STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable Paul M. Burch, Circuit Court Judge

Appellate Case No: 2013-000466

THE STATE,

Respondent,

v.

LARRY TYLER,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

RECEIVED
SEP 30 2013
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

ARGUMENT 7

The trial court properly denied Appellant's motion for directed verdict on the contributing to the delinquency of a minor charge because sufficient evidence was presented establishing Appellant was guilty 7

CONCLUSION 17

TABLE OF AUTHORITIES

Cases:

Am. Booksellers Found. v. Dean, 342 F.3d 96 (2d Cir. 2003) 14

Morris v. State, 361 S.W.3d 649 (Tex. Crim. App. 2011) 15

State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) 8, 9

State v. Brister, 435 N.W.2d 679 (Neb. 1989) 11, 12

State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008) 7, 16

State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012) 13

State v. Horton, 682 S.E.2d 754 (N.C. Ct. App. 2009) 14

State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998) 8

State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986) 7, 8

State v. Rodriguez, 279 S.C. 106, 302 S.E.2d 666 (1983) 10

State v. Venters, 300 S.C. 260, 387 S.E.2d 270 (1990) 7

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) 7, 16

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 7

United States v. Brand, 467 F.3d 179 (2d Cir. 2006) 14

United States v. Chambers, 642 F.3d 588 (7th Cir. 2011) 15

United States v. Johnson, 132 F.3d 1279 (9th Cir.1997) 12

Statutes:

S.C. Code Ann. § 16-17-490 (2003) 9, 10

S.C. Code Ann. § 16-17-490(2) (2003) 8, 9

Other Authorities:

Legal and Epidemiological Aspects of Child Maltreatment, 19 J. Legal Med. 471 (1998) 14

The Criminal Law of South Carolina 96 (5th ed. 2007) 10, 11

STATEMENT OF ISSUES ON APPEAL

The trial court properly denied Appellant's motion for directed verdict on the contributing to the delinquency of a minor charge because sufficient evidence was presented establishing Appellant was guilty.

STATEMENT OF THE CASE

A Darlington County Grand Jury indicted Appellant for criminal solicitation of a minor, second-degree sexual exploitation of a minor, contributing to the delinquency of a minor, and disseminating harmful material to minors. (R.* Indictments.) On February 25-27, 2013, Appellant proceeded to trial before a jury. Richard Jones, Esquire, represented Appellant, and Assistant Solicitors John W. Holt and Patti McKenzie Parker represented the State. The jury found Appellant guilty of all charges, and the Honorable Paul M. Burch sentenced him to eight years' imprisonment for each of the charges except contributing to the delinquency of a minor, for which he received a three year sentence. (Tr. 194.)

On March 4, 2013, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

Victim and her sister accompanied their grandmother, Dorris Brown, to her friend Ernestine Witherspoon's house on numerous occasions. (Tr. 44, line 14-Tr. 45, line 5.) On one visit, Appellant, who was Ms. Witherspoon's son, gave Victim and her sister a cell phone. (Tr. 45, lines 15-19; Tr. 54, lines 5-17; Tr. 65, lines 5-14.) The girls began looking at the pictures on the phone and saw girls in bathing suits and one picture of Appellant in blue underwear. (Tr. 55, lines 8-17; Tr. 65, lines 18-23.) Ms. Brown returned the phone to Appellant after Victim told her that her sister said there were pictures of naked men on the phone. (Tr. 45, line 22-Tr. 46, line 7.)

Tyquan Brown, the girls' twenty-one-year-old cousin, visited Ms. Witherspoon's house and Appellant asked him and his mother if they wanted a cell phone. (Tr. 68, lines 4-12; 69, lines 2-21.) Tyquan's mother gave him the cell phone and when he got home he began to delete items from the phone. (Tr. 69, lines 22-25.) He noticed some draft versions of text messages that contained Victim's name in the titles. (Tr. 71, lines 4-23.) After reading the drafts, he realized they referred to Appellant wanting Victim in his bed and he notified Victim's mother, Georgita Brown. (Tr. 72, line 2-Tr. 73, line 5.) Georgita called the police, and the police arrested Appellant initially for driving under suspension and then charged him with criminal solicitation of a minor, second-degree sexual exploitation of a minor, contributing to the delinquency of a minor, and disseminating harmful material to minors. (Tr. 81, lines 13-17; Tr. 89, lines 4-9; R* Indictments.)

