

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Saluda County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO KENYARDO POSEY,

APPELLANT

APPELLATE CASE NO. 2017-000500

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #26 (INDEX CARDS),
STATE’S EXHIBIT #33 (CD MINOR INTERVIEW REDACTED),
STATE’S EXHIBIT #34 (CD SISTER INTERVIEW REDACTED).**

1 That's not the situation we have here. You're on this
2 jury because we trust you to take the position he's
3 presumed innocent not that he's presumed guilty.

4 So you have to look at the facts of the case not
5 just - it basically breaks down into three categories at
6 the end of the day. Fact from fiction. Experts, and as
7 the Solicitor brought up, common sense. And reality
8 tells us when you check in and go through the door and
9 they look through your purse or wallet and make sure you
10 take everything out of your pocket, they aren't saying
11 leave your common sense outside. We don't want that.
12 You have got to have it to work through a case like this.
13 You have got to look at the facts of the case. And I
14 don't usually try to make notes and come up and talk for
15 a long time. I have had to make a couple because we have
16 been here a week and there's a lot of things that's gone
17 on. We have looked at the evidence a lot longer than
18 y'all have seen it so there's no way that you can
19 probably absorb everything in a week that we have been
20 looking at a long time.

21 These two attorneys have been involved in this case
22 since December of 2014. Two years they have been
23 involved in this case. I have been involved in it
24 probably about six months or so. So we have looked at
25 things that y'all have see in a week and we can't expect

1 you to absorb everything. Although a lot is in evidence
2 for you to look at, I think the Child Advocacy Center
3 tapes are probably one of the best pieces of evidence we
4 have got. That child advocacy tape, when you look at it,
5 it certainly doesn't show someone a week or so or two
6 weeks after an alleged assault being depressed and crying
7 and upset. You remember the Child Advocacy Center
8 interviewer, she said a lot of times we have to take time
9 to have someone become adapted to us. To feel
10 comfortable with us and so the interview process can go
11 on. They can do, the Child Advocacy Center can do two or
12 three sessions to get to what they are trying to get to.

13 In this Child Advocacy Center tape it was almost
14 flippant talking about Theodore Roosevelt. Talking about
15 things so easily. Talking about the sex issue so easily.
16 No tears. No crying. Nothing. Even in a part of that
17 interview she looked down and says I like your shoes. I
18 mean, it was almost a flippant interview. There was no
19 sadness. There wasn't anything that you saw on the stand
20 with a tear two years later after we had asked her have
21 you been in this courtroom before. We know why they were
22 in the courtroom before. They come in here with the
23 prosecutor and people to kind of say what they're gonna
24 say. But that CAC tape shows a very not depressed young
25 lady whatsoever.

1 Whether or not she and **Sister** have been programmed,
2 whether or not there's a puppet on a string, we can't
3 tell because we couldn't get to the mother. The mother
4 is back there like quarterbacking an NFL game protected
5 by people. She never testified. Never been able to go
6 ahead and cross examine her. Never been able to ask her
7 about anything. Why wouldn't you call the mama? What is
8 the fear factor of putting the mother on the witness
9 stand. That's a big missing piece of the puzzle. We
10 thought we would be cross examining her. We called her.
11 We got to accept her as being truthful. We ain't gonna
12 call her. The State calls her. We get to cross examine
13 her. What about, are you deaf? Do you wear a hearing
14 aid? How in the world for two or three years in a 1200
15 square foot house do you not hear or see sex going on?
16 Penile penetration going on nightly for over a year or
17 almost two years. How do you not learn of this if it's
18 happened at all two or three years ago?

19 Remember, she said it happened every night. We had
20 sex every night. Sometimes it would go every other night
21 and then maybe it went every third night and in the video
22 she is saying I guess Thursday was his only night off.
23 That's the only night he didn't have sex with her. Come
24 on. This is in the fact or fictional realm of common
25 sense. How in the world can somebody have that much

1 nerve to try to go in a bedroom or to put a hand down the
2 pants when everybody in the house is in the same kitchen.
3 You either think you either dumb or there's something
4 missing in this picture that we can't get to the
5 quarterback.

6 What in the world is needed in a case like this
7 besides common sense? You've got a hallway that is
8 narrow. You got a 1200 square foot house. And ladies
9 and gentlemen of the jury, you have got someone saying we
10 have had sex every night and even the week before we had
11 sex every night, Thursday, and mom, remember, in the
12 child advocacy tape is saying, they telling that she had
13 suspicions that this had been going on for at least a
14 month, that she talked to aunt Pooh and **Minor** overheard
15 her that it might have been happening over a month.

16 Well, if you even have a suspicion something like that is
17 going on for over a month, do you think someone gets away
18 with it six out of seven nights a week? I mean, it ain't
19 Ray Charles and it ain't someone that's deaf. This is
20 their mother. There's no infirmity. It just don't make
21 sense in the fact or fictional realm.

22 This is a great case where we don't have to prove
23 motive at all. We don't have to prove motive but we know
24 there's motive out there. We know that both children
25 said it's better when dad is not here. Things have moved

1 on smoothly. It's in all the CAC tapes. Better when
2 he's not here. And there even was in one of the tapes
3 and I have to take part of the transcript out to read to
4 you, but even **Minor** did say except Thursday it happened
5 Friday, Wednesday, Tuesday, Monday. That's about
6 everyday. But what I'm getting at is they wrote in a
7 notebook there's a part of the interview that says
8 they're asking the child in the interview, I'm just gonna
9 read part of it. It's page 57 of the transcript
10 that you will have. Uh, maybe I know one time like --
11 This is the child. This is **Minor** talking. I know one
12 time like we were sitting in her room, in her bed is like
13 one of those day beds. Interviewer, uh-huh. And so it's
14 like this. And then she said, like that. And we were
15 sitting down and she says, oh, well, that notebook that I
16 was gonna bring, we both have one and hers is like that.
17 So she's telling the interviewer that notebook I was
18 gonna bring, we both have one and hers is like that.
19 Okay, says the interview. The child. And she, I don't
20 know how to write with this marker. Interviewer: It's
21 okay. Child: But she wrote who do you want to leave?
22 And I - and she had, uhm, she changed colors for some
23 reason but she said dad or mom. I want to take that back
24 because I'm the one that wrote that. And then she
25 circled dad. Interviewer: Okay.

