IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Appellate Case No. 2023-000126

The Honorable G.D. Morgan Jr., Circuit Court Judge

State of South Carolina……Respondent,

v.

Randy Lee Flower ……Appellant.

**FINAL BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

I. Did the trial court commit reversible error by refusing to sever the charges against Flower where the charges could not be proved by the same evidence and trying them together prejudiced his right to a fair trial?

II. Did the trial court commit reversible error by refusing to quash several amended indictments where the indictments were overly broad both in time span and language of the offense and such indictment prejudiced Flower's ability to defend himself and receive a fair trial?

## STATEMENT OF THE CASE

This appeal arises from Appellant Randy Lee Flower's conviction in Greenville Court of General Sessions for eight counts of Criminal Sexual Conduct With a Minor (1st degree), seven counts of Lewd Act with a Minor, five counts of Contributing to the Delinquency of a Minor, two counts of Criminal Sexual Conduct with a Minor (2nd degree), two counts of Voyeurism, and one count of Disseminating Obscene Material to a Minor.[1] ROA p. 1-99. He was originally indicted for 31 counts relating to alleged sexual assault of his three biological daughters. At a March 8, 2022, hearing the Honorable G.D. Morgan, Jr. quashed eight indictments because the time period alleged was too lengthy. ROA p. 309. The State moved for a continuance, which was granted. ROA p. 310, 315.

The State re-drafted the indictments to reflect shorter time spans and now brought charges on 69 indictments. On January 9, 2023, Judge Morgan presided over Flower's trial. Flower, represented by Alex Kornfield, moved for a severance of the cases by victim and for exclusion of evidence of the others' allegations as inadmissible propensity evidence. ROA p. 1264. After hearing arguments, Judge Morgan denied the motion. ROA pp. 216-243, pp. 268-273.

The jury found Flowers guilty of twenty-five counts on January 13, 2023. Judge Morgan sentenced him on January 17, 2023, to concurrent terms of fifty years in prison for seven counts of CSC Minor (1st degree); thirty years for one count of CSC Minor (1st degree); twenty years for two counts of CSC Minor (2nd degree); fifteen years for seven counts of Lewd Act Upon a Minor; time served for two counts of Voyeurism, five counts of Contributing the Delinquency of a Minor, and one

[1] Greenville indictments: 2019-8044A,2022-2845A, 2019-8052, 2022-2802A, 2022-2801A,2022-2800A, 2022-2805A, 2019-8061, 2021-7846A,2019-8045A, 2019-8046A, 2019-8047A, 2021-6837A,2019-8048A, 2021-6839A, 2021-7843A, 2019-8053,2022-2822A, 2022-2837A, 2022-2808A, 2022-2809A,2022-2810A, 2022-2814A, 2022-2827A and 2019-8049A.

count of Disseminating Obscene Material. ROA p. 3, 7, 11, 15, 19, 23, 27, 31, 35, 39, 43, 47, 51, 55, 59, 63, 67, 71, 75, 79, 83, 87, 91, 95, 99.

This appeal follows.

## ARGUMENTS

### I. The trial court committed reversible error in refusing to sever the charges against Flower where the charges could not be proved by the same evidence and trying them together prejudiced his right to a fair trial.

Flower was accused of molesting his three daughters over many years when they were minors. They were young adults when they first made the report to the Fountain Inn Police Department. At trial, each of the daughters testified and their testimony was the only evidence of Flower's guilt. There was no other direct evidence submitted. Each daughter testified only as to her own abuse, as they were not aware of any other daughter being abused.

The oldest daughter, IF, who was aged 25 at trial, testified that her father would sexually molest her when he was spanking her. ROA 535, lines 9-10. After church on Sunday, he would take her "tights down and spank [her] bare and lift up [her] dress." Then he would "grope me or he would stick his fingers inside me, either anally or vaginally." ROA 538, lines 13-18. She testified that she remembered that on her third birthday this happened, and it hurt so bad she jumped and dropped her headband into the toilet. ROA 550, lines 1-8. According to IF, he would not let her leave until they prayed and she hugged him. ROA 539, lines 8-13.