At trial, twelve-year-old Victim testified that when she was around Appellant, he would take pictures of her and her sister, sometimes without adults in the room. (Tr. 52, line17-Tr. 53, line 2.) She also explained that Appellant played a racing game with her

and her sister where, "He said that if he win[s] he get[s] a hug, and if we win we get a dollar." (Tr. 53, lines 5-12.) She acknowledged that she never won a dollar but that she received a lot of hugs from Appellant. (Tr. 53, lines 13-18.) She identified the cell phone Appellant gave her and her sister. (Tr. 53, line 23-Tr. 54, line 11.) She stated that she saw pictures on the phone of a girl in bikinis and of Appellant in blue underwear. (Tr. 55, lines 5-17.) Victim testified that Appellant liked her more than her sister because he took more pictures of her. (Tr. 55, line 22-Tr. 56, line 1.)

Victim's ten-year-old sister also testified Appellant took more pictures of Victim than of her and he played a racing game where he would win hugs. (Tr. 64, lines 3-16.) She admitted she was more outgoing and more of a talker than Victim. (Tr. 64, lines 17-21.) She testified she looked at the pictures on the cell phone and saw some of girls in bathing suits and one of Appellant in blue underwear. (Tr. 65, lines 18-23.) She stated the pictures made her feel uncomfortable, and she told her grandmother, "Grandma, there are some naked pictures of him." (Tr. 66, lines 8-12.) Victim's sister agreed Appellant paid more attention to Victim than to her and testified Victim received a lot of hugs from Appellant. (Tr. 66, line 23-Tr. 67, line5.) She explained that she told her father, "He keep[s] hugging on us." (Tr. 67, lines 7-11.)

Tyquan Brown testified regarding the cell phone Appellant gave him and the pictures that were on it. (Tr. 70, lines 1-17.) He described one picture as the Appellant in a blue Speedo.[1] (Tr. 70, line 18.) He also saw pictures of women and children. (Tr. 70, lines 19-20.) Tyquan deleted most of the pictures so he could start using the phone. (Tr.

[1] A Speedo is a tight-fitting swim brief, usually revealing. McGraw-Hill Slang Dictionary, "Speedo" (last visited September 19, 2013) http://www.answers.com/topic/speedo-slang.

70, line 22-Tr. 71, line 3.) He then noticed some unsent draft text messages that were labeled using Victim's name. (Tr. 71, lines 4-18.) He read them and saw that they appeared to be for Victim because they acknowledged she was a little girl and mentioned Victim's sister by name. (Tr. 71, line 25-Tr. 72, line 12.) Tyquan notified Victim's mother. (Tr. 72, lines 16-21.)

Georgita Brown, Victim's mother, testified next. (Tr. 79, lines 3-24.) She explained that Tyquan called her and she went to pick up the cell phone from him. (Tr. 80, lines 7-19.) She testified she saw a picture on the phone of Appellant in a blue Speedo with no other clothing on. (Tr. 80, lines 20-21.) She then read the draft text messages and became disturbed enough to call the police. (Tr. 80, lines 23-25.) She met Deputy Eric Hodges in the parking lot of a Roses store, and he sent her to retrieve the box for the phone. (Tr. 81, line 18-Tr. 82, line 14.) At that point her aunt, who was riding in the car with her, noticed Appellant nearby. (Tr. 82, lines 14-25.) Georgita told Officer Hodges that Appellant was at a nearby garage. (Tr. 83, lines 11-13.)

Deputy Eric Hodges of the Darling County Sheriff's Office testified that after learning where Appellant was, he approached him and arrested him for driving under suspension, advised him of his Miranda rights, and told him he was working on another investigation for which Appellant agreed to answer questions. (Tr. 88, line 15-Tr. 89, line 9.) Deputy Russell Harrell testified next regarding his assistance in obtaining items from Appellant's residence pursuant to a search warrant. (Tr. 99, lines 14-25.) He read out the draft text messages he was able to retrieve from the cell phone in question. (Tr. 102, line 6-103, line 13.) A printout of those messages was admitted as State's Exhibit 11 without objection. (Tr. 101, line 15-Tr. 102, line 12.)