1 We don't have that notebook. They didn't want to
2 bring that notebook so we could see that they're in there
3 plotting, who do we want to get rid of, mom or dad? What
4 are we gonna do? This is part of a CAC interview that
5 unless you study it you would never remember it but it's
6 there. If you listen to it. It's on page 57. But I
7 don't know what number that's gonna be. We've been
8 looking for a notebook. You've heard me ask the
9 interviewer about the notebook. She said I don't
10 remember. No mom testifying. No Deputy Clark, lead
11 investigator testifying, leads us to say what are you
12 hiding from us? What are we not seeing in a case that
13 takes someone's freedom away if you lose. This ain't
14 probation. This is serious stuff.

15 And you have got to go home to your family, you have
16 got a weekend ahead of you, and tell them if you find
17 someone guilty, what did that person do? The Solicitor
18 even kind of mellowed it out a little bit at the end of
19 her talk and she said, you know, even if you don't
20 believe he had penile penetration, but we think he did,
21 all we have to prove is that it was his saliva on the
22 vagina. Now, look, if she's lying about one thing, you
23 can't say, well, we don't believe this but we believe
24 that.

25 Credibility is huge in this kind of case. So if

1 they're coming up and saying if you don't want to believe
2 the penile penetration part, at least believe he put his
3 mouth on the vagina, then that's telling you we don't
4 know if we can believe our own story because there's no
5 evidence of semen. There's no evidence -- And I don't
6 care about all that. The medical stuff is great. That's
7 why I said there's three elements. There's facts.
8 There's medical evidence. And then there's common sense
9 that you're looking at. And when you're looking at
10 medical evidence, you know, the prosecutor brought up how
11 you try an armed robbery and the video camera, different
12 things. In a medical malpractice case someone in civil
13 court suing a doctor for malpractice, you're going to
14 have an expert saying what that doctor did or didn't do
15 that resulted in some injury to the patient. You're
16 going to have another expert saying that that doctor did
17 everything right. So it becomes a battle of experts
18 basically in a medical malpractice case. Because if
19 every medical malpractice case the plaintiff's doctor was
20 always right, there would never be a no verdict. There
21 would always be money being paid out. We know that's not
22 true.

23 So a battle of experts sometimes don't mean anything
24 except that this expert thinks this and this expert
25 thinks that. We had every expert basically in here

1 saying no semen. No damage to the hymen area. No
2 bleeding. No bruising. No nothing. I don't care how
3 you phrase it, whether it's socialized or not. We talked
4 about hymens being intact. None of that. It regenerates
5 itself for three years. Seven nights a week, six nights
6 a week, five nights a week for two or three years, it's
7 gonna look like it's the same like a virgin? Does it
8 take an expert to tell us that? Or does it just take
9 common sense to understand one expert might be a little
10 wrong. That's a battle of experts. Does it mean
11 credibility on one side or the other? We know there's
12 enzymes. Not any proof of anything else. We know it
13 could be lineally. Grandfathers and uncle and other
14 people could have the same DNA.

15 We're not suggesting anyone else did anything.
16 We're not suggesting anything happened but when you look
17 at the expert issue, there's not a whole lot of damage to
18 us.

19 Now, DNA certainly can be planted. Again, we don't
20 have mom. Why is that panty sitting in the - why didn't
21 you pick it up and put it in the trash or put it - not
22 the trash. Put it in the bin where you gonna wash
23 clothes.

24 Antonio said they had sex the night before, he and
25 his girlfriend. Not wife. They family though. Anything

1 could have happened. It could have been time to kick him
2 out and not just have him leave where you walk out the
3 door. Just get out forever. Life was better without you
4 around. I'm not saying anything was planted. I'm not
5 saying there was even evidence of it. I'm not even
6 saying it was for real DNA. It's a battle of experts to
7 give you your opinion. But you go back and look at the
8 dynamics of the case.

9 How long -- Oh, and the smoking issue. That's
10 another thing that we learned in the courtroom this week.
11 The girls, **Minor** says, oh, by the way, the sex would
12 happen when she was in the bathtub. Two or three times
13 when she went to get a lawnmower. That was in the
14 daytime. But other times it was at night when she was
15 either in the bath, watching TV, and that was all that
16 was in the CAC video, Child Advocacy Center video. Now
17 they throw in, oh, by the way she was out smoking. That
18 gives us a few extra minutes to give time in this trial.

19 Remember also **Minor** is saying the sex took about
20 ten minutes when we had sex. Now, we started at 9:00 or
21 9:10, something like that. I don't know how long I have
22 been talking, but ten minutes is a long time in a 1200
23 square foot house to hear humping or beds squeaking or
24 something and mom not hear a thing. Six nights out of
25 seven? You almost have to say come on. It's not

1 logical. This is where you look at facts and say which
2 expert do we look at. The expert that we brought in
3 wasn't any bell ringer for us. He didn't sit there and
4 light up the sky for anybody. Neither did theirs. They
5 all said no injury. He said his medical opinion with
6 medical certainty was there could not have been any
7 penile penetration to her. That's his expert opinion.
8 No one else denied it on the other side. There's no
9 evidence that there could have been penile penetration.

10 So I think the Solicitor overnight said, well,
11 maybe, maybe we better just talk about cunnilingus,
12 licking it or something because maybe we're not gonna win
13 that part so let's at least say it's oral sex. I don't
14 go that way. It's either all or nothing. Either they
15 have been having sex six or seven nights a week or
16 there's somebody making up a story for a benefit of a
17 quarterback that I can't cross examine. It's a shame.

18 Now, when the verdict is reached, you reach a
19 verdict of not guilty in this case, I don't want someone
20 thinking, gosh, if we don't convict him, these two young
21 girls are gonna think that we don't believe her and that
22 may hurt her. That's not the issue. That's not the
23 issue. As you know the burden of proof in this state, in
24 this country is they have to prove guilt beyond a
25 reasonable doubt. So it's not a matter of saying we

1 think you're not lying - you're lying to us, something
2 like that. I don't want them to think that. It's a
3 matter of saying we just don't think the burden of proof
4 has been met. It's not sufficient burden of proof with
5 the logistics and dynamics of the house, the frequency,
6 and everything else.