She testified that he walked around the house naked in front of his children. ROA 539, lines 20-25. Her father would become angry if she locked the bathroom door when she showered. ROA 546, lines 11-14. From five to fourteen years of age, she said, he often came into the bathroom when she was showering.

In a bedroom she shared with her two younger sisters, she would "often wake up [in the middle of the night] and he would be standing in that doorway." ROA 553, lines 14-24; ROA 554, line 7. IF testified that he would stand there with his hand in his pants and then come over and touch her

legs and caress her. Then, she said, he "moved up to where he would touch [her] vaginally and sometimes anally." ROA 553, lines 1-6. She stated this happened when she was "under five." ROA 554, line 15. No one ever woke up when this occurred. ROA 556, line 24 – ROA 557, line 1. When IF was seven or eight, she moved into a bedroom upstairs. ROA 565, lines 12-14. She testified that at least two times he would come up the stairs and sit on her bed and stick his fingers inside of her vagina and anus. According to IF, he also taught her to touch him on his penis and testicles. ROA 566, lines 1-8; ROA 568, lines 14-17. He would tell her that she was doing "really good." ROA 569, lines 1-4.

According to IF, when she was nine or ten, he placed his penis on "top of [her] vagina." ROA 570, lines 11-15. He also taught her how to perform fellatio. ROA 570, lines 16-18. He said he was training her for when she was older. ROA 572, lines 5-10. According to IF, he told her that her mother was going to die and so he was teaching her to be a replacement – that they would be together when she was older. ROA 572, lines 11-16; p. 260, lines 14-19. This occurred in multiple rooms in the house. ROA 573, lines 11-12. When she was ten or eleven, in a room downstairs, he allegedly had her sit on the couch while he would perform oral sex on her. ROA 575, lines 11-16; ROA 576, lines 16-17.

When she was in middle school and aged eleven or twelve, she moved to an alcove space to sleep, which did not have a door. ROA 577, lines 5-15. IF stated that father came up to her alcove and digitally penetrated her vagina and press his thumb up against her anus. She also testified he had her perform fellatio on him at that time. ROA 579, lines 2-14. He told her to be quiet so as not to wake anyone up. ROA 579, lines 18-20.

She testified that the assaults continued repeatedly until Flower moved out of the marital home when she was fifteen. ROA 581, line 24. She testified that she hid in the closet one time when he come up and he ejaculated in her bed. ROA 583, lines 9-17.

IF testified that, starting in middle school, he would often use a back massager on her as a vibrator. ROA 587, lines 1-18. Her father asked her to describe what it felt like while he assaulted her. ROA 588, lines 3-8. She testified that he would show her pornographic movies on his phone and grope her over her clothes. ROA 591, lines 8-24; ROA 592, lines 3-6. According to IF, he gave her beers with dinner. He also gave her whiskey and then groped her over the clothes. ROA 593, lines 9-14.

IF struggled with eating disorders, cutting, and suicidal ideation when she was in high school. ROA 597, lines 18-25.

Flower left in 2013 and he and his wife were divorced. He went to Spain in 2015 and remarried. ROA 602, lines 14-18; ROA 659, line 16. In 2019, Flower came back to Greenville County. At that point, she told her mother he had molested her. ROA 604, lines 4-17; ROA 605, lines 3-20. Her mother took her to the police station in July 2019. She told the investigator that she did not tell anyone because she thought he would never return from Spain. ROA 642, lines 17-23.

The second oldest daughter, AF, aged 22 at trial, testified that she is two and a half years younger than IF. She testified that her father would come when she called for assistance with wiping when she was two years old. He would bend her over all the way so that her chest was touching her knees. He would "put one hand on her back and stick his fingers in [her] vagina." ROA 671, lines 8-14; ROA 673, line 11.

AF also testified that when she was four or five, she would wake up at night and her father would be standing in the doorway of the bedroom that she shared with her sisters. He would pull down her pajama pants and stick his fingers in her vagina. ROA 675, line 23 – ROA 676, line 3. He never said anything to her. ROA 676, lines 13-15; ROA 732, lines 20-22.

