

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable George M. McFaddin, Circuit Court Judge

SAMUEL JOLLY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000949

APPENDIX

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State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Samuel Jolly,)
)
 Defendant.)
)
)

February 12, 2018
St. George, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 3:58 p.m.)

THE COURT: All right. This is *State of South Carolina v. Samuel Jolly*. I have -- we're trying to take up some pretrial motions before -- before we get started tomorrow morning. And I -- and I think all the motions I got are yours, Ms. Williams?

MS. WILLIAMS: Yes. Yes, sir.

THE COURT: Okay. Is there any one in particular you want to start with?

MS. WILLIAMS: Certainly, Your Honor.

THE COURT: Pick one.

MS. WILLIAMS: I think we're in agreement. I made a motion to sequester the state's witnesses. I think we can knock that one out.

MR. TEMPLETON: With the exception of my investigating officer, I'm in agreement.

MS. WILLIAMS: Perfect.

THE COURT: Okay.

MS. WILLIAMS: I made a motion to determine the admissibility of prior convictions.

MR. TEMPLETON: Your Honor, as to the defendant's prior record, the only thing he's got is a ---

THE COURT: Okay. Hold on. Let me get that -- let me get to that one.

1 MR. TEMPLETON: Let me find it real quick.

2 THE COURT: I -- bear with me. Prior convictions,
3 right?

4 MR. TEMPLETON: Your Honor, the only thing he's got is
5 a 1988 conviction for breach of trust with fraudulent
6 intent. Based on the time frame, I -- the state doesn't
7 intend to go into that unless, for some reason, he were to
8 open the door into that if he were to testify. But I think
9 -- I -- I would agree, it's not admissible at this point
10 unless, for some reason, he says something on the stand
11 that might open the door to it. I'll, of course ---

12 THE COURT: Okay.

13 MR. TEMPLETON: --- bring that ---

14 THE COURT: Makes sense ---

15 MR. TEMPLETON: --- to the Court's ---

16 THE COURT: --- to me.

17 MR. TEMPLETON: --- attention if I believe so.

18 THE COURT: Okay.

19 MS. WILLIAMS: Makes sense to me also, Your Honor.

20 And we ---

21 THE COURT: Okay.

22 MS. WILLIAMS: --- will consider that when determining
23 whether or not my client wishes to testify at the
24 appropriate time.

25 THE COURT: Okay.

1 MS. WILLIAMS: The next motion that I think should be
2 brought up on is -- is one that's not handed to you,
3 because this was ---

4 THE COURT: Because Mr. Kornegay didn't type it up
5 ahead of time?

6 MS. WILLIAMS: I'm going to blame it on Mr. Kornegay.

7 THE COURT: Good.

8 MS. WILLIAMS: Yes.

9 THE COURT: Okay.

10 MS. WILLIAMS: However, I do think it's my fault.
11 It's -- it's just one that came to my attention while he
12 was preparing the trial, Judge. And it's a motion to
13 challenge the sufficiency of the indictments. And so I'm
14 going to turn that over to Mr. Kornegay, who's going to
15 argue that motion.

16 And just for the record, the ---

17 THE COURT: And ---

18 MS. WILLIAMS: --- *Jackson v. Denno* motion and the
19 motion to limit the doctor's testimony, I think, has to be
20 taken up at a later date due to ---

21 THE COURT: That ---

22 MS. WILLIAMS: --- witness availability.

23 THE COURT: Okay. All right. And I don't have a copy
24 of the indictments. I don't know what -- he's -- he's
25 charged with criminal sexual conduct with a minor?

1 MS. WILLIAMS: Yes.

2 THE COURT: Is that correct?

3 MR. TEMPLETON: It is, Your Honor. It's criminal
4 sexual conduct in the first degree and a lewd act. And
5 I'll hand you up my copies for now. Let me make sure
6 they're the right ones. Yeah.

7 (Off the record briefly.)

8 THE COURT: All right. And, Mr. Kornegay?

9 MR. KORNEGAY: Yes, sir.

10 THE COURT: You -- you're arguing -- which indictment,
11 the criminal-sexual-conduct ---

12 MR. KORNEGAY: Sir ---

13 THE COURT: --- indictment?

14 MR. KORNEGAY: Sir, there's an argument as to both
15 indictments, Your Honor, to quash both indictments. The
16 more specific argument will go towards the indictment on
17 the lewd act.

18 THE COURT: Okay.

19 MR. KORNEGAY: But I have a broader argument on both
20 the criminal-sexual-conduct as well as the lewd-act
21 indictments, Your Honor.

22 THE COURT: Okay. Okay. All right.

23 MR. KORNEGAY: Thank you, Your Honor. May it please
24 the Court?

25 THE COURT: Yes, sir.

1 MR. KORNEGAY: And, Your Honor, the criminal-sexual-
2 conduct indictment is No. 2013-GS-18-0416.

3 THE COURT: All right, sir.

4 MR. KORNEGAY: And the lewd-act indictment is 2014-GS-
5 18-0126. And, Your Honor, the two main cases that I'm
6 referring to in this motion is *State v. Baker*, 411 S.C.
7 583; and *State v. Tumbleston*, 376 S.C. 90.

8 In *State v. Baker*, the Court explained that (As read):
9 "An indictment is the charge of the state against the
10 defendant, the pleading by which he's informed of the fact,
11 and the nature and scope of the accusation; and that the
12 reviewing court is to determine whether the offense is
13 stated with sufficient certainty and particularity to
14 enable the Court to know what judgment to pronounce and the
15 defendant to know what he is being called upon to answer
16 and whether he may plead an acquittal or conviction
17 thereon; and whether it apprises the defendant of the
18 elements of the offense that is intended to be charged."

19 And the Court notes that (As read): "In determining
20 whether an indictment meets the sufficiency standard, the
21 trial court must look at the indictment with a practical
22 eye in view of all the surrounding circumstances."

23 And, Judge, my first argument applies to both
24 indictments. And it addresses the span of time that is
25 alleged in each indictment. For both indictments the state

1 has alleged that on or about August 1st, 1996, to August
2 22nd, 1997, over a year for each crime alleged.

3 And what we would argue, Your Honor, is this span of
4 time, especially in light of the circumstances of this
5 particular case -- this case is alleged to have happened
6 over 20 years ago. In light of those circumstances, this
7 span of time is insufficient to give Mr. Jolly and the
8 defense the ability to sufficiently address the accusations
9 brought by the state.

10 So for my argument for the criminal-sexual-conduct,
11 that's my only argument for that indictment, Judge, is the
12 specificity as to the date.

13 THE COURT: All right. Well, let me ask you a
14 question. *State v. Wade* said that -- that the defendant
15 was not prejudiced when they were alleging that the crimes
16 and acts occurred over a two-year period, 1984 and 1985.
17 How is that ---

18 MR. KORNEGAY: Yes, Your Honor.

19 THE COURT: --- different from this one?

20 MR. KORNEGAY: So the distinguishing fact for this one
21 is the prosecution of this case is over 20 years after the
22 allegations. And along with that, as will come up in other
23 pretrial motions and possibly during the trial, there's a
24 large amount of evidence -- documents, information -- that
25 were present at the time that these charges were brought

1 that we just don't have access to. Not -- not any fault of
2 the state; just have been lost/destroyed. And I believe
3 that that would factor in, when the Court says, "An
4 indictment with a practical eye, in view of all the
5 surrounding circumstances," I think that that would impact
6 those surrounding circumstances.

7 THE COURT: So, you know -- and this is going to come
8 up, I know, when we start talking about how we're going to
9 handle the fact that this case is 20 years old. And -- and
10 I don't know exactly how I'm going to handle that right
11 now. But I don't know that it's just the state's fault
12 that this case is 20 years old.

13 So if somebody manages to elude arrest for a number of
14 years, then we can just go, "Okay."

15 MR. KORNEGAY: That's not my argument, Judge.

16 THE COURT: Okay.

17 MR. KORNEGAY: I -- I don't think that it excuses any
18 actions on a defendant.

19 THE COURT: Uh-huh.

20 MR. KORNEGAY: However, the burden is on the state.

21 THE COURT: Exactly.

22 MR. KORNEGAY: They're ---

23 THE COURT: And now ---

24 MR. KORNEGAY: --- the gathering ---

25 THE COURT: --- they've lost a lot of evidence.

1 MR. KORNEGAY: The ---

2 THE COURT: Correct?

3 MR. KORNEGAY: --- ability to gather evidence ---

4 THE COURT: Uh-huh.

5 MR. KORNEGAY: --- the ability to keep and retain
6 evidence ---

7 THE COURT: Uh-huh.

8 MR. KORNEGAY: --- and the ability to build a case,
9 that's all on the state.

10 THE COURT: And those are all good arguments to make
11 to the jury, don't you think?

12 MR. KORNEGAY: Yeah.

13 THE COURT: Where is this ---

14 MR. KORNEGAY: Sure.

15 THE COURT: --- where is all this evidence?

16 MR. KORNEGAY: Sure.

17 THE COURT: Okay.

18 MR. KORNEGAY: And ---

19 THE COURT: But keep on going. I didn't ---

20 MR. KORNEGAY: So that -- that would be the bulk of my
21 argument as to the criminal-sexual-conduct ---

22 THE COURT: Uh-huh.

23 MR. KORNEGAY: --- indictment. The lewd-act
24 indictment, while I believe that argument applies, I also
25 believe that the lack of incident descriptions in this

1 indictment presents the defense from responding to it in a
2 sufficient -- in an effective way.

3 Essentially, in the lewd-act indictment, the state has
4 repeated the statute with names thrown in. They have not
5 given any detail as to a specific time/date, any details as
6 to what occurred. And I don't believe that it is
7 sufficient under the case law because of that.

8 THE COURT: You said -- you cited *Baker*, right?

9 MR. KORNEGAY: Yes, sir. The two cases I have in
10 front of me are *Baker* and *Tumbleston*.

11 THE COURT: And didn't *Baker* say that the indictment
12 was sufficient in that the indictments clearly identified
13 the elements of lewd act and substantially tracked the
14 statutory language so ---

15 MR. KORNEGAY: That's ---

16 THE COURT: --- plainly that the nature of the charged
17 offense could be easily understood?

18 MR. KORNEGAY: Well, that's a portion of it, Your
19 Honor: that the elements must be included in the
20 indictment. But what also -- be included under *Baker* is
21 sufficient certainty and particularity to enable the Court,
22 as well as the defendant, to know what he's being called
23 upon to answer and whether he may plead and acquittal or
24 conviction thereon.

25 So I agree: The elements must be included in the

1 indictment. But that's not all that needs to be included
2 in the -- in the indictment. It also must state the
3 allegations of this particular incident.

4 And I would argue that this -- the lewd-act indictment
5 does not do that. I think the CSC indictment does. But I
6 don't believe that -- from what I can tell, the lewd act is
7 essentially the language of the statute with the name
8 Samuel Jolly and **Minor** put in.

9 THE COURT: All right. And, of course, I saw Mr. Ward
10 here earlier today. But he's changed uniforms. So I could
11 -- I can't -- I can't ask him. But any other argument that
12 you have on that point?

13 MR. KORNEGAY: No, Your Honor. That would -- that
14 would be my argument.

15 THE COURT: Okay. Do you have a response to that
16 portion of the argument?

17 MR. TEMPLETON: Just briefly, Your Honor. As far as
18 the lewd act is concerned, I think that based on putting
19 the time frame, along with a victim, along with the basic
20 requirements of the -- of that particular charge, putting
21 him on notice of that particular charge gives this Court
22 notice of what he's being called to respond to. That,
23 along with all of the discovery that's been put forward in
24 this case, he's able to determine these are basically
25 sexual touchings, along with the ultimate act, which is why

1 he's charged with criminal sexual conduct in the first
2 degree, which is the digital penetration.

3 I think that both of those, together with the entire
4 circumstances, gives this defendant ample opportunity and
5 ample ability to respond to the allegations set before this
6 Court against him.

7 THE COURT: Okay.

8 MR. KORNEGAY: And, Your Honor ---

9 THE COURT: Mr. -- anything -- anything in response?

10 MR. KORNEGAY: I -- I would just say an issue that we
11 have for the defense is, yes, the state has made the
12 allegation of a lewd act. However, in the discovery -- I'm
13 looking at notes from the LCC interview -- we have multiple
14 allegations of different incidents that we don't know which
15 of these incidents the state is pursuing as a lewd act.

16 We have notes from Tom Marshall. We have notes from
17 Lori Gopper (phonetic). Both describe very different
18 incidents. And both, actually in the notes, say -- claim
19 to be first incident or first thing that -- that occurred.

20 And with all these different accusations that
21 potentially the state could be pursuing under this charge,
22 having just the statute listed in the indictment does not
23 provide the defense with sufficient notice to effectively
24 answer those charges.

25 THE COURT: So in the discovery, how many different

1 incidents are you aware of?

2 MR. KORNEGAY: Well, in front of me, Judge, I -- I see
3 two -- this is just notes from the LCC interview. And I
4 don't know -- beg the Court's indulgence?

5 THE COURT: Yeah.

6 (Off the record briefly.)

7 MR. KORNEGAY: And, Your Honor ---

8 THE COURT: Eleven?

9 MR. KORNEGAY: --- Ms. -- Ms. Williams has just
10 pointed out a total of eleven. So I believe all those
11 different separate allegations, I think that should be
12 considered in the -- in the surrounding circumstances in
13 regard to this indictment because just a general lewd act
14 doesn't give us, as the defense, a direction or a target to
15 know, okay, this is what we need to answer.

16 THE COURT: How about eleven different incidents?

17 MR. KORNEGAY: Well, if -- if the -- if the state
18 wants to put an indictment with eleven different incidents,
19 that would at least give us notice to know what we need to
20 respond to.

21 THE COURT: Okay. All right.

22 MR. TEMPLETON: I mean, Your Honor, the state could've
23 presented eleven separate indictments if we wanted to.
24 Ultimately ---

25 THE COURT: I think ---

1 MR. TEMPLETON: --- it -- it's ---

2 THE COURT: --- what he wants me -- I -- what he wants
3 you to do is tell me: Is it going to be two or three? Are
4 we going to do all eleven?

5 MR. TEMPLETON: I -- I intend to go into all of the
6 sexual touching that happened to this child over a year
7 period of time. Basically -- well, and -- and the victim
8 now is 30. But she is going to come and testify to all the
9 actions that this man took against her during this year
10 period of time where she was living in -- in Dorchester
11 County.

12 There are some allegations that occurred in Charleston
13 County as well, which the state may or may not -- I think
14 we got a *Lyle* motion to -- to talk about as well -- that
15 the state may also be interested in going into. But all of
16 these actions leading up to this ultimate act of the CSC-
17 first are the actions that the state believes that the
18 victim is -- is -- is going to testify to.

19 THE COURT: Okay. So you believe that the victim is
20 going to come in and testify to all eleven of those things?

21 MR. TEMPLETON: Your Honor, I don't know if it's --
22 the number is eleven.

23 THE COURT: Well -- well ---

24 MR. TEMPLETON: I -- I can't ---

25 THE COURT: --- I -- I'm assuming ---

1 MR. TEMPLETON: I can't say it's for sure it's eleven.

2 But each -- each allegation of the sexual touching ---

3 THE COURT: Uh-huh.

4 MR. TEMPLETON: --- that occurred, we allege by Mr.

5 Jolly on ---

6 THE COURT: During that year?

7 MR. TEMPLETON: During that year period of time that
8 she lived in Dorchester County.

9 THE COURT: Okay. All right. All right. Mr. -- oh,
10 I'm sorry.

11 (Off the record briefly.)

12 MR. KORNEGAY: Judge, and that -- the -- the issue
13 that Ms. Williams is raising with me is the problem with
14 just saying, okay, we're going to pursue all eleven is all
15 eleven of those things that she just pointed out, they're
16 not all just sexual touching.

17 THE COURT: Uh-huh.

18 MR. KORNEGAY: There's one allegation of pornographic
19 material being shown. There's a lot of different
20 incidences -- and I don't know -- based on what the state
21 just said, I'm -- I'm still not clear of what he is
22 pursuing in his prosecution of the trial as the lewd act,
23 or if he's just ---

24 THE COURT: Well, sure ---

25 MR. KORNEGAY: --- trying to draw out as much

1 testimony as possible in hope that the jury decides, okay,
2 well, there's a lewd act in there somewhere.

3 THE COURT: Well, showing her pornography ---

4 MR. KORNEGAY: That was -- that was in the discovery,
5 Judge.

6 THE COURT: Okay. Well, I'm just saying ---

7 MR. KORNEGAY: Yeah.

8 THE COURT: --- would be -- showing her pornography
9 would be with -- I would assume, with the intent of
10 arousing, appealing, or gratifying the lust and passions --
11 I would think.

12 MR. KORNEGAY: That may be, Judge. And we would just
13 ask for the state to put ---

14 THE COURT: Well, I'm not ---

15 MR. KORNEGAY: --- that in the indictment.

16 THE COURT: Okay.

17 MR. KORNEGAY: If that's what they intend to
18 prosecute.

19 THE COURT: Well, let -- let me tell you the way I'm
20 going -- I -- I -- I -- any other arguments you want to
21 make about this?

22 MR. KORNEGAY: No, Your Honor.

23 THE COURT: Okay. I've got your arguments on the
24 record. I am -- I'm not going to dismiss any of them based
25 on the indictment. I'm going to preserve your objection to

1 my ruling. So that'll be preserved in case you have to
2 take it up on appeal. Okay?

3 MR. KORNEGAY: Thank you, Your Honor.

4 THE COURT: Yes, sir. Thank you. All right. What's
5 next?

6 MS. WILLIAMS: Judge, that motion actually dovetails
7 into my motion, which is the *Lyle* motion. And -- and the
8 reason why we did the indictment one first ---

9 THE COURT: Which is the *Lyle* one?

10 MS. WILLIAMS: That's right.

11 THE COURT: Okay.

12 MS. WILLIAMS: The prior bad acts, 404(B) ---

13 THE COURT: Yes, ma'am.

14 MS. WILLIAMS: --- *State v. Lyle*.

15 THE COURT: Uh-huh.

16 MS. WILLIAMS: And -- and -- and one of the reasons
17 why we need the indictment to be sufficient and -- and to
18 be clear is because what I believe -- and I -- I think the
19 solicitor just announced to the Court -- what I believe the
20 state is going to try to do is bring up an entire year of
21 bad acts. So they're going to try to bring in not only did
22 he have a sexual touching -- and that's the lewd act -- but
23 he had showing -- showing pornographic material. He had
24 sexual play with a teddy bear.

25 He had -- and -- and when I say eleven incidences ---

1 THE COURT: Uh-huh.

2 MS. WILLIAMS: --- that's just from one report. And
3 to give you some context of what's going on in this case,
4 this charge was reported to DSS in August of 1997. DSS
5 took a statement from the victim, Minor [REDACTED] And that
6 statement has about six different incidences that could be
7 a lewd act.

8 The victim has been interviewed -- oh. And to back
9 that up, the entire DSS file's been erased. It's gone. So
10 all we have is five handwritten notes from a DSS worker,
11 Ms. Yvonnia Elmore, who's now Ms. Brown, who's going to
12 come testify about these five -- it was six written notes.

13 One page is missing, so now we only have five. So
14 it's an incomplete, handwritten excerpt from a DSS file
15 that's been destroyed. And we know it's been destroyed
16 because we tried to subpoena it from DSS and they let us
17 know that they don't have it anymore. So we've got that
18 lewd acts.

19 THE COURT: Uh-huh.

20 MS. WILLIAMS: Then, we have her being interviewed by
21 Lowcountry Children's Center on September 5th of 1997,
22 where they do a recorded interview. We have Ms. Gropper's
23 (phonetic) handwritten notes about what she said. And that
24 contains one, two, three, four, five, six, seven, eight,
25 nine, ten, eleven, thirteen, fourteen fifteen -- sixteen

1 different incidences that may or may not be considered lewd
2 act.

3 Then, she types up her recollection of the -- the
4 video. And that's ---

5 THE COURT: You mean -- you mean now, recently?

6 MS. WILLIAMS: No, no, no.

7 THE COURT: Oh.

8 MS. WILLIAMS: At the time ---

9 THE COURT: Then.

10 MS. WILLIAMS: --- 1997. So she's got the handwritten
11 notes; then she types it up. So we've got that
12 recollection of it.

