those -- those  
19      would be admitted without objection.

20            Now, logistically, Ms. Meadows, how are you  
21      going to get these into the record?

22            MS. MEADOWS: I think Jan said we needed to  
23      mail them. So I can -- you know, I can talk to  
24      Mr. Warder after the hearing and we can figure out,  
25      you know, if he wants to mail it to me and I can

1 mail it to Pickens or whatever, you know, we need to  
2 do, but we'll mail it to Pickens.

3 THE COURT: Okay. And send a copy of them to  
4 Mr. Thompson when you send them in.

5 MS. MEADOWS: Okay.

6 THE CLERK: Excuse me, Judge. I think they  
7 need to go to the court reporter first.

8 MS. MEADOWS: Oh, I'm sorry. Yes.

9 THE COURT: We can't hear Ms. Scott on here,  
10 but -- well, yeah, let's do that. Get them to the  
11 court reporter and then -- and they can be -- they  
12 can be filed appropriately.

13 MR. WARDER: My office mails them to the court  
14 reporter? That's how you want me to do it?

15 MS. MEADOWS: Sure. And, Mr. Warder, I'll  
16 e-mail you the court reporter's information and  
17 address and everything.

18 MR. WARDER: Okay. Thank you.

19 BY MS. MEADOWS:

20 Q. Okay. And, Mr. Warder, did you consider -- did  
21 you make any of these drawings as exhibits?

22 A. I'm sure I considered it, you know, at the  
23 time.

24 Q. Okay. Did you think they would've been helpful  
25 or hurt the case?

1       A.    I'm sure I decided then they wouldn't be  
2       helpful, and I think now I would still think they  
3       wouldn't help.

4       Q.    Okay.  And then Mr. Hendrix's last claim is  
5       about at some point in the trial you had a problem  
6       -- you had trouble hearing Judge Gravely.  Do you  
7       recall that?

8       A.    The answer is, no, I -- I don't recall or  
9       didn't recall that.  I understand it is in the  
10      transcript and that, you know, but I would do that.  
11      If I didn't understand something a judge said, I  
12      would ask him to repeat it.

13      Q.    Okay.  So you wouldn't have basically gone  
14      through the morning without being able to hear him  
15      and then ask him at some point in the afternoon,  
16      tell him you couldn't hear him?

17      A.    No.  You know, I have to communicate with the  
18      Court.

19      Q.    Right.  Okay.  So if you didn't hear -- if you  
20      couldn't hear something the judge said, you would  
21      ask -- tell him immediately, right?

22      A.    Yes, ma'am.

23            MS. MEADOWS:  Okay.  All right.  Nothing  
24      further from the State.

25            THE COURT:  Mr. Thompson, your witness.

1 MR. THOMPSON: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. THOMPSON:

4 Q. Mr. Warder, I'm going to start with the  
5 pictures. The little girl Minor1 she denied that  
6 she drew the pictures on the stand in her direct, is  
7 that correct, or it was actually when the  
8 codefendant crossed her? Do you recall that?

9 A. I don't recall it, but it says it happened.  
10 Yes.

11 Q. Okay. And was there any -- was this case based  
12 on the credibility of those children?

13 A. Yes. I mean, I think children had to be  
14 believed.

15 Q. Well, I guess what I'm getting at, there were  
16 no eyewitnesses or anything other than the children?

17 A. Right. And interviewing the children and the  
18 police or whatever it is.

19 Q. Right. The Child Advocacy Center?

20 A. Yes.

21 Q. Now, Mr. Hendrix took the stand and testified;  
22 is that correct?

23 A. Yes.

24 Q. Did you ask him about the picture in your  
25 direct of him?

1 A. No. I think ---

2 Q. But the credibility of the little girl and the  
3 other two children were paramount?

4 A. Yes.

5 Q. Okay. Now, as to the severity of the charges  
6 and the allegations there, you say you think that  
7 you discussed that with him?

8 A. Yes.

9 Q. Do you have your file with you?

10 A. Yes.

11 Q. Are there any notes in your file showing where  
12 you discussed it with him?

13 A. No.

14 Q. Okay. And you think when the offers came in,  
15 do you -- do you recall whether there was one offer  
16 or two offers?

17 A. No. I don't at this time.

18 Q. Okay. Do you believe when the offers come in,  
19 you would've still discussed the severity and the  
20 potential sentence with him; is that correct?

21 A. Yes. I would've discussed the advantages and  
22 the disadvantages. That's the only thing to talk  
23 about when you're talking to a client about an  
24 offer.

25 Q. Okay. Is there anything in your file showing

1 where you discussed those offers with him?

2 A. No. I did not put it in the file after the  
3 discussion.

4 Q. Okay. So you didn't make any contemporaneous  
5 notes or any notes shortly thereafter to go in the  
6 file as to what y'all talked about?

7 A. No.

8 MR. THOMPSON: Okay. Thank you. I have  
9 nothing further.

10 MS. MEADOWS: Your Honor, just -- just briefly?

11 THE COURT: Okay.

12 REDIRECT EXAMINATION

13 BY MS. MEADOWS:

14 Q. Mr. Warder, so, basically, is that your routine  
15 to discuss, you know, when you get a plea offer,  
16 even if you don't, to discuss the severity of the  
17 charges and potential sentences that someone's  
18 facing in order to kind of weigh their options?

19 A. Yes. The only reason a client is considering a  
20 plea offer is to consider if it's advantageous for  
21 him to take it or not take it.

22 Q. Right.

23 A. But he -- and he only knows it's advantageous  
24 when he understands if everything goes south and he  
25 gets convicted what will happen to him and what he

1       could get if he took this plea offer. That's ---

2       Q.     Right.

3       A.     --- the advantage, whatever that amount is, and  
4       then that's what we discussed. That's -- that's  
5       what every good lawyer does when he sits down with  
6       his client. They tell him whether he should take it  
7       or shouldn't take it. They give them advice because  
8       the client has to understand the reason.

9       Q.     Right. Okay. And then back to the pictures.  
10      Now, there weren't any of these drawings admitted as  
11      exhibits, correct, at trial?

12     A.     Right.

13     Q.     Okay. And ---

14             -- (cross-talking) --

15     Q.     --- I'm sorry.

16     A.     The child loved him was -- I think the word  
17     "love" in a case like this with a child is not a  
18     good image, I don't think, to have at all.