AF claimed that her father would rub her thigh while they watched TV in the TV room. ROA 679, lines 4-7. This happened repeatedly up until her left the house in 2013.

She testified that he gave her alcohol. ROA 679, lines 15-18. She stated that, starting when she was seven or eight, he would often walk in when she was in the shower and sit on the side of the tub and watch her. ROA 682, lines 7-25. When she was around seven, he had her use a back massager on his back, with the sheet over him. ROA 683, line 22 – ROA 684, line 10.

She also stated that she saw images of naked women on his computer, but that he did not show them to her. ROA 685, lines 13-23.

AF testified that when she visited her father after her parents separated, he would touch her thigh and caress it. ROA 691, lines 6-10. She decided to make a report when he returned from Spain. ROA 693, lines 13-18. Her mother brought all three girls to the police station in July 2019. ROA 696, lines 15-21.

KF, the youngest daughter, testified at trial when she was twenty years old. ROA 819, lines 24-25. She testified to bare-bottom spankings but did not testify that her father sexually assaulted her while spanking her. ROA 823, lines 15-20. She testified that her father would come into the shower and look at her in the mirror, starting when she was about four and ending when she was nine. ROA 827, lines 11-25. He would sit on the "tub banister thing" and stare into the shower. ROA 828, lines 7-11. KF testified that he would aggressively grab her arm and squeeze her thighs. ROA 830, lines 13-21. She testified that, starting when she was about five, her father would play movies with sex scenes and pornography. ROA 832, lines 1-9; ROA 833, line 5. While watching one movie, KF testified that her father unbuckled his pants and had her put her hand under his testicles. ROA 835, lines 18-25. He would "take [her] pants down and slide his fingers inside" her anus and vagina. ROA 835, lines 1-2.

He had her perform oral sex on him until he ejaculated. ROA 836, lines 3-5. She stated she was five when this activity started. ROA 836, lines 7-9.

She testified that when she asked for help wiping when she was three years old, her father would stick his fingers inside her anus and move his finger. ROA 838, lines 8-18. She testified that he would come into her bedroom, pull her pants down, and put his fingers inside of her. ROA 842, lines 12-16. She further testified that he had her suck his penis and he put his mouth on her vaginal area. ROA 843, lines 15-21. He told her that it was training. ROA 843, lines 20-25. She also testified that he would come to her bedroom when she was in middle school, and she would hide under the bed. Then he would masturbate on the bed. ROA 845, lines 18-21. KF testified that she was in the room with her brother when her father told her brother to go mow the lawn. She testified that he then made her lick and rub his testicles. ROA 846, lines 8-13. Then he put his penis in her vagina. ROA 846, lines 14-16. This went on repeatedly and he never said anything to her. ROA 848.

KF testified that when she was eight years old, he had her stay with him when her mother was in the hospital and that he had her give him a back massage and then "he had [her] lay on his chest" he put his penis up to her vagina. She testified that he gave her alcohol and then he would touch her and use a vibrator on her. ROA 853, lines 15-25; ROA 857, lines 12-15. KF claimed that her father would threaten to kill her two dogs. ROA 859, lines 7-9.

KF testified that her father asked her to make noises when he assaulted her. ROA 880, lines 20-21.

The state called a blind expert in the field of child abuse dynamics. ROA 794, lines 15-16. She testified about delayed disclosure, shame, memory, behavioral issues, grooming, and trauma. ROA 796-818.

The defense called an expert in the field of parental alienation. ROA 995-1017. She testified this field dealt with a parent influencing a child to feel unfavorably towards the other parent. The defense raised the issue that the family was angry at him for not financially supporting them and abandoning his wife for another woman.

Flower testified on his own behalf and denied all allegation of sexual impropriety. ROA 1122-1171. He testified that his wife was irrationally jealous and unhappy with his income. ROA 1127-1128.

Prior to trial, Flower's counsel filed a motion to sever the cases such that there would be a separate trial for each daughter. He submitted a written motion on March 1, 2022, and the State filed a written reply on March 22, 2022. ROA 1264-1281. After hearing arguments on the record, the judge ruled that the case should not be severed, relying on *State v. Beekman*, 415 S.C. 632, 785 S.E.2d 202 (2016), as well as *State v. Perry*, 430 S.C. 24, 842 S.E.2d 654 (2020).