13 THE COURT: Uh-huh.

14 MS. WILLIAMS: Then, we have Detective Marshall, who
15 sat in on the interview. He's got handwritten notes. And
16 then, he's got a typedwritten version of that. And that's
17 where I'm getting the eleven incidences from. That's --
18 that ---

19 THE COURT: Uh-huh.

20 MS. WILLIAMS: --- was his notes. Those are
21 substantially different than what the therapist took.

22 The video is lost. Detective Marshall's file, his
23 investigative report, not provided. So the defense is left
24 in this position where we're, at the minimum, asking the
25 state: Tell us what the heck you want to prosecute.

1 Because not only are we missing the LCC video, we're
2 missing the DSS reports. We're missing any police file
3 that could've been provided to us.

4 And so in addition to the indictment not being
5 specific, which I know you've ruled on ---

6 THE COURT: Uh-huh.

7 MS. WILLIAMS: --- you then move into *Lyle*. So if
8 they're going to say that the lewd act happened sometime
9 during or around when the CSC happened, which the CSC
10 indictment is specific. They talk about penetration of the
11 vagina with the finger. So that one, at least, is specific
12 enough that we can defend that conduct.

13 But then, you start talking about the lewd act. Now
14 they've just opened the door by making this general
15 indictment. They've now opened the door to all this prior-
16 bad-act material that I can't keep out. And I'll they're
17 to the do with it is show propensity: "Oh, well, he showed
18 her pornographic material."

19 And -- and -- and again, they're doing it so that they
20 don't have to meet the burden that *Lyle* requires them to
21 meet. *Lyle* requires them to meet one of the elements:
22 common scheme or plan, identity. Because typically, this
23 type of evidence wouldn't be admissible unless they meet
24 one of those requirements. And they have to prove it by
25 clear and convincing evidence.

1 So by making this indictment that lacks specificity,
2 they're now getting all this Lyle information in. And so I
3 was hoping, by doing the -- the indictment one first, to
4 get them to say, Okay. Well, this is the incident we're
5 going to talk about. This is -- these are the incidences.

6 And if they'd be willing to say, "We're only going to
7 talk about the sexual touching," as the -- as the -- as
8 they lewd act, well, then, I could argue: Well, then, we
9 need to limit the evidence about pornographic material and
10 all of that.

11 In other cases we have -- that I've tried, we have
12 done -- they've argued that they could get all that in
13 because it's grooming. And -- and we've ---

14 THE COURT: Because it's ---

15 MS. WILLIAMS: --- all ---

16 THE COURT: --- grooming?

17 MS. WILLIAMS: Yeah.

18 THE COURT: Okay.

19 MS. WILLIAMS: --- that sexual predators groom their
20 victims.

21 THE COURT: Right.

22 MS. WILLIAMS: And -- and we've argued about whether
23 or not that's admissible. And I know you've said -- I've
24 had cases like that. And that's in a case where the state
25 actually calls an expert to say, "Hey, jury, this is what

1 sexual predators do. This is how they groom. And this is
2 the culmination," which is what the state has used a couple
3 of times, which culminated in the penetration.

4 We don't have an expert in this case. The state's not
5 calling an expert. So we can't even get -- for them to
6 bring in all of this grooming and *Lyle* stuff, what it's
7 doing is it's -- it's infringing on our due process rights,
8 our *Lyle* rights, our 404(B) rights, and it makes it a giant
9 issue for us.

10 And so we're asking not only for the indictment to be
11 specific, but also for all of that grooming stuff to be
12 excluded. Because at that point we're even taking -- we're
13 taking judicial notice of grooming. And we're asking the
14 jury to -- to be educated as to grooming, when we don't
15 have an expert to educate.

16 Does that makes sense? I feel ---

17 THE COURT: No. It ---

18 MS. WILLIAMS: --- I'm going ---

19 THE COURT: No. I ---

20 MS. WILLIAMS: --- around in a circle ---

21 THE COURT: --- I'm -- I'm ---

22 MS. WILLIAMS: --- on this.

23 THE COURT: No. I -- no. Really, it -- it absolutely
24 makes sense. Let me -- here's my problem. I'm assuming
25 the victim is coming in here to testify. And the victim is

1 going to testify as to what their relationship was: what
2 happened between August 1st of 1996 and August 22nd of
3 1997.

4 MS. WILLIAMS: Right.

5 THE COURT: And that's what she's going to testify to.
6 Okay? Now, if they -- if they don't have any testimony
7 about grooming, I mean, they don't. But to me -- and this
8 is just me -- just talking about the facts of their
9 situation, that's up to the jury to decide whether or not
10 that makes sense to them or not. It might not.

11 MS. WILLIAMS: Well, the problem with the -- the
12 victim in this case, again, Judge, and just -- I didn't
13 finish that thought ---

14 THE COURT: Oh. No. I ---

15 MS. WILLIAMS: --- she -- she ---

16 THE COURT: Go ahead.

17 MS. WILLIAMS: --- came back in, in 2011, and gave a
18 whole nother statement ---

19 THE COURT: Uh-huh.

20 MS. WILLIAMS: --- this time alleging probably about
21 15 new acts. And I think by ---

22 THE COURT: And so you don't know exactly how to
23 cross-examine her on them.

24 MS. WILLIAMS: Not only do I -- I mean, I know how to
25 cross-examine her with ---

1 THE COURT: Oh, yeah.

2 MS. WILLIAMS: --- the inconsistent statements and --
3 and the ---

4 THE COURT: Uh-huh.

5 MS. WILLIAMS: --- impeachment. But I think, once we
6 let her get into all of this Lyle testimony ---

7 THE COURT: Uh-huh.

8 MS. WILLIAMS: --- I think they're trying to show
9 propensity. And they're trying to do it -- and they're
10 trying to allow her to show propensity.

11 If it was any other case ---

12 THE COURT: Uh-huh.

13 MS. WILLIAMS: --- if it was -- and -- and there
14 actually is a case on this, a child-abuse case, Judge, if I
15 may reference ---

16 THE COURT: Yeah.

17 MS. WILLIAMS: --- it real quick. And it's a case
18 where they talk -- it's homicide by child abuse. And the
19 state tried to bring in ---

20 (Off the record briefly.)

21 MS. WILLIAMS: The state tried to bring in evidence of
22 prior child abuse with that -- with that child, where the -
23 - the defendant had perpetrated prior -- a split lip and a
24 -- and a black eye with that child. And the Court said:
25 You can't bring that in. That's -- that's prior-bad-act

1 testimony. And so the victim was not allowed to testify

2 ---

3 THE COURT: Uh-huh.

4 MS. WILLIAMS: --- or the victim's family and EMS was
5 not allowed to testify about those prior bad acts. Because
6 it wasn't substantially similar. And -- and they found
7 that it didn't meet the common scheme or plan.

8 And -- and that case is *State v. Pierce*, 326 S.C. 176.
9 And that was decided in 1997 ---

10 THE COURT: Okay.

11 MS. WILLIAMS: --- by the Supreme Court of South
12 Carolina.

13 THE COURT: Okay.

14 MS. WILLIAMS: And so yeah. I think that we can tell
15 the victim, you can't -- if -- if we have a victim on the
16 witness stand that says, "This guy assaulted me, and the
17 prior incidences of assault between us happened this and
18 this and this day," I think this Court would say, "No, no.
19 You can't talk about those. Those are prior bad acts.
20 We're talking about this incident right here."

21 And when we let her start talking about this bad act
22 and then this bad and then this bad act, culminating in
23 this bad act, at that point we've now let her get into all
24 of the -- that *Lyle* testimony too. And I -- I -- I think
25 that the Court has to tell her, "You can't talk about prior

1 bad acts. We can only talk about what is relevant and
2 what's at issue today." Or if we are going to talk about
3 those prior -- prior bad acts, they have to meet one of the
4 elements of the *Lyle* exception, common scheme or plan,
5 which I think is what they would argue. And not only does
6 it have to meet that, it's got to be by clear and
7 convincing evidence.

8 My argument, if we go down that line, is that it's
9 obviously under *State v. Pierce*. It's not common scheme or
10 plan. The Court's already found that that kind of thing is
11 not common scheme or plan. And it certainly wouldn't be
12 able to be -- we'd have to have a full hearing as to
13 whether or not it ---

14 THE COURT: Uh-huh.

15 MS. WILLIAMS: --- could be proven by clear and
16 convincing evidence. Because as I presented to Your Honor,
17 she's given such contradictory testimony over the years
18 that whether or not her testimony, uncorroborated, rises to
19 the level of clear and convincing evidence for this Court
20 would have to be determined.

21 THE COURT: Which means we'd pick a jury and then I'd
22 have to hear that hearing.

23 MS. WILLIAMS: That's right.

24 THE COURT: Okay. All right. Well ---

25 MR. TEMPLETON: I mean, ultimately, Your Honor, it --

1 it boils down to relevancy. This is the first thing we're
2 looking at. Is it relevant?

3 Next, you go to 404(B). Ultimately, the state would
4 assert that: (1) part of this is, for the most part,
5 existence of a common scheme or plan; that over a period of
6 time -- I -- I think the -- the period of time of time that
7 we're talking about in the indictment all happened in
8 Dorchester County. That's -- I don't think what Ms.
9 Williams is talking about. She's talking about the
10 allegations that also occurred in Charleston County prior
11 to the move to Dorchester County, I -- I believe, is what
12 she's arguing to.

13 MS. WILLIAMS: Yeah. Everything.

14 THE COURT: Well, she -- she's arguing about all of
15 the -- all of these, even the ones in Dorchester County, I
16 think.

17 MS. WILLIAMS: That's correct.

18 MR. TEMPLETON: Well, regarding the ones in Dorchester
19 County, those go directly to the indictment of -- of lewd
20 act. I mean, there's no way for me to prove that lewd act
21 without her being able to testify to those items. So those
22 aren't prior bad acts. Those are the acts that we're
23 talking about for my lewd-act indictment. Ultimately,
24 then, also, they'll be facts towards the CSC-first
25 indictment. But I -- I believe the only ones that would be

1 prior bad acts that we're not talking about in this actual
2 case would be allegations prior to the time frame of my
3 indictment, which would be what occurred in another county.

4 THE COURT: And why would we need to get into those?

5 MR. TEMPLETON: Your Honor, I -- I think, basically,
6 what -- the reason I want to get into the entire scheme of
7 what occurred in this -- in this case is that this victim
8 needs to be able to tell the jury, from the very beginning,
9 she knew Mr. Jolly. Mr. Jolly is her stepfather -- or was
10 ---

11 THE COURT: Uh-huh.

12 MR. TEMPLETON: --- her stepfather at the time.
13 There's kind of a -- I'm not sure if he's still married to
14 her mother or not. But regardless, at the time this
15 occurred, he's her stepfather. He has the opportunity over
16 this entire period of time. And it's one act after
17 another, leading up to this final act, along with all those
18 acts in between that happened in Dorchester County.

19 THE COURT: Well, let me ask you something. Wouldn't
20 -- don't you think that just covering the lewd acts in
21 Dorchester covers it, without trying to bring in something
22 that happened in Charleston?

23 MR. TEMPLETON: I -- I -- I believe that I can prove
24 the -- the case that I'm presenting to -- to -- to this
25 jury. But I believe that all of those things are in his

1 total plan for this victim.

2 THE COURT: Yeah. It may well be in the total plan
3 for the victim. But I -- I -- to me, when you start
4 getting outside the realm of the indictment, outside of
5 when it occurred, then I'm starting to deal with prior bad
6 acts.

7 MR. TEMPLETON: Okay.

8 THE COURT: And I'm not -- I -- I -- I just don't see
9 the reason to -- to make another ground for appeal. That's
10 just my take on it, you know. These are all motions in
11 limine. But I -- I understand the argument that -- that
12 Ms. Williams and Mr. Kornegay are making: that,
13 essentially, we're getting into prior bad acts by going
14 over all the lewd acts.

15 But the problem I have with not going over them with
16 that is those are -- as you said, those are the lewd acts
17 that's she's complaining about that occurred here in
18 Dorchester County. So ---

19 MS. WILLIAMS: If I may, Your Honor?

20 THE COURT: Oh, yeah. Sure.

21 MS. WILLIAMS: Also, the -- the Court has talked about
22 the realm of the indictment being what happened in
23 Dorchester County. And I've been through the evidence
24 that's been provided to me with a fine-tooth comb. And the
25 reality for me -- and maybe/maybe not for the state -- is I

1 don't know what those are.

2 The very first thing the handwritten notes from the
3 therapist says -- at the LCC interview is there is a
4 difficulty with recall of dates from the victim. So she is
5 inconsistent with where things happened and when they
6 happened. She tells one person that the first thing that
7 happened is that Samuel Jolly showed his privates to her by
8 lifting the sheet while they were in bed.

9 She tells Detective Marshall -- he writes in his notes
10 that these problems have been happening since she was 2
11 years old. So here I am, trying to read these notes,
12 because the LCC video is gone, and trying to figure out,
13 with some sort of specificity, some sort of ballpark
14 figure, what are the dates that these allegations happened
15 and where did they happen. I don't know.

16 She goes on to tell the therapist that the first
17 incident -- she tells the therapist, however, that the
18 first incident was in the computer home of the -- where the
19 family lived before the marriage, where Samuel Jolly put
20 his hands down her shorts. I don't know where that is. I
21 don't know when it is. I don't know if they're going to
22 try to bring that in.

23 So that was one of the reasons why I kept saying, What
24 is the lewd act? If you want to tell me that the lewd act
25 is the rubbing the teddy bear on genitalia and this and

1 that and this, then I think we're getting somewhere.
2 Because I don't -- I can't tell from -- and part of the
3 problem is that we've lost the evidence.

4 And so I can't piece together what the allegations are
5 and what is going to become a prior bad act. And that's
6 one of the reasons I brought it pretrial, is because I
7 don't want to be standing up like, you know, a jack-in-the-
8 box every time she says something to say, "Objection. I
9 think this is *Lyle*."

10 So -- and that -- and that was one of the reasons I
11 wanted to get it cleared up before court and -- and try to
12 figure out -- and -- and also, we have to -- if we're going
13 to amend the indictment, we obviously have to do it before
14 the -- before the jury is sworn. So I just wanted to say
15 that. I -- I don't know. And I don't know that the state
16 knows when certain incidences happened and where they
17 happened. Because the record that we have is not accurate.

18 THE COURT: Mr. Templeton, when's going to be an
19 issue.

20 MR. TEMPLETON: When?

21 THE COURT: When.

22 MR. TEMPLETON: I mean, ultimately, I -- I believe my
23 witness is going to come in and testify to which events
24 occurred. And I -- and I can talk to her about keeping out
25 the events that happened in Charleston County, if you

1 instruct me to do so. I ---

2 THE COURT: Well, you know, I mean, this is your case.
3 But, you know, to me, what we want to do is to try a clean
4 case ---

5 MR. TEMPLETON: Absolutely.

6 THE COURT: --- and find out what's going on with
7 this. You know, he's -- we've got, I'm assuming, because
8 of the way -- that the criminal sexual conduct with a minor
9 is pretty clear, okay?

10 MR. TEMPLETON: Absolutely, Your Honor.

11 THE COURT: And we can have a pretty clean trial on
12 just -- on just this; is that correct?

13 MR. TEMPLETON: I would agree.

14 THE COURT: If we have a trial with this, we're going
15 to end up -- and I -- I'm not asking you to *nolle pros* it.
16 What I'm asking -- what I want you to think about is if you
17 don't go forward with this, you can -- if something doesn't
18 go right with this, we can come back -- you can come back
19 and try him on this. Do you give up anything by trying him
20 on one and not -- and not the other?

21 MR. TEMPLETON: I mean, not -- I ---

22 THE COURT: I mean ---

23 MR. TEMPLETON: --- would agree that I don't give
24 anything up, other than the possibility of an additional
25 sentence. But ---

1 THE COURT: Doesn't -- doesn't -- doesn't this thing
2 carry how many years?

3 MR. TEMPLETON: Zero to thirty.

4 THE COURT: Okay. And -- okay.

5 MR. TEMPLETON: Because of the time frame, it's zero
6 to thirty, instead of ---

7 THE COURT: Anyway, I ---

8 MR. TEMPLETON: --- twenty-five to life.

9 THE COURT: --- I -- let -- I'm -- I -- we can talk
10 about it and you can think about it. I'm not ruling on it
11 right now.

12 MR. TEMPLETON: Okay.

13 THE COURT: But I -- I'm -- I'm concerned -- if -- if
14 my ruling is that she can testify as to the lewd acts that
15 occurred on August 1, 1996, to August 22nd, 1997, we got to
16 be pretty sure of what those acts are. She can't come in
17 here and start saying, "Well, you know, when I was 2,"
18 because I'm assuming at 2 ---

19 MR. TEMPLETON: It ---

20 THE COURT: --- was before this.

21 MR. TEMPLETON: Your Honor, I don't know where that's
22 coming from. They're ---

23 THE COURT: Well ---

24 MR. TEMPLETON: --- to my knowledge, there's no
25 allegations outside of ---

1 THE COURT: I think they are -- see how good -- how
2 helpful it is to have Mr. Spears here? Regardless of what
3 you said about him.

4 MR. SPEARS: Thank you, Judge.

5 THE COURT: I'm here for you.

6 (Off the record briefly.)

7 THE COURT: And, see, if we did run into the issue of
8 does she remember when these events happened, we got
9 another issue. Because I'm -- you know, I'm not inclined
10 to let her just say, "These things happened to me and I was
11 about" ---

12 MR. TEMPLETON: Right. I mean ---

13 THE COURT: Okay.

14 MR. TEMPLETON: --- I think she's fairly particular on
15 location that these things occurred. And ---

16 THE COURT: Okay.

17 MR. TEMPLETON: --- my understanding -- and I believe
18 this is what she'll testify as -- to is approximately
19 August 1st, 1996, is when she moves to Dorchester County.

20 THE COURT: Uh-huh.

21 MR. TEMPLETON: And she is -- she is able to
22 articulate to me which one of these events occurred ---

23 THE COURT: --- after she moved ---

24 MR. TEMPLETON: --- in that house in Dorchester
25 County.

1 THE COURT: Okay.

2 MR. TEMPLETON: I -- so I -- I'm ---

3 THE COURT: Are they aware of which events they are?

4 MR. TEMPLETON: I don't -- I'm ---

5 MS. WILLIAMS: No. I'm ---

6 THE COURT: He's not ---

7 MS. WILLIAMS: --- not -- and that's -- I -- I had
8 done a specific *Brady* motion, or at least indicated I was
9 going to do one at some point. I know that the state has
10 met with the victim; that she has elaborated further still
11 on what her statement is, or what her testimony is going to
12 be. None of that's been provided to me.

13 So no. I have no clue which ---

14 MR. TEMPLETON: And those are just conversations that
15 I've had with this victim. I don't believe those are
16 subject to disclosure, unless they are exculpatory in some
17 nature. And I'm -- they are not.

18 THE COURT: Well, I'm sure they're not exculpatory.
19 Okay. All right.

20 MS. WILLIAMS: I think they may be discoverable, just
21 because I think they may be contradictory to the first
22 three sets of reports that we have. We have the August
23 1996 report -- or no -- the August 1997 report, September
24 1997 report, and then we have a whole nother statement from
25 2011. And so I think that this is going to be more fodder

1 for cross. And -- and after she testifies, I may be asking
2 Your Honor for a couple of minutes, because I ---

3 THE COURT: That would be ---

4 MS. WILLIAMS: --- I -- I assume she's going to be
5 saying things that I am completely unprepared for.

6 THE COURT: No. I -- it -- you know, Ms. Williams,
7 just let me tell you. This -- this case is an old case.
8 It's going to create issues that the Court is going to have
9 to address. We could end up taking perhaps longer-than-
10 normal breaks so that y'all can review. And that -- that
11 goes for both sides, because I don't know what's going to
12 happen. I mean, I don't know if Mr. Jolly is going to take
13 the stand. I don't know how everything is going to play
14 out.

15 MS. WILLIAMS: Yeah.

16 THE COURT: Just so y'all be aware -- I mean, I've got
17 a case that's an old case. But it's serious. And I --
18 we've got to figure out a way to get it tried as fairly as
19 we can. So ---

20 MS. WILLIAMS: Thank you, Judge.

21 THE COURT: Yeah. Okay.

22 MS. WILLIAMS: So I have no ruling on the *Lyle*. We're
23 going to think about it and get back on it in the morning
24 or maybe take it up during the course of the trial?