7 In the bedroom a year earlier when they said that
8 all three were in the bed, I don't know. I don't have a
9 10 year old anymore. I don't know where the word humping
10 comes from with them to say that he's humping my sister
11 in the bed. Whether it's fabricated or whether it's put
12 to someone's language or maybe that's the way she talks.
13 But remember also **Minor** said that purportedly when he
14 kissed her, she said he kissed me with his tongue like
15 adults do. It's on that tape. So she's seen stuff. How
16 else would she know that sometimes adults may put a
17 tongue in each other's mouth. She's seen it. She
18 basically said that. Said he put his tongue in my mouth
19 like adults do it. So she's seen things.

20 And the tape is just so good on showing how
21 nonchalant she was when talking to the CAC interviewer,
22 the Child Advocacy Center interviewer.

23 There's not much more I want to go through. The
24 kitchen, I guess I better talk about the kitchen. You
25 got four people in the house, four people sitting in the

1 kitchen or standing in the kitchen. Remember, **Sister**
2 said she was standing here and said she was sitting in
3 there and I understand they may change their mind. I'm
4 not saying they're making it up. It's just that they
5 might not remember. Her specificity, the specifics in
6 the Child Advocacy Center tape of what she had on two or
7 three years ago when they went and got a lawnmower, I
8 can't tell you what I wore Tuesday when I came here. How
9 I can remember what I had on two years ago when my dad
10 went to get a lawnmower, it's almost, I don't know.
11 She's brilliant or it's just kind of made up to sound
12 good.

13 But those are things that when you go back to
14 deliberate, oh, it would be easy to say look, she says he
15 did it, therefore presumption of guilt is on him to prove
16 his innocence and we don't believe him when he said he
17 didn't do it. We look at him, tall guy, long fingers,
18 whether we were gonna get really gross and try to take a
19 erection penis picture and show y'all, we didn't do that.
20 All that is gonna be common sense to think about whether
21 or not that hymen would still be like it is and the
22 doctor says no way. No way she could be having sex since
23 she was seven or eight years old and look like this. We
24 felt that that was sufficient. We felt just looking at
25 was sufficient.

1 We didn't have to put him up. It's always a gamble
2 when you put somebody on the stand but he wanted to tell
3 y'all he didn't do it and he testified he didn't do it.
4 We put his aunt up. She's probably here in the back.
5 And I know they can say what do you think an aunt is
6 gonna say. I wouldn't believe him. Of course not. I
7 understand that. But I wanted y'all to see someone
8 that's in the family that's supporting him and there's
9 other family members here that are supporting him. He's
10 got two other children. 41 years old. He's - obviously
11 both mom and dad have had other relationships with other
12 men and women. It was admitted. They have separated
13 because of that. It was admitted.

14 Why in the world would he have to be a pedophile at
15 39 years old when he's not a bad looking guy. There's
16 plenty of people he could be seeing. He said they had a
17 decent relationship when it was good. When it was bad,
18 it was bad. And remember **Minor** said it kind of started
19 when aunt Pooh told me that he wasn't my natural dad. I
20 have tried to put my hands around what has that got to do
21 with this case? It's not like he found out that he
22 wasn't the natural dad therefore I'll go have sex with
23 her because she ain't my daughter. He knew he wasn't the
24 natural dad so what does that have to do with this case?
25 That Pooh told me it wasn't my natural dad and that's

1 when it started. It's almost like saying he found out he
2 wasn't the natural dad so he started having sex with her.
3 He knew he wasn't the natural dad so that part of Pooh
4 and mom, I don't know. They just want to get rid of him
5 for good and they have done a good job of setting this
6 thing up to do it.

7 The experts again, I can't go back through all that,
8 one expert against another but there's no big deal on the
9 expertise I don't think. And DNA is not anymore than
10 could be. It could be planted. It could be an enzyme of
11 it. Remember they said it's presumptive evidence. But
12 again, you have got to take the medical part of it and
13 just set that here and say this is that. But let's look
14 at the realistic facts of a 1200 square foot house, six,
15 seven nights a week sex. Mom suspected a month earlier
16 and she never catches him. Never catches him. It's just
17 not plausible.

18 When I was a younger lawyer I remember people saying
19 in the courtrooms, I would always hear them say sometimes
20 it's better to let a hundred innocent people - excuse me.
21 Let a hundred guilty people go free than to incarcerate
22 one innocent person. So you think of that. Make sure
23 whatever your verdict is you've got a peace of mind going
24 home that you can live with. Because there's a lot of
25 factual issues that that CAC tape helps us with. Even

1 **Sister** was saying when she testified and we cross
2 examined her briefly, you're not ever gonna cross examine
3 and jump hard on a young lady, but we asked about, she
4 said these notes were done while she was doing homework.
5 And then when we asked, she said, oh, no. That was my
6 bad. I made a mistake. It was when we were in the car.
7 And I looked at these things and said okay. You're
8 driving down the road in a car and writing out notes and
9 that would be pretty doggone good handwriting to me in a
10 moving automobile. And I just even wonder, we don't have
11 a handwriting expert. We have got to take it for what
12 it's worth whether it's her handwriting or not, but does
13 that even look like the same, right there, I have been,
14 to me it don't even look like someone added rape there.
15 I don't know. But that's a jury question. Where it was
16 done and how it was done is all a jury question.

17 But there is a lot of reasonable doubt. Reasonable
18 doubt is what this whole trial is about and trusting this
19 jury does not feel that, that we have a burden of proving
20 innocence. That's hard to do. All you can do is say I
21 didn't do it. So we are asking you to -- The Solicitor
22 is gonna get another bite at the apple. We get kind of
23 sandwiched in as defense attorney. They get to go first
24 and last so I would just ask you to kind of think about
25 what I've said. Listen to the evidence. You got all the

1 evidence with you in that jury room. This is not
2 shoplifting first where someone is gonna get a fine.
3 This is very serious. I would just ask you to please let
4 your conscious be your guide. Let your common sense rule
5 in this case and consider the facts, the real facts of
6 this case and come back with a verdict of not guilty.
7 Thank you.

8 MS. MAYES: May it please the Court.

9 THE COURT: Yes, ma'am.

10 MS. MAYES: Time always reveals the truth no matter
11 what means he took to conceal it. No matter what means
12 he took to intimidate **Minor**. Time reveals the truth.
13 If I understood correctly defense counsel just stood
14 before you to say that a 10 year old and an eight year
15 old plotted and planned, that's ridiculous. Absolutely
16 ridiculous. They loved him. Writing those cards, one of
17 the hardest things **Minor** ever had to do but as she
18 testified, how did she feel when she finally got it out?
19 Relieved. Relieved. And so when she sat in that
20 interview room in Aiken with Ms. Ann and he says she
21 wasn't crying. You didn't see any tears. What you saw
22 was a child who was relieved. A child who lived with
23 hope and now that hope has sustained her.