A motion for severance is addressed to the trial court and should not be disturbed unless an abuse of discretion is shown. Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996) cert. denied 520 U.S. 1200, 117 S.Ct. 1561, 137 L.Ed.2d 708 (1997). The courts have held "that [where] lack of a severance would result in admission of improper prior bad act evidence under Rule 404(b), SCRE, and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923)," then the charges should be severed. *State v. Harris*, 351 S.C. 643, 572 S.E.2d 267 (2002).

In *State v. McGaha*, the Court of Appeals held that the defendant could be tried on charges related to both of the girls he molested. 404 S.C. 289, 744 S.E.2d 602 (2013). In finding the charges could be tried together, the Court found that the charges would be proven by the same evidence.

*Id*. at 295, 744 S.E.2d at 605. In that case, there were several witnesses who testified about the events. A "substantial portion of the testimony presented at trial to prove the crime against one child was the same evidence it would have used to prove the crime against the other." *Id*. at 296, 744 S.E.2d at 606. This is distinguishable from the instant case, where the only probative evidence came from the girls themselves and each daughter could only testify about her own experience. There is no other evidence against Flower.

In *State v. Tallant*, this Court held that the facts surrounding the alleged assault of two siblings did not require severance. In that case, the brother's testimony provided evidence of the assault against his sister because he witnessed "odd behavior with their sister, and, eventually, his abuse of her." 430 S.C. 438, 442, 845 S.E.2d 508, 510 (Ct. App. 2020). This is in sharp contrast to the instant case, where none of the daughters could testify as to abuse of the others.

In *State v. Beekman*, 415 S.C. 632, 785 S.E.2d 202 (2016), the defendant moved to sever the charges that he molested his two stepchildren. The Court found that the charges would be proved by the same evidence. *Beekman* is distinguishable because there the testimony of many of the same witnesses would be used to prove both charges. That is not true in the instant case. There are no fact witnesses in common in the three cases.

In *McGaha*, the Court of Appeals stated that:

> where the defendant argues prejudice from admission of evidence of the other charges tried in the same case, our courts have analyzed whether evidence of one or more charges would be admissible in a trial involving only the other charge.

*Id*. at 298, 744 S.E.2d at 606.

That case was decided before *State v. Perry*, 430 S.C. 24, 30, 842 S.E.2d 654, 657 (2020), and relied on the now-overturned decision from *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009), to find that the State would have been able to introduce evidence of the other crime charged. *Perry* clarified that there must be scheme or plan common to both crimes and that evidence of the other crime serves some purpose other than using the defendant's character to show his propensity to commit the crime charge. *Id.* at 44, 842 S.C. at 665.

As the Supreme Court stated in *Perry*, "[i]t is in criminal cases that the law must be the most sternly on guard against allowing the doing of an act to be proved by a propensity to do it." (internal citations omitted). Rule 404(b) of the South Carolina Rules of Evidence "prevents the State from introducing evidence of a defendant's other crimes for the purpose of proving his propensity to commit the crime for which he is currently on trial. *Id.* Proof "that a defendant has been guilty of another crime equally heinous prompts the ready acceptance of and belief in the prosecution's theory that he is guilty." *Id.*

In *Perry*, the Court found that *Wallace* Court, "so expanded the admissibility of prior bad acts in sexual offense cases that the exception has swallowed the rule. Id. at 37, 842 S.E.2d at 661 (quoting *State v. Perez*, 432 S.C. 492, 501, 816 S.E.2d 550, 556 (2018) (Hearn, J. concurring)). The appellate courts have "refused to recognize a specific exception to the inadmissibility of prior bad act evidence in criminal sexual conduct cases." *Perry*, at 35, 842 S.E.2d at 660 (quoting *State v. Wallace*, 364 S.C. 130, 141, 611 S.E.2d 332, 338 (Ct. App. 2005), rev'd, 384 S.C. 428, 683, S.E.2d 275 (2009)).