At the close of the State's case, Appellant moved for a directed verdict as to all charges. (Tr. 128, lines 5-7.) As to the contributing to the delinquency of a minor charge, he specifically argued the indictment on that charge alleged Appellant caused Victim to become incorrigible and the State had failed in its burden to prove Appellant was guilty. (Tr. 128, line 14-Tr. 129, line 2.) The State argued that by giving Victim the cell phone with text messages and pictures of himself in bikini briefs he did so to deport herself to willfully injury or endanger her morals or health. (Tr. 130, line 22-Tr. 131, line 2.) After considering the motion overnight, the trial court denied the motion, reserving its right to review the motion at any later point in the trial if necessary. (Tr. 133, line 23-138, line 10.)

Ultimately, the jury found Appellant guilty of all charges and the trial court sentenced him to eight years' imprisonment for each of the charges except contributing to the delinquency of a minor, for which he received a three-year sentence. (Tr. 187, 194.)

ARGUMENT

The trial court properly denied Appellant's motion for directed verdict on the contributing to the delinquency of a minor charge because sufficient evidence was presented establishing Appellant was guilty.

Appellant argues the trial court erred in refusing to grant a directed verdict on the charge of contributing to the delinquency of a minor because the State failed to present any substantial evidence beyond a reasonable doubt that Appellant did anything to make the minor delinquent as alleged by the indictment. On the contrary, sufficient evidence was presented on this charge and the trial court correctly denied the motion. Thus, the trial court should be affirmed.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in a light most favorable to the State. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). An appellate court must find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648. An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). **"[U]nless there is a total failure of evidence** tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a

directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

"In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review. A defendant cannot argue on appeal an issue in support of his directed verdict motion when the issue was not presented to the trial court below." State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998). See State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.").

The only ground Appellant argued in his motion for directed verdict on the charge of contributing to the delinquency of a minor at trial was that the State had failed to prove Appellant was guilty of causing Victim to become incorrigible. His motion follows:

> As to contributing to the delinquency of a minor, Your Honor, specifically, that indictment which is 2013-16-0605. It alleges the act of the defendant in giving the minor, [Victim], a cell phone causing her to become incorrigible.
>
> Your Honor, the only testimony that was in--that was presented today from eithere [sic] [Victim] or [Victim's sister] was that for about ten minutes they had possession of the red cell phone which contained, I believe both of them said, a picture of [Appellant] in bikini underwear and a lady in a bathing suit.
>
> And for that reason we fail--we feel that the State as [sic] failed in its burden to move that [Appellant] is guilty of contributing to the delinquency of a minor.

(Tr. 128, line 14-Tr. 129, line 2.) (emphasis added.) He did not argue the State did not prove any other subsection of contributing to the delinquency of a minor but only focused on subsection (2) "To become and be incorrigible or ungovernable or habitually disobedient and beyond the control of his or her parent, guardian, custodian or other

lawful authority." S.C. Code Ann. § 16-17-490(2) (2003). Appellant now argues the evidence did not show Appellant did anything to make the minor delinquent as alleged by the indictment, which listed all subsections of the statute. This argument is not preserved for review. See Bailey, 298 S.C. at 5, 377 S.E.2d at 584 ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.").

The South Carolina statute for contributing to the delinquency of a minor provides:

> It shall be unlawful for any person over eighteen years of age to knowingly and wilfully encourage, aid or cause or to do any act which shall cause or influence a minor:
>
> (1) To violate any law or any municipal ordinance;
>
> (2) To become and be incorrigible or ungovernable or habitually disobedient and beyond the control of his or her parent, guardian, custodian or other lawful authority;
>
> (3) To become and be habitually truant;
>
> (4) To without just cause and without the consent of his or her parent, guardian or other custodian, repeatedly desert his or her home or place of abode;
>
> (5) To engage in any occupation which is in violation of law;
>
> (6) To associate with immoral or vicious persons;
>
> (7) To frequent any place the existence of which is in violation of law;
>
> (8) To habitually use obscene or profane language;
>
> (9) To beg or solicit alms in any public places under any pretense;
>
> (10) To so deport himself or herself as to wilfully injure or endanger his or her morals or health or the morals or health of others.

S.C. Code Ann. § 16-17-490 (2003) (emphasis added).