24 So when she sat in that interview room and she
25 filled out everything she knew and everything she could

1 even get the words to describe, it's still all beyond her
2 comprehension. She still doesn't even realize really
3 what sex is. She just knows the act of it. She just
4 knows he put his private part here. He put his finger
5 here. He put his mouth here. She knows all those things
6 happened and she can describe it but she doesn't even
7 know the meaning behind it because to her it had become
8 as normal as doing your homework or doing any other
9 chore. And as he explained when he testified, she
10 trusted him. She was a good kid. She obeyed. That
11 child has no reason to plot and plan as Mr. Vieth
12 suggested.

13 And then to take that as far as an eight year old or
14 a 10 year old could concoct a way to put his DNA in her
15 vagina? Everyone can agree on one thing. You get to
16 rely on your common sense, ladies and gentlemen. You get
17 to rely on the evidence that has been proven beyond a
18 reasonable doubt in this courtroom.

19 And he talks about Brandi Nye. So that's a very
20 interesting point. Brandi Nye is in this courtroom.
21 Brandi Nye is available to either party as a witness to
22 the State or the defense. They called witnesses. She is
23 a person accessible to either party. They didn't call
24 her either. But we know one thing from Antonio Posey's
25 testimony, Brandi Nye heard that bed squeaking. That

1 much we know. Even he admits that. Circumstantial
2 evidence. Maybe in another case it might even come down
3 to circumstantial evidence. But not this one. There's
4 overwhelming proof beyond a reasonable doubt. And that's
5 the final thing I'll address since he mentioned
6 reasonable doubt. And the Judge will charge you just
7 momentarily on it.

8 Reasonable doubt does not mean that the State must
9 prove its case beyond all possible doubt or beyond every
10 doubt. Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced and I submit to you the
12 testimony of **Minor**, that alone is testimony and
13 evidence that leaves you or would leave you firmly
14 convinced. If you add to that **Sister**, an
15 eyewitness and then finally the overwhelming undeniable
16 DNA evidence, it's not presumptive. I think he threw
17 that word around. We don't know really what it is. Is
18 it an enzyme? Is it presumptive? We know exactly what
19 it is. There was a DNA analyst from the state crime lab,
20 an expert, an expert who actually did the DNA test.
21 That's not a presumptive test. It's absolutely
22 conclusive. There is no doubt whatsoever. There is 100
23 percent proof that that DNA that is a match to Antonio
24 Posey was on her vaginal swabs and in the crotch of both
25 pairs of underwear.

1 You decide the evidence. That's your sworn oath and
2 responsibility as jurors. You decide what crime will, and
3 will not be tolerated. I submit to you a crime of this
4 nature would shock the conscious of any community
5 anywhere but in this state and in this county --

6 MR. VIETH: Your Honor, I object to that comment.
7 They're giving the jury an area to think --

8 THE COURT: I understand. Ms. Mayes --

9 MS. MAYES: I'll rephrase it.

10 THE COURT: -- move on.

11 MS. MAYES: You decide this case based on the
12 evidence before you and that evidence is proof beyond a
13 reasonable doubt of criminal sexual conduct with a minor.
14 Thank you.

15 THE COURT: All right. Ms. Gallman, ladies and
16 gentlemen of the jury, I'm gonna give y'all my
17 instructions but let's take a brief break. Step to the
18 restroom. My court reporter has been working hard. He
19 hasn't taken a break so we're gonna take about 10 minutes
20 and have you back in here, give you my instructions and
21 then that's when y'all are gonna start talking about the
22 case but not until then, okay? You can't talk about it
23 yet. Have you back in here in about 10 or 15 minutes.

24 (Whereupon, the jury entered the jury room at 10:25
25 a.m.)

1 (Short break.)

2 THE COURT: You ready to go?

3 MR. VIETH: Your Honor, there's something I want to
4 put on the record.

5 THE COURT: When you're ready.

6 MR. VIETH: With regards to the reply and argument
7 when the Solicitor started talking about the community
8 and involvement, I feel like that's something that I have
9 got to at least ask for a mistrial or a curative
10 instruction. When you get a jury of people and try to
11 sway someone this way or that way, the community is gonna
12 come down on us, that's not what this trial is about. I
13 think it's very improper. It was not responsive to
14 anything I said and I just think it's very prejudicial in
15 a small community like this.

16 THE COURT: Got to get them in earlier. They keep
17 coming in late. I want them in here earlier. Don't
18 bring them in late again please. Uhm, all right. I
19 don't believe she overstepped the bounds of trying to
20 create an emotional bond with the jurors on the verdict
21 which I think is what you are suggesting. I generally
22 give in my very end, you can see it in the instructions,
23 as to I instruct the jury they have got, you know, no
24 friends to reward, no enemies to punish. If they're
25 active in the community and state, their verdict has got

1 to be just either for the State or the defense so I think
2 that would be an appropriate way to fix this without
3 drawing attention to it.

4 MR. VIETH: All right, sir.

5 THE COURT: And so the objection is noted. I'm not
6 going to grant a mistrial on that basis.

7 MR. VIETH: All right, sir.

8 THE COURT: Y'all got an issue on the criminal
9 intent portion of the instruction, Ms. Mayes?

10 MS. MAYES: No, sir, Your Honor. I believe there
11 was an issue about whether or not -- It's not an element.
12 You're going to charge on the elements, but I have no
13 objection to the overall charge on intent.

14 THE COURT: Okay. Fair enough. All right. Bring
15 in the jury.

16 (Whereupon, the jury returned to the courtroom at
17 10:40 a.m.)

18 THE COURT: All right. Ms. Gallman, ladies and
19 gentlemen of the jury, it's now my opportunity to do my
20 portion of the instructions so what I'm going to do is
21 I'm gonna give you the instructions on what the law of
22 South Carolina is as I understand it and I tell you now
23 that my instructions aren't too long. I have had some
24 much longer than this. Once we finish the instructions,
25 then we will gather the evidence. I'll ask the lawyers

1 for comments about whether or not my instructions were
2 full and complete and addressed the issues which were
3 presented to you and if they're in agreement that the
4 instructions are satisfactory, then at that point you
5 will begin your deliberations.