25 THE COURT: We could end up taking it up during the

1 course of the trial. It could be one of those things where
2 ---

3 MS. WILLIAMS: --- it cures itself?

4 THE COURT: Huh?

5 MS. WILLIAMS: It may cure itself.

6 THE COURT: We can -- we can always hope. I -- I live
7 in hope that many things will cure itself.

8 MS. WILLIAMS: Yes, sir.

9 THE COURT: Okay.

10 MS. WILLIAMS: I do too, Judge.

11 THE COURT: Okay. What's next?

12 MS. WILLIAMS: The next motion that I have, I think,
13 probably, is my motion to dismiss.

14 THE COURT: Okay.

15 MS. WILLIAMS: And, Judge, we've gone over a little
16 bit of the basis of this. And it's a due process motion.
17 I'm -- I don't know what the remedy is, other than a
18 dismissal, at this point, based on due process.

19 In this case we have a complete dearth of evidence.
20 We have a missing DSS file, which significantly hinders my
21 ability not only to cross-examine the DSS worker, but also
22 to cross-examine the victim in this case. DSS, as -- as
23 you know, would've had in their file any other allegations
24 that she had made against other people; any other
25 incidences that would've been reported, by her or to her --

1 about her. They would've had any family court
2 documentation if a guardian ad litem was appointed. It's
3 been destroyed. And -- and it's the state's responsibility
4 ---

5 THE COURT: Could I -- I ---

6 MS. WILLIAMS: Yes.

7 THE COURT: --- I -- we're just curious. Did we check
8 the court file, rather than the DSS file? Was there a
9 court file on this in family court?

10 MS. WILLIAMS: I did not check the court file.

11 MR. TEMPLETON: I -- I have not, Your Honor.

12 THE COURT: I mean ---

13 MS. WILLIAMS: I can check that as soon as I leave
14 her.

15 THE COURT: Okay. Well, good luck. I mean ---

16 MS. WILLIAMS: Yeah. It's closed.

17 THE COURT: --- it's 25 till. It'll probably be in
18 the morning.

19 MS. WILLIAMS: I can look for it in the morning. The
20 reality is that the Court -- all the Court is going to have
21 is the court filings.

22 THE COURT: Yeah. But you never can tell what kind of
23 reports ---

24 MS. WILLIAMS: That's right.

25 THE COURT: --- are in there.

1 MS. WILLIAMS: That's right. And I will look for
2 that. We talked about it this morning. And -- and John
3 Loy actually asked me about that yesterday or maybe this
4 morning.

5 But my -- my understanding is that there was never --
6 Mr. Jolly left the home. What -- the way this happened is
7 that DSS -- this was reported to DSS by a sex-ed teacher.
8 And DSS went to the home with two police officers.

9 And when they went, they decided not to EPC. And what
10 they did decide to do was to tell Mr. Jolly to skedaddle,
11 which is what he did. He packed up and left. He got a
12 trailer and moved to Florida.

13 So I don't believe they ever entered the court system
14 at that point, because the issue had been -- I think,
15 probably, the mama did parenting classes and they kind of
16 monitored the whole thing. But I don't think it ever went
17 to court. But at any rate, it wouldn't have anything to do
18 with him, because he did what DSS told him to do, which was
19 to get out of Dodge.

20 So we've got a missing DSS file. Getting back to my
21 motion to dismiss, we've ---

22 THE COURT: Uh-huh.

23 MS. WILLIAMS: --- got the missing DSS file, which
24 would be extraordinarily helpful. You then move on to the
25 Lowcountry Children's Center interview. There is no video

1 of that.

2 So as you know, if you've ever seen those videos, the
3 demeanor of the child is extraordinarily helpful in
4 demonstrating, both for the state and the defense, but to
5 demonstrate to the jury especially if, in a case like this,
6 it is truly one person's word versus another. There are no
7 extraneous witnesses. There's no DNA. There is nothing
8 other than **Minor** versus Samuel Jolly. That's all
9 we got.

10 So to be able to see the contemporaneous video that
11 has been lost and/or destroyed -- I -- I -- to be honest, I
12 don't know where it is. It's just completely unavailable.
13 And -- and for law enforcement to not preserve that is a
14 real problem.

15 We also have lost -- I -- I'm assuming there would've
16 been a -- a much more extensive police file. We have no
17 police reports. We have the incident report from when the
18 two officers responded to the scene that says: We went out
19 there. We told Samuel Jolly to leave. We went with DSS
20 workers, and we spoke to **Minor**

21 And then, we have one-page, typedwritten note -- it's
22 not even a report -- from Deputy -- Deputy Marshall, who --
23 it -- it's just a recantation of what he observed in the
24 September 5th LCC interview. It's just a -- it's just he
25 put his written notes into this one page. It doesn't even

1 have a date on it. So we've lost the police file.

2 You then move on. There was a medical evaluation done
3 by a Dr. Baker. It was done on the same day as the LCC
4 interview. She finds a transection of the hymen. She took
5 pictures. The pictures have been lost or destroyed. So I
6 can't get another expert to look at those pictures.

7 Her final report has been lost or destroyed. She's
8 going to come to court and say she don't remember anything
9 about anything, other than what's in these notes that she
10 took. So I can't even cross-examine her, really. And I
11 certainly can't go get my own expert to look at what
12 evidence they did have at the time.

13 One of those, I think, this Court could pass on. Ah,
14 you know, you -- you can do it in cross-examine -- you can
15 do it in cross-examination. You can present it to the
16 jury. And you can say, "Jury, look at all this evidence
17 they don't have." But when you add cumulatively all of
18 this and the age of this case, we then get -- at -- at --
19 at some point, it crosses the line where it is just --
20 there is no physically possible way for us to give Samuel
21 Jolly a fair trial. Because I can't cross-examine these
22 people.

23 THE COURT: Well, and -- and I -- I -- I do understand
24 your argument. But I've also got a victim, who I don't
25 know that I can give her a fair trial.

1 MS. WILLIAMS: This is true.

2 THE COURT: You know, she's got allegations that are
3 incredibly serious. And he's got charges against him that
4 are incredibly serious.

5 MS. WILLIAMS: That's right.

6 THE COURT: They both deserve a fair trial. And, you
7 know, at this stage of the game, I've got to rely on
8 whatever evidence there is. I've got to rely on the common
9 sense -- good sense of the jury and -- and see what
10 happens.

11 MS. WILLIAMS: Our courts have found that there are
12 times that the Court should dismiss charges ---

13 THE COURT: Uh-huh.

14 MS. WILLIAMS: --- based on lack of evidence, based on
15 lost or destroyed evidence.

16 THE COURT: Right.

17 MS. WILLIAMS: Our -- our -- United States has found
18 that it's only if you show bad faith on -- of the part of
19 the state or the police. And that -- certainly, we're not
20 alleging that here.

21 THE COURT: Right.

22 MS. WILLIAMS: I don't think it's bad faith. I think
23 it's bad policing. I don't think it's bad faith.

24 But our courts ---

25 THE COURT: Uh-huh.

1 MS. WILLIAMS: --- the South Carolina courts have
2 said: If you can show that it's exculpatory on its face,
3 then the case should be dismissed. It's hard to prove a
4 negative. But what I would tell Your Honor is that when
5 you take all of these together, at that point it does
6 become exculpatory on its face. Because the extraordinary
7 loss of evidence ---

8 THE COURT: Uh-huh.

9 MS. WILLIAMS: --- is exculpatory. And so because it
10 is exculpatory -- and who knows what I would've seen on
11 those pictures and what my expert would've said -- then I
12 would -- I would ask this Court to dismiss these -- this
13 case based on the destruction of evidence and loss of
14 evidence in the case. Because I think it's a due process
15 violation.

16 THE COURT: Okay. And -- and I appreciate that. I --
17 I'm -- I'm not going to dismiss it at this stage. Now,
18 after the -- after the state's put up its case, I -- I'll
19 see. I'm going to -- I'm sure you're going to make a
20 motion at that time and -- and renew it if I don't do
21 something at the end of the case. But at this stage in the
22 game, I kind of need to see what's going to happen so --
23 and hopefully, make it as fair as it can be for both sides.

24 MS. WILLIAMS: Thank you, Judge.

25 THE COURT: Okay. Thank you.

1 MS. WILLIAMS: Okay. My next motion is a pretrial
2 motion to preclude the state from referencing evidence of
3 flight as guilt. This particular case, like I said, the
4 allegations are from 1996-1997. It's first reported to DSS
5 ---

6 THE COURT: And what is it -- you -- you don't have to
7 argue too much. I -- I'm concerned about -- about issues
8 that he left. We don't -- do we have any testimony that he
9 actually left because of this?

10 MR. TEMPLETON: We do.

11 THE COURT: Tell me what -- what it is.

12 MR. TEMPLETON: Your Honor, Detective Marshall is
13 going to be able to come in and testify that he actually
14 spoke with the defendant's brother at one point; that the
15 defendant and -- and his brother were on the phone.
16 Detective Marshall indicated that there was a warrant for
17 him, and he would not come back. So one being that portion
18 of it, that he ---

19 THE COURT: When was that?

20 MR. TEMPLETON: Back with -- I believe it was in --
21 the ---

22 DETECTIVE MARSHALL: The ---

23 MR. TEMPLETON: --- August/September/October of ---

24 DETECTIVE MARSHALL: Yeah.

25 MR. TEMPLETON: With a -- within a month or two after

1 these allegations came out that Detective Marshall had
2 conversations that -- with the defendant's brother. The
3 defendant's brother was on the phone with the defendant,
4 and he knew that there was a warrant out for his arrest --
5 or that -- at least it was indicated to him that there was
6 a warrant out for his arrest.

7 I've also spoken with the mother of this victim. And
8 she will indicate very similar-type testimony that Mr.
9 Jolly knew that there was a warrant for him and he decided
10 not to come back to South Carolina when he knew there was a
11 warrant for him. I -- I'm -- I'm kind of -- and then, also
12 -- we also have the second time that he runs from these
13 allegations as well.

14 Ultimately, in 2000 and approximately '13, he's
15 extradited back to South Carolina ---

16 MS. WILLIAMS: Uh-huh.

17 MR. TEMPLETON: --- finally served with this warrant
18 for the first time. Because the state would allege he's on
19 the run for that entire period of time. Finally, he gets
20 back to South Carolina. He ultimately gets a bond.

21 I believe he actually is coming in to possibly plead
22 guilty or some kind of court appearance and -- and leaves.
23 A bench warrant is issued for him again. It's another
24 approximately two years before he's found again down in
25 Florida.

1 So I believe there will be evidence to substantiate
2 that flight, both the first time and the second time.

3 THE COURT: Okay. All right. Well, I -- I might want
4 to have a hearing on that before -- I -- I might want to
5 hear the testimony on that. You know, and we might have to
6 do that at -- we -- we might have to have some stuff going
7 on before I keep the jury around for too long.

8 Okay. Because I'm concerned about -- I'm -- I'm
9 letting the state go into a lot of areas that -- you know,
10 like with the lewd-act thing -- that concern me. And to
11 then throw in -- I -- I'll -- I mean, I'd like to know he
12 was really on the phone with you, Investigator, that he
13 knew about that.

14 DETECTIVE MARSHALL: I'm sorry?

15 THE COURT: I -- I -- I really would like to -- to
16 make sure that the defendant was on the phone with you and
17 not just you talking to his brother, even though, you know,
18 anybody can assume, you know, the brother did talk to him.
19 But still, was he -- he was on -- well, you don't need to
20 answer that ---

21 DETECTIVE MARSHALL: Yes, sir.

22 THE COURT: --- now. But ---

23 DETECTIVE MARSHALL: I understand.

24 THE COURT: --- but that's -- but that's one of my
25 concerns.

1 DETECTIVE MARSHALL: All right. Yes, sir.

2 THE COURT: Okay. All right. So we might -- we might
3 end up just picking a jury and telling them to come back
4 later while we take up some testimony out of the presence
5 of the jury on some of these issues that, you know, I have
6 some concerns with. Okay? Yes, ma'am.

7 MS. WILLIAMS: Oh. Me?

8 THE COURT: Yeah.

9 MS. WILLIAMS: This is the first I've heard this,
10 Judge. This has never been told to me before. There's --
11 it's never indicated in the notes from Detective Marshall
12 that he spoke to a brother. There's indication in the
13 notes that they knew that Mr. Jolly had rented a U-Haul and
14 that he had taken it to Florida ---

15 THE COURT: Uh-huh.

16 MS. WILLIAMS: --- back in 1997. But there's no
17 indication that he had ever actually spoken to anybody or
18 that -- any recollection of that at all whatsoever. It's
19 hard for me to believe that 20 years later, we can remember
20 that. But the person in question, the brother, he's
21 deceased. So I can't even -- I can't even verify that.

22 THE COURT: Uh-huh.

23 MS. WILLIAMS: So that's going to -- it's going to
24 make it difficult for me. But I would just -- you know, as
25 far as them getting him to court, giving him the plea

1 offer, and him getting the bench warrants, I really have
2 nothing to say about all of that. My real concern is them
3 arguing to the jury that he knew he had a warrant and he
4 left and he was gone until 2013. And -- and that -- that
5 is the thrust of my argument about that time period.

6 THE COURT: Yeah. I -- I think once you get to 2013,
7 it becomes ---

8 MS. WILLIAMS: Right.

9 THE COURT: --- it -- it becomes a different story.

10 MS. WILLIAMS: Right.

11 THE COURT: To me -- well, of course, you -- you don't
12 have anybody from DSS coming in and telling them that he
13 said -- told him to leave, do you?

14 MS. WILLIAMS: Yes. The ---

15 THE COURT: Oh, you do?

16 MS. WILLIAMS: --- DSS worker says it in her notes.

17 THE COURT: Oh, okay.

18 MS. WILLIAMS: And the police officer says it in their
19 notes. They told him, "Get out of the house."

20 THE COURT: What ---

21 MR. TEMPLETON: You're not ---

22 THE COURT: --- what ---

23 MR. TEMPLETON: --- to leave the state while ---

24 THE COURT: No. No.

25 MR. TEMPLETON: --- under investigation.

1 THE COURT: No. No. I -- I ---

2 MR. TEMPLETON: Okay.

3 THE COURT: --- I understand -- I -- I understand
4 there's a big distinction between, you know, leave the
5 house and leave, you know, the state and let's go to --
6 where -- Florida or Texas?

7 MR. TEMPLETON: Florida, Your Honor.

8 THE COURT: Florida? Okay.

9 MR. TEMPLETON: Uh-huh.

10 THE COURT: You know, I understand there's a
11 distinction there.

12 MS. WILLIAMS: But yes. The DSS worker and the police
13 officers that reported both told him he was not allowed to
14 reside in the house and that he had to leave. And there's
15 never an indication that he was ever told, "There's going
16 to be a warrant for your arrest. You're under arrest.
17 We're going to arrest you on this."

18 THE COURT: And -- and, see, that's what I'd like to
19 hear some testimony about before we get into it too much.
20 So that might be one of the things that we just wanted to
21 take up out of the presence of the jury tomorrow. And so
22 what we might do it after we pick the jury tomorrow, tell
23 them to come back either later that day or Wednesday.
24 Okay?

25 MR. TEMPLETON: The only issue I've got is I've got

1 one witness flying in and flying back out of kind of late
2 in the afternoon Wednesday. So I just got to work -- work
3 through my -- it's the DSS worker, actually. She's ---

4 THE COURT: Okay.

5 MR. TEMPLETON: --- coming in from California. Other
6 than that, everyone else is available whenever we need
7 them. My doctor is only available Wednesday morning.

8 THE COURT: Okay. Well, if we start taking testimony
9 on Wednesday, maybe we can get the jury -- well, let me
10 just see how ---

11 MR. TEMPLETON: We'll -- we'll see how ---

12 THE COURT: Let's see how this goes this afternoon.
13 It's going slower than I thought it -- thought and hoped.
14 So ---

15 MR. TEMPLETON: Absolutely, Your Honor.

16 THE COURT: --- you know ---

17 MS. WILLIAMS: Okay. My last motion for this Court
18 for today is the specific discovery request that I've
19 already referenced. I do believe that if there have been
20 interviews with the victim, that elicit additional
21 responses that aren't already provided in discovery --
22 additional incidences, additional information, different
23 information -- that that is discoverable, under both Rule 5
24 and *Brady*. And I would just ask for any notes regarding
25 those interviews.

1 I've asked for any and all reports generated by law
2 enforcement. I believe the state's going to tell you that
3 they've given me everything in their possession and that
4 there isn't anything else. I've asked for DSS records and
5 reports. Those have been destroyed. I've confirmed that.

6 I've asked for ---

7 THE COURT: You said we haven't checked family court
8 records.

9 MS. WILLIAMS: Except for the family court records.
10 But the DSS file, yes ---

11 THE COURT: Right.

12 MS. WILLIAMS: --- has been destroyed. And I will
13 check family court records.

14 I've asked for any interviews, recording, report,
15 pictures, medical evaluations. That was because the doctor
16 in this case, Dr. Baker, did take pictures. She did do a
17 final report. But the state, I believe, is going to
18 respond that those have been destroyed. I don't know if
19 there's any counseling records or medical records of the
20 victim that the state has. I do believe they've given me
21 all the notes that they have regarding law enforcement
22 officials. However, if there's any more, I'd request them;
23 additionally, and any all videos and any and all statements
24 made by the defendant.

25 THE COURT: Okay. Any -- any ---

1 MR. TEMPLETON: I -- I would agree with basically all
2 of what she just said. I mean, the only thing I would -- I
3 would object to is my personal notes with the victim, I do
4 not believe are discoverable. Outside of that, I mean ---

5 THE COURT: She's got everything you got?

6 MR. TEMPLETON: She's got everything that's in --
7 everything that I've got.

8 THE COURT: Okay.

9 MR. TEMPLETON: Regarding the lost stuff, I mean, at
10 the end of the day, if Mr. Jolly hadn't left the state,
11 this all would've been here back then. And -- and that
12 would be the position of the state.

13 THE COURT: Okay. All right. All right. And, Ms.
14 Williams, I -- I just want to make sure on the record, for
15 purposes of PCR, you have -- you have taken over to your
16 client the recommendations as far as what I would do as far
17 as sentencing, if he was to consider pleading in this?

18 MS. WILLIAMS: Yes, sir, I have.

19 THE COURT: Okay. And he has indicated to you that he
20 did not want to take advantage of that plea -- of that plea
21 offer?

22 MS. WILLIAMS: Court's indulgence?

23 THE COURT: Sure.

24 (Off the record briefly.)

25 MS. WILLIAMS: Yes, sir. Yeah. He does not wish to

1 plead guilty. He wishes to pursue his right to a trial.

2 THE COURT: He has absolutely every right to have a
3 trial, and he will have a trial.

4 Mr. Jolly, what I wanted to make sure and ensure was
5 -- was just the fact that depending on how the trial comes
6 out, I didn't want you complaining about your attorneys'
7 representation or not telling you about possible plea
8 offers. I wanted to make sure you were aware of all that.

9 THE DEFENDANT: Yes.

10 THE COURT: Okay?

11 THE DEFENDANT: Yes.

12 THE COURT: So that it would not be part of any
13 postconviction relief request that you may file. Okay?

14 THE DEFENDANT: Okay.

15 THE COURT: Okay. All right. Thank y'all.

16 MS. WILLIAMS: Thank you, Judge.

17 MR. TEMPLETON: Thank you, Your Honor.

18 THE COURT: Thank you.

19 THE DEFENDANT: Thank you, sir.

20 (Whereupon, the proceeding was concluded at 4:56 p.m.)

21 --- END OF TRANSCRIPT OF RECORD ---

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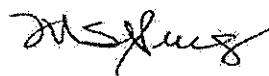
24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE
12TH DAY OF FEBRUARY, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 1, 2018

State of South Carolina)
) Court of General Sessions
 County of Dorchester)
 2013-GS-18-00416
 2014-GS-18-00126

State of South Carolina)
) vs.
) Transcript of Record
)
)
 Samuel Jolly)
) Defendant

February 13, 2018
 St. George, South Carolina

B E F O R E:

Honorable Edward W. Dickson, Judge

A P P E A R A N C E S:

Ryan Templeton, Assistant Solicitor
 Michael Spears, Assistant Solicitor
 Attorneys for the State

Michelle Williams, Assistant Public Defender
 John Kornegay, Assistant Public Defender
 Attorneys for the Defendant

Joy E. Holston
 Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Yvonnia Brown (Pretrial)

Direct examination by Mr. Spears: 29
Cross-examination by Ms. Williams: 33
Redirect examination by Mr. Spears: 35
Recross examination by Ms. Williams: 35

(SW) Rebecca Jolly (Pretrial)

Direct examination by Mr. Templeton: 40
Cross-examination by Ms. Williams: 43
Redirect examination by Mr. Templeton: 46
Examination by The Court: 47

(SW) Tom Marshall (Pretrial)

Direct examination by Mr. Templeton: 49
Examination by The Court: 53
Cross-examination by Ms. Williams: 54

(SW) Yvonnia Brown (Pretrial)

Direct examination by Mr. Spears: 57
Cross-examination by Ms. Williams: 59
Redirect examination by Mr. Spears: 60

1 (SW) Minor

2 Direct examination by Mr. Templeton: 86

3 Cross-examination by Ms. Williams: 101

4 Redirect examination by Mr. Templeton: 118

5

6 (SW) Yvonnia Brown

7 Direct examination by Mr. Spears: 122

8 Cross-examination by Ms. Williams: 133

9 Redirect examination by Mr. Spears: 139

10

11

12

13 Opening Arguments by Mr. Spears: 81

14 Opening Arguments by Mr. Kornegay: 84

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19 Certificate of Reporter 144

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E X H I B I T SState's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Statement	X		29

Court's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Jury Note (Foreperson)	X		73
2	Jury Note (Take notes)	X		121

1 (Court Reporter, Maryann Nevers was the Court Reporter for
2 this case on February 12, 2018.)