One hundred years ago, the Supreme Court established that evidence of prior bad acts must be scrutinized with an eye towards controlling the "dangerous tendency and misleading probative force of this class of evidence." *Perry*, 430 S.C. at 33, 842 S.E.2d at 659, citing *State v. Lyle*, 125 S.C.

406, 118 S.E. 803 (1923). Prior bad acts may be admissible if the evidence is a part of a common scheme or plan. This "exception requires more than mere commission of two similar crimes by the same person." *Perry*, 430 S.C. at 34, 842 S.E.2d at 659 (quoting *State v. Stokes,* 279 S.C. 191, 193, 304 S.E.2d 814, 815 (1983)). There must be some connection between the crimes beyond mere similarity. *Id*. at 36, 842 S.E.2d at 661.

Using the *Perry* analysis, these would not be admissible at the other trials. In *Perry*, the Court noted that both crimes occurring in the same home is too general of a similarity. *Perry*, 430 S.C. 24, 39, 842 S.E.2d 654, 663. General similarities are not enough. The fact that the alleged perpetrator is the only father figure in the victims' lives is not enough. *Id*. If the acts are "unique," then a good argument can be made that "the connection if sufficient." *Id*.

In the instant case there are too many differences in the allegations of each child. There are some similarities – alcohol, pornography, potty-training, but not enough to render the unduly prejudicial testimony admissible. Very little is unique about the allegations of abuse.

Clearly, Flower's rights were prejudiced by having these nearly 70 cases tried together. The only purpose of evidence of other crimes was to tap into the jury's tendency to believe that a person is guilty when they have been charged with similar crimes against different victims. Propensity evidence is admissible if offered for some purpose other than to show the accused is a bad person or he acted in conformity with his prior conviction." *Perry*, 430 S.C. at 40, 842 S.E.2d at 662. The evidence of the assaults on the other two children only serves to show propensity. It serves no other purpose.

Therefore, the trial court erred when it failed to sever the charges. Based on the fact that there was no evidence other than victim testimony, and there is no manner that Flower can refute the charges, he was clearly prejudiced. He is entitled to a new trial.

## II. The trial court committed reversible error in refusing to quash several of the indictments against Flower where the indictments failed to provide adequate notice by incorporating expansive time frames and vague and broad language and therefore prejudice his right to a fair trial.

Flower was initially set to proceed to trial during the week of March 7-March 11, 2022, in front of the Honorable Judge Morgan in Greenville County. A jury was selected, and several pre-trial motions were heard including a defense motion to quash several of the indictments. ROA 479. At this time, Flower was to proceed under 31 total indictments. ROA 113. On May 29, 2020, trial counsel filed a "Motion to Quash Indictments" and thereafter, a "Motion to Quash Indictments (Amended)" on May 4, 2022, regarding the expansive time periods prescribed in the indictment. The trial court heard the amended motion on May 7, 2022. ROA 505.

The court specifically asked the State to address several indictments as to the time periods prescribed for the dates of offense. ROA 506. These indictments included the following:

1. 2019-GS-23-8054; Criminal Sexual Conduct with a Minor, 1st Degree; Date of offense: 2005-2011.
2. 2019-GS-23-8055; Criminal Sexual Conduct with a Minor, 1st Degree; Date of Offense: 2000-2008.
3. 2019-GS-23-8063A; Contributing to the Delinquency of a Minor; Date of Offense: 2002-2013.
4. 2019-GS-23-8071A; Contributing to Delinquency of a Minor; Date of Offense: 2005-2011.
5. 2021-GS-23-6838A; Criminal Sexual Conduct with a Minor, 1st Degree; Date of Offense: 2000-2008.
6. 2021-GS-23-7842A; Criminal Sexual Conduct with a Minor, 3rd Degree; Date of Offense: 2005-2011.

7. 2021-GS-23-7844A; Criminal Sexual Conduct with a Minor, 1st Degree; Date of Offense: 2005-2011.
8. 2021-GS-23-7851A; Criminal Sexual Conduct with a Minor, 1st Degree; Date of Offense: 2005-2011

ROA 506-508.