19     Q.     Okay.

20     A.     It isn't whether the child needs you or the  
21     child is willing. You know, I think if everybody's  
22     talking about love, it makes a conviction more  
23     likely.

24     Q.     Okay. And then, it's my recollection from  
25     the -- from the transcript that Ms. Horlbeck, the

1 codefendant's counsel, she didn't actually show the  
2 child any picture, correct? She just asked about  
3 them?

4 A. Correct.

5 Q. Okay. And so none of the -- none of the  
6 drawings given to you by Mr. Hendrix were ever shown  
7 or seen by anyone at trial, correct?

8 A. That's correct.

9 MS. MEADOWS: Okay. Nothing further.

10 THE COURT: Okay. Anything further from this  
11 witness?

12 MS. MEADOWS: No, sir.

13 MR. THOMPSON: No, sir.

14 THE COURT: All right. Thank you, Mr. Warder.

15 MR. WARDER: Thank you, Your Honor.

16 THE COURT: Any further witnesses from -- any  
17 further witnesses from the State?

18 MS. MEADOWS: No, sir. The State rests.

19 THE COURT: Any reply -- any reply testimony?

20 MR. THOMPSON: No, sir.

21 THE COURT: No reply testimony. All right.

22 Well, I'll let each side make a brief summation.

23 Ms. Meadows, the State can go first, and then I'll  
24 give Mr. Thompson the last word.

25 MS. MEADOWS: Sure. Just one second, Judge.

1 Your Honor, as to Mr. Hendrix's first allegation  
2 that he didn't know the terms of the potential  
3 sentence he was facing, you know, as Mr. Warder  
4 said, he routinely discusses that with his client  
5 when they're trying to, you know, weigh whether to  
6 take a plea offer versus go to trial.

7 As to the hearing problem, Mr. Warder testified  
8 that if he could not understand the judge, he would  
9 tell them immediately and ask them to repeat  
10 themselves. He would not, you know, wait until, you  
11 know, and then -- and then ask them later.

12 And then as to the picture, you know, whether  
13 or not to introduce something like that into  
14 evidence is a -- it's -- it's up to the discretion  
15 of the attorney. And Mr. Warder testified that he  
16 believe that those would be more harmful than  
17 helpful.

18 So it is the State's position that Mr. Warder  
19 was not ineffective based on any of these claims,  
20 and we would ask that the Court deny this  
21 application.

22 THE COURT: Thank you, Ms. Meadows.  
23 Mr. Thompson?

24 MR. THOMPSON: Thank you, Judge. As to the  
25 hearing problem, Judge, I'm going to just let that

1 lie based on testimony and let you make that  
2 determination without any input from me.

3 But as to the not being advised of the severity  
4 of the charges and the potential sentence,  
5 Mr. Hendrix testified that he wasn't aware of the  
6 severity and that he didn't know the potential  
7 sentence and that he wasn't told that. Mr. Warder  
8 testified that he thought he did that, but, you  
9 know, he just thought he did it. It was routine for  
10 him to do it, but he has no notes in his file or  
11 anything showing that he did it.

12 As to the picture, Mr. Warder testified this  
13 was a case really that dealt with the credibility of  
14 the children. Mr. Hendrix testified he gave a  
15 picture to -- to Mr. Warder that the young lady  
16 Minor 1 drew saying "I love you -- I love you,  
17 Aaron" I believe is what he said. And he thought  
18 that that picture would be used to impeach the  
19 credibility of the young girl Minor 1 .

20 Looking at the transcript, when she was  
21 questioned by the codefendant's attorney, she  
22 indicated that she did not draw the picture or  
23 didn't think she drew the picture. Mr. Hendrix,  
24 when he testified, he could've testified that, yes,  
25 he recognized her drawing and her handwriting

1       because they drew and wrote things all the time  
2       together.

3               So I think the point there is, is that there  
4       was a chance to impeach the credibility of the young  
5       girl with that picture, and that was not used. So  
6       that would be my argument.

7               THE COURT: Thank you, Mr. Thompson.

8               MS. MEADOWS: Your Honor, may I reply briefly?

9               THE COURT: Yes, ma'am. Yes, ma'am.

10              MS. MEADOWS: Okay. Now, according to the  
11       transcript, Ms. Horlbeck, the codefendant's counsel,  
12       she asked Minor 1 in general about whether she drew  
13       something that said -- I think it said, "You're my  
14       best friend" and the victim replied no, so it does  
15       not appear that any actual picture was shown to her  
16       for her to identify and it wasn't introduced as an  
17       exhibit.

18              So, you know, the State -- State's position  
19       that there was really nothing to impeach her on  
20       based on just that exchange because there was -- you  
21       know, she wasn't asked to identify anything and it  
22       was not an exhibit.

23              MR. THOMPSON: May I reply to that, Judge?

24              THE COURT: Yes.

25              MR. THOMPSON: If that's the case and I believe

1       that may have been -- if my recollection of the  
2       transcript is correct -- all the more reason  
3       Mr. Warder should've shown her the picture and asked  
4       her if she drew it.

5               THE COURT: Now, these pictures that you're  
6       going to mail to the court reporter as exhibits, are  
7       these the pictures in question?

8               MS. MEADOWS: These were the pictures that were  
9       given to -- that Mr. Hendrix gave to Mr. Warder, but  
10      they were not the ones that -- you know, they  
11      weren't ever used at trial or mentioned at trial.

12              THE COURT: Well, that's my question. The  
13      pictures that Mr. Hendrix is talking about that were  
14      not used, are these the pictures that are being  
15      admitted into evidence?

16              MS. MEADOWS: Yes.

17              MR. THOMPSON: Yes, sir. The only picture  
18      actually I'm aware of, Judge, the defendant's told  
19      me is the one that says "I love you, Aaron" with a  
20      picture above it or below it.

21              THE COURT: Okay. Well, what I will do, I want  
22      to go back. As both of you know, I'd like to take  
23      some time to read the transcript and the materials  
24      that were submitted, so I'm going to take this under  
25      advisement. I'll have my law clerk send you the

1 decision. Thank you for your well-prepared  
2 arguments. We'll close the record.

3 MS. MEADOWS: Thank you, Your Honor.

4 MR. THOMPSON: Thank you.

5 MS. MEADOWS: Judge, when I e-mail you the  
6 packet, it says that there is a server outside. I  
7 don't know if it's the SC court server, but it  
8 reported an error and it kept bouncing back.