6 Now, I told you early on -- I don't know where the
7 indictment is but it's around here somewhere. The
8 indictment presented by the State of South Carolina
9 through Saluda County through the Solicitor's Office was
10 presented to the Saluda County grand jury and true
11 billed. It alleges or accuses Antonio Posey of the crime
12 of criminal sexual conduct in the first degree. He has
13 pled not guilty to that and by that plea denies all of
14 the allegations contained in that indictment.

15 Mr. Posey comes into court clothed with a
16 presumption of innocence and this presumption of
17 innocence stays and remains throughout the case and
18 entitles him to a verdict of not guilty until that
19 presumption is dispelled by evidence satisfying you 12 of
20 his guilt beyond a reasonable doubt.

21 Now, if the State has not proved all the elements
22 beyond a reasonable doubt, he is entitled to a verdict of
23 not guilty.

24 Now, the constitution of South Carolina and our laws
25 which make you the jury the finders of fact also makes me

1 as the Judge the judge of the law and the instructor of
2 the law. So I tell you this: That prior to you taking
3 your oath, I explained to you and I'll explain to you
4 again that I am instructing the law as I understand it.
5 If you have a different understanding of what the law is
6 or what the law was or what you heard the law may be, you
7 must disregard that and accept the law as I am
8 instructing it to you as it is my job and duty to charge
9 you as the current law of South Carolina on the elements,
10 the required proof by the State and that sort of thing.
11 You must accept the law as instructed by the Court. If
12 you have a misunderstanding or a disagreement with the
13 law, you must disregard that.

14 Now, if I make a mistake during the instructions
15 here, there's another time and another place that that
16 error can be considered and, if necessary, changed. But
17 for our purposes today you must accept the law as I'm
18 instructing it to you.

19 In all criminal prosecutions the State has the
20 burden of proof of guilt of a defendant. A defendant has
21 no burden whatsoever as he is presumed innocent. So the
22 prosecution must prove their case to the standard called
23 beyond a reasonable doubt before a finding of guilt can
24 occur.

25 Now, I tell you that according to our constitution

1 and the laws of South Carolina you 12 are the sole
2 finders of fact in this case. I'm not allowed to have an
3 opinion as to what the facts are. I have been in court
4 and listened to the testimony, but I did not participate
5 in the findings of fact. That is the job and province of
6 the jury of peers which are you 12 in this case.

7 Now, in doing your job in finding facts you must
8 pass upon a person's credibility or in other words a
9 person's believability. So you must listen closely to
10 the testimony presented in this trial. As the judges of
11 the facts in evaluating the witnesses and evidence,
12 credibility and believability, you can take into account
13 anything in your common knowledge, your common sense,
14 your collective experiences you wish in evaluating the
15 credibility of what's been presented to you.

16 Now, additional things the courts have observed that
17 you can consider when evaluating credibility or
18 believability is what was the manner and appearance of
19 any of the witnesses who testified.

20 Was the witness straightforward or hesitant in
21 answering.

22 How did a witness come to know the facts to which he
23 or she testified. What was their ability to know or
24 recollect these facts.

25 Is there some reason a witness would want to give

1 testimony which would hurt one side or the other. In
2 other words, were any of the witnesses biased or
3 prejudiced toward one side or the other.

4 Was a witness' testimony strengthened or weakened by
5 other testimony or other evidence received in the court.

6 You as a jury of 12 can believe as much or as little
7 of the testimony presented.

8 You can believe part of a witness' testimony and
9 disregard the rest. You can believe one witness against
10 many. You can believe many against one. You may believe
11 part of a testimony and disbelieve the rest.

12 I also tell you that the fact the testimony is not
13 controverted does not mean you must accept it since it's
14 undisputed. You still must gauge the credibility of all
15 the witnesses who have testified and all of the evidence
16 which has been received.

17 Now, I tell you also that there was expert testimony
18 presented from several witnesses. Our rules of evidence
19 normally don't allow a person to come in and give
20 opinions. However, the exception to that rule is when a
21 person who is qualified as an expert witness in some
22 science or field of expertise by education and
23 experience, they have particular training in an area,
24 they can offer opinions as to relevant or material
25 matters in that field of expertise. They can also state

1 the reasons for these opinions that they gave as
2 testimony.

3 Now, I tell you this: You should consider any
4 expert opinion received as evidence in this case like all
5 the other evidence received and give it the weight you
6 believe it deserves. If you decide that the opinion of
7 an expert witness is not based on sufficient education or
8 experience or if you conclude that the reasons given in
9 support of the opinion are not sound or if you believe
10 that the opinion of an expert is outweighed by other
11 evidence, you can disregard that opinion in its entirety.

12 An expert witness' opinion testimony is to be given
13 no greater weight than that of other testimony of other
14 witnesses simply because the witness was qualified as an
15 expert.

16 Now, y'all have heard testimony in this case from a
17 child. Where a witness is a child you must determine
18 just as with any other witness whether the testimony is
19 believable. In deciding believability of the child you
20 may consider not only matters that I have already
21 discussed with you, but you may also consider the age of
22 the child, the child's ability to remember and observe
23 the facts they have testified to, the child's ability to
24 understand and answer questions. Because young children
25 may not fully understand what is happening here, it is up

1 to you to decide whether the child understood the
2 seriousness of appearing as a witness in a criminal
3 trial. You may consider whether the child understood the
4 questions, whether the child had a good memory, and also
5 whether the child understands the difference between
6 lying and telling the truth. In addition, you may
7 consider that young children may be influenced by the way
8 questions are asked. It is up to you to consider the
9 testimony presented by the child in deciding whether the
10 child's credibility is sufficient.

11 Now, I told you, I observed and noted that you 12
12 have listened closely to the evidence and I have
13 mentioned that you must weigh the evidence. I tell you
14 now that weighing evidence is simply a mental process
15 entirely. You weigh the evidence using good judgment and
16 common sense. Evidence weighs with you that which
17 convinces you of its truth regardless of where it came
18 from. Your object here today is to find the truth.

19 Now, there's two types of testimony and evidence
20 presented generally in all trials. There's direct
21 testimony and circumstantial -- I'm sorry. Direct
22 evidence and circumstantial evidence.