3 (Court Reporter, Bonnie Kelly was the Court Reporter for
4 this case on February 14, 2018.)

5 THE COURT: We are now getting ready to call the
6 case. And, Mr. Templeton, Solicitor, are you ready to
7 call this case?

8 MR. TEMPLETON: We are, Your Honor.

9 THE COURT: Okay.

10 MR. TEMPLETON: The State calls the State of South
11 Carolina versus Samuel Jolly. That is 2013-GS-18-416 and
12 2014-GS-18-126. Criminal sexual conduct with a minor in
13 the first degree and lewd act.

14 THE COURT: All right. Mr. Templeton, since you are
15 representing the State, if you wouldn't mind introducing
16 yourself to the jury panel, introducing anyone that is
17 going to be helping you and identify the people that work
18 at the Solicitor's office.

19 MR. TEMPLETON: My name is Ryan Templeton. I am one
20 of the Assistant Solicitor's for Dorchester County.
21 Helping me out is Mike Spears, another Assistant Solicitor
22 in our office. The other lawyers in our office, the
23 elected Solicitor is David Pascoe, he is from Calhoun
24 County but represents all three of these counties. The
25 other lawyers are in our Dorchester office are Don

1 Sorenson, George Smythe, Sheila Mims, Heather Huckabee and
2 Virgil Deas who does our prosecution in Family Court.
3 Also helping me will be Carrie Huff, our courtroom
4 coordinator.

5 THE COURT: Thank you, sir. Is there any member of
6 the jury panel related by blood or marriage or a close
7 personal friend of Mr. Templeton's, Mr. Spears or any
8 person that works in the Solicitor's office here in the
9 First Circuit. If so, please stand at this time.

10 (No response.)

11 THE COURT: No one is standing. The Defendant in
12 this case is Samuel Jolly. And, Ms. Williams, would you
13 mind introducing yourself, cocounsel and Mr. Jolly.

14 MS. WILLIAMS: Yes, sir.

15 THE COURT: Thank you, Ma'am.

16 MS. WILLIAMS: If it please the Court. My name is
17 Michelle Williams and I am an attorney for the Dorchester
18 County Public Defender's office. If you know me, there is
19 a recent name change for me, my former name was Michelle
20 Suggs. So if you know me, you may know me as that name.
21 I represent Samuel Jolly. This is Mr. Jolly. Assisting
22 me in the Defense is John Kornegay. He is member of the
23 Dorchester County Public Defender's office also. Other
24 members of our office are Mark Leiendecker, he is the
25 Circuit Defender; John Loy is the Deputy Public Defender;

1 Pierce Wehman; Ashley Chisolm, Mary LeMatty does our
2 Magistrate charges; Gina Mcalhany does our Family Court
3 charges; and Al Davis does our Family County charges.

4 THE COURT: Is there any member of the jury panel
5 related by blood or marriage or close personal friends of
6 any of the attorneys, Ms. Williams, Mr. Kornegay or any
7 member of the Public Defender's office here in the First
8 Circuit, if you would please stand at this time. Anybody
9 related by blood or marriage, close personal friends to
10 any member of the Public Defender's office or anybody who
11 works there.

12 (No response.)

13 THE COURT: No one is standing. Has any member of
14 the jury panel or a member of your immediate family been
15 represented by the Solicitor's office, Mr. Templeton's
16 office in any manner at any time. Anybody, in this jury
17 panel or a member of your immediate family been
18 represented by the First Circuit Solicitor's office. If
19 so please stand at this time.

20 (No response.)

21 THE COURT: No one is standing. Has any member of
22 the jury panel or member of your immediate family been
23 involved in a case where the First Circuit's office
24 represented the other side. If so please stand at this
25 time.

1 (No response.)

2 THE COURT: No one is standing. Has any member of
3 the jury panel or a member of your immediate family been
4 represented by the First Circuit Public Defender's office,
5 if so please stand at this time.

6 (No response.)

7 THE COURT: No one is standing. Is there any member
8 of the jury panel related or a personal friend of the
9 Defendant, Samuel Jolly, if so please stand at this time.

10 (No response.)

11 THE COURT: No one is standing. There are a number
12 of potential witnesses in this case and I am going to run
13 through them, not necessarily all of them will be called
14 but they could be. Is any member of the jury panel
15 related by blood or marriage or a close personal friend of
16 Minor [REDACTED] If so please stand at this time.

17 (No response.)

18 THE COURT: No one is standing. Is there any member
19 of the jury panel related by blood or marriage or a close
20 personal friend of Rebecca Jolly. If so please stand at
21 this time.

22 (No response.)

23 THE COURT: No one is standing. Any member of the
24 jury panel related by blood or marriage or a close
25 personal friend of Yvonnia Brown, formerly known as

1 Yvonnia Elmore. If so please stand at this time.

2 (No response.)

3 THE COURT: No one is standing. Any member of the
4 jury panel related by blood or marriage or a close
5 personal friend or has been a patient of Dr. Elizabeth
6 Baker. If so please stand at this time.

7 (No response.)

8 THE COURT: No one is standing. Any member of the
9 jury panel related by blood or marriage or close personal
10 friends of Tom Marshall. If so please stand at this time.

11 (No response.)

12 THE COURT: No one is standing. Has any member of
13 the jury panel or a member of your immediate family or
14 close personal friend been employed by any law enforcement
15 agency. I know I had one gentleman who worked for, yes,
16 would you please stand, please sir. And just, what is
17 your name.

18 JUROR: Number 96, Your Honor, Keith Novak.

19 THE COURT: And, Mr. Novak, you are retired Chief
20 Deputy from where?

21 JUROR: Charleston County.

22 THE COURT: Okay. And you are not working for any
23 law enforcement at this time?

24 JUROR: Not at this time.

25 THE COURT: Okay. So the fact that you have worked

1 for law enforcement, would that affect your ability to
2 listen to the evidence in this case and render a fair and
3 impartial verdict?

4 JUROR: No, sir.

5 THE COURT: You stay with us then, please. Okay.
6 Your name and number, please, Ma'am.

7 JUROR: Nancy Truluck, 139.

8 THE COURT: Okay. And, Ms. Truluck, now you have a
9 close personal friend or family member that works for law
10 enforcement?

11 JUROR: I was formerly employed for the Florence
12 County Sheriffs office.

13 THE COURT: From Florence County.

14 JUROR: Yes, sir.

15 THE COURT: Okay. So you are part of the Truluck's
16 from over at the PD?

17 JUROR: Yes, sir.

18 THE COURT: And you said you, you used to work for
19 Florence County?

20 JUROR: I worked for Florence County for four years
21 as a nurse.

22 THE COURT: As a nurse. The fact that you used to
23 work for Florence County as a nurse, would that affect
24 your ability to listen to the evidence in this case and
25 render a fair and impartial verdict?

1 JUROR: No, sir.

2 THE COURT: Stay with us then. And your name and
3 number.

4 JUROR: 129, Kathy Smith.

5 THE COURT: And, Ms. Smith, you or a member of your
6 family or close friend?

7 JUROR: A member of my family but I am not quite
8 sure. Would DNR be considered.

9 THE COURT: Yes, they can arrest people.

10 JUROR: Okay. Son-n-law.

11 THE COURT: So your son-n-law works for DNA.

12 JUROR: Yes.

13 THE COURT: Okay. The fact that your son-n-law
14 worked for DNR, would that affect your ability to listen
15 to the evidence in this case and render a fair and
16 impartial verdict?

17 JUROR: No.

18 THE COURT: Please stay with us. No one is standing.
19 Let's see. Okay. I have already gone over number two, do
20 you have the list. It says, related to anybody in the
21 First Circuit so I have cleared that. Just double
22 checking.

23 MS. WILLIAMS: Yes sir, you have covered that one.

24 THE COURT: All right, ladies and gentlemen, the only
25 thing that you know about is what the Defendant has been

1 indicted for. Okay. And I will tell you that the
2 indictment is just the method that he got brought to court
3 in. It is the State's duty to prove him guilty of those
4 charges beyond a reasonable doubt. Okay. My question to
5 you is there any member of the jury panel who has formed
6 an opinion concerning the guilt or the innocence of the
7 Defendant. If so please stand at this time.

8 (No response.)

9 THE COURT: No one is standing. Has any member of
10 the jury panel or a member of your immediate family ever
11 been a victim of a sexual offense. If so please stand at
12 this time. All right. You mind giving me your name and
13 number, please, sir.

14 JUROR: Eddie Broome, juror 12.

15 THE COURT: And, Mr. Broome, it was a member of your
16 family?

17 JUROR: Yes and me as well.

18 THE COURT: Mr. Broome, the fact that you and a
19 member of your family had been a victim of a sexual
20 offense, would that affect your ability to listen to
21 evidence in this case, render a fair and impartial
22 verdict.

23 JUROR: Probably so, I believe it would.

24 THE COURT: Sir?

25 JUROR: I believe it would, yeah.

1 THE COURT: Okay. Mr. Broome, I am going to excuse
2 you from service and I am sorry for whatever you had to go
3 through. Okay. Thank you, sir. Juror number 12 is
4 excused. Your name and number, please ma'am.

5 JUROR: 74, Kelsey Gardner.

6 THE COURT: Was it a member of your family?

7 JUROR: Yes, it was my cousin.

8 THE COURT: Your cousin. Ms. Gardner, the fact that
9 a cousin of yours was a victim of a sexual offense, would
10 that affect your ability to listen to evidence in this
11 case and render a fair and impartial verdict?

12 JUROR: I don't think so.

13 THE COURT: It wouldn't affect you?

14 JUROR: No.

15 THE COURT: If you would please stay with us. Thank
16 you, Ma'am. No one else is standing. Has any member of
17 the jury panel or a member of your immediate family ever
18 been accused of committing a sexual offense. If so please
19 stand at this time.

20 (No response.)

21 THE COURT: No one is standing. Is any member of the
22 jury panel aware of any reason whatsoever that they could
23 not be fair and impartial to the Defendant and to the
24 State. If so please stand at this time.

25 (No response.)

1 THE COURT: No one is standing. Is there any member
2 of the jury panel or a member of your immediate family,
3 wait a minute. Is there any member of the jury panel a
4 member of any victims rights or law enforcement
5 organizations such as Citizens Against Violent Crime, the
6 acronym of CAVE; People Against Rape, PAR; Mothers Against
7 Drunk Driving, MADD; Persons Empowered to Save Teens,
8 PEST. I did not realize that was the acronym for that.
9 Having two teenage boys at one time, that is such an
10 appropriate one. Or any community watch program or any
11 like organizations which would encourage strict law
12 enforcement of criminal law. Is there any member of the
13 jury panel involved or members of any of these
14 organizations. If so please stand at this time.

15 (No response.)

16 THE COURT: No one is standing. Any other questions
17 from the State?

18 MR. TEMPLETON: None from the State, Your Honor.

19 THE COURT: Any questions from the Defendant?

20 MS. WILLIAMS: None, Your Honor.

21 THE COURT: Ladies and gentlemen, y'all need to bear
22 with me a second. I have my little list of things I like
23 to look over, make sure I have got everything covered.
24 Ladies and gentlemen, we go through all of the questioning
25 and like that, what is going to happen now is your names

1 will be randomized by the computer and placed in a
2 different order and then we are going to go around, go
3 about picking a jury. As I told you, we are going to pick
4 twelve jurors and two alternates. It is going to take us
5 a minute to do that. Once we have gotten the list done, I
6 know that the attorneys are going to need, I guess a
7 little bit of time, y'all are going to be ready to go?

8 CLERK OF COURT: We are ready.

9 THE COURT: Okay. Ladies and gentlemen, we are going
10 to get ready to pick a jury. When your name is called, I
11 would ask you to come forward to right in front of the
12 Clerks right here. Turn and face the attorneys and then
13 the attorneys will decide whether they are going to sit
14 you on the jury or excuse you from service of the jury.
15 Bring everything you brought with you because if you get
16 picked for the jury you are to come over here and you are
17 going to go ahead and sit in the jury box. All right.
18 Madam Clerk. The strikes are five and ten.

19 CLERK OF COURT: Number 151, James Wright. What says
20 the State.

21 MR. TEMPLETON: Please present the juror.

22 CLERK OF COURT: The Defense.

23 MS. WILLIAMS: Please seat the juror.

24 CLERK OF COURT: Have a seat in our jury box.

25 THE COURT: Mr. Wright, you did exactly right,

1 everybody saw you. Very good, thank you, sir.

2 CLERK OF COURT: Juror number 5, Jacob Baliko. What
3 says the State.

4 MR. TEMPLETON: Please excuse the juror.

5 CLERK OF COURT: Number 97, Natasha Nowrang. What
6 says the State.

7 MR. TEMPLETON: Please present the juror.

8 CLERK OF COURT: The Defense.

9 MS. WILLIAMS: Please seat the juror.

10 CLERK OF COURT: Have a seat in the jury box. Juror
11 number 23, Amy Cooper. What says the State.

12 MR. TEMPLETON: Please seat the juror.

13 CLERK OF COURT: The Defense.

14 MS. WILLIAMS: Please excuse the juror.

15 CLERK OF COURT: Juror 113 Erica Robinson. What says
16 the State.

17 MR. TEMPLETON: Please seat the juror.

18 CLERK OF COURT: The Defense.

19 MS. WILLIAMS: Please excuse this juror.

20 CLERK OF COURT: Number 60 Karen Huffman. What says
21 the State.

22 MR. TEMPLETON: Please seat the juror.

23 CLERK OF COURT: The Defense.

24 MS. WILLIAMS: Please excuse this juror.

25 CLERK OF COURT: Number 74, Kelsey Gardner. What

1 says the State.

2 MR. TEMPLETON: Please seat the juror.

3 THE COURT: The Defense.

4 MS. WILLIAMS: Please excuse this juror.

5 CLERK OF COURT: Number 95, Wenda Nezamzdeh. What
6 says the State.

7 MR. TEMPLETON: Please seat the juror.

8 CLERK OF COURT: The Defense.

9 MS. WILLIAMS: Please seat the juror.

10 CLERK OF COURT: Number 133, Gary Swafford. What
11 says the State.

12 MR. TEMPLETON: Please excuse this juror.

13 CLERK OF COURT: Number 100, Cynthia Parisoli. What
14 says the State.

15 MR. TEMPLETON: Please present the juror.

16 CLERK OF COURT: The Defense.

17 MS. WILLIAMS: Please excuse this juror.

18 CLERK OF COURT: Number 27, Brett Cush. What says
19 the State.

20 MR. TEMPLETON: Please seat the juror.

21 CLERK OF COURT: The Defense.

22 MS. WILLIAMS: Please seat the juror.

23 CLERK OF COURT: Number 56, Barbara Lamos. What says
24 the State.

25 MR. TEMPLETON: Please seat the juror.

1 CLERK OF COURT: The Defense.

2 MS. WILLIAMS: Please excuse this juror.

3 CLERK OF COURT: Number 152, Angela Yates. What says
4 the State.

5 MR. TEMPLETON: Please present the juror.

6 CLERK OF COURT: The Defense.

7 MS. WILLIAMS: Please seat the juror.

8 CLERK OF COURT: Number 88, Daniel Miller. What says
9 the State.

10 MR. TEMPLETON: Please seat the juror.

11 CLERK OF COURT: The Defense.

12 MS. WILLIAMS: Please seat the juror.

13 CLERK OF COURT: Number 145, Jeffrey Wheeler. What
14 says the State.

15 MR. TEMPLETON: Please present the juror.

16 CLERK OF COURT: What says the Defense.

17 MS. WILLIAMS: Please seat the juror.

18 CLERK OF COURT: Number 142, Anthony Vaccaro. What
19 says the State.

20 MR. TEMPLETON: Please seat the juror.

21 MS. WILLIAMS: I am sorry, 142?

22 CLERK OF COURT: 142.

23 MS. WILLIAMS: Please seat the juror.

24 CLERK OF COURT: Number 52, Pamela Hanson. What says
25 the State.

1 MR. TEMPLETON: Please seat the juror.

2 CLERK OF COURT: The Defense.

3 MS. WILLIAMS: Please excuse the juror.

4 CLERK OF COURT: Number 8, Claudia Benthall. What
5 says the State.

6 MR. TEMPLETON: Please present the juror.

7 CLERK OF COURT: The Defense.

8 MS. WILLIAMS: Please seat this juror.

9 CLERK OF COURT: Number 130 Shawn Smith. What says
10 the State.

11 MR. TEMPLETON: Please present the juror.

12 CLERK OF COURT: The Defense.

13 MS. WILLIAMS: Please seat this juror.

14 CLERK OF COURT: Number 75, Kate Lehecka. What says
15 the State.

16 MR. TEMPLETON: Please present the juror.

17 CLERK OF COURT: The Defense.

18 MS. WILLIAMS: Please seat this juror.

19 CLERK OF COURT: Number 125, Danielle Singletary
20 Peagler. What says the State.

21 MR. TEMPLETON: Please present the juror.

22 CLERK OF COURT: The Defense.

23 MS. WILLIAMS: Please excuse this juror.

24 CLERK OF COURT: Number 43, Timothy Gaskins. What
25 says the State.

1 MR. TEMPLETON: Please excuse this juror.

2 CLERK OF COURT: Juror 144 Robin Weindorf. What says
3 the State.

4 MR. TEMPLETON: Please present this juror.

5 CLERK OF COURT: The Defense.

6 MS. WILLIAMS: Please excuse this juror.

7 CLERK OF COURT: Number 25, Jack Couch. What says
8 the State.

9 MR. TEMPLETON: Please present the juror.

10 CLERK OF COURT: The Defense.

11 MS. WILLIAMS: Please seat this juror.

12 THE COURT: Two alternates, strikes are one and two.

13 CLERK OF COURT: Juror number 138, Ryan Trecy. What
14 says the State.

15 MR. TEMPLETON: Please present the juror.

16 CLERK OF COURT: The Defense.

17 MS. WILLIAMS: Please seat the juror.

18 CLERK OF COURT: Number 73, Sandra Lamb. What says
19 the State.

20 MR. TEMPLETON: Please present the juror.

21 CLERK OF COURT: The Defense.

22 MS. WILLIAMS: Please excuse this juror.

23 CLERK OF COURT: Juror number 53, Kimberly Harris.
24 What says the State.

25 MR. TEMPLETON: Please present the juror.

1 CLERK OF COURT: The Defense.

2 MS. WILLIAMS: Please seat the juror.

3 THE COURT: That's our second alternate?

4 CLERK OF COURT: That will be it.

5 THE COURT: All right. Any issues regarding jury
6 selection from the State?

7 MR. TEMPLETON: Nothing from the State, Your Honor.

8 THE COURT: Any issues regarding jury selection from
9 the Defense?

10 MS. WILLIAMS: None, Your Honor.

11 THE COURT: Y'all are prepared for me to seat this
12 jury. You know, ladies and gentlemen, those of y'all who
13 did not get chosen, I see the disappointed looks on your
14 faces. I am sorry I do not have another case to try this
15 week. Okay. So, thank y'all for being willing to serve.
16 I am sorry you did not get the opportunity to do so this
17 week. But you are now free to go. Thank y'all very much
18 for being willing to serve.

19 (Whereupon, the remaining jury panel was excused from
20 open court.)

21 (Whereupon, a bench conference was held in the
22 presence of the jury but out of the hearing of the
23 jury.)