9 THE COURT: Well, my law clerk just indicated  
10 he has the packets.

11 MS. MEADOWS: Oh, okay. Great. Okay.

12 THE COURT: So that problem is solved.

13 MS. MEADOWS: All right. Thank you, Judge.

14 THE COURT: Thank you.

15 (The proceedings concluded at 3:19 p.m.)

16 - - -

17

18

19

20

21

22

23

24

25

## C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

I, the undersigned, Lisa Scott, Circuit 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Pickens County, South Carolina, on the 26th day of January, 2022.

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

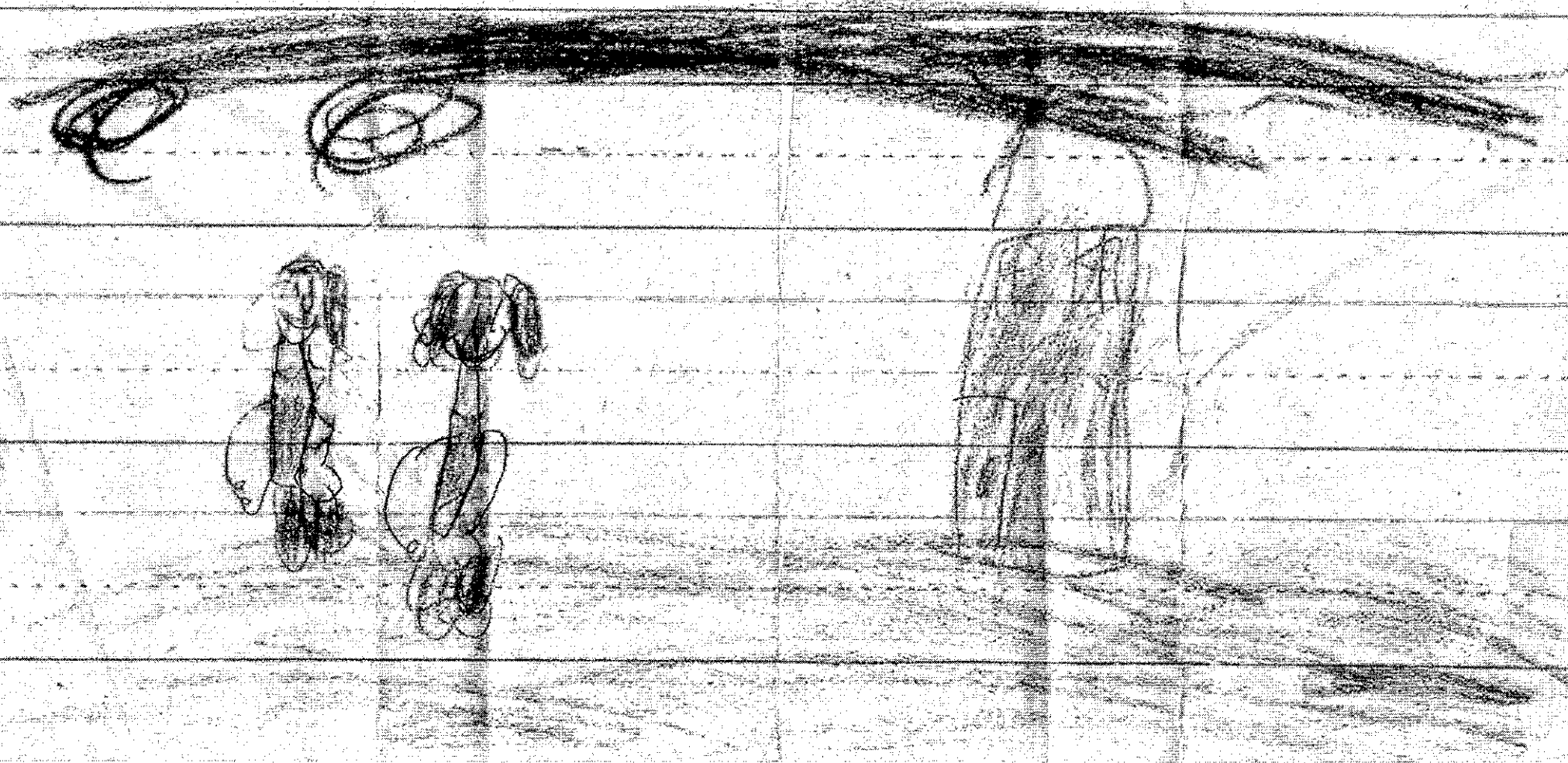
September 27, 2022

/s/Lisa Scott

Lisa Scott  
Circuit Court Reporter

I love

Aaron.



Minor 1

I love my

Kanban



Minor 1

Fum

ADP 20

to

to

Happy  
Valentine's  
Day

Minor 1

To:

Aaron



Valentines@paparimagie.com

PMG, Inc.

NXINM11J101

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2022 AUG 19 A 8:50

Aaron Van Hendrix, SCDC #3668, Clerk of Court, Case No. 2019-CP-39-1044  
PICKENS COUNTY  
SOUTH CAROLINA

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

# I. INTRODUCTION

This matter comes before the Court by way of a post-conviction relief (PCR) action commenced by Aaron Van Hendrix (Applicant) on August 14, 2019, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. The State requested an evidentiary hearing through its return and motion for a more definite statement on January 22, 2020. A hearing into the matter convened before the undersigned on January 26, 2022, via Cisco WebEx Meetings. Applicant was present at the hearing and represented by Don A. Thompson. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his trial counsel, Richard H. Warder. In addition to the pleadings in this action, this Court had before it a copy of the Pickens County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish

any constitutional violations or deprivations entitling him to post-conviction relief. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

## **II. FACTS & PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. In May of 2014, Applicant was arrested following an investigation into allegations that he and his girlfriend, Stacy Carol Riden, sexually abused Riden's three minor children. During its June 2015 term, the Pickens County Grand Jury indicted Applicant for two counts of first-degree criminal sexual conduct with a minor (2015-GS-39-0227, -0229) and one count of third-degree criminal sexual conduct with a minor (2015-GS-39-0228).

On January 25, 2016, Applicant and Riden<sup>1</sup> proceeded to a joint jury trial before the Honorable Perry H. Gravely. Richard H. Warder (Counsel) represented Applicant and Assistant Solicitor Christopher Jones of the Thirteenth Circuit Solicitor's Office prosecuted the case.