23 Direct evidence is testimony of a person who asserts
24 or claims to have actual knowledge of certain facts such
25 as an eyewitness. Circumstantial evidence is slightly

1 different. It is proof of a chain of facts and
2 circumstances indicating the existence of another fact.
3 Our law makes no distinction between direct evidence or
4 circumstantial evidence. There's not a greater degree of
5 proof required of circumstantial evidence than that of
6 direct evidence. I tell you you should weigh all of the
7 evidence in the case. I also tell you to the extent the
8 State has based or relies its case upon circumstantial
9 evidence, all of the circumstances must be consistent
10 with one another and when taken together conclusively
11 point to the guilt of the accused beyond a reasonable
12 doubt before a finding of guilt can occur. If the
13 circumstances merely portray the defendant's behavior as
14 suspicious, then the State's proof has failed.

15 I tell you that after weighing all of the evidence
16 presented whether it be direct evidence or circumstantial
17 evidence you're not convinced beyond a reasonable doubt
18 of the defendant's guilt, then you must find him not
19 guilty.

20 I have used the term reasonable doubt many times
21 thus far. What is a reasonable doubt? I tell you that a
22 reasonable doubt is the kind of doubt which would cause a
23 reasonable person to hesitate to act.

24 Reasonable doubt may arise from evidence which is in
25 the case, or from a lack or absence of evidence in this

1 case. Proof beyond a reasonable doubt is proof that
2 leaves you firmly convinced of the defendant's guilt. It
3 is the kind of doubt one can assign a reason, if the
4 assignment can be done reasonably, firmly, and
5 convincingly.

6 I charge you further that the defendant Mr. Posey is
7 entitled to every reasonable doubt which may arise in
8 this case and what that means is if you have any doubt
9 during the trial, you're required to resolve that doubt
10 in his favor.

11 I also tell you that during the deliberations you
12 are likely to have a full and free discussion of the
13 issue of guilt or innocence. That full and free
14 discussion does not automatically mean that reasonable
15 doubt exists in this case. Now, you must make the
16 determination whether or not a reasonable doubt exists as
17 to his guilt and if you find the State has not met that
18 burden, you are required to find him not guilty.

19 I instruct you further that criminal intent is a
20 necessary element of all crimes. It must be proved by
21 the State beyond a reasonable doubt. Criminal intent is
22 a matter that must be determined by the jury by the
23 circumstances surrounding the situation. There's no way
24 that a person's intent can be proved to a mathematical
25 certainty. Medical science does not allow us to dissect

1 a person's brain to determine what he or she had in mind,
2 so our law states that criminal intent may be inferred
3 from the circumstances shown to have existed both before
4 and after the fact. That's how you the jury make a
5 determination of whether or not the element requiring
6 intent was present.

7 Criminal intent is a state of mind that operates
8 jointly with an act or omission in the commission of a
9 crime. Criminal intent is a mental state of conscious
10 wrongdoing. It is up to you, the jury, to determine what
11 the defendant intended to do based upon the circumstances
12 shown to have existed and the State must prove criminal
13 intent beyond a reasonable doubt.

14 Now, the specifics of the offense of first degree
15 criminal sexual conduct with a minor. In order to
16 sustain a conviction the State must prove beyond a
17 reasonable doubt that the defendant engaged in a sexual
18 battery with a victim less than eleven years old.

19 Sexual battery is sexual intercourse, cunnilingus,
20 fellatio, anal intercourse, or any intrusion, however
21 slight, of any part of a person's body or of any object
22 into the genital or anal openings of another person
23 except when the intrusion is accomplished for medically
24 recognized treatment.

25 The State must prove beyond a reasonable doubt that

1 the victim was less than eleven years old at the time of
2 the battery.

3 Consent, willingness, indifference, or ignorance on
4 the part of the minor as to what was taking place does
5 not in any way affect the charge of criminal sexual
6 conduct with a minor because an unmarried woman under the
7 age of fourteen cannot legally consent to any sexual acts
8 or intercourse.

9 I instruct you further that mere presence at the
10 scene is not sufficient to prove somebody guilty of a
11 crime. A person's presence where a crime is being
12 committed or mere association with a person who commits a
13 crime does not make a defendant an aider or abettor of
14 anyone committing the crime.

15 The burden is upon the State to prove every element
16 of the crime charged. So after reviewing all of the
17 evidence if you find the State has proved the defendant
18 was only present at the scene and they have not proved,
19 beyond a reasonable doubt, any other participation in the
20 crime, then you must find him not guilty.

21 Ms. Gallman, I tell you as a group those are the
22 substance of my instructions and before y'all retire to
23 begin your deliberations I want to express the importance
24 of your act and participation as jurors this week in this
25 trial. You're not called upon very often to serve as

1 jurors in any cases. You and I are acting for this
2 community and for this state. It is our responsibility,
3 mine as the Judge and yours as the jury, to make certain
4 that the trial is fair and you must be certain that a
5 verdict is just.

6 It is my job to make certain everyone receives fair
7 and impartial justice. I'm not telling you how to decide
8 the case. That is not my job, nor am I allowed to
9 comment. If you believe I have made any comments on the
10 facts, please understand that none of my rulings or my
11 comments to the attorneys are to be considered as
12 evidence or anything as a part of your decision. It is
13 your job to weigh the evidence received, the testimony
14 received, evaluate it and if you believe that the State
15 has proved its case beyond a reasonable doubt
16 unanimously, then you have the duty to find a verdict of
17 guilty. If you believe the State has failed in its proof
18 of proving the elements of criminal sexual conduct with a
19 minor, then you must find the defendant not guilty. You
20 have no enemies to punish. No friends to reward. Your
21 responsibility is to make certain that this case and
22 verdict is just. I'm confident y'all will do that.

23 I also told you that I want you to confine your
24 decision to what you have heard here in the courtroom,
25 the instructions I have given you, and anything not heard

1 in the courtroom is not to be discussed, all right?

2 Thus, those are my instructions. I tell you also
3 that I'll send back a verdict form for you momentarily.
4 Once you get the verdict form, then you can begin your
5 deliberations. If something comes up and you have a
6 question about my instructions on the law, I'll be happy
7 to reinstruct you or even perhaps just answer the
8 question. But you must write it down, submit it to the
9 bailiff. The bailiff will bring it to me. I'll talk it
10 over with the five lawyers and we'll make what we
11 consider an appropriate response.

12 Now, questions like why didn't either side call so
13 and so as a witness or present this or present that,
14 y'all get to consider what was presented. Those are your
15 limits is what was presented in evidence and my
16 instructions that I want you to follow.