It is interesting to note that on appeal, Appellant specifically argues no evidence exists to support subsections (1)-(9) of the contributing to the delinquency of a minor statute. It is telling that he makes no contention regarding the State's failure to prove subsection (10). Indeed, this failure to argue regarding the one subsection that seems to apply in this case may act as a waiver.

In State v. Rodriguez, 279 S.C. 106, 109, 302 S.E.2d 666, 667 (1983), the Supreme Court determined that a person can be convicted of contributing to the delinquency of a minor under subsection (10) even if the minor resists the advances and does not cooperate. Rodriguez committed two lewd acts on children who were recuperating from surgery in a hospital. Id. at 107, 302 S.E.2d at 666. He was charged with committing a lewd act on a twelve-year-old child and was charged with contributing to the delinquency of a minor for his lewd act on a fourteen-year-old child. Id. Rodriguez argued the trial court should have granted his directed verdict motion because by resisting his advances, the fourteen-year-old child had not wilfully injured her morals as required by the statute. Id. at 108, 302 S.E.2d at 667. The Court determined that the legislature did not intend "the statute to apply only when the minor is a willing participant," and found "[t]he evidence shows appellant encouraged the victim to willfully injure her morals; that she chose not to cooperate is of no consequence." Id. at 109, 302 S.E.2d at 667.

The Rodriguez case is instructive in several ways. First, it supports the fact that advances of a sexual nature toward a minor fall under subsection (10) of the contributing to the delinquency of a minor statute. Second, "[t]he result of [the Court's] statutory interpretation seems to be that the statutory proscription of contributing to the

delinquency of a minor may be satisfied by an attempt to do so." William Shepard McAninch et al., The Criminal Law of South Carolina 9 (5th ed. 2007).

A Nebraska Supreme Court case offers insight into the examination of a defendant's behavior versus the behavior of a victim in situations involving the encouragement of a minor to become delinquent. In State v. Brister, 435 N.W.2d 679 (Neb. 1989), the defendant was charged with contributing to the delinquency of a child under section 28-709(1) of the Nebraska Revised Statutes. On appeal, Brister argued the statute required the child to actually become delinquent. Id. at 681. The Nebraska Supreme Court found:

> [T]he defendant's inappropriate touching and sexual advances toward the girl had the effect of encouraging her to deport herself so as to injure or endanger seriously her morals. Such action would tend to make the girl become a delinquent child. That the young girl was able to resist the blandishments of the older defendant is a tribute to her and should not result in the exoneration of defendant for his improper conduct. Section 28-709 is addressed to the conduct of the person accused of contributing to the delinquency of a child, not the conduct of the child. The statute does not require that the child actually become delinquent . . . , but only that the defendant encourage the child to become delinquent . . . .

Id.

Here, Victim did not read the draft text messages he had written to her, which contained language that would clearly fit into subsection (10). However, the drafts were clearly written to her, and the jury could infer that by purposely giving Victim the phone that contained the drafts, Appellant intended for her to read them and act on them, thereby injuring or endangering her morals. The draft text messages were as follows:

> [Victim], to fall in love with a little girl as young as you are, but I can't stop my heart from loving you, girl. I wish I had another hour alone with you and nobody knew.

> Me in trouble. Please, [Victim], especially don't tell [your sister]. She will surely tell someone. This is just between you and me, my love.
>
> Never want to be apart from each other ever again. I love you, little angle [sic]. Wish I could make you my wife. If I could you- - if I could you would be in my bed tonight. Don't get me.
>
> Where we were. I would how [sic] you how much I love you, [Victim], by holding you close to me and plant a kiss on your lovely lips so powerful that we both would never.
>
> [Victim]. You were so beautiful. Please don't tell anyone what I am telling you. First time I ever saw you, [Victim], I fell for you. I know a man should not suppose.

(Tr. 102, line 15-Tr. 103, line 13.) These messages show Appellant's intent to be alone with Victim, kiss her, hold her close, have her in his bed, and marry her. Further, he urges her not to tell anyone and admits he should not have such feelings for a little girl. The text drafts are the electronic equivalent of love letters. Whether he sent them to her or not, they were clearly intended to be seen and read by her. Moreover, one can tell by what Appellant wrote that he was encouraging her to act on this "love" he had for her. He was attempting to encourage Victim to engage in behavior that involved kissing, sleeping with him, marrying him, and keeping all of it secret. This certainly fits into the definition of subsection (10) by encouraging her <u>to so deport herself as to wilfully injure or endanger her morals or health</u>. As noted in <u>Brister</u>, the examined conduct for purposes of the contributing to the delinquency of a minor statute is Appellant's, not Victim's.