### **A. Summary of Evidence Adduced at Trial**

On December 29, 2013, Deputy Adam McJunkin of the Pickens County Sheriff's Office travelled to the residence of Mark and Lisa Riden ("Grandfather" and "Grandmother") in response to allegations the couple's three minor grandchildren had been sexually abused by Stacy Carol Riden ("Riden"), who was the children's biological mother, and Aaron Van Hendrix,

---

<sup>1</sup> Riden was indicted for two counts of first-degree criminal sexual conduct with a minor, one count of third-degree criminal sexual conduct with a minor, and one count of unlawful conduct towards a child, and Riden, who was not initially present for trial, was tried together with Applicant. Caroline Horlbeck of the Greenville County Public Defender's Office represented Riden.

who was Riden's former live-in boyfriend.<sup>2</sup> (R. 143-145; 169-70; 174; 197; 202; 207-208; 240; 384). At that time, the children—a seven-year-old boy ("Victim 1"), the boy's seven-year-old twin sister ("Victim 2"), and the twins' three-year-old younger sister ("Victim 3")—had been living with their grandparents' for approximately eight or nine months, but they had previously resided with Applicant and Riden at a mobile home located in Easley, South Carolina. (R. 142-144; 154-155; 169; 175; 177; 195-96; 201-03; 211; 261; 383; 392; 396; 460).

After the allegations arose, Investigator Marvin Nix of the Pickens County Sheriff's Office began an investigation into the reported sexual abuse and referred the children to the Julie Valentine Center, a child abuse and sexual assault recovery center, for forensic interviews. (R. 237-38; 240-41; 255; 260; 298). Following the referral, Shauna Galloway-Williams, the executive director of the Julie Valentine Center, interviewed Victim 2 in February of 2014. (R. 50; 301). During the interview, Victim 2 indicated she previously lived with Applicant and Riden and asserted Riden physically abused her and did other "bad stuff" during that time. (State's Ex. # 1 (Victim 2's First Interview Recording)). Specifically regarding the other "bad stuff," Victim 2 recounted Riden held her down by her hair while Applicant rubbed and digitally penetrated her vagina over her clothing in front of Victim 1 and Victim 3. (State's Ex. # 1). Additionally, Victim 2 stated Applicant and Riden regularly talked about sex in front of them, watched pornographic movies, engaged in sex acts in front of her, took a lot of pills and "medicine," and pulled her into the shower on one occasion while they were using it together. (State's Ex. # 1). Furthermore, she indicated Riden told her not to reveal the abuse, and she noted Applicant sometimes wore Riden's clothing and used her nail polish. (State's Ex. # 1).

---

<sup>2</sup> Grandmother was the children's step-grandmother while Grandfather was the children's maternal grandfather. (R. 239; 459).

Thereafter, in March of 2014, Galloway-Williams interviewed Victim 1 and Victim 3. (R. 50; 201). During Victim 1's interview, Victim 1 stated Applicant and Riden did bad things to him and his siblings. (State's Ex. # 3 (Victim 1's First Interview Recording)). Specifically, Victim 1 recounted Applicant rubbed and poked his "privates," touched him underneath his clothing, and tried to make him touch his "privates" on multiple occasions, and he indicated Riden rubbed and poked his privates as well. (State's Ex. # 3). He also stated Riden held both him and Victim 2 down while Applicant sexually abused them, and he indicated his father observed the abuse once. (State's Ex. # 3). Additionally, he recounted Riden was physically abusive towards him along with Applicant, and he indicated Riden sometimes forced them to watch a pornographic movie. (State's Ex. # 3). Furthermore, Victim 1 indicated Applicant and Riden threatened to kill them if they revealed the sexual abuse. (State's Ex. # 3). Similarly, during Victim 3's interview, Victim 3 recounted Applicant touched her "down there" and made her touch him "down there" in Riden's presence. (State's Ex. # 5 (Victim 3's Interview Recording)). Additionally, she vacillated somewhat on whether Riden inappropriately touched her but indicated she thought she did. (State's Ex. # 5). Victim 3 also stated she observed Riden hold Victim 1 down so Applicant could touch his groin area. (State's Ex. # 5).

Following the interviews, Dr. Mary Croswell, a medical doctor and an expert in child abuse pediatrics, conducted a physical examination of each of the children. (R. 269-71; 279-80). In examining Victim 1 and Victim 2, Dr. Croswell found nothing abnormal. (R. 274-78; 281; 293). However, in examining Victim 3, Dr. Croswell found labial adhesions in Victim 3's vaginal

area, which potentially could have resulted from non-accidental trauma but also could have resulted from accidental trauma or other causes.<sup>3</sup> (R. 284-85).

Thereafter, Galloway-Williams again conducted a forensic interview of Victim 1. (R. 307). During the second interview, Victim 1 stated Applicant and Riden touched his and his siblings' "privates," sucked on them, licked them, and made them do reciprocal acts, and he recounted he witnessed the sexual abuse being committed upon Victim 2 and Victim 3. (State's Ex. # 4 (Victim 1's Second Interview Recording)). He further indicated Applicant and Riden put their fingers into his buttocks. (State's Ex. # 4). Additionally, he recounted he observed Applicant and Riden injecting themselves with needles, stated he observed bleeding from his siblings' "privates" after they were digitally penetrated, and again confirmed Applicant and Riden threatened to kill them if they revealed the abuse. (State's Ex. # 4). He also stated his father observed the abuse occur on some occasions but did nothing to stop it. (State's Ex. # 4). Furthermore, as to why he did not reveal all the details of the abuse during the first interview, Victim 1 indicated he failed to do so because he was scared. (State's Ex. # 4).

Likewise, Galloway-Williams also conducted a second interview of Victim 2. (R. 307). During that interview, Victim 2 recounted Applicant and Riden performed oral sex on her and her siblings and forced her and her siblings to perform oral sex on them. (State's Ex. # 2 (Victim 2's Second Interview Recording)). Additionally, Victim 2 indicated she and her younger sister bled from their vaginas after they were digitally penetrated, and she stated Applicant and Riden showed them pornographic movies. (State's Ex. # 2). Victim 2 further revealed her father witnessed the sexual abuse without intervening, and she indicated her father and one of

---

<sup>3</sup> During the examination of Victim 3, Dr. Croswell also found evidence of cavities and more dental breakdown than expected for someone Victim 3's age. (R. 282-84; 291).

Applicant's sisters inappropriately touched her on one occasion. (State's Ex. # 2). Furthermore, Victim 2 stated she did not fully reveal the abuse during the first interview because she was scared and nervous. (State's Ex. # 2).