17 Now, if you want to hear any testimony again,
18 Mr. LeBlanc made a recording. He can replay testimony.
19 If you want to see the video of the interviews, the video
20 player and television is on a cart. It can be brought in
21 the jury room and y'all can watch the video or any
22 portion of it. I'm certain there's somebody here
23 qualified to run the video player that can do it better
24 than me. That's available to you also.

25 Now, I want to talk with the lawyers about the

1 evidence that they handle with gloves. We may keep it
2 out here and then if you ask for it, we'll equip somebody
3 with gloves, one of y'all, so y'all can look at it but I
4 don't think it would be appropriate for us to safe handle
5 it carefully. I'll require y'all to handle it carefully
6 also. But that is for y'all's viewing if so needed.

7 I think that's it. So y'all step in the jury room.
8 If I need to give you further instructions, I'll bring
9 you back out here, otherwise when the evidence comes to
10 you with the bailiff with the verdict form, then you can
11 begin your deliberations.

12 Now, once you start deliberations, y'all deliberate
13 as long as you want. If you want a break, take a break.
14 You don't have to ask my permission. If someone wants to
15 step outside and walk around the courthouse for some
16 fresh air, no deliberations while that person is missing
17 or in the bathroom. 12 of you've got to be present when
18 discussing. One person wants to break, everybody gets a
19 break. You're on your time then. Did we get the lunch
20 question answered? We'll see about lunch too. We'll see
21 when we want it. How about that? All right. Y'all Step
22 to the jury room and I'll give you further instructions
23 momentarily.

24 (Whereupon, the jury entered the jury room at 10:58
25 a.m.)

1 THE COURT: All right. Any exceptions to the
2 charging either side?

3 MS. MAYES: None from the State, Your Honor.

4 MR. SCOTT: None from the defense, Your Honor.

5 THE COURT: All right. We've got the verdict form.
6 Y'all have seen it. Everybody's good with that. All
7 right. Now, y'all come to an agreement as to the
8 evidence that require the gloves. However y'all want to
9 handle that, that's fine with me. I don't care.

10 MS. MAYES: The only issue, Your Honor, would be
11 that under the statute we are required to preserve
12 evidence. It's preserved actually for potential
13 retesting for DNA so because of that I wouldn't encourage
14 them to handle the evidence unless they ask for the
15 gloves but that's at the Court's discretion.

16 THE COURT: I'll tell you, I'm gonna tell them that
17 if they want to take anything out of the package, they've
18 got to ask us for gloves, otherwise leave it in the
19 packages. How about that?

20 MS. MAYES: Thank you, Your Honor.

21 THE COURT: I think that would be the best way to do
22 it. All right.

23 (Whereupon, the Forelady, Ms. Gallman, entered the
24 courtroom at 11:00 a.m.)

25 THE COURT: Ms. Gallman, we talked, the lawyers and

1 I talked about the evidence that's in those packages,
2 things they used with the gloves, I'm gonna ask that you
3 not take it out of the plastic bags unless you ask for
4 gloves. So if somebody wants to see it outside the
5 package, knock on the door and we'll get gloves to you
6 and then you can pull it out but until then y'all just
7 leave it all in the packaging it's in, okay?

8 MS. GALLMAN: Okay.

9 THE COURT: I wanted to make sure we had that on the
10 record so everybody will know. Okay. Thank you, ma'am.
11 Y'all can begin now. It is 11:00. Do y'all want to eat
12 lunch 12:00, 12:15, 12:30? If you do she needs a little
13 lead time. If you ask me at 12:00, it's going to be
14 1:00.

15 MS. GALLMAN: Well, we'll decide. We've already
16 decided to go through lunch.

17 THE COURT: Okay. Well, y'all work and if y'all get
18 hungry, you let me know, okay?

19 MS. GALLMAN: Okay.

20 THE COURT: Because y'all are on your time.

21 MS. GALLMAN: Okay.

22 THE COURT: All right.

23 (Whereupon, Ms. Gallman, the verdict form, and the
24 evidence entered the jury room and deliberations began at
25 11:02 a.m.)

1 THE COURT: All right. Now we're down.

2 (Court break during deliberations.)

3 (Verdict at 11:55 a.m.)

4 THE COURT: All right, folks. The jury has reported
5 we have a verdict.

6 BAILIFF: Yes, Your Honor.

7 THE COURT: All right. I want to make certain that
8 everybody here understands this jury has been here for
9 four days. If you're not going to be able to contain
10 yourself emotionally when they come in, I don't want this
11 jury to feel in any way good, bad, indifferent. They
12 have had a hard job. They've listened to this case very
13 fully and completely. So if you're not gonna be able to
14 contain your emotions, because there's no winners here no
15 matter which way the verdict goes, so I don't want
16 anybody cheering or crying. I want everybody to be
17 respectful of the job they have done. Anybody can't do
18 that, it's a good time to leave right now, all right?
19 Bring them into me.

20 (Whereupon, the jury entered the courtroom at 11:56
21 a.m.)

22 THE COURT: Ms. Gallman, have y'all reached a
23 verdict?

24 FORELADY: Yes, sir.

25 THE COURT: And was it unanimous?

1 FORELADY: Yes, sir.

2 THE COURT: All right. Hand it to my bailiff
3 please.

4 (Whereupon, verdict form handed to bailiff by
5 Forelady.)

6 THE COURT: All right. Please publish the verdict.

7 THE CLERK: The State of South Carolina, County of
8 Saluda, indictment number 2015-GS-41-048. The State
9 versus Antonio K. Posey, first degree criminal sexual
10 conduct with a minor, guilty. Greta Gallman, forelady,
11 February 17th, 2017.

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, is this your verdict and still jury verdict?

14 FORELADY: Yes, sir.

15 THE COURT: All right. Any issue for the jury?

16 MR. SCOTT: Just ask the Court to poll the jury.

17 THE COURT: Ms. Marge, she'll ask you individually
18 is this your verdict and still your verdict and you say
19 yes or no, okay?