"Grooming" is "the process of cultivating trust with a victim and gradually introducing sexual behaviors until" victimization is possible. <u>United States v. Johnson</u>, 132 F.3d 1279, 1283 n. 2 (9th Cir.1997). Here, Appellant played a racing game with the girls where he would get to hug them when he won (which he always did), took pictures

of them, played with them while their grandmother was visiting with his mother, and established trust. He worked up to the point of giving them the cell phone that contained a picture of him in his underwear and pictures of women in bikinis. These are all classic grooming techniques Appellant engaged in for the purpose of encouraging Victim to injure or endanger her morals. They were all part of lowering Victim's defenses, gaining her trust, and preparing her for adult acts, thus increasing his chances of success in future sexual encounters.

In State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012), the Supreme Court examined the role of photographs sent to a victim as a part of grooming for sexual abuse. The Court found the trial court did not abuse its discretion in admitting photographs Green sent to his victim. The Solicitor offered the photographs "to show the furtherance of the conduct to solicit sex from the underage child as a form of grooming, as a form of soliciting sex." Id. at 286, 724 S.E.2d at 673. The Court found the photographs corroborated other evidence to establish Green's intent to solicit the minor to engage in sexual activity. Id. at 287, 724 S.E.2d at 673. The Court stated that Green's comment that he could show the minor the subject of the picture (his penis) in person, in conjunction with the photographs, provided the jury with evidence of Green's specific intent as to the charged crimes. Id. While Green was not charged with contributing to the delinquency of a minor, the Court's reasoning for allowing the photographs demonstrates its recognition of the grooming process that occurs with people who engage minors in sex.

Here, in addition to the draft text messages written to Victim, Appellant also gave Victim the phone containing a picture of him in his underwear. The phone also contained pictures of women in bikinis. These pictures of adults in very little clothing, in

conjunction with the draft text messages proclaiming his desire to engage the minor in sex and intimacy on an adult level, clearly demonstrate grooming. To a ten-year-old girl, which Victim was at the time of the crime, seeing a picture of an adult male in his underwear was just as inappropriate and shocking as seeing a naked man. In fact, Dorris Brown testified Victim told her, "Grandma, he gave us a phone and [my sister] said naked men on there." Although there was no testimony the phone contained any actual nude photographs, the comment demonstrates the inappropriateness of the photograph and the fact that seeing an adult male in his underwear was just like seeing him nude to such young children.

The United States Court of Appeals in the Second Circuit examined grooming behavior in United States v. Brand, 467 F.3d 179 (2d Cir. 2006). Brand made contact via internet chat sessions with two individuals he believed to be young girls. Id. at 184. The Court noted that "Brand's behavior—sharing pictures, flirting, and attempting to gain affection—constituted classic "grooming" behavior in preparation for a future sexual encounter." Id. at 203. The Court further pointed out, "Child sexual abuse is often effectuated following a period of 'grooming' and the sexualization of the relationship." Id. (quoting Sana Loue, Legal and Epidemiological Aspects of Child Maltreatment, 19 J. Legal Med. 471, 479 (1998)). The Court further noted the government's "interest in preventing pedophiles from 'grooming' minors for future sexual encounters." Id. (quoting Am. Booksellers Found. v. Dean, 342 F.3d 96, 102 (2d Cir. 2003)).

Two out-of-state cases that examined expert testimony about grooming offer insight into what grooming is. In State v. Horton, 682 S.E.2d 754, 758 (N.C. Ct. App. 2009), the North Carolina Court of Appeals affirmed the trial court's admission of expert testimony consisting of "descriptions of 'grooming' techniques commonly used by

perpetrators of sexual abuse to increase the likelihood of success." These included "making excuses to touch the child's body." Id. at 759. Morris v. State, 361 S.W.3d 649 (Tex. Crim. App. 2011), also examined the subject of grooming in the context of allowing expert testimony. The trial court allowed the expert to describe how grooming can involve joking and games to minimize the offender's conduct. Id. at 652. When asked whether an offender might trick a victim into playing games so that he could obtain sexual contact, the expert pointed out that games and horseplay with the victim are "just disguised foreplay." Id. Here, Appellant used a game of racing where he agreed to give the girls a dollar if they won but would receive a hug if he won. This is an example of using games to trick the child into allowing him to have contact with her body.