Meanwhile, Investigator Nix met with both Applicant and Riden, and he interviewed each of them in regard to the allegations of sexual abuse. (R. 242; 244; 246-47). During the interview with Riden, Riden denied the allegations and indicated she was surprised by them. (R. 244-45). However, she confirmed Applicant had lived with her and her children for a period of time and also noted the children's father had stayed with them sometimes. (R. 245-46). Similarly, during the interview with Applicant, Applicant did not make any admissions regarding the sexual abuse. (R. 247-50). However, Applicant acknowledged he wore Riden's clothing on one occasion while he was residing with her and her children for a period of time. (R. 247-48; 250; 260). He further indicated the children's father stayed with them sometimes, and he stated one of Riden's sisters took her clothes off at the residence on one occasion. (R. 248-49). At the conclusion of the investigation into the sexual abuse allegations, Investigator Nix arrested both Applicant and Riden. (R. 250-51; 259).

At trial, all three children testified about the sexual abuse they suffered at the hands of Applicant and Riden. (R. 142-206). During his testimony, Victim 1 recounted Applicant and Riden inappropriately touched him and his sisters' "privates" and forced him to perform oral sex on them, and he indicated they threatened to kill him if he revealed the abuse. (R. 144-47; 150). Additionally, Victim 1 recounted that his father was sometimes present at the home he lived in during the time period in which the abuse was occurring, but Victim 1 specifically indicated he did not believe his father was actually present when the abuse occurred and was not there laughing when the abuse was happening. (R. 164-65). Similarly, Victim 2 recounted Applicant

and Riden touching her “privates,” making her touch their “privates,” and making her perform oral sex on them. (R. 169–70). She further indicated she saw Applicant and Riden touch her siblings’ “privates,” and she stated she did not reveal the abuse because Applicant and Riden threatened her. (R. 170–73). Furthermore, she indicated that her father was sometimes present at the home she lived in at the time of the sexual abuse but never actually witnessed the sexual abuse occur. (R. 173–74). Likewise, Victim 3 recounted she was inappropriately touched on a “bad place” by Applicant and Riden. (R. 197–98).

Following the children’s testimony, the law enforcement officers who responded when the sexual abuse was disclosed testified about the details of their investigation and about the statements made by both Applicant and Riden.<sup>4</sup> (R. 207–11; 237–66). Additionally, Dr. Croswell testified about her findings during her physical examinations of the children, and she noted it was “[q]uite rare” for physical findings to be made in child sexual abuse cases. (R. 269–86; 291–93). Furthermore, Galloway-Williams informed the jury she conducted forensic interviews of the children, and the recordings of the four interviews of Victim 1 and Victim 2 were admitted into evidence over objection and played for the jury with redactions. (R. 298–304; 306–07; 310).

Thereafter, the solicitor continued forward with the State’s case and called Christine Carlberg to the witness stand. (R. 318). During her testimony, Carlberg—who had no contact with the victims, had not seen any recordings of the victims’ statements, and had not read any statements from the victims—was qualified as an expert in child abuse dynamics. (R. 328–29; 331–32). Upon being qualified as an expert, Carlberg generally discussed delays in disclosure of

---

<sup>4</sup> During Investigator Nix’s testimony, he specifically noted no one—including the victims’ father and Riden’s sisters—other than Applicant and Riden was arrested and charged in connection to the abuse of the victims. (R. 259–20).

sexual abuse and explained general concepts related to the disclosure process, grooming, and coaching for the jury. (R. 330–62). At the conclusion of Carlberg’s testimony, the State rested. (R. 365–66).

Riden then testified in her own defense. (R. 365–66; 380). During her testimony, Riden denied the allegations in total, stated she never touched or rubbed her children’s genitals in an inappropriate manner, claimed she would never perform digital penetration or oral sex on her children, and indicated she did not know why the allegations were being made or if the children were coached. (R. 380–83; 391; 395–96). Additionally, she indicated she never observed anyone else, including Applicant, engage in inappropriate interactions with the children, stated she would have killed Applicant if she discovered he was abusing her children, and denied Applicant ever sexually abused the children. (R. 383; 385–86; 396; 419). Following Riden’s testimony, Riden rested her case. (R. 441).

Applicant also elected to testify in his own defense. (R. 421; 442). During his testimony, Applicant—like Riden—completely denied the allegations and claimed the children were not sexually assaulted. (R. 445–46; 448). However, Applicant conceded he had no idea what happened in the home after he moved out in December of 2012. (R. 444; 447–48).

In addition to Applicant’s testimony, Mark Lusk, who was the children’s biological father, testified as a part of Applicant’s defense.<sup>5</sup> (R. 424; 452). During Lusk’s testimony, Lusk indicated he never saw anything inappropriate occurring at Riden’s residence when Applicant and the children were living there. (R. 426; 429). He also specifically denied he ever sexually abused the children or witnessed anyone sexually abusing the children. (R. 436–37; 441).

---

<sup>5</sup> Luanne Queen, who was Applicant’s mother, also testified in Applicant’s defense, indicated she interacted several times with Applicant and the children, and noted the children always seemed happy and free of signs of physical abuse or injury. (R. 452–56).

Furthermore, Lusk denied ever getting into a bed with Applicant, and he unsubtly implied he would have killed anyone he saw hurt or do anything inappropriate to his children. (R. 429; 436).

Thereafter, Applicant rested his case, and the State called Grandfather in reply. (R. 457; 459). During his testimony, Grandfather confirmed Lusk asked him to come and get the children because there was no food in Riden's house, people were coming and going from that location, and Lusk was afraid the children would starve or be hurt if they were not removed from the home. (R. 461). He further stated he spoke with Riden after she was arrested, and she denied the charges. (R. 461-62). However, Grandfather indicated Riden stated she was influenced by drugs if she had anything to do with the allegations and expressed remorse about missing warning signs regarding Applicant. (R. 462; 464).

Following the presentation of that evidence and testimony, the parties presented their closing arguments to the jury, the trial judge instructed the jury on the law, and the case was submitted to the jury. (R. 472-545).