The time frame for the offenses in these indictments ranged between 6-11 years. The court ultimately decided to grant the motion to quash as to the eight indictments listed above but denied the motion as to the rest of the indictments. ROA 517. In quashing the indictments above, the court reasoned that the above indictments violated the ability of a defendant to effectively defend himself against such a large time frame as attested by the South Carolina Supreme Court in *State v. Baker*, 411 S.C. 583, 769 S.E.2d 860 (2015), and as such, was prejudicial to the Flower. ROA 517-518. In response to the court's decision to quash a portion of the indictments, the State requested a continuance in order to reconcile the indictments with the court's order. ROA 518. The continuance was granted. ROA 523.

In response, the State reindicted Flower in May 2022, adding 58 new indictments. In a weak attempt to "conform" with the judicial concern over several of the old indictments, the State reintroduced the numerous new indictments with the same substance as the old indictments but breaking the time period into arbitrary 1-year periods. In total, Flower then faced 69 total indictments and was ultimately convicted on 25 of them.

As an overarching principle, an indictment is a "notice document." *State v. Tumbleston*, 376 S.C. 90, 96, 654 S.E.2d 849, 852 (Ct. App. 2007). The South Carolina Constitution proscribes that, "no person may be held to answer for any crimes the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed…". S.C. Const. art. I, §11. Additionally, "no person shall be held to answer in any court for an alleged crime of offense, unless upon indictment by a grand jury….". S.C. Code

Ann. §17-18-10 (2023). "The primary purpose of an indictment [is] to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005). "This required notice is a component of the due process that is accorded every criminal defendant." *Id.*

In *State v. Baker*, the Supreme Court considered a challenge by a defendant convicted on four indictments for committing a lewd act upon a minor. 411 S.C. 583, 769 S.E.2d 860 (2015). On the eve of trial, Baker moved to quash the indictments on the ground "they were unconstitutionally overbroad and vague." *Baker*, 769 S.E.2d at 862-863. Baker argued to the trial court that "his ability to present a defense was hindered as 'broad brush [of the indictments] is not just summers of three years but really six and a half to seven years with no specificity.'" *Id.* at 863. For example, one of the indictments alleged the acts occurred between 1998-2004. *Id.* at. 862. The trial judge denied the motion to quash finding that the indictments were specific because the dates of the offense were not an essential element of the crime charged. *Id.* at 863. The Court of Appeals affirmed Baker's ultimate convictions on the indictments finding that the indictments were sufficient "as time was not a material element of the charged offenses…and the indictments clearly identified the elements of the offenses and substantially tracked the statutory language so that the nature of the charged offenses could be easily understood." *Id.*

In considering Baker's case on further appeal, the Supreme Court noted that "an indictment is a critical document in criminal defense preparation that is grounded in constitutional and statutory principles. *Id.* When an indictment is presented, a defendant "*may question* the propriety of the

accusation…and the *manner in which it has been presented.*" *Id.* (emphasis added). The Court noted that when a defendant raises a timely challenge to the sufficiency of an indictment, the reviewing court must determine whether "(1) the offense is stated with sufficient certainty and particularly to enable the court to know what judgement to pronounce, and the defendant to know what is called upon answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendants of the elements of the offense that is intended to be charged." *Id.* at 864 (quoting *State v. Gentry*, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005)) (emphasis added). Further, the trial court must "look at the surrounding circumstances that existed pre-trial, in order to determine whether a given defensed has been prejudiced…taken by surprise [,] and hence unable to combat the charges against him." *Id.* at 864 (quoting *State v. Wade*, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991)) (internal quotations omitted).