24 THE COURT: Congratulations. I appreciate you not
25 getting off, you are over 65, right?

1 JUROR: Yes.

2 THE COURT: So you are a year younger than my brother
3 and he is still working. All right. Ladies and
4 gentlemen, what I was talking with the attorneys involved
5 is, while we are trying to get everything done as quickly
6 and as timely possible, there are issues that I have to go
7 over with the attorneys outside of the presence of the
8 jury. Okay. And there will be times during the trial
9 when I will ask y'all to be excused and go back to the
10 jury room. We have got some matters we can start this
11 trial that I have got to talk with the attorneys before we
12 can actually begin the trial. So I will be able to give
13 y'all a longer lunch hour than I normally would give
14 y'all. Okay. What I am going to ask y'all to do is to be
15 back in the jury room about 2:30, 2:20. So you have got
16 two hours for lunch. The members of the jury, not the
17 alternates, but the members of the jury, when y'all get
18 back I need for y'all to elect a Foreperson of the jury.
19 Foreperson of the jury will always have an assigned seat
20 right up here at the front closet to the witness stand.
21 The duties of the Foreperson are to complete the verdict
22 form at the end of the trial, to maintain, make sure and
23 organize the discussion in the jury room includes
24 everybody when you begin your deliberations. If you have
25 any questions of the jury after you begin deliberations

1 the Foreperson writes out the questions and sends it out
2 for me to answer, if I can. Sometimes they ask questions
3 that I cannot answer because there are questions about
4 testimony and that is up for you to decide. Okay. But so
5 the members of the jury, not the alternates need to pick
6 the Foreperson when you get back. Hopefully at 2:30 we
7 will be ready to go and we will start with my statement to
8 you about your duties, what is going to happen, opening
9 arguments, I mean opening statements and then we will
10 start testimony today. As you saw, when I went over the
11 list of witnesses, we do not have a whole lot of witnesses
12 in this case. The thing that I need to tell you I think
13 is the hardest thing for jurors to understand is that you
14 cannot talk to anyone about this case including among
15 yourselves while the, until I tell you you can begin your
16 deliberations. Normally what happens is, y'all are going
17 to come in here and you are going to watch a witness. The
18 witness is going to testify. At some point we will take a
19 break and you will go back in there. The most natural
20 thing is that y'all want to talk about what you just
21 heard. You cannot do that. You cannot begin talking
22 about this case until I tell you you can begin your
23 deliberations. And one reason you are not allowed to
24 begin your deliberations until I tell you, after you have
25 heard the entire case, is so that it is just you thinking

1 about it, you are not going to be influenced by anybody
2 else's comments about testimony or anything like that
3 until everybody has heard everything. That is the reason
4 we do it that way. So, let me remind you, you do not talk
5 about this case to anyone. If anyone comes up to you and
6 wants to talk about this case I need to know who they are
7 because y'all are not suppose to talk to anybody about
8 this case. The other thing that I need to caution you
9 about is, there are going to be times in a case where
10 people are going to refer to a place or a time or
11 something like that. The natural, what has become natural
12 which wasn't natural 20 years ago and somebody tells you
13 something and you might want to check on the Smart Phone
14 and see where the incident was or check to see what was
15 going on the world when the incidents occurred, things
16 like that. You cannot do that. All the information that
17 you are going to need in this case you are going to find
18 out in court. And only the information that you get in
19 court is what you can use. So you don't do any
20 independent investigation. You don't do any independent
21 reading, you don't check newspaper reports or anything
22 like that. Everything that you need to know about this
23 case you are going to hear in this courtroom. You can't
24 talk about it, you can't do any independent research.
25 Now, as I told y'all, being in a jury is interesting, it

1 really is. My brother-in-law, my wife, neighbors, have
2 all come back and told me what it is like to be on a jury.
3 I hope you enjoy this experience. It is important that
4 you do this. Okay. It is important that you give a fair
5 trial to both the State and the Defendant in this matter.
6 And I will remind you that the State has a burden of
7 proving the Defendant guilty in this case beyond a
8 reasonable doubt. And we will go over that. But right
9 now I have talked all I want to talk, so right now y'all
10 get a almost two-hour lunch break. So relax, come back
11 ready to go and good luck finding a good place to eat.

12 (Whereupon, the jury is excused from open court for a
13 lunch break.)

14 THE COURT: I would like to get back here, take
15 forty-five minutes to eat and get back here. Anything we
16 need to take up before we take a break.

17 MR. TEMPLETON: Nothing from the State, Your Honor.

18 THE COURT: Anything from the Defense?

19 MS. WILLIAMS: No, I can't think of anything. Just a
20 ruling on my discovery, my specific discovery motion. My
21 understanding is the only thing out there that was not
22 provided that the State has in their possession are notes,
23 I believe maybe there is notes from Mr. Templeton but also
24 from their Investigator, Mr. Melendez regarding their
25 interview of **Minor** in this case.

1 THE COURT: And that would be attorney work product
2 and part of their investigation in this matter that has to
3 do with their presentation of this case. And so I am
4 going to deny any production of those notes.

5 MS. WILLIAMS: Thank you, Judge.

6 THE COURT: Thank you. I'll see y'all back here as
7 soon after 1:15 as we can get here.

8 MS. WILLIAMS: And at that point we are only going to
9 do Jackson versus Denno, right?

10 MR. TEMPLETON: I am going to figure out if we will
11 do Lyle as well.

12 MS. WILLIAMS: Okay.

13 THE COURT: I would like to get everything ready to
14 go.

15 (Whereupon, a lunch break was taken.)

16 THE COURT: Are we ready.

17 MR. TEMPLETON: I think we have kind of discussed the
18 issue of the allegations that occurred or the State would
19 allege occurred in Charleston County. The State is in
20 agreement with not going into those allegations. The
21 State would only intend to go into the allegations that
22 occurred in Dorchester County during the time listed in
23 the indictment.

24 THE COURT: I think that is a wise decision on behalf
25 of the State.

1 MR. TEMPLETON: I believe the Defense may still have
2 an objection to that but I believe that is appropriate
3 under the circumstances.

4 THE COURT: That was an argument that you made
5 yesterday, wasn't it?

6 MS. WILLIAMS: That's correct, Judge.

7 THE COURT: That there was too many of them?

8 MS. WILLIAMS: That's correct. It is kind of the
9 insufficient indictment or a motion to quash the
10 indictment and also the Lyle motion that I made. I would
11 have an objection to all of that. I think there needs to
12 be an incident date and an incident and then all the other
13 acts that come with that. If they wanted to indict them
14 for all the other acts I think they probably should have
15 indicted it. Otherwise, there is a reason why we have
16 Lyle so we don't do things like this. So I would object
17 to everything. But I understand what the Solicitor is
18 intending to do and I think I understand what your ruling
19 is.

20 THE COURT: Well, I tell you what my ruling is. He
21 can testify to any of the lewd acts that occurred from
22 August 1st of 1996?

23 MR. TEMPLETON: Yes, Your Honor.

24 MS. WILLIAMS: Yes.

25 THE COURT: To August 22nd of 1997.

1 MR. TEMPLETON: It is either the 20th or the 22nd.
2 My copies is with you.

3 THE COURT: It is August 1st of 1996 to August 22nd
4 of 1997. And from my review of the Family Court document
5 that seems to be the appropriate thing.

6 MR. TEMPLETON: I believe so, Your Honor.

7 THE COURT: But, Ms. Williams, I am noting your
8 objection to my ruling for the reasons that it, the
9 indictment was not specific enough by letting him go
10 forward with all the issues, all of the incidents that may
11 have occurred during that time. It seems to be getting
12 into the problem, the general argument against prior bad
13 acts and it kind of goes against the basic theory in
14 Lyle's. Isn't that correct?

15 MS. WILLIAMS: Yes, sir.

16 THE COURT: So we preserve your objection of those
17 three issues, I think.

18 MS. WILLIAMS: Yes, sir. I will make a contemporary
19 objection when it is first entered into evidence,
20 testimonial evidence to preserve it.

21 THE COURT: Okay.

22 MS. WILLIAMS: Thank you, Judge.

23 THE COURT: Hopefully we can keep it preserved.

24 MS. WILLIAMS: Thank you, Judge.

25 THE COURT: Thank you, Ma'am. All right.

1 MR. SPEARS: I think the next motion we might want to
2 go forward on is the Denno hearing regarding the
3 statements of the Defendant to the Department of Social
4 Services.

5 (Whereupon, State's Exhibit 1 was marked for
6 identification only.)

7 THE COURT: Okay. Call your witness.

8 MR. SPEARS: Your Honor, the State calls Yvonnia
9 Brown.

10 YVONNIA BROWN, being
11 first duly sworn, testified as follows:

12 THE COURT: State your name for the record, please.

13 MS. BROWN: Yvonnia Brown.

14 THE COURT: And where do you work now?

15 MS. BROWN: Merced Behavioral Health in California.

16 THE COURT: Oh, that is right, you got flown in.

17 MS. BROWN: Yes.

18 THE COURT: We are glad to have you back.

19 MS. BROWN: I am glad to be back.

20 THE COURT: All right, Mr. Spears.

21 MR. SPEARS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 By Mr. Spears:

24 Q Ms. Brown, did you, have you worked for DSS in
25 Dorchester County?

1 A Yes.

2 Q When did you work there?

3 A From 1996 to 2003.

4 Q Now, as part of your job, did you ever perform any
5 home visits?

6 A Yes.

7 Q About how many times?

8 A Too many to count.

9 Q I understand. Now, let's go back to around 1997.
10 Did you have a chance to speak with, on August 25th of
11 1997, did you have a chance to speak with Mr. Jolly?

12 A Yes.

13 Q And can you explain to the Court why you spoke with
14 him?

15 A Because part of being a social worker with the
16 Department of Social Services, we have to interview all
17 the parties, the victim, the alleged perpetrator. So on
18 the 25th, that was my opportunity to interview Mr. Jolly
19 and Ms. Jolly.

20 Q Now, did you have anyone with you during this
21 interview?

22 A I was solo during that time.

23 Q Where did this interview take place?

24 A At his home.

25 Q At the Department of Social Services, did you have

1 any procedure for documenting these interviews?

2 A Yes.

3 Q And what was that procedure?

4 A Always put down where your location is, time, the
5 date. Kind of give almost like a information that could
6 be used in court. You have the right to an attorney.
7 Those preliminary kind of disclosures take place.

8 Q And, again, I apologize, do you recall where this
9 took place, the address where this took place?

10 A Shirley Lane in Ladson.

11 Q All right. Now, you say you are the only one there.
12 So you conducted the interview, correct?

13 A Yes.

14 Q Was the interview done for the Department of Social
15 Services or was this done for any other entity?

16 A The Department of Social Services.

17 Q Okay. When you began the interview, did you
18 Mirandize Mr. Jolly?

19 A We have, this information could be used in the court.
20 You have the right to an attorney. Those preliminary
21 things that we usually kind of have the social work into
22 an investigation. So that, I did do that as part of my
23 investigation.

24 Q Okay. And did Mr. Jolly give you any indication that
25 he wasn't willing to speak with you?

1 A Not at that time at all. He said he already had an
2 attorney and the attorney advised him that they could go
3 ahead and cooperate with the Department of Social
4 Services.

5 Q Now, did you ever prevent him from leaving the room
6 during the time you spoke with him?

7 A No.

8 Q Did he ever ask to leave?

9 A No.

10 Q Did he ever tell you that he wasn't going to answer
11 any questions?

12 A No.

13 Q Okay. Lastly, did, at any point and time, after he
14 said he had spoken with his attorney, did he tell you that
15 he wanted to speak with an attorney again?

16 A No.

17 Q Okay. And can you just please explain to the Court
18 what you personally noticed about Mr. Jolly's demeanor
19 during the interview?

20 A He was very emotional, tearful, he was saying he
21 wanted his family back. He was not in any distress or
22 concern, he was very cooperative during the process.

23 MR. SPEARS: Court's indulgence.

24 Q Ms. Brown, when you were speaking to him, again, you
25 said this was for Department of Social Services interview.

1 What questions did you ask him?

2 A I asked him about, disclose about the allegations.
3 Did he touch **Minor** Did he pull down her shorts. Did he
4 touch her vagina, put his finger in her vagina, those
5 typical questions.

6 Q What did he tell you?

7 A Well, the first, tickling her and pulling down her
8 shorts. He admitted to that. For exposing himself in the
9 shower, coming out of the shower naked, he admitted to
10 that. As relates to putting his fingers in her vagina.
11 He said, I don't recall.

12 Q After you asked him those questions did he give you
13 any indication of how he wanted to move forward?

14 A He just wanted to, wanted his family back. He wanted
15 **Minor** to come home and trust him again. That was the
16 extent of our conversation.

17 Q All right. Please answer any questions the Defense
18 may have for you.

19 THE COURT: Ms. Williams.

20 MS. WILLIAMS: Thank you, Judge, may it please the
21 Court.

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 By Ms. Williams:

25 Q When you were, Ms. Brown, when you were speaking

1 about your duties as a DSS worker, you said one of the
2 things is that you interview the perpetrator?

3 A Alleged, yes.

4 Q And perpetrator means that somebody that has done
5 something wrong or committed a crime?

6 A Correct.

7 Q You went by yourself to the home, Samuel Jolly's
8 home, do you remember who all was in the room?

9 A His wife.

10 Q So it was just the three of you?

11 A Yes.

12 Q And did you identify yourself as somebody that works
13 for the State?

14 A Yes.

15 Q How long did this interview last?

16 A I believe, I don't know.

17 Q How long did interviews that you had typically last?

18 A Probably about forty-five minutes to an hour.

19 Q And when you advised Mr. Jolly the information
20 against him could be used in court, did you specify
21 whether it could be used in criminal court or civil court?

22 A No, I didn't.

23 Q I have no further questions. At the end of the
24 interview, one further question, at the end of the
25 interview y'all had a discussion about Mr. Jolly leaving

1 the home, he was going to leave the home or he was going
2 to be advised to leave the home?

3 A I can't remember in detail.

4 Q I have no further questions.

5 THE COURT: Anything on redirect?

6 MR. SPEARS: Very, very briefly, Your Honor.

7 REDIRECT EXAMINATION

8 By Mr. Spears:

9 Q Ms. Brown, at that point and time, in your capacity
10 as a DSS worker, did you carry handcuffs with you?

11 A No.

12 Q Did you have, did you carry a handgun with you?

13 A No.

14 Q Okay. No further questions.

15 THE COURT: Anything on recross?

16 MS. WILLIAMS: Just quickly, Your Honor.

17 RECROSS-EXAMINATION

18 By Ms. Williams:

19 Q Ms. Brown, a lot of what your testimony here today is
20 based on are your notes that you have reviewed in a
21 report?

22 A That is correct.

23 Q Those notes, it is about five pages, correct.

24 THE COURT: You want to show them to her?

25 MS. WILLIAMS: Yes. May I approach?

1 THE COURT: Yes, that would be great.

2 Q I am handing you a document, are those, the first
3 five pages, are those your notes that you took when you
4 conducted this interview?

5 A Yes.

6 Q If I can direct your attention to the page numbers.
7 It looks as if page three is missing. Would that be
8 accurate?

9 A According to this document, yes.

10 Q Okay. Do you have any independent recollection of
11 this interview or are you basing your testimony primarily
12 on these notes?

13 A It is a combination. The notes help me to jog my
14 memory but it was 20 years ago.

15 Q Right. So do you have an independent recollection?

16 A Yes.

17 Q I have no further questions.

18 THE COURT: Thank you, Ma'am, you may step down. Any
19 other witnesses from the State?

20 MR. SPEARS: Nothing from the State, Your Honor.

21 THE COURT: Any witnesses on behalf of the Defendant?

22 MS. WILLIAMS: None, Your Honor.

23 THE COURT: Okay. Well, so this is my Denno hearing?

24 MS. WILLIAMS: Judge, this is your Denno hearing.

25 And I will say a lot of why we had to go through this is

1 because, a lot of the evidence has been lost.

2 THE COURT: Oh, yes.

3 MS. WILLIAMS: So I needed to know whether or not,
4 the way this interview was conducted and I think that has
5 been presented to His Honor for the purposes of finding
6 the totality of circumstances about whether this statement
7 was voluntary.

8 THE COURT: Okay. Well, it appears to me that the
9 Defendant, Mr. Jolly, was given his Miranda warnings. And
10 it was a voluntary statement that he made to the DSS
11 worker with knowledge that anything he said could have
12 been used in court. Anything else?

13 MS. WILLIAMS: Not regarding the Denno hearing.

14 THE COURT: Okay. So what is next.

15 MR. TEMPLETON: Your Honor, I think the only other
16 thing we really have to take up is the flight issue. I
17 think the best way to go about this is maybe just to call
18 the two witnesses that I intend to call in my case
19 regarding flight. And I would propose to just limit their
20 testimony to whether they are going to testify regarding
21 flight and then we will argue at that point.

22 THE COURT: That is the issue regarding the motion
23 that you made earlier, correct, about any issues regarding
24 flight? Is there any reason to go into any other area.
25 That is what I am asking, no matter how unclear it was

1 asked.

2 MS. WILLIAMS: I am sorry, I was reviewing my notes
3 from the other pretrial motions.

4 THE COURT: Now, you take a deep breath and look at
5 it and then when you tell me you are ready we will start
6 this.

7 MS. WILLIAMS: If I could, just quickly, I feel like
8 the Solicitor said the only thing left was flight, that
9 the flight issue and the flight motion, the motion to
10 determine how much or how little that we can talk about
11 during this trial. I just wanted to quickly go through
12 the pretrial motions and just put on the record what my
13 understanding of what has happened.

14 THE COURT: All right.

15 MS. WILLIAMS: Sequestration is agreed to. Prior
16 convictions has been addressed. None unless Mr. Jolly
17 opens the door to the breach of trust. The motion to
18 quash the indictment for lack of specificity was denied.
19 The Lyle motion denied. The motion to dismiss based on
20 due process violations because of the destruction of
21 evidence is going to be--

22 THE COURT: Denied.

23 MS. WILLIAMS: --denied?

24 THE COURT: Well,--

25 MS. WILLIAMS: I wrote on here, no ruling, renew at

1 directed verdict and perhaps address during the course of
2 the trial.

3 THE COURT: Well, for purposes of this, I thought my
4 ruling, the way I, for purposes of a motion in limine, it
5 was denied.

6 MS. WILLIAMS: Okay.

7 THE COURT: I figured those same points were going to
8 be brought up at the end of the State's case and at the,
9 perhaps at the end of your case.

10 MS. WILLIAMS: Yes.

11 THE COURT: Essentially as a directed verdict motion.

12 MS. WILLIAMS: Yes, thank you.

13 THE COURT: Okay.

14 MS. WILLIAMS: Jackson v. Denno, I think we have
15 completed that.

16 THE COURT: Yes, Ma'am.

17 MS. WILLIAMS: We have a motion to determine the
18 admissibility or to exclude the witnesses testimony
19 regarding the doctor. I believe that has to be addressed
20 tomorrow.

21 MR. TEMPLETON: The doctor will be here in the
22 morning. So we should get to that one very quickly.

23 MS. WILLIAMS: Yes, I think that leads us very
24 squarely into the motion to determine the admissibility of
25 flight evidence.

1 THE COURT: Okay. All right. Are you ready, is it
2 your turn or are you just calling it for Mr. Spears.

3 MR. TEMPLETON: This is my turn.

4 THE COURT: Okay.

5 MR. TEMPLETON: The State calls Rebecca Jolly.

6 REBECCA JOLLY, being
7 first duly sworn, testified as follows:

8 THE COURT: State your full name for the record.

9 MS. JOLLY: Rebecca Louise Jolly.

10 THE COURT: Okay. And, Ms. Jolly, are you working
11 somewhere?

12 MS. JOLLY: Yes, sir. D.J. Powers Company.

13 DIRECT EXAMINATION

14 By Mr. Templeton:

15 Q Ms. Jolly, would you tell the Court, how are you
16 related to the victim in this case?

17 A I am legally married to him.

18 Q The victim?

19 A I am sorry, I am her mother.

20 Q Okay. And to the Defendant?

21 A I am legally married to him.

22 Q You are still legally married to him at this point?

23 A Yes.

24 Q Okay. Back in 1997, do you recall there is some
25 allegations of sexual misconduct by Mr. Jolly against your

1 daughter?

2 A Yes.

3 Q I want to direct you just to what occurred after
4 these allegations came out. If you would, do you recall
5 DSS coming by to speak to you and Mr. Jolly?

6 A Yes.

7 Q Okay. Do you recall DSS basically instructing him
8 that he needed to get out of the house for your daughter
9 to come back into the house?

10 A Yes.

11 Q Okay. At any point did they say he needed to leave
12 the State?

13 A No.

14 Q Okay. Back in that timeframe, after these
15 allegations came out, how long were you in contact with
16 Mr. Jolly, your husband at the time, after these
17 allegations came out?