#### **B. Verdict & Subsequent Proceedings**

Following the four-day trial, the jury convicted Applicant as indicted. Judge Gravely sentenced Applicant to concurrent terms of twenty-five years' imprisonment for each count of first-degree criminal sexual conduct with a minor and a consecutive term of twelve years' imprisonment for third-degree criminal sexual conduct with a minor.<sup>6</sup>

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

---

<sup>6</sup> Riden was also convicted as indicted. Judge Gravely sentenced her to concurrent terms of twenty-five years' imprisonment for each count of first-degree criminal sexual conduct with a minor and fifteen years for third-degree criminal sexual conduct with a minor along with a consecutive term of imprisonment of ten years for unlawful conduct towards a minor.

Whether the trial court erred in granting the State's request, over [Applicant]'s objection, to redact portions of the children's forensic interviews where they alleged their father and his girlfriend were present during sexual abuse, participated in the sexual abuse, and were told about the sexual abuse where this evidence was relevant as it tended to disprove the children's claims because the father testified in [Applicant]'s case that if he had known about any abuse, the defendants "would not be here. They would be dead" and its removal violated the rule of completeness?

Following briefing and oral argument, the Court of Appeals affirmed Applicant's convictions. *State v. Van Hendrix*, Op. No. 2019-UP-022 (S.C. Ct. App. filed Jan. 9, 2019). The case was remitted back to the circuit court on January 25, 2019.

### **III. CURRENT APPLICATION**

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. Ineffective Assistance of Counsel
  - a. "A hearing problem during trial;"
  - b. "I was not advised of the severity[*sic*] of the charges against me nor the amount of time they carry;" [and]
  - c. "I provided council [*sic*] with the picture that [Victim 2] drew and wrote, 'I love you Aaron' on; she testified to having not drawn it so it certainly could have been used in trial in my favor"

At the outset of the evidentiary hearing, PCR counsel confirmed Applicant would be proceeding only on the claims raised in the original application.

### **IV. STANDARD OF REVIEW**

The Uniform Post-Conviction Procedure Act<sup>7</sup> (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

<sup>7</sup> S.C. Code Ann. §§ 17-27-10 to -160.

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee all criminal defendants the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of

the proceeding would have been different but for counsel's deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668). The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard, and failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)). Significantly, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Strickland*, 466 U.S. at 696.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.'" *Dunn v. Reeves*,

594 U.S. \_\_\_, \_\_\_, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen.*” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The reviewing court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). Further, “even if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; see also *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at

689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Id.* at 688–89; *cf. id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn*, 594 U.S. \_\_\_, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–07). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Strickland*, 466 U.S. at 689; *see Mazzell v. Evatt*, 88 F.3d 263, 269 (4th Cir. 1996) (declining “to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial”). The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

When evaluating this probability, the reviewing court must “consider the specific impact counsel’s error had on the outcome of the trial” coupled with “the strength of the State’s case in light of . . . the [totality of the] evidence presented to the jury.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018); *Strickland*, 466 U.S. at 695–96. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Strickland*, 466 U.S. at 687 (emphasis added). In general, “the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice.” *Smalls*, 422 S.C. at 188, 810 S.E.2d at 843 (citing *Strickland*, 466 U.S. at 696) (stating “a verdict . . . only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support”). Accordingly, “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. *Id.* at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

#### V. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims of ineffective assistance of counsel articulated at the start of the hearing and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

##### 1. *Hearing problem during trial*

Applicant first contends trial counsel was ineffective because Counsel, at some point during trial, allegedly could not hear the judge due to a hearing impairment. When asked about this allegation at the PCR hearing, Applicant testified that at some point during trial, Judge Gravely was speaking and Counsel had to ask the judge to repeat himself because he did not hear

him. Applicant stated merely that he is not sure what Counsel missed. When asked to identify where in the transcript or on what day of his trial this occurred, Applicant stated he could not remember. Rather, he testified that Counsel had a hearing aid and speculated that maybe Counsel could not hear anything that morning. Counsel testified that he does recall any point during the trial where he was unable to hear or understand what the judge was saying. However, had that happened, he would have spoken up immediately.

This Court finds Applicant failed to overcome *Strickland*'s strong presumption that trial counsel rendered adequate assistance and exercised reasonable professional judgment in his representation of Applicant at all stages of the trial. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Counsel's credible testimony indicates he would have immediately notified the judge if he could not hear the judge—or anyone else for that matter—at any point during the trial. This Court further finds Applicant wholly failed to present any evidence or testimony specifying what, when, or where in the record he believes Counsel was having trouble hearing. *See Strickland*, 466 U.S. at 690 ("A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment."). Applicant's belief that Counsel may have missed something at some point during his trial is nothing more than speculation. *See Simpson v. Moore*, 367 S.C. 587 n.2, 598, 627 S.E.2d 701, 707 n.2 (2006) (noting that a PCR applicant "may not simply posit suppositions and speculations in an attempt to establish that counsel was ineffective"), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836; *United States v. Basham*, 789 F.3d 358, 375 (4th Cir. 2015) (emphasizing that *Strickland*'s "prejudice requirement [cannot be satisfied] through 'rank speculation, defying calculation of a reasonable probability'" (citation omitted)). Because Applicant failed to establish deficient performance or any resulting prejudice,

Applicant's claim pertaining to Counsel's purported inability to hear the judge during trial is **DENIED**.

**2. *Failure to advise Applicant on the severity of the charges and potential sentence***

Applicant next contends Counsel provided ineffective assistance by failing to advise him of the severity of the charges he was facing and potential sentence he could receive if convicted. At the PCR hearing, Applicant first testified Counsel never discussed with him the seriousness of the charges or potential sentence he could receive. Applicant then testified that, he had known about the potential sentence he could receive, it would have given him "something to think about." Specifically, Applicant testified he would have talked about it with his family, who maybe could have convinced him to plead guilty. Applicant recalled the State making him a twelve-year offer and fifteen-year offer. When asked why Applicant rejected those offers, he stated that he was innocent and did not think he would be convicted.

Counsel confirmed that the State made at least one plea offer although he could not recall the specific terms. However, Counsel testified he was confident that he informed Applicant of the severity of the charges against him and the potential sentence he was facing because it is his general practice to discuss these matters when consulting with a client about a plea offer. In fact, Counsel stated that he would never advise a client about a plea offer with a client without thoroughly discussing and comparing the sentences he or she could receive. He further recalled explaining to Applicant the advantages and disadvantages of pleading guilty versus going to trial. Nonetheless, Counsel stated, Applicant rejected the offer because he did not think he would be convicted at trial.