In United States v. Chambers, the Seventh Circuit recognized "that child sexual abuse can be accomplished by several means and is often carried out through a period of grooming." 642 F.3d 588, 593 (7th Cir. 2011). "Grooming refers to deliberate actions taken by a defendant to expose a child to sexual material; the ultimate goal of grooming is the formation of an emotional connection with the child and a reduction of the child's inhibitions in order to prepare the child for sexual activity." Id. The Court pointed out the ways Chambers was grooming Kendal, which included sending the alleged fourteen-year-old girl pornography via email. Id. Here, Appellant did not send actual pornography, but he did give Victim a phone containing pictures of adults in underwear and swimsuits. Those types of pictures, especially when seen by such a young child, can certainly be construed as being "sexual material." Young children are not normally exposed to adult males in the underwear.

In sum, all that was required for the charge of contributing to the delinquency of a minor to be submitted to the jury was for direct evidence or substantial circumstantial

evidence to exist. Here, the draft text messages indicate Appellant's attempt to communicate inappropriate, sexually themed "love letters" to Victim that would encourage her to injure or endanger her morals through engaging in behavior such as kissing, sleeping with Appellant, and keeping everything secret. In conjunction with the grooming process shown through testimony regarding the hugs won during the racing game, the picture-taking of Victim, and the adult-themed photographs on the phone, sufficient evidence existed to allow the jury to determine whether Appellant was guilty of contributing to the delinquency of a minor. Thus, the trial court properly denied Appellant's directed verdict motion and submitted the charge to the jury for its resolution. Because the appellate court may only reverse a trial court's denial of a motion for a directed verdict if there is **no evidence** to support the trial court's ruling or if the ruling is based on an error of law, this Court should affirm the trial court's ruling. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008) (emphasis added).

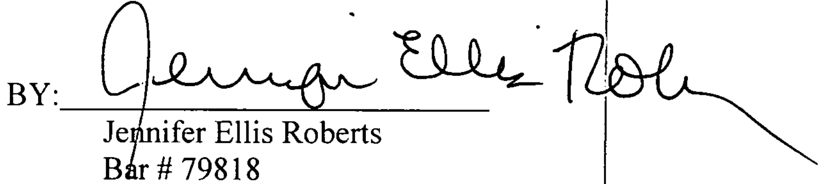
CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General



BY:________________________
Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

September 30, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable Paul M. Burch, Circuit Court Judge

RECEIVED
SEP 30 2013
SC Court of Appeals

Appellate Case No: 2013-000466

THE STATE,

Respondent,

v.

LARRY TYLER,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

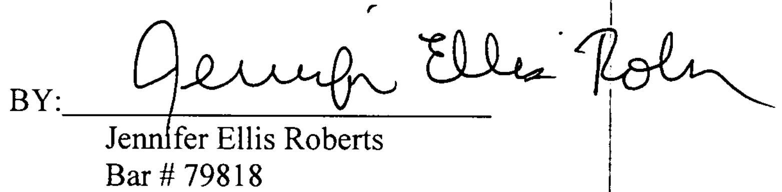
Trial Transcript pages 134-37, 187, 194.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

BY:

Jennifer Ellis Roberts
Bar # 79818

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

ATTORNEYS FOR RESPONDENT

September 30, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable Paul M. Burch, Circuit Court Judge

RECEIVED
SEP 30 2013
SC Court of Appeals

Appellate Case No: 2013-000466

THE STATE,

Respondent,

v.

LARRY TYLER,

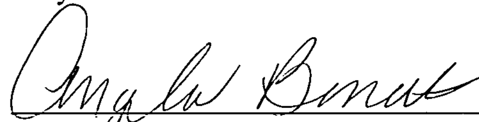
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 30th day of September, 2013.



ANGELA BENNETT
Legal Assistant

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

ALAN WILSON
ATTORNEY GENERAL

September 30, 2013

RECEIVED
SEP 30 2013
SC Court of Appeals

Robert M. Pachak, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Larry Tyler
Appellate Case No: 2013-000466

Dear Mr. Pachak:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services