20 THE CLERK: Choya R. Tucker, is this your verdict
21 and still your verdict?

22 CHOYA R. TUCKER: Yes.

23 THE CLERK: Ernest J. Rogers, Junior, is this your
24 verdict and still your verdict?

25 ERNEST J. ROGERS, JUNIOR: Yes.

1 victim impact, **Minor** during the break had an opportunity
2 to hand write a letter to the Judge that I'm going to
3 read on her behalf. It says, Dear Judge, my name is
4 **Minor**. Antonio hurt me and my family in many
5 different ways. He hurt me physically, mentally,
6 socially and emotionally. He has hurt **Sister** emotionally
7 the most and that hurts me. She has cried many times
8 because she misses her father. We both loved him and
9 trusted him. He disrespected our trust and respect for
10 him. I was affected long term wise socially because now
11 I have trouble trusting friends and sometimes even my
12 family. I want him to pay for what he did to me, my
13 sister and my mother. Mentally he hurt me because I have
14 had nightmares and flashbacks. I do feel sorry for his
15 family and I'm not angry at them because that is his
16 family. I want him to be sent to jail or prison and
17 never get out because I will suffer forever and I want
18 him to do the same. I want him to have a life sentence,
19 but if not that no less than 25 years. I also want to
20 add that I am glad that I finally told because I don't
21 want him to do this to anyone else. I want to thank you,
22 Judge, and the Court for all their participation in this
23 case. Thank you. **Minor** and family.

24 THE COURT: All right. Mr. Scott, anything
25 regarding mitigation?

1 guy. His kids love him so much. It's very hard. I have
2 been knowing the family all my life so I just ask the
3 Court to please just have mercy on him. Thanks.

4 MR. VIETH: Your Honor, we would like to say a
5 couple things and wrap it up. Obviously you heard this
6 case and he has no prior criminal history, Judge. None.
7 And I know you have great latitude in sentencing in a
8 case like this, 25 to a pine box basically, come out in a
9 pine box. But I think the criminal history is a
10 consideration. There were some factual issues. I'm not
11 going to go through all of those. You heard the case.
12 And I understand the Federal Court and State Court doing
13 this a long time, both courts, that you get points in
14 Federal Court for accepting responsibility, and if you
15 don't accept responsibility, you can't expect to get the
16 same sentence as somebody who accepts responsibility and
17 I appreciate that. I have dealt with it in the federal
18 systems. With the state courts system we don't have the
19 same point system per say but to punish someone gravely
20 for exercising their constitutional right to a trial by a
21 jury, I don't think that's what the intent of the
22 legislature is is to punish someone for exercising their
23 constitutional right to a trial by a jury when they
24 maintain their innocence so I don't expect the minimum
25 but I would ask the Court not to impose any great

1 other kids as well that needs me. I never in my life
2 violated my kids. I love my kids. I never had a problem
3 with any kids. I worked and I do what I'm supposed to do
4 as a man and a father and I'm asking the Court please be
5 lenient towards me because I never in my life even
6 thought of or committed such a crime as they claim I did
7 and I would like to just say I love Brandi still today.
8 I love **Minor** and I love **Sister**. I don't have no hate in
9 my heart whatsoever. I still care for Brandi. I love
10 them. And I never have -- Of course, I love my family
11 also. I just ask that you please, please be lenient
12 towards me.

13 THE COURT: All right. As everyone knows the jury
14 is the judge of the facts and I'm going impose punishment
15 based upon the facts that the jury has determined. All
16 right. Considering everything in the trial, I have heard
17 all the comments made, the victim's letter, comments by
18 the family members, the sentence of the Court is that
19 Mr. Posey be incarcerated in the Department of
20 Corrections for a determinant term of 40 years, give him
21 credit for the 434 days he's done. Good luck.

22 MS. MAYES: Thank you, Your Honor.

23 WHEREUPON, THE TRIAL WAS CONCLUDED.

24

25

DOCKET NO. 2015-GS-41- 048

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2015

THE STATE

vs.

ANTONIO KENYARDO POSEY

CDR#0385

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR
1ST DEGREE

DONALD V. MYERS, SOLICITOR

WITNESSES

SCSD

CLARK

ARREST WARRANT NUMBER

2014A4110100326

2015A4110100003

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

Date:

FEB 09 2015

VERDICT

TRUE BILL

Breta C. Mallman

guilty

2/17/17

Foreperson of Petit Jury

Date:

ATTEST: TRUE COPY

[Signature]

Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SALUDA)

CRIMINAL SEXUAL CONDUCT WITH A MINOR
1ST DEGREE

2015 FEB 23
Clerk of Court

FILED: TULLOCH
J. J. [Signature]

At Court of General Sessions, convened on February 9, 2015, the Grand
Jurors of Saluda County present upon their oath:

That ANTONIO KENYARDO POSEY, DOB [REDACTED] 1975, did in Saluda
County, on or about March 1, 2013 and December 2, 2014, engage in a sexual
battery upon and/or with the body of a female child, [REDACTED] Minor, DOB [REDACTED] /2004,
being less than eleven years of age, the defendant being older than the victim, in
violation of §16-3-655(A)(1), South Carolina Code of Laws, 1976, as amended,
~~with penalties provided for in §16-3-653(D)(1), South Carolina Code of Laws, 1976,~~
as amended.

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

[Signature]

ASSISTANT SOLICITOR

544
 STATE OF SOUTH CAROLINA)
 COUNTY OF Saluda)
 STATE VS.)
 Antonio Kenyardo Posey)
 AKA:)
 Race: Black Sex: M Age: 39)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Ward, SC 29166)
 DL#: [REDACTED] SID#: [REDACTED])

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-41-048
 A/W#: 2015A4110100003
 Date of Offense: 11/30/2014
 S.C. Code § : 16-03-0655(A)(1)
 CDR Code #: 0385
 FEB 24 2017

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SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: CSC with minor - 1st Degree

CONVICTED OF or PLEADS

in violation of § 16-3-655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
 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:

Solicitor 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 40 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. 434 days
 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: _____

PTUP _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

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	\$
% to County (if paid in installments)		\$ 3.75
TOTAL		\$ 128.75

ATTEST: TRUE COPY
 Sheri C. Coleman
 Clerk of Court
 Saluda, S. C.

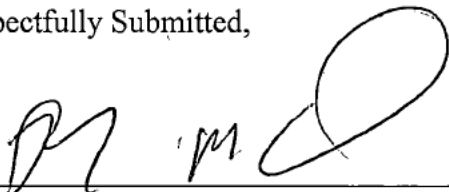
Clerk of Court/ Deputy Clerk Sheri C. Coleman
 Court Reporter: Steve Seblane

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.
 Presiding Judge [Signature]
 Judge Code: 2154
 Sentence Date: 2-17-17

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 17th day of September, 2018.

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