This Court finds Applicant failed meet his burden under *Strickland* regarding his allegation he did not understand or was never informed of the sentence he was facing if

convicted at trial or the seriousness of the charges against him as a result of ineffective assistance of counsel. Counsel's credible testimony demonstrates that, despite advising Applicant of the risks of trial and the benefits of accepting the plea offer, Applicant chose to go to trial because of his insistence that he was innocent and would not be convicted of these offenses. Applicant, on the other hand, presented inconsistent testimony regarding his understanding of the plea offers and what Counsel told him. Considering Counsel's recollection of his discussions with Applicant regarding the plea offers, coupled with his testimony regarding his established practice, this Court finds Applicant failed to demonstrate Counsel's representation "fell below an objective standard of reasonableness" as measured by "prevailing professional norms" in this regard. *Strickland*, 466 U.S. at 688.

Applicant further failed to demonstrate a reasonable probability that he would have accepted the plea offer even if Counsel was somehow deficient in this regard based on Applicant's own testimony that he did not accept any plea offer because he was innocent. *See Hill*, 474 U.S. at 59 ("In the context of plea negotiations, the prejudice element turns on whether counsel's performance affected the defendant's final decision to accept or reject a plea offer). Rather, Applicant's only claim of prejudice is that he would have talked about it with his family—who maybe could have convinced him to plead guilty—had Counsel properly advised him of the severity of the charges and the sentence he was facing. Applicant therefore failed to demonstrate a reasonable probability that the result of the proceeding would have been different absent Counsel's alleged errors. *Strickland*, 466 U.S. at 689, 694. Accordingly, Applicant's request for relief by way of this claim is **DENIED**.

### 3. *Failure to impeach Victim 2 with drawings*

Finally, Applicant contends Counsel was ineffective for failing to impeach Victim 2's credibility with a drawing Victim 2 gave Applicant. At the PCR hearing, Applicant testified he gave Counsel several drawings Victim 2 gave him when they were living together in Riden's home. Specifically, he stated Victim 2 wrote "I love you" or "you're my best friend" on one of the drawings. He recalled Riden's lawyer questioning Victim 2 about the drawing at trial in the following portion of her cross-examination:

RIDEN'S COUNSEL: Do you remember drawing some things for Mr. Hendri[x], or Aaron?

VICTIM 2: I don't remember.

RIDEN'S COUNSEL: Did you ever draw him anything that said, "You're my best friend"?

VICTIM 2: No, ma'am, I didn't.

RIDEN'S COUNSEL: You don't think you did that?

VICTIM 2: No, ma'am, I didn't.

(R. 179). However, no drawing was admitted into evidence nor shown to Victim 2.

Applicant stated that Counsel never did anything with the drawings or asked Victim 2 about them. He believes Counsel should have used one of the drawings at trial although in Applicant's opinion, the drawing by itself "does not show much." However, he testified that, "put together with all of [his] other issues," Counsel could have shown the drawing to Victim 2 to impeach her credibility during his cross-examination. He further stated that Victim 2's credibility was crucial at trial. Applicant stated he could not remember if he was there or saw Victim 2 making the drawing; however, he testified he could recognize her drawing and handwriting.

At the PCR hearing, Counsel produced the three drawings or notes he received from Applicant that allegedly came from Victim 2. (See State's Exhibit #1-3). Counsel described the first drawing as a picture with the sky drawn in blue with two little girls standing next to a house that looks like a penis. (State's Exhibit #1). Victim 2's name is written on the back. The remaining two drawings are valentines. Counsel described the first valentine as a piece of paper with a badly drawn heart with, "I love you Aaron" written at the top. (State's Exhibit #2). More hearts are drawn on the back and "From [Victim 2] to Aaron." The other valentine is a printed Hello Kitty card with the text "To: Aaron" on one side and "from: [Victim 2]" on the other. (State's Exhibit #3).

Counsel was asked if he considered using any of these drawings at trial. He testified that he considered it but decided they would not be helpful. Counsel stated he still believes they would be more harmful than helpful. In Counsel's opinion, it is best to stay away from anything involving the word "love" when representing a defendant charged with CSC with a minor. Counsel additionally confirmed that Riden's counsel never showed any drawings during her cross-examination of Victim 2 and that no drawings were used at all at trial. On cross-examination, Counsel stated that he believes Victim 2 denied drawing the pictures. When asked whether the case was based on the credibility of the children, Counsel agreed that, in his opinion, the jury had to believe the children to return the guilty verdicts. He stated there were no eyewitnesses other than the children and the credibility of the children was paramount.

This Court finds Applicant failed to establish Counsel's decision not to impeach Victim 2 with the drawings fell below an objective standard of reasonableness under the highly deferential review required by *Strickland*. See *Strickland*, 466 U.S. at 689 (explaining that review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-

guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable"). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Id.* at 688-89; *cf. id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). Accordingly, when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Underwood v. State*, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); *see Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir.1977)).

Here, Counsel articulated a strategic decision to forego impeaching the seven-year-old child with her drawings indicating she loved Applicant because Counsel believed doing so could be more <sup>RSS harmful</sup> than helpful. *See Gustave v. United States*, 627 F.2d 901, 906 (9th Cir. 1980) (explaining that, like the manner and scope of cross-examination generally, "[i]mpeachment tactics are generally held to be matters of trial strategy which are to be afforded deference"). Because Victim 2 was undoubtedly a sympathetic witness, an attempt to impeach her could risk alienating the jurors who might view it as an unfair attack on a young child. Further, none of the drawings Applicant provided to Counsel say, "you're my best friend," which is what Riden's counsel specifically asked Victim 2 about. The impeachment value of the drawings in Counsel's possession was therefore minimal, and in fact one of them depicts, in Counsel's opinion, a house

shaped like a penis. Given the totality of the circumstances, this Court finds Applicant failed to demonstrate that Counsel's decision not to use these drawings at trial fell below an objective standard of reasonableness.

Even assuming Counsel was deficient in this regard, Applicant failed to demonstrate a reasonable probability that, but for Counsel's failure to impeach Victim 2 with the drawings, the jury "would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695; see *Dell v. Straub*, 194 F. Supp. 2d 629, 651 (E.D. Mich. 2002) ("Impeachment strategy is a matter of trial tactics, and tactical decisions are not ineffective assistance of counsel simply because in retrospect better tactics may have been available."). A reasonable probability is defined as "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In light of the aforementioned fact that none of the drawings provided to Counsel contradicted Victim 2's testimony that she never gave Applicant "you're my best friend" drawing, Counsel's failure to impeach her with these drawings is hardly "sufficient to undermine confidence in the outcome" of Applicant's trial. *Strickland*, 466 U.S. at 694. Accordingly, Applicant's request for relief by way of this allegation is DENIED.