The Court ultimately found that due to the offense dates encompassing six and a half years, "Baker was prejudiced as he was undoubtedly taken by surprise and significantly limited in his ability to combat the charges against him. Simply stated, there was no way for Baker to know 'whether he [could] plead an acquittal.'" *Id.* at 864 (quoting *Gentry*, 363 S.C, at 103, 610 S.E.2d at 500). The Court further stated, "we are unable to discern how any defendant could effectively defends himself against a six-year time frame." *Id.* While recognizing that the prosecution often faces difficulties in identifying exact dates and time frames in sexual abuse cases involving children, "the class of criminal case should not translate into an expectation that operated to circumvent constitutional and statutory principles." *Id.* The Court ultimately found that due to the prejudice garnered from the indictments, Baker's convictions must be reversed. *Id.*

Related to time as considered above in *Baker*, indictments must also assert the offense charged with "sufficient certainty and particularly to enable the court to know what judgment to pronounce, and the defendant to know what is called upon answer and whether he may plead an acquittal or conviction thereon…". *Gentry*, 363 S.C. at 102-103. "The true test of the sufficiency of an indictment is [if]…it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." *State v. Wade*, 306 S.C. 79, 82-83, 409 S.E.2d 780, 782 (1991) (quoting *State v. Ham*, 259 S.C. 118, 129,191 S.E.2d 13,17 (1972)).

In this instant case before the Court, the trial judge quashed eight indictments he found to be in violation of *Baker* due to their excessive length prescribed for the time of the offense. After the State reindicted and amended several indictments against Flower, trial counsel moved again to quash the indictments claiming excessive length and lack of specificity. The trial court refused to quash any of the new indictments. Although the trial court correctly threw out the indictments in accordance with *Baker* initially, the court erred in allowing several indictments that would violate *Baker* and prejudice Flower to proceed against him and ultimately serve as basis for his conviction.

Flower was convicted on the following eight indictments which proscribe time limits highly similar to the quashed indictments and the indictments faced by the Defendant in *Baker* that were ultimately found to be prejudicial:

1. 2019-GS-23-8053; Date of Offense: 2008-2012. (4) years.
2. 2019-GS-23-7843A; Date of Offense: 2008-2012. (4) years.
3. 2022-GS-23-2845A; Date of Offense: 2008-2012. (4) years.
4. 2021-GS-23-6839A; Date of Offense: 2005-2010. (5) years.
5. 2019- GS-23-8048A; Date of Offense: 2005-2010. (5) years.
6. 2019-GS-23-8046A; Date of Offense: 2005-2010 (5) years.
7. 2019-GS-23-8061; Date of Offense: 2008-2013. (5) years.
8. 2019-GS-23-8044A; Date of Offense: 2008-2013. (5) years.

There is practically no difference between these "amended" indictments and the previously quashed indictments. The State did shorten the time period, but a large range of time still exists in each of these indictments. The *Baker* Court found that 6.5 years was too prejudicial to the defendant as he had no way to "effectively defend himself." In this case, the State asked Flower to "effectively defend" himself against acts allegedly committed within the span of 4 and 5 years. Like the defendant in *Baker*, Flower was undoubtedly prejudiced by these time spans. The trial court even recognized the issues with the first rounds of indictments under *Baker* but failed to protect Flower a second time with such prejudicial indictments. The trial court seems to have instituted the time period in *Baker*, 6.5 years, as a bright line rule in deciding whether the new indictments were prejudicial to Flower. No such bright line rule was prescribed by the Supreme Court in the *Baker* case or any of its progeny. Therefore, the trial court erred in failing to quash the above indictments.

Additionally, several of the indictments from which Flower was convicted lacked the "sufficient certainty and particularly" to inform both the trial court and Flower what he was to stand trial for. *Gentry*, 363 S.C. at 102-103. The following indictments are mere recitations of the offense statute without any further description of the incidents.

1. **2019-GS-23-8052: Voyeurism.**

> "That Randy Lee Flower did in Greenville County, between the 24th day of July, 2008 and the 24th Day of July, 2010, willfully and unlawfully and for the purpose of arousing or gratifying sexual desire of any person, view, photograph, audio record, video record, produce, or create a digital electronic file, or filmed the victim, I.F., without her/his knowledge and consent, while I.F. was in a place where she/he would have had a reasonable expectation of privacy. This is in violation of §16-17-0470 of the South Carolina Code of Laws (1976) as amended."