18 A Probably a month or two, a little while.

19 Q You were in constant contact during that period of
20 time?

21 A Not constantly because basically moved him out of the
22 house.

23 Q Okay. Do you know where he had gone?

24 A Not directly, no.

25 Q Ultimately, was there a conversation where you went

1 and met Mr. Jolly somewhere?

2 A Yes.

3 Q Okay. Where did you have to go meet Mr. Jolly?

4 A I met him, I think it was in Georgia.

5 Q Did Mr. Jolly indicate why he wouldn't come back to
6 Summerville?

7 A It had, he and I had talked about the fact that they
8 were going to issue a warrant for his arrest.

9 Q So do you have knowledge that he knew that he was, at
10 least, being looked for by law enforcement at that time?

11 A Yes.

12 Q When he left the State?

13 A As before or after, I am not sure if it was--

14 Q During that month period of time?

15 A Yes.

16 Q Did he have knowledge that law enforcement was
17 looking for him?

18 A Yes.

19 Q Okay. And at any point did he return to South
20 Carolina to your knowledge?

21 A No.

22 Q Okay.

23 MR. TEMPLETON: Your Honor, that would be the extent
24 of the flight portion for Ms. Jolly.

25 THE COURT: Okay. You have any questions of this

1 witness?

2 MS. WILLIAMS: Yes.

3 CROSS-EXAMINATION

4 By Ms. Williams:

5 Q Ms. Jolly, these allegations were from August of
6 1997, that is when DSS first came to your house, isn't
7 that right?

8 A Correct.

9 Q And then you met with Lowcountry Children's Center in
10 September of 1997?

11 A Correct.

12 Q And a DSS case was created and you had to go to
13 court?

14 A Correct.

15 Q And that court lasted from September of 1997, through
16 December of 1997 at the very least, right?

17 A Probably.

18 Q And during that entire time you were going to
19 counseling with your daughter, you were going to court
20 because you had to deal with DSS and a parenting plan they
21 had placed, right?

22 A Yes.

23 Q And sometime during all of that you said you went and
24 met the perpetrator of this crime, Samuel Jolly?

25 A Yes.

1 Q You met him in Georgia, when and where did that
2 happen?

3 A I don't remember the exact date or even the exact
4 place honestly.

5 Q So the allegations happened in August, the warrant
6 was sworn out in October of 1997. Was the warrant already
7 issued when you went to meet with this man?

8 A I am not sure. We only knew that they were going to,
9 the statement was that they were going to issue a warrant
10 and that they were looking for him.

11 Q Who told you that?

12 A Initially I believe it was Detective Marshall who
13 said that he was pretty positive that they were going to
14 be issuing a warrant.

15 Q So at the time that you met with Samuel Jolly, you
16 have no recollection as to whether or not a warrant was
17 actually in place?

18 A I had not seen a document, no.

19 Q Okay. All you remember is that maybe Detective
20 Marshall told you they were going to issue a warrant?

21 A Yes.

22 Q And what did you meet with Mr. Jolly about?

23 A We were talking about money and the fact that I was
24 in a great deal of debt. And we were still actually
25 talking about him getting help and us reconciling.

1 MS. WILLIAMS: The Court's indulgence.

2 THE COURT: Take your time.

3 MS. WILLIAMS: I am sorry, Your Honor, I am reviewing
4 the records that were given to us this morning from the
5 Family Court.

6 THE COURT: Take your time.

7 Q Ms. Jolly, are you aware that during the DSS case,
8 there were several attempts made to locate Mr. Jolly?

9 A Yes.

10 Q Did you at any time disclose this new information to
11 them, that you were going to meet with him or had met with
12 him?

13 A No, I did not.

14 Q Were you at any time asked by DSS whether or not you
15 had had any contact with Samuel Jolly?

16 A Initially when they started looking at him, yes.

17 Q And do you remember telling them that, no, you had
18 had no contact with him?

19 A At that time, yes.

20 Q Although you had had contact with him?

21 A Yes.

22 Q And so today is the first time that you have actually
23 testified or told anyone that you had contact with him and
24 that you told him the police were looking for him?

25 A Yes.

1 Q You ultimately attempted to reconcile with Mr. Jolly,
2 didn't you, you moved to Florida?

3 A I moved to Tampa for a job.

4 Q And did you reconcile with him to some degree?

5 A No.

6 Q Were you ever romantic or friendly relationship with
7 him after you moved to Florida?

8 A No.

9 Q I have no further questions. I actually do have one
10 question. Did you meet with Mr. Jolly while you lived in
11 Florida?

12 A No.

13 Q Never met with him at any time?

14 A I have not, when I moved to Tampa when I took a job
15 at Lifelines (phonetic).

16 Q And you never saw him or met with him while you were
17 in Florida?

18 A No, ma'am.

19 Q Did you know that he was there?

20 A No, ma'am.

21 Q No further questions.

22 THE COURT: Anything on redirect.

23 MR. TEMPLETON: Just one question, Your Honor.

24 REDIRECT EXAMINATION

25 By Mr. Templeton:

1 Q Ms. Williams had asked you about whether you knew if
2 a warrant had been issued at the time that you were
3 speaking with him. Did you know if there had been a
4 warrant issued?

5 A To my knowledge I thought it had already been issued.

6 Q Did Detective Marshall ever indicate to you that they
7 were at least looking for him at that point?

8 A Yes.

9 Q So you know that you, did you express that to Mr.
10 Jolly?

11 A Yes.

12 Q That law enforcement was looking for him?

13 A Yes.

14 Q Okay.

15 MR. TEMPLETON: That is the only question, Your
16 Honor.

17 THE COURT: Okay. Ms. Jolly, I have got to get the
18 timeline straight in my head.

19 EXAMINATION BY THE COURT

20 By The Court:

21 Q I have got a police incident report from August 22nd
22 of 1997 when Ms. Elmore, now Ms. Brown reported your
23 daughter's concerns or about Mr. Jolly. Okay. And how
24 long, okay, this was in August, the end of August. When
25 did you, and I need something better than, you know, you

1 are not sure. Give me some way of having an idea of when
2 you met with him in Georgia?

3 A I honestly don't remember, the time is very fussy for
4 me. I thought it was within about a month.

5 Q About a month of when this occurred?

6 A Right, of when they first came to the door.

7 Q And when Ms. Elmore, when the lady from DSS, then Ms.
8 Elmore, now Mr. Brown came to the door, was it, when she
9 came to the door or was it when the police came to the
10 door?

11 A When the police came to the door.

12 Q When the police came to the door you were aware of
13 the criminal sexual conduct charge?

14 A That is when I found out.

15 Q Okay, towards the end of August?

16 A Yes.

17 Q And so to the best of your recollection now, you are
18 indicating that, you believe within a month you were
19 meeting with Mr. Jolly in Georgia?

20 A Yes, sir.

21 Q And also, to the best of your recollection, where in
22 Georgia?

23 A I honestly don't remember. It was this many miles
24 this way until you see a restaurant on the right-hand
25 corner and it was almost like a little diner.

1 Q Were you going towards Augusta, Savannah?

2 A South, I was going South.

3 Q Okay. So you went on 95?

4 A Yes. 95, I went on 95, I went through this way, went
5 through Walterboro from Summerville and then going on 95.

6 Q Okay. All right.

7 THE COURT: Mr. Templeton, do you have any more
8 questions?

9 MR. TEMPLETON: None from the State, Your Honor.

10 THE COURT: Ms. Williams, any questions?

11 MS. WILLIAMS: No, Your Honor.

12 THE COURT: Thank you, Ma'am, you may step down.

13 Call your next witness.

14 MR. TEMPLETON: The State would call Detective Tom
15 Marshall.

16 TOM MARSHALL, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Templeton:

20 Q If you would, tell the Court how you got involved in
21 this case?

22 A Well after, I got this call after they had been at
23 the Lowcountry's Children's Center.

24 Q Okay.

25 A And from there I started investigating what was going

1 on and I went to an area, I was given some information,
2 and went to a place called, actually Jolly's or Folly's--

3 Q Who owns that location?

4 A The brother.

5 Q That would be Mr. Jolly's brother at the time?

6 A Yes.

7 THE COURT: What does he own?

8 A It is, on the road heading back into Charleston there
9 is a place where cars are broken down and he actually
10 fixed them and sold cars off the street. I had that
11 information so I went there to talk to him.

12 Q Did you get to talk to Mr. Jolly, his brother at that
13 time?

14 A Yes.

15 Q Do you know if Mr. Jolly's brother had any contact
16 with Samuel Jolly?

17 A Yes.

18 Q How do you know that?

19 A While I was there talking to the elder, I told him
20 that I was looking for his brother and to see if he can
21 get into contact with him. Eventually there was some
22 contact made, after I talked to him, and then I told him
23 that if that was him, you know, to go ahead and let me
24 talk to him. But he stayed over there and talked to his
25 brother and then after that he left and I left.

1 Q Okay. Ultimately were you able, ultimately did that
2 information, to your knowledge, to your knowledge was that
3 information relayed to Mr. Jolly, that you were looking
4 for him?

5 A Yes. I told him that, you know, as I got him outside
6 really, that is where I talked to him on the outside of
7 the cars and everything. And he said he was going to go
8 ahead and I thought, you know, look for him for me.

9 Q Okay. At any point did Mr. Jolly, I am sorry, I need
10 to substantiate which Mr. Jolly. At any point did Samuel
11 Jolly make contact with you after you requested that he do
12 so?

13 A I asked him just to, you know, if he sees him tell
14 him to get in touch with me. And I left it at that.

15 Q Did that ever happen?

16 A No.

17 Q Okay. Ultimately did you get a warrant signed for
18 Samuel Jolly?

19 A Yes, I did.

20 Q And I am going to show the warrants just so you can
21 tell the dates. I am going to hand you the warrant. Can
22 you tell me when a warrant was actually issued for Mr.
23 Jolly. Go to the second page, it is a little bit easier
24 to read, down at the bottom.

25 A It was on the 9th day of October, '97.

1 Q 1997?

2 A Yes.

3 Q Okay. And then ultimately how long did it take
4 before the warrant was actually served on Mr. Jolly. And
5 I will show you when the warrant, again, when the warrant
6 was actually served on Mr. Jolly.

7 A That will be 1/30/2013.

8 Q 2013?

9 A 2013, yes.

10 Q Okay.

11 THE COURT: What is the date in 2013?

12 MR. TEMPLETON: January 30th, 2013, before the
13 warrant is actually signed, or actually served.

14 THE COURT: Okay.

15 Q During that period of time, was law enforcement
16 looking for Mr., Samuel Jolly?

17 A Just basically that is how I would do it. I was not
18 getting anything from anywhere else but I did have, how I
19 would do it, I was in different places and looking for and
20 eventually, what happens sometimes is you can't find
21 anybody and so you kind of--

22 Q This case had kind of gone cold for a little while?

23 A Yes.

24 Q Ultimately though Mr. Jolly is picked up and brought
25 back here?

1 A That's correct.

2 Q Okay.

3 MR. TEMPLETON: That would basically be the testimony
4 regarding him leaving the State from Mr., from Detective
5 Marshall.

6 THE COURT: Okay. Ms. Williams, would you mind if I
7 ask him some questions so I can clarify this for me.

8 MS. WILLIAMS: Not at all.

9 EXAMINATION BY THE COURT

10 By The Court:

11 Q Detective Marshall, when you were meeting with Mr.
12 Jolly's brother?

13 A Yes, sir.

14 Q Okay. You told his brother you wanted him, you
15 wanted to get in touch with Samuel Jolly?

16 A Yes sir, that is correct.

17 Q And I was a little unclear, while you were there
18 talking with the Defendant's brother, did he get in touch
19 with Samuel Jolly?

20 A As far as I know, no.

21 Q Okay.

22 A With me.

23 Q While you were there he didn't. Okay. Did you tell
24 the Defendant's brother why you were looking for him?

25 A I think I did at that particular time because I, that

1 would have come out of my mouth normally.

2 Q What would normally would you have told him as far--

3 A -- I would have told him I had a warrant for his
4 arrest and he needs to turn himself in.

5 Q Okay.

6 A And I got no response. And in part I did not get to
7 talk to, other than the older one and he was suppose to, I
8 said, well then have him, you know. And I said, I'll
9 still be looking for him. You know, that's how it ended
10 there and I didn't have any more contact with this senior.

11 Q Was any other person, any other family member or
12 close personal friend of Samuel Jolly that you remember
13 contacting to try and get the Defendant, Samuel Jolly, to
14 come in?

15 A Right now, no, I don't.

16 Q You don't have any independent recollection?

17 A Yeah.

18 Q All right, thank you, sir.

19 THE COURT: I am sorry, Ms. Williams.

20 MS. WILLIAMS: Thank you, Judge, may it please the
21 Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 By Ms. Williams:

25 Q You were the lead detective in this case and so you

1 got a chance to look at the different reports and the DSS
2 worker's notes and everything. Isn't that right,
3 Detective Marshall?

4 A Yeah. Well, at that time it would be Detective.

5 Q Retired Detective Marshall?

6 A Yeah.

7 Q And you are aware that the responding officers in
8 this case, they didn't do an emergency protective custody
9 of **Minor** in this case, right?

10 A According to the report I saw that later on in my
11 investigation. But at that particular time, no.

12 Q And what they actually did is they advised Samuel
13 Jolly he needed to leave the house?

14 A I didn't know what they did.

15 Q Is it through your investigation that you found out
16 that they advised Samuel Jolly that he needed to leave the
17 house while this investigation was ongoing?

18 A I would have to say I don't remember, I don't have
19 that, it doesn't come back to me right now.

20 Q If you got a look at the DSS records or you got a
21 look at the incident report, would that refresh your
22 recollection?

23 A No, that wouldn't help me at this particular time
24 other than there was, they went out there and talked.

25 Q Well, they didn't remove **Minor** from the home, right?

1 A That is what the information is that everybody, yes.

2 Q And so they would have asked Samuel Jolly to leave,
3 they wouldn't have let them both live there, right?

4 A They might, I don't know, I can't answer that.

5 Q When you went to talk to Samuel Jolly's brother, when
6 did you go?

7 A During the investigation going around, trying to find
8 him.

9 Q Was it before or after October of 1997 when the
10 warrant was issued?

11 A I can't answer that.

12 Q But at any rate you never actually knew whether or
13 not Mr. Jolly's brother spoke to him?

14 A No.

15 Q Do you remember ever having a conversation with
16 Rebecca Jolly where she indicated to you that she had
17 contact with Samuel Jolly?

18 A No.

19 Q Do you remember ever having a conversation with
20 Rebecca Jolly that you advised her that you were looking
21 for Samuel Jolly?

22 A No.

23 Q I have no further questions.

24 THE COURT: Anything on redirect?

25 MR. TEMPLETON: Nothing, Your Honor.

1 THE COURT: You may step down. Any other witnesses
2 for the State?

3 MR. SPEARS: Your Honor, I think it would be
4 appropriate at this time, I think we need to call Yvonnia
5 Brown back to the stand regarding, just a very small
6 amount that she spoke to Mr. Jolly about as well.

7 THE COURT: Okay. Ms. Brown, you have already been
8 sworn in, you are still under oath, still good for the
9 remainder of the day, tomorrow will be different. Okay.

10 MR. SPEARS: If it please the Court, Your Honor,
11 thank you.

12 THE COURT: Sure.

13 MR. SPEARS: May I approach the witness, Your Honor.

14 THE COURT: You may.

15 DIRECT EXAMINATION

16 By Mr. Spears:

17 Q Ms. Brown, do you recognize this?

18 A Yes.

19 Q And can you explain to the Court what that is?

20 A These are my work activity notes, this is how we
21 document our case records.

22 Q And it is my understanding that on those notes, there
23 are two separate events?

24 A Yes.

25 Q Now, can you explain to the Court what those two

1 separate--

2 A The first event is my interview, interview with
3 Officer Caulder and Cassenino and **Minor** That is on the
4 22nd.

5 Q What is the second event?

6 A The second event is my interview with Mr. and Ms.
7 Jolly.

8 Q And what date did that occur again?

9 A August 25th.

10 Q What year?

11 A 1997.

12 Q Can you flip to page six of your notes, please. And
13 can you tell the Court what you wrote on that page?

14 A I did advise Mr. and Ms. Jolly the right of an
15 attorney. Again, Mr. Jolly said he did not, he had
16 already talked to an attorney and advised him to cooperate
17 with DSS.

18 Q And after that?

19 A Also explained to him that the case will be
20 transferred to the Sheriff's Department.

21 Q So you told him that you were sending this case to
22 the Sheriff's Department on August 25th, 1997, is that
23 correct?

24 A Yes, that is correct.

25 Q All right. No further questions.

1 THE COURT: Page six?

2 MR. SPEARS: Yes, page six, Your Honor. The second
3 portion on page six. Page six looks kind of like a
4 half-page.

5 THE COURT: One that says six.

6 MR. SPEARS: Yes, Your Honor, trying to help you.

7 THE COURT: I know and I do appreciate that. And,
8 Ms. Brown, it looks like part of this was cut off. I
9 mean, page six.

10 MS. BROWN: Yes.

11 THE COURT: Okay. Page six would normally had been,
12 I guess as long as page five.

13 MS. BROWN: Yes, sir.

14 THE COURT: And you don't, you didn't have any
15 control over these pages.

16 MS. BROWN: No.

17 THE COURT: You don't know what happened to the rest
18 of it?

19 MS. BROWN: No, sir.

20 THE COURT: Okay. All right. Any questions, Ms.
21 Williams?

22 MS. WILLIAMS: Yes, sir.

23 CROSS-EXAMINATION

24 By Ms. Williams:

25 Q Ms. Brown, I am going to refer to the same document

1 that you are holding, your notes from the investigation
2 into this case.

3 A Yes.

4 Q I am referring to page two. Half way down you will
5 see where it says recipient, you have written discussion.

6 A Yes.

7 Q And I am reading from there. It says worker, and I
8 am assuming that's you. And Officer Cassenino, is the
9 best I can properly pronounce that, and Caulder discuss
10 the **Minor** situation. Officer Cassenino, "he was not
11 comfortable", with doing an EPC but he does want the
12 father to leave. Is that accurately from your report?

13 A Yes.

14 Q I have no further questions.

15 MR. SPEARS: Briefly, Your Honor.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION

18 By Mr. Spears:

19 Q Ms. Brown, on that same line where you were just
20 reading from, I believe you stopped at, he doesn't want
21 the father to leave. Can you just continue from there?

22 A Until the investigation is complete.

23 Q So as a whole, can you just read that whole sentence
24 together?

25 A Worker Officer Cassenino and Caulder discuss **Minor's**

1 situation. Officer Cassenino said that he was not
2 comfortable with doing an EPC but he was not, he doesn't
3 want the father to leave or **Minor** until the investigation
4 is complete.

5 Q And the sentence after that, just for clarification,
6 please.

7 A **Minor** then stated that she was spending the weekend
8 with her grandmother in Berkeley County.

9 Q No more questions.

10 THE COURT: Anything on recross?

11 MS. WILLIAMS: Nothing, Judge.

12 THE COURT: Thank you, Ma'am. And you know you will
13 back?

14 MS. BROWN: Yes.

15 THE COURT: Okay, appreciate it. Anything else from
16 the State?

17 MR. SPEARS: Nothing from the State, Your Honor.

18 THE COURT: Anything from the Defense?

19 MS. WILLIAMS: Yes, sir.

20 THE COURT: Okay.

21 MS. WILLIAMS: Judge, this was my motion to preclude
22 the State from arguing flight as evidence of guilt because
23 that is what they will be using, this particular, what
24 they would call flight for. And specifically I am
25 referring to the time period between 1997 and 2013 when

1 this warrant was actually issued for his arrest. Our case
2 law, specifically State versus Grant points out that
3 evidence of flight from arrest is only marginally
4 probative as to guilt or innocence, that it needs to be
5 appropriate for it to first be entered into evidence or
6 discussed in trial. State versus Pagan, also from our
7 courts says that the critical factor in determining
8 whether this evidence is admissible is whether the
9 totality of the evidence creates an inference that the
10 Defendant had knowledge that he was being sought for an
11 arrest. The evidence that we have heard today, retired
12 Deputy Marshall, his evidence was basically, I told his
13 brother that I was looking for him for an investigation.
14 He didn't know if it happened before or after the warrant
15 had been issued. My hunch is it was probably before the
16 warrant was issued. And there is really no connection
17 between whether or not he knows that the brother actually
18 spoke to Mr. Jolly. So that testimony really gives us no,
19 sheds no light on whether or not you can find under the
20 totality of the circumstances that Mr. Jolly was fleeing
21 from an arrest. The information from Ms. Rebecca Jolly
22 was that, for the first time today after 20 years she is
23 remembering and telling people that she spoke to Mr. Jolly
24 in Georgia. That she denied ever speaking to Mr. Jolly to
25 DSS. That she denied ever meeting with Mr. Jolly to DSS.