#### VIII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

**IX. CONCLUSION**

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

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 8 day of August, 2022.



R. SCOTT SPROUSE  
Presiding Circuit Court Judge  
Thirteenth Judicial Circuit

Wallula, South Carolina

2022 AUG 5 A 8:50  
CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

RECEIVED

AUG 22 2022

S.C. SUPREME COURT

## WITNESSES

Terry Marvin Nix

Pickens County Sheriff's Office

5/12/2014

ARREST WARRANT NUMBER  
2014A3910300218

## ACTION OF GRAND JURY

TRUE BILL

Date

JUN 09 2015

  
Foreperson of Grand Jury

## VERDICT

Guilty

C. Fred Beaman, Jr.

Foreperson of Petit Jury  
Date: 1-24-2016DOCKET NO. 2015-GS-39-0227  
BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2015

THE STATE

VS.

AARON VAN HENDRIX

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

Certified Copy

Hendrick P. Williams

Clerk of Court

Pickens County, SC

Dated: 1/24/2016

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on **JUN 09 2015** the Grand Jurors of Pickens County present upon their oath:

That AARON VAN HENDRIX did in Pickens County, between 12/25/2011 through 12/25/2012, commit a sexual battery on <sup>Minor 1</sup> who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Certified Copy

*Harold P. Williams*

Clerk of Court  
Pickens County, SC

Dated *Aug 2019*

*MB*

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

*Brian Hunter*

SOLICITOR

BAR # 77844

## WITNESSES

Terry Marvin Nix

Pickens County Sheriff's Office

5/12/2014

## ARREST WARRANT NUMBER

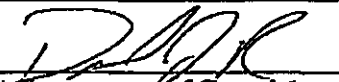
2014A3910300220

## ACTION OF GRAND JURY

TRUE BILL

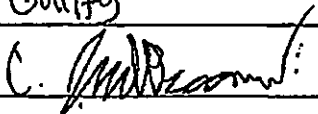
FILED

JUN 09 2015

  
 Foreperson of Grand Jury

## VERDICT

Guilty

  
 Foreperson of Petit Jury

Foreperson of Petit Jury

Date: 1-28-2016

DOCKET NO. 2015-GS-39-

BBH

0228

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2015

THE STATE

VS.

AARON VAN HENDRIX

Indictment for

3661

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
3RD DEGREE

VIOLATION § 16-03-0655(C)

Certified Copy

Hendrick P. Vetter

Clerk of Court

Pickens County, SC

Dated: 1/28/2016

MS

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

At a Court of General Sessions, convened on

JUN 09 2015

the Grand Jurors of Pickens

County present upon their oath:

That AARON VAN HENDRIX did in Pickens County, between the dates of 12/25/2011 through 12/25/2012, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of <sup>Minor 2</sup>a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-03-0655(C) of the South Carolina Code of Laws (1976) as amended.

**Certified Copy**

*Harold P. Walker*

**Clerk of Court**

**Pickens County, SC**

Dated *July 2015*  
*ms*

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

*Brenda Hunter*  
SOLICITOR BAR # 77844

## WITNESSES

Terry Marvin Nix

Pickens County Sheriff's Office

5/12/2014

ARREST WARRANT NUMBER  
2014A3910300219

## ACTION OF GRAND JURY

TRUE BILL

Date

JUN 09 2015

Foreperson of Grand Jury

## VERDICT

Guilty

C. G. Brown

Foreperson of Petit Jury

Date: 1-28-2016

DOCKET NO. 2015-GS-39-  
BBH

0229

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2015

THE STATE

vs.

AARON VAN HENDRIX

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

Certified Copy

Hendrick P. Vallentyne

Clerk of Court

Pickens County, SC

Dated

J. D. G. M.

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on **JUN 09 2015** the Grand Jurors of Pickens  
County present upon their oath:

That AARON VAN HENDRIX did in Pickens County, between 12/25/2011 through 12/25/2012,  
commit a sexual battery on Minor 3 who was less than eleven years of age. This is in violation of §16-  
3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Certified Copy

*Harold P. Walker*

Clerk of Court

Pickens County, SC

Dated

*May 2015*

*m*

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

*Bruce Hunter*

SOLICITOR

BAR # 77844

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Pickens

VS.

Aaron Van Hendrix

AKA:

Race: WHITE Sex: M Age: 27

DOB: 1988 SS#: [REDACTED]

Address:

City, State, Zip: Easley, SC 29640

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

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Sex, Crim Sex Cond, 1st Deg W/Min <11 Yrin violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing  
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUSThe charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

78892

Jones, Christopher L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ Set by SCDPPPS

Recipient:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| *Fine:                                 | \$      |           |
| § 14-1-206 (Assessments 107.5 %)       | \$      |           |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$ 3.90   |
| TOTAL                                  | \$      | \$ 137.90 |

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3900227

A/W#: 2014A3910300218

Date of Offense: 12/25/2011

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

CDR Code # 0385

☐ Mandatory GPS(CSC) ☐ §17-25-45  
w/minor 1st or Lowd Act)

1/28/16

PTUP

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive or jointly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to \_\_\_\_\_

Other: \_\_\_\_\_

Clerk of Court

Pickens County, SC

Dated 1/28/16

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge

Judge Code:

Sentence Date:

2751

1/28/16

## STATE OF SOUTH CAROLINA

COUNTY OF  
STATE

Pickens

VS.

Aaron Van Hendrix

AKA:

Race: WHITE Sex: M Age: 27

DOB: 1-1988 SS#: [REDACTED]

Address:

City, State, Zip: Easley, SC 29640

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

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: SEX/ Criminal Sexual Conduct with Minor 3rd Degree - U/16yrs &amp; actor over 14yrs

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

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

ATTEST:

78892

Jones, Christopher L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 14 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

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

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

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 1/28/16☐ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

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

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

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |           |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) |         | \$ 3.90   |
| TOTAL                                  |         | \$ 133.90 |

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3900228

A/W#: 2014A3910300220

Date of Offense: 12/25/2011

S.C. Code § : 16-03-0655(C)

CDR Code #: 3661

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Certified Copy

Hendrick P. Walker

Clerk of Court

Pickens County, SC

Dated 1/28/16

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

1/28/16