2. **2022-GS-23-2805A: Contributing to the Delinquency of a Minor.**

> "That Randy Lee Flower did in Greenville County, between the 24th day of July 2005, and the 23rd day of July 2006, knowingly and willfully encourage, aid, or cause I.F., a minor, to

do any act which caused or influenced I.F. to depot herself in a manner so as to willfully injury or endanger her morals or health or the moral or health of others. This is in violation of §16-17-490 of the South Carolina Code of Laws (1976) as amended."

3. **2022-GS-23-2800A: Contributing to the Delinquency of a Minor.**

"That Randy Lee Flower did in Greenville County, between the 24th day of July 2008, and the 23rd day of July 2009, knowingly and willfully encourage, aid, or cause I.F., a minor, to do any act which caused or influenced I.F. to deport herself in a manner so as to willfully injury or endanger her morals or health or the morals or health of others. This is in violation of §16-17-490 of the South Carolina Code of Laws (1976) as amended."

4. **2022-GS-23-2801A: Contributing to the Delinquency of a Minor.**

"That Randy Lee Flower did in Greenville County, between the 24th day of July 2009, and the 23rd day of July 2010, knowingly and willfully encourage, aid, or cause I.F., a minor, to do any act which caused or influenced I.F. to deport herself in a manner so as to willfully injury or endanger her morals or health or the morals or health of others. This is in violation of §16-17-490 of the South Carolina Code of Laws (1976) as amended."

5. **2022-GS-23-2802A: Contributing to the Delinquency of a Minor.**

"That Randy Lee Flower did in Greenville County, between the 24th day of July 2010, and the 23rd day of July 2011, knowingly and willfully encourage, aid, or cause I.F., a minor, to do any act which caused or influenced I.F. to deport herself in a manner so as to willfully injury or endanger her morals or health or the morals or health of others. This is in violation of §16-17-490 of the South Carolina Code of Laws (1976) as amended."

6. **2022-GS-23-2845A: Contributing to the Delinquency of a Minor.**

"That Randy Lee Flower did in Greenville County, between the 31st day of August 2008, and the 31st day of August 2012, knowingly and willfully encourage, aid, or cause K.F., a minor, to do any act which caused or influenced K.F. to deport herself in a manner so as to willfully injury or endanger her morals or health or the morals or health of others. This is in violation of §16-17-490 of the South Carolina Code of Laws (1976) as amended."

7. **2019-GS-23-8061: Disseminating Obscene Material to a Minor.**

"That Randy Lee Flower did in Greenville County, between the 31st day of August 2008 and the 31st day of August 2013, knowingly disseminate to K.F. a minor twelve years of age or younger material which he/she knew or reasonable should have known to be obscene. This in violation of the South Caroline Code of Laws Section §16-15-0345 as amended."

8. **2019-GS-23-8044A: Voyeurism.**

> "That Randy Lee Flower did in Greenville County, between the 5th day of May, 2008 and the 5th day of May, 2013, willfully and unlawfully and for the purpose of arousing or gratifying sexual desire of any person, view, photograph, audio record, video record, produce, or create a digital electronic file, or filmed the victim, A.F., without her/his knowledge and consent, while A.F. was in a place where she/he would have had a reasonable expectation of privacy. This is in violation of §16-17-0470 of the South Carolina Code of Laws (1976) as amended."

The State merely included boilerplate and formulaic language ignoring the prescription provided in *Gentry* that for indictments to be sufficient they must be described in certain and particular terms. Armed with just statutory language, Flower could not effectively defend himself against the offenses for which he was being charged. In addition, a number of the above indictments also contain time spans of 4-5 years, making them doubly vague and overbroad. Flower did not receive the proper notice that an indictment is meant to proffer and as such was highly prejudiced by continuing to trial under such defective documents. The trial court erred in refusing to examine the language of the indictments therefore committed reversible error by exposing Flower to unreasonable prejudice.

## CONCLUSION

Respectfully, this Court should grant Mr. Flower a new trial.

Respectfully submitted,

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September 12, 2024.

CERTIFICATE OF SERVICE

Counsel certifies that she has provided a copy of this final brief on Joshua Edwards of the South Carolina Attorney General's Office via email on this date, September 12, 2024.

/s/Elizabeth Franklin-Best