1 That she knew he was in Florida and never reported that to
2 DSS or any of the authorities. But for the first time
3 today she comes to court and says that she told him that
4 they were looking for him. She doesn't know if it was
5 before or after the warrant was issued but based on her
6 timeframe it sounds like it was before the warrant was
7 issued because she said it was about a month after the
8 first allegations, the warrant was not issued until
9 mid-October. So based on what the State has provided
10 today, under the direction of State versus Grant and State
11 versus Pagan, they have not been able to bring enough
12 evidence to show that Samuel Jolly's leaving, which he was
13 instructed to leave, leaving and moving out of the house
14 and moving to Florida was some sort of flight indicative
15 of guilt. And I am asking you to preclude them from
16 discussing or referencing that period of time and
17 referencing, referencing it as if it is some sort of
18 guilty conscience on his part.

19 THE COURT: Okay. Mr. Templeton.

20 MR. TEMPLETON: Your Honor, going back to State v.
21 Pagan, the Court said in that case is sufficient, the
22 circumstances just find inference that the Defendant's
23 actions were motivated as a result of his belief that
24 police officers were aware of his wrongdoing and were
25 seeking him for that purpose. The awareness of the

1 wrongdoing is sufficient, the warrant doesn't have to be
2 issued. Our courts have never indicated that, at least to
3 my knowledge, that the warrant had to be issued at that
4 point. Just that he had knowledge that law enforcement
5 was looking for him for that purpose. And ultimately, in
6 State v. Beckham which is 334 SC 302, the Court found that
7 flight or evasion of arrest is basically a circumstance
8 that needs to go to the jury. Citing State v. Turnage.
9 In this case we have heard from basically three people
10 that indicate that Mr. Jolly at least had knowledge that
11 these allegations had led against him and then he left the
12 State. Primarily from our DSS worker, indicating him
13 directly that these allegations were going to be forwarded
14 to law enforcement, they were going to begin an
15 investigation. For him to then to leave the State after
16 being told directly by a DSS worker, it is in her notes,
17 that law enforcement would be investigating from here.
18 That along with Detective Marshall is indicating that he
19 attempted multiple times to try and find Mr. Jolly,
20 ultimately communicated through his brother that we are
21 looking for him, he needs to come in and talk to us or a
22 warrant would be issued. All of those allegations, all of
23 those instances together, I believe, points this Court in
24 the direction that Mr. Jolly had knowledge that they were
25 looking for him, that these allegations had been levied

1 against him at that point and he decided to leave the
2 State, flee the State from these charges at that point. I
3 believe that is sufficient for this case to go to the
4 jury. And just to add onto that, Ms. Jolly also
5 indicating that she spoke to him. She indicated that law
6 enforcement had asked her, at least on, had spoken to her,
7 they are looking for him, the warrant is going to be
8 issued. And she indicates that she passed that
9 information along to Mr. Jolly. I think that all of those
10 three things together and particularly two of them, the
11 two, the DSS worker and the, and Detective Marshall, that
12 testimony leads us to the conclusion that Mr. Jolly had
13 knowledge that he was being sought after for these crimes,
14 that the allegations had been levied against him at that
15 point and that is sufficient. We don't need to get to the
16 warrant before the flight. I think the allegations alone
17 is sufficient. That will be the argument of the State.

18 THE COURT: Okay. Ms. Williams, anything in reply?

19 MS. WILLIAMS: Yes, sir. First, Mr. Jolly was told
20 to leave the house, number one. Number two, there has
21 been no testimony that he was told he was not allowed to
22 leave the State. Number three, the case law is very
23 clear. Flight evidence is relevant when there is a nexus.
24 And the State has to prove this nexus between the flight
25 and the offense charged. And the evidence that they

1 brought today in order to argue that this is somehow
2 indicative of his guilt doesn't prove that nexus between
3 the flight and the evidence and the offense charged. And
4 the idea that our Court is saying that you have got to
5 show a nexus between the flight and the offense charged,
6 Mr. Templeton has argued that we don't need to charge an
7 offense for the flight to be indicative of guilt. The
8 wording is very clear. There has to be a nexus between
9 the flight of Samuel Jolly and the offense charged. And I
10 would say for the record, if the man was evading the
11 police and evading all of this, there are witnesses, I was
12 in contact of him. I am the mother of the victim, I am in
13 contact with him, clearly she had to have had a phone
14 number or an address or some way to reach him so that she
15 can contact him, she knew he was in Florida and she never
16 relayed this to the police. Clearly he wasn't completely
17 incognito changing his name, he has never changed his
18 name, there is no indication he has changed his name or
19 that he was somehow hiding from her too. There was an
20 avenue for the police to reach her, reach him. And in
21 light of the fact that the evidence is that he was asked
22 to leave the house and the State can't prove the nexus, we
23 are asking you to preclude them from arguing that the
24 period of time from 1997 to 2013 is somehow flight by
25 Samuel Jolly which indicates that he is guilty.

1 THE COURT: Okay.

2 MS. WILLIAMS: The time period after 2013, Judge, we
3 have no argument for that and would have no objections for
4 that period of time.

5 THE COURT: Okay. All right. Y'all give me a
6 second, I am going to look over these cases. I will come
7 back to you shortly with my decision. Can I see the
8 statement for the Jackson v. Denno thing.

9 MR. SPEARS: The DSS worker's?

10 THE COURT: Yes. I want to see the date.

11 MR. SPEARS: Would you want the statement or the
12 notes.

13 THE COURT: She said she had a statement.

14 MR. SPEARS: That is all of her notes and then her
15 statement.

16 THE COURT: I am just curious, in this Jackson v.
17 Denno hearing, go back to that, at some point Ms. Brown
18 indicated that she talked with Mr. Jolly. Okay. Mr.
19 Spears, you remember, you asked her that.

20 MR. SPEARS: Yes, Your Honor.

21 THE COURT: Do you have a date for when she said she
22 spoke with Mr. Jolly.

23 MR. SPEARS: Yes, Your Honor. On her notes that she
24 took, at the very front. So I believe it is page four of
25 her notes, the date on there is August 25th, 1997.

1 THE COURT: The incident report was done on August
2 22nd. Is that correct?

3 MR. SPEARS: That is correct, Your Honor. And just
4 for clarification purposes, on those same notes that Ms.
5 Brown made, the initial interview that she had was with
6 **Minor** solely. And that was on August 22nd of 1997. And
7 then three days later is when she spoke with Mr. Jolly on
8 August 25th of 1997.

9 THE COURT: Okay. All right.

10 MS. WILLIAMS: Judge, do you have a copy of the
11 incident report from the two officers that reported, that
12 is dated August 22nd of 1997?

13 THE COURT: I have got the incident report, criminal
14 sexual conduct. It is two pages, August 22nd.

15 MS. WILLIAMS: Yes, sir. From Officer Caulder at the
16 bottom?

17 THE COURT: Yes, I have got that. Okay. So, here is
18 the way I see everything. From the incident report it
19 looks like the police at that time knew that the victim
20 had accused Mr. Jolly of criminal sexual conduct in the
21 first degree and set forth the incidents, that he had been
22 bothering her since the year before. And that he had
23 placed his finger in her vagina at least two separate
24 occasions. That is in the incident report on October, on
25 August 22nd. Right?

1 MS. WILLIAMS: My understanding of the incident
2 report on August 22nd was that these two officers had gone
3 out to the house because Yvonnia Elmore, the DSS worker
4 had asked them to accompany her.

5 THE COURT: Right.

6 MS. WILLIAMS: At that time they refused to take the
7 juvenile into emergency protective custody and decided
8 that DSS would begin an investigation.

9 THE COURT: Right.

10 MS. WILLIAMS: Yes.

11 THE COURT: It sets forth the incidents in some
12 specificity at that time.

13 MS. WILLIAMS: Of that she was telling them at the
14 time.

15 THE COURT: Exactly. Okay. Now, then on August 25th
16 Mr. Jolly, the Defendant was interviewed. Correct?

17 MS. WILLIAMS: Yes, sir.

18 THE COURT: Okay. And at that time he was made aware
19 of the allegations of wrongdoing, that had been charged
20 against him.

21 MS. WILLIAMS: Yes, sir.

22 THE COURT: Okay.

23 MS. WILLIAMS: By a DSS worker, Ms. Elmore.

24 THE COURT: Right. And something else on August
25 25th. When he met with them he, the Defendant, Mr. Jolly,

1 told Ms., now Brown, that he already had an attorney, that
2 the attorney had told him to cooperate and she advised him
3 that this matter was being turned over to the police.

4 MS. WILLIAMS: My understanding is that she read him
5 his rights, yes sir. That she read his rights to him,
6 asked him if he wanted to consult an attorney. He said he
7 had consulted an attorney and he was going to go ahead and
8 cooperate with the DSS investigation.

9 THE COURT: Right. And she told him that it was
10 being turned over to the police according to what she
11 testified to.

12 MS. WILLIAMS: Yes, sir. The last page of that, and
13 as Your Honor pointed out during your questioning of her,
14 that page is cut off. And so you see that last sentence
15 that says, I advised Mr. Jolly that we were going to turn
16 the investigation over. Yes.

17 THE COURT: Right, okay. According to my reading of
18 the case law. It says that you can get into, it says that
19 the actions were motivated as a result of his belief that
20 police officers were aware of his wrongdoing and were
21 seeking him for that purpose. Okay. Now, clearly he knew
22 that he was, they were aware of his wrongdoing, of that
23 this girl had reported. Okay. And subsequently I know we
24 had Detective Marshall indicating that he talked to his
25 brother, the brother apparently stepped away for a minute

1 but he had no knowledge of whether his brother ever talked
2 to him or not. To me the nexus is whether or not he was
3 aware of his wrongdoing. And he was aware of his
4 wrongdoing. And so now he is being tried for that. And
5 so there is a nexus of him being aware of his wrongdoing
6 and this current trial. So I am going to let them go into
7 the fact that he left, okay, from that time period. Ms.
8 Williams, I am going to note your objection to my ruling
9 so that is going to be preserved on the record. But it is
10 up to the jury to determine, I am going to let the jury
11 hear it, they can determine whether he has got a good
12 explanation for it, whether they believe if DSS told him
13 to leave the house, that he believed that they told him to
14 leave the State. Okay. That is his shot. But I note
15 your objection to my ruling.

16 MS. WILLIAMS: Thank you, Judge. If I may, one
17 little side note on that. I think the Court is also
18 required to make a finding under the relevance portion of
19 the argument that this evidence of flight as guilt is more
20 probative than it is prejudicial. The Supreme Court in
21 State versus Grant said that, evidence of flight is only
22 marginally probative as to the ultimate issue of guilt or
23 innocence. In a case like this that is 20 years old that
24 there is some conflicting testimony about whether or not
25 he knew about the charges, our argument would be that this

1 is certainly more prejudicial especially when in light of
2 the fact that most of the evidence in this case is gone
3 and the only evidence that we do have is testimonial.
4 This would be so much more prejudicial than it would be
5 probative to the guilt of Mr. Jolly.

6 THE COURT: Well, I am finding it more probative than
7 prejudice because I have, the only reason I think the jury
8 deserves an explanation why this case is here at this
9 time, some explanation.

10 MS. WILLIAMS: And to be clear, I have no objection
11 for the res gestae of the case, hey, this warrant was
12 issued then. We couldn't find him, he left, we couldn't
13 find him. The problem is when the State starts arguing,
14 as a result of that he is obviously guilty.

15 THE COURT: And I understand that and, Ms. Williams,
16 were I in your shoes I would be arguing probably not as
17 well as you are but I would be arguing your position as
18 well. It bothers me that he knew absolutely what the
19 charges were against him and that he left. Okay. And was
20 gone for an extended period of time. Now, that is not to
21 say, I will say on the record, you know, Ms. Jolly's
22 testimony did not help my decision in this. She was under
23 an obligation, I think, to tell the police that she had
24 contact with Mr. Jolly and it makes no sense to me that
25 when her daughter makes allegations like that that she

1 meets with him and does not report any of this to the
2 police. It doesn't make sense to me. So, but I am going
3 to let it in. I am preserving your objection for the
4 record and we can find out whether I am right or not.

5 MS. WILLIAMS: Thank you, Judge.

6 THE COURT: All right. Now, for the record, the
7 winner in the who is going to be the Foreman competition,
8 juror number 151 is the Foreperson. Now, is the State
9 ready to proceed?

10 (Whereupon, Court's Exhibit 1 was marked for
11 identification only.)

12 MR. TEMPLETON: We are ready, Your Honor.

13 THE COURT: Is the Defense ready to proceed?

14 MS. WILLIAMS: Yes, sir.

15 THE COURT: Okay. Bring the jury on out.

16 (Whereupon, the jury came into open court at
17 approximately 2:50 p.m.)

18 THE COURT: If y'all don't mind sliding down. I
19 remember years ago I had a school teacher who was my
20 Forelady, Foreperson. And what she did and I thought it
21 was very good, was the only assigned seat is for the
22 Foreman. But what she did is she made sure that everybody
23 in the jury panel moved, they didn't sit in the same seat
24 the whole time, they rotated through. And the reason for
25 that is so that everybody gets a little bit of different

1 perspective. You are sitting back there, you are a little
2 further away from the witness. What she did, she lined
3 everybody else out just like a good teacher in the second
4 grade would do and marched them all in and rotated
5 everybody through. So y'all need to remember, it is good
6 for y'all to change seats. You get a little bit of
7 different perspective on everything. So this isn't
8 church, you don't have your assigned pew. Okay. Y'all
9 just move through except for you, you are assigned. And
10 for the two alternates, y'all are assigned. Okay. Now,
11 before we get started, y'all have been picked as jurors.
12 Before we get started in this case y'all have to be sworn
13 in as the jury. So I need for y'all to all stand, raise
14 your right hand and the Clerk is going to swear you in.

15 (WHEREUPON, the jury was sworn at 2:51 p.m.)

16 THE COURT: Ladies and gentlemen, the case that we
17 are about to try is the case of State of South Carolina
18 versus Samuel Jolly who is the Defendant in this case.
19 This trial like all trials is probably going to be
20 different from what you might expect. Many people have
21 not had a chance to tend actual court sessions as you are
22 doing now and you may think from watching television or
23 movies or reading books that trials are always full of
24 high drama, intense actions and riveting circumstances.
25 While all of these things may be true at times this trial

1 is not for entertainment. It is a fundamental part of our
2 democracy. It is a search for truth in an effort to make
3 sure that justice is done between the parties before this
4 Court. Searching for the truth and making sure that
5 justice is done is often slow, deliberate and repetitive.
6 The opposite of what you may have seen on television or
7 movies or read in books. The courtroom is a place of
8 honor dedicated to the protection and preservation of
9 citizens rights through what many have called the greatest
10 justice system ever created. The attorneys appearing
11 before you are advocates for the parties that they
12 represent. But first and foremost they are officers of
13 this court sworn to uphold the integrity and fairness of
14 our judicial system and to help you in the search for the
15 truth. You will find them to be professional and
16 confident and ethical in their representation of their
17 clients interest. And as a side note, you should note
18 that by being in South Carolina you are very lucky because
19 we have a wonderful bar, the attorneys that have appeared
20 in front of me have always come prepared and they do a
21 great job. So, I hope you will never need an attorney but
22 you are in the right State to be represented. Remember,
23 you have just taken an oath to try this case and reach a
24 true verdict. You are also expected to be professional,
25 reasonable and ethical. Now, my instructions are intended

1 to give you an introduction on the trial of this case.
2 These remarks are not a charge on the law. I will
3 instruct you on the law at the end of the trial before you
4 retire to consider your verdict. This is merely an
5 explanation of the procedure we will follow at trial so
6 that you might better understand what is happening and
7 going to happen. The Defendant is charged by two
8 indictments that have been filed in this court. One is
9 for lewd act and the other is for criminal sexual conduct
10 with a minor and the victim under eleven years of age.
11 Now, I will explain the elements of those crimes later.
12 The indictments simply, are simply the charge by which
13 this case is brought into court. It is not in any sense
14 evidence of any of the allegations that it contains. The
15 Defendant has plead not guilty to these charges. The
16 State therefore has the burden of proving each and every
17 one of the elements of the indictment beyond a reasonable
18 doubt. It will be your duty, ladies and gentlemen, to
19 decide whether the State has met that burden. Your duty,
20 your purpose as jurors is to find and determine the facts.
21 You are the sole judges of the facts. If at any time
22 during this trial I make a comment regarding the facts you
23 must disregard it. You are to determine the facts from
24 the testimony that you hear from this witness stand right
25 here and any other evidence that is introduced in court.

1 It is up to you to determine the inferences which you feel
2 may properly be drawn from this evidence. It is
3 especially important that you perform your duty of
4 determining the facts diligently and consciously because
5 ordinarily there is no way to correct an erroneous
6 determination of facts by a jury. The same law that makes
7 you the judges of the facts makes me the Judge of the law.
8 The law that is given by the Court is the only law you may
9 consider. You must accept it and follow it even though
10 you may disagree with it. I cannot tell you what the
11 facts are and you cannot disagree with me about what the
12 law is or should be. Your job is to take the law as I
13 give it to you and apply it to the facts as you find them
14 from the testimony of the witnesses and any other evidence
15 that is introduced. After doing that you will render your
16 verdict, a true verdict under the solemn oath that you
17 just took as jurors. Until I advise you to begin your
18 deliberations you must not discuss this case with anyone
19 including your fellow jurors, friends, family members, and
20 anyone else, particularly those involved in this case.
21 This includes discussions face to face and those by
22 telephone, email, texts, blogs or any other method of
23 communication. You may not use a computer, cellular phone
24 or other electronic device with communication capabilities
25 at any time while in the courtroom or during

1 deliberations. During your breaks or meals or overnight
2 you may use these devices but not to investigate anything
3 about this case. You may not at any time use these
4 devices to get or send information about this case. This
5 includes information about a party, a witness, an attorney
6 or court officer, news accounts about the case, research
7 on any topics raised, any topics you may think would be
8 helpful in deciding the case or any testimony presented by
9 any witness. During the trial do not read, listen to or
10 watch any news reports about this case. I don't see a
11 reporter in here, I don't know that there is going to be
12 any but you need, I am just cautioning you, if you happen
13 to open the paper and you start seeing something you don't
14 read it. Okay. This includes anything that may be in the
15 newspapers, on the internet, radio or television. You
16 must not consider anything you may have read, you may have
17 read or heard about the case outside of the courtroom,
18 whether before or during the trial. After the case is
19 submitted to you you must discuss it only in the jury room
20 with your fellow jurors. The attorneys and parties in
21 this case have been advised that you are not to speak,
22 that they are not to speak to you at all. So if you see
23 anyone involved in the case and they do not even say
24 hello, they are not being unfriendly. They are just
25 following my instructions. It is important that you keep

1 an open mind and not decide any issue in this case until
2 all of the evidence has been presented, the parties have
3 made their closing arguments and I have instructed you on
4 the law. It is your solemn responsibility to determine
5 the guilt or innocence of the Defendant. And your verdict
6 must be based solely on the evidence that is presented to
7 you in this courtroom and on the law as I instruct you
8 during and at the close of this trial. In just a moment
9 the Solicitor will make what is called an opening
10 statement in which the Solicitor will explain to you the
11 issues in this case or at least what the Solicitor
12 believes of the issues in this case. The attorney for the
13 Defendant may also make an opening statement, although he
14 or she is not required to do so. What the attorneys tell
15 you during their opening statements is not evidence, it is
16 only their contention as to what the issues are. The
17 evidence in this case will be presented to you by the
18 testimony of sworn witnesses from this witness stand or by
19 any exhibits that may be introduced into evidence. From
20 time to time during the trial the attorney may have a
21 question of law to discuss with me or you may see them
22 approach the bench or some times I might, myself, find it
23 necessary to excuse you from the courtroom for a short
24 period while the attorneys and I discuss a matter of law.
25 You are excused because you are the judges of the facts.

1 And sometimes when I am discussing matters of law with the
2 attorneys it may be necessary for me to make some comment
3 on the facts in connection with my ruling on whether or
4 not a particular law applies. If these incidences, I will
5 excuse you from the courtroom while these discussions take
6 place so that you will be, so that you will not be
7 influenced in any way by anything that I might say or do
8 in connection with the facts. In determining what the
9 true facts are in this case you must decide whether or not
10 the testimony of the witness is believable. It is my
11 responsibility to rule as a matter of law as to whether
12 certain testimony is admissible. But once the testimony
13 is admitted, whether or not you believe it is solely for
14 you to determine. In deciding whether to believe a
15 witness you have the right to consider the interest of any
16 witness, the biased of any witness, prejudice of any
17 witness, the opportunity for the witness to have seen the
18 matters and things about which the witness may testify and
19 the way the witness acts on the witness stand. You have a
20 right to consider anything that is in the record that will
21 help you evaluate the testimony of a witness. That means
22 it is your duty to pay close attention to these
23 witnessers, to observe them, to listen to them and pay
24 close attention to the attorneys and to the Court. Please
25 do not let your thoughts wonder but give complete

1 attention to the testimony in this case so that at the end
2 of all the testimony, after the arguments of counsel and
3 my charge on the law you will then be in a position to
4 determine what the true facts are and apply the law to
5 those facts and render a true verdict. It is your added
6 duty, Mr. Foreman, to preside in the jury room and be the
7 jury spokesman in court and it is your duty to write the
8 verdict and I will give you further instructions about
9 that at the conclusion of the case. Is the State ready to
10 proceed?

11 MR. SPEARS: Yes, Your Honor.

12 THE COURT: Mr. Spears.

13 MR. SPEARS: If it please the Court, Your Honor.

14 THE COURT: Yes, sir. Come on down.

15 MR. SPEARS: Good afternoon, ladies and gentlemen.

16 As you heard, my name is Mike Spears, I represent the
17 State alongside Mr. Templeton here. Now, we are here
18 because of two charges. The Judge has already told you,
19 we are here for a charge of criminal sexual conduct on a
20 minor under eleven years of age and lewd act. Now at the
21 end of this trial, when all of the evidence has been given
22 to you, the Judge is going to charge you fully with the
23 law that is applicable to this case. But for right now,
24 just to help in the context, the evidence that you are
25 going to see going forward, I am going to give you a brief

1 preview of that law. So in South Carolina it is unlawful
2 for an individual to commit sexual battery on a minor
3 under eleven years of age. Okay. So what is sexual
4 battery. Sexual battery is the intrusion of any part of
5 an individual's body into the genital or anal openings of
6 another. So if you take that and put it into the law,
7 under criminal sexual conduct on a minor, it is unlawful
8 for an individual to place any part of their body into the
9 genital or anal openings of another when that other is
10 under eleven years of age. Following that, the charge for
11 a lewd act on a minor under sixteen years. Now, in South
12 Carolina, a person over the age of fourteen, willfully and
13 lewdly attempts to commit a lewd and lascivious act on an
14 individual under sixteen years of age with the intent of
15 arousing or appealing to or gratifying sexual desires of
16 either the assailant or the victim. So those are the,
17 that is the preview of the law that is going to be applied
18 here. And as you have already been told, it is our
19 responsibility to prove this beyond a reasonable doubt.
20 What is important to remember is that we don't have to
21 prove it beyond any and all doubt, however that simply
22 means that at the end of this trial if you are firmly
23 convinced that the alleged actions occurred then you must
24 find the Defendant guilty. So let's go back, we are going
25 back, we are going back to 1997. Therein Ms. **Minor**

1 **Minor** I say **Minor** in 1997 was ten years
2 old. She lived in Dorchester County with her mom and her
3 step-dad. Her step-dad, at that time, was Samuel Jolly.
4 As I say, you are going to hear in this case, typically
5 evidence that is in the form of testimony and exhibits.
6 Keep in mind this happened in 1997, this was before
7 everything was captured on cell phone footage. So the
8 majority of what you are going to hear is testimony. And
9 you are going to hear evidence that while **Minor**
10 ten years old, lived in Dorchester County with her
11 step-dad, Samuel Jolly, that she was exposed to increasing
12 sexual acts by Mr. Jolly. You are going to hear evidence
13 that states that he fondled her breasts and talked about
14 puberty, that he fondled her vagina and talked about pubic
15 hair. That he exposed her to pornographic cartoons,
16 pornographic parities of cartoons that are typically meant
17 for kids. You are going to hear about how he made her
18 sexually gratify him with a stuffed animal. And finally
19 you are going to hear that when she was ten years old he
20 placed his fingers inside of her vagina. Okay. Now you
21 are also going to hear that Samuel Jolly knew he was being
22 investigated for these acts and that he left. Ladies and
23 gentlemen, I submit to you that at the end of this case,
24 when you hear the evidence, all that has been given to
25 you, that you will be fully convinced that Samuel Jolly is

1 guilty of criminal sexual conduct on a minor in the first
2 degree, a minor under eleven and that Samuel Jolly is
3 guilty of lewd act on a minor under sixteen years of age.

4 Thank you.

5 THE COURT: Thank you, Mr. Spears. Mr. Kornegay.

6 MR. KORNEGAY: Your Honor, may we approach.

7 THE COURT: Sure.

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 (Whereupon, the Defense has renewed their objection
12 on flight per The Court at the bench.)

13 THE COURT: Mr. Kornegay.

14 MR. KORNEGAY: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. KORNEGAY: Good afternoon, ladies and gentlemen,
17 my name is John Kornegay and I along with Ms. Michelle
18 Williams am representing Mr. Samuel Jolly. Imagine that
19 you have been accused of the most heinous crime possible
20 and yet you didn't do it. The case you are going to hear
21 about this week involves allegations of a heinous crime,
22 sexual assault. It is the type of crime where, when we
23 hear an allegation it creates an extreme emotional
24 response. That is the type of crime that Samuel Jolly has
25 been charged with. But I want to remind you that the

1 whole reason we are standing before you today is because
2 he has plead not guilty. Now, our first reaction when we
3 hear an accusation like this is to say, well, prove you
4 didn't do it, prove your innocence. But it is very
5 difficult, sometimes impossible to prove a negative, to
6 prove that you did not do something. And the law
7 recognizes this. That is why the law places the burden on
8 the State to prove the accused guilt beyond a reasonable
9 doubt. Now the Judge is going to instruct you as to the
10 law in this case. And he will use a phrase, the
11 presumption of innocence. He will say something like, the
12 Defendant is cloaked in a presumption of innocence. Now,
13 this is a phrase that we have all heard but it is not
14 something that we live out in our day-to-day lives, myself
15 included. When we turn on the TV or open the newspaper
16 and see a suspect in a murder case has been arrested or a
17 bank robbery suspect. We say, oh, they caught the
18 murderer or they arrested the robber. And that is fine
19 for us to do in our day-to-day lives but you cannot do
20 that today unless and until the State proves each element
21 of the crimes charged beyond a reasonable doubt. Mr.
22 Jolly is not simply not guilty. He is innocent. Now I
23 ask that you pay close attention to the witnesses
24 presented by the State. I want you to consider their
25 motives, consider their testimony, weigh their evidence,

1 consider their lack of evidence and I ask after weighing
2 the credibility of the witnesses and examining their
3 evidence you return a verdict of not guilty. Thank you.

4 THE COURT: Thank you, Mr. Kornegay. Is the State
5 prepared to call its first witness?

6 MR. TEMPLETON: The State calls Minor

7 being

8 first duly sworn, testified as follows:

9 CLERK OF COURT: State your full name for the record.

10 Minor My name is Minor

11 DIRECT EXAMINATION

12 By Mr. Templeton:

13 Q Good afternoon.

14 A Good afternoon.

15 Q If you would, Minor tell the jury when you
16 were born?

17 A I was born .

18 Q And in August then of 1997 were you ten years old?

19 A Correct.

20 Q Okay. How do you know the Defendant, Samuel Jolly?

21 A He was married and still is married to my mother,
22 Rebecca Jolly.

23 Q Okay. When did you first meet Mr. Jolly?

24 A In 1996, my mother brought him to our house, we were
25 living in North Charleston at the time. They had been

1 dating for about four months prior and she wanted me to
2 meet him as a potential wife-mate.

3 Q Ultimately did they get married?

4 A Correct.

5 Q Okay. And at some point in 1997 did y'all move?

6 A We did.

7 Q Where did y'all move to, I apologize, 1996 I believe?

8 A Correct. In '96 we moved from North Richburg Drive
9 in Charleston to Shirley Lane in Ladson.

10 Q Is that in Dorchester County?

11 A Correct.

12 Q If you would, at that time what school were you
13 attending?

14 A Rollings Middle School.

15 Q Do you remember what grade you were in?

16 A Fifth, I was in the fifth grade.

17 Q When you started there?

18 A When I started there. It was the year, it is now
19 Rollings School of the Arts so this was the year prior to
20 that actually happening. It was just a regular middle
21 school when I attended fifth grade.

22 Q When you moved to Dorchester County did some things
23 start occurring between you and Mr. Jolly?

24 A Yes.

25 Q If you would, go into the first thing that you

1 remember of a sexual nature that Mr. Jolly did to you.

2 MS. WILLIAMS: Objection, Your Honor. Just based on
3 my pretrial motions regarding Lyle and 404(b).

4 THE COURT: Okay. And I note your objection and my
5 rulings from the pretrial still stands.

6 MS. WILLIAMS: Thank you, Judge.

7 THE COURT: But your objection is preserved for the
8 record. Thank you. You may go ahead.

9 Q I will repeat the question.

10 A Repeat the question, please, sir.

11 Q Absolutely. Once you moved to Dorchester County on
12 Shirley Lane as you just testified to, if you would, tell
13 this jury basically the first active sexual misconduct
14 that you remember between you and Mr. Jolly.

15 A I have two incidences coming to mind. So the very
16 first that I can bring up is when I was, I was about nine,
17 ten, ten years old at that time and I was starting to feel
18 some pain in my breasts from their growing. I was
19 starting to come into puberty a little bit. And I
20 remember addressing these issues out loud to my mom and my
21 step-dad. My step-dad then came to me and asked me to
22 pull my shirt up and of course I wasn't wearing bras at
23 that time. So I was completely nude and he was down on
24 his knees in the living room and was touching my breasts
25 like fondling them telling me basically like, this is

1 normal and your boobs are going to get bigger and so they
2 are going to hurt. Basically being very doctorly about
3 it.

4 Q Who was present during that occurrence?

5 A Just me and Mr. Jolly.

6 Q If you would, what is the next thing you kind of
7 remember happening to you, or Mr. Jolly doing to you?

8 A He really liked to have me on his lap on the
9 computer, that was something that we did a lot. And that
10 continued from the last house. So when we were there he
11 did have me sit on his lap and we had a computer room that
12 was a finishing garage. So when you went in there, it was
13 like a step down and it was carpeted and the door is shut
14 and it was very, like a heavy door. So it is like sound
15 proof basically. So we went in there a lot and sat on the
16 computer and he had these really weird cartoons and it was
17 the Flintstones and it was very sexually graphic. There
18 was images of a elephant trunk being inserted into Wilma's
19 vagina through the window and Fred Flintstone naked with
20 an erection and ejaculating all over the walls and stuff.
21 And it was done in like a comic strip type, like if you
22 were reading a Flintstone's comic book but it was sexual
23 in nature.

24 Q Was this something that you found on the internet or
25 was this something that--

1 A No.

2 Q Okay, who showed this to you?

3 A Mr. Jolly.

4 Q And you would sit on his lap while he showed it to
5 you?

6 A Yes.

7 Q At that point did he do anything to you?

8 A Yes, he would stick his hands down in my panties. He
9 didn't penetrate me at that time but it was a lot of just
10 touching my vagina area.

11 Q Okay. Did you feel comfortable?

12 A No.

13 Q Okay. Tell the jury how you felt?

14 A I felt very awkward for a lot of it. It had been
15 happening for a while at that point so I kind of numbed
16 myself--

17 MS. WILLIAMS: Objection, Your Honor. Pretrial
18 motion again, Lyle and 404(b).

19 THE COURT: Okay. She just needs to maintain just
20 what happened from August of 1996 forward. Okay. No
21 reference to anything else.

22 MR. TEMPLETON: Yes, sir.

23 MS. WILLIAMS: Correct.

24 A You mean before the house, I just meant that it had
25 been happening a while in that house. So I kind of became

1 numb and I didn't really object a lot or way, I was
2 basically very silent a lot of the time and I just kind of
3 complied with what he was doing.

4 Q So you had just basically kind of become numb to it?

5 A Yes.

6 Q Okay. Do you remember, did these occur regularly?

7 A Yes.

8 Q I mean, could you give an idea on how often these
9 types of events would occur during that period, while you
10 were in the Shirley Lane house?

11 A In the Shirley Lane house they were pretty spread out
12 but continued to happen regularly. So I would say at
13 least once a month something was happening. My
14 recollection as to exactly how spaced out they were is not
15 very good.

16 Q And this was 20 years ago?

17 A Correct.

18 Q Okay. If you would, tell the jury the next thing
19 that you kind of remember separate from those other
20 events?

21 A The next thing is another time where I was, my mom
22 had a couch that was a sectional. So there was like a
23 long part I would lay on a lot to watch TV in the living
24 room. And at that age I did walk around the house with a
25 long t-shirt and panties, my pajamas basically. If I

1 didn't have school or if it was a weekend day I was just
2 always in my pajamas. And so in a t-shirt and panties on
3 the couch and Mr. Jolly was on his knees on the floor in
4 front of me and he had my panties down and he was touching
5 my vagina on the outside and basically like explaining why
6 I was growing pubic hair there which was confusing to me.

7 Q Okay. The time of day when most of these things
8 would occur, do you kind of remember when most of these
9 allegations would have occurred?

10 A Yes, after school a lot. My mom worked full-time and
11 she usually didn't get home until like 6:00 or 7:00 in the
12 evening. So if it was a school day, from the time I
13 walked in the door after school I was subject to whatever
14 he wanted. At the time his job, he either wasn't working
15 or he was working at this music studio. So it was odd
16 hours, he would be in the bed all day asleep until I got
17 home from school and then he would get up.

18 Q If you would, tell the jury the next thing that you
19 remember happening at Shirley Lane?

20 A So the next incident is where my mom had their
21 bedroom, she has this big waterbed and I was definitely in
22 pajamas. I remember being in like a, almost like a pajama
23 dress, old school, '90s thing. And my mom was at home so
24 I would either like stay home from school sick that day or
25 she was gone somewhere for the weekend shopping or

1 something and I remember being in my parent's bedroom. I
2 don't recall why I went in there but I was definitely in
3 there laying in the bed. I remember it was early daytime
4 because the sunlight I could see, it was very bright but
5 it was covered because they had dark curtains in there.
6 And I can remember him being on top of me and I remember
7 his face right in my face and I can feel his breath on my
8 face, I could hear his breath in my ear. And I laid very
9 still like a board on the waterbed but it was like wobbly
10 because it was moving and he inserted, I believe it was
11 his middle finger, inserted into my vagina. He was
12 talking to me during that time, like, I guess trying to
13 keep me calm but I don't remember exactly what he was
14 saying to me. I just remember the breathing, the
15 breathing on my face and his face right in my face and the
16 feeling of the finger in my vagina.

17 Q And we are talking about Mr. Jolly sitting right over
18 here?

19 A That's correct.

20 Q Okay. Was there an incident where he had offered you
21 some money?

22 A Yes. There was a strange time, I came home from
23 school one day and he was sitting on the couch, there was
24 like two recliners that were attached to the long part.
25 And he always sat in one and my mom sat in the other one.

1 So he was in his little seat and he took \$1,500.00 dollars
2 in cash and laid it out on the coffee table in front of me
3 and then he asked me if I wanted this money, if I would
4 sit on his face. And he like sat back in the recliner and
5 he leaned his head back like this to kind of like
6 demonstrate, this is how my face is going to be. And I
7 want you to put your vagina on my face.

8 Q Did you end up doing that?

9 A I did not. At that time I was kind of confused by
10 that much money. I didn't even get an allowance then.
11 So, I didn't even know what to do with money, spend it or
12 whatever. So I just kind of laughed it off as a joke
13 really. He didn't like force me at that time to do
14 anything. So I just kind of haha and then I went on to
15 play with my friends.

16 Q Do you remember anything that happened with a stuffed
17 animal?

18 A Yes. There was sometime where I, I feel like there
19 was some erectile disfunction happening. He was
20 explaining to me that his penis was not working right and
21 that he needed some help. So where my mom, her waterbed
22 there was a headboard and it had these shelves and she was
23 a knickknack lady so she had all of these like little
24 knickknacks and she had a few stuffed animals. There was
25 one there right next to where he was laying and he took it

1 off of the shelf and handed it to me and he always slept
2 naked. So all he had to do was peel the sheet back and he
3 was just naked all the time. And so he pulled the sheet
4 back and handed me the stuffed animal and asked me to rub
5 his penis with the stuffed animal to arouse him.

6 Q Did you do that?

7 A I did.

8 Q And that was at his request?

9 A Yes.

10 Q When you say he was kind of in bed naked a lot, I
11 mean how often were you seeing him?

12 A Every day.

13 Q All right. Was it common for you to see him naked?

14 A Yes.

15 Q Okay. And, again, were all of these single events.
16 Are these all single events or were these happening kind
17 of over and over again.

18 A Several had happened over and over. The penetration,
19 I can't recall it happening more than that one definite
20 time. But I definitely blocked a lot out from that time.
21 I don't have a lot of memory of even years before that, I
22 have blocked out so much so I can't definitively say that
23 more happened or less or, you know. I just know that
24 those things did occur, they were occurring regularly and
25 they, I was coming home from school every single day in

1 fear, in terror, of, okay, what is it going to be today.

2 Q Do you have any doubt in your mind that he penetrated
3 you on that occasion?

4 A No doubt at all.

5 Q Okay. What was the kind of the last thing you
6 remember happening before you told?

7 A Before I told, the very last incident that I remember
8 was, to me it was kind of traumatizing and I think that
9 might have been like the pushover edge for me. He liked
10 to chase me around the house a lot in a game like jump out
11 behind a door or behind a corner. And so he did that and
12 he was chasing me around the living room and pulled my
13 pants down. So I am running around with no pants. And I
14 ran from, I was getting increasingly scared at this point
15 because after the penetration happened I was really
16 worried, like this is going to get worse. And I was
17 already eleven, or ten, almost turning eleven then. So I
18 was a little bit more mature to figuring out what was
19 going on. So, I started getting more scared and instead
20 of just numb to it I was like starting to panic. So I
21 started screaming and crying and I ran from the living
22 room into my bedroom which was right next to my parent's
23 room. And I ran to my bed and got down on my knees and I
24 smashed my face into my bed and I was just screaming,
25 crying. And he came in there and instantly was apologetic

1 and I am so sorry. And so I stood up and turned around
2 and he was on his knees on the edge of the floor standing
3 below me and he took his hands and grabbed my butt cheeks,
4 by butt. And he said, I am so sorry, he said A-S-S. He
5 said your ass is just so great I can't help myself. And
6 so I guess I just kind of had to take that as okay.

7 Q What was your level of dress when that was going on?

8 A I can't remember if I had a shirt on or not but I was
9 definitely no pants at all, no underwear at all.

10 Q Would that have been your decision or would that have
11 been Mr. Jolly's decision?

12 A That would have been his decision.

13 Q How would that have gone down, I mean how would that
14 have happened, how would you have gotten that level of
15 undress?

16 A He was definitely like in a playful, like he pulled
17 them down and off as we were like in the living room.

18 Q Was that a regular thing?

19 A Pulling my pants down, yes, that kind of happened a
20 lot. But mostly it was during times where I happened to
21 just be in like a long t-shirt and panties and there was a
22 lot of him putting his hand in my underwear.

23 Q Who is the first person you kind of told that you
24 were feeling uncomfortable about Mr. Jolly?

25 A My mom.

1 Q Did you tell her what was happening or just that you
2 were uncomfortable around him?

3 A The first time, well, before they got married I
4 expressed my discomfort around him.

5 Q Let's move on from that for just a second. Did you
6 ever talk to your grandmother about what was happening?

7 A Yes. I told my mom, that didn't really go anywhere.
8 So then I told my grandma.

9 Q Okay. Ultimately did anything come out of telling
10 your mom and your grandmother about this?

11 A No.

12 Q Who did you have to tell before something happened?

13 A I told my gym teacher, that is who I told.

14 Q What happened after you told your gym teacher?

15 A She told the guidance counselor and the guidance
16 counselor then contacted DSS.

17 Q Do you remember DSS coming to talk to you?

18 A I do.

19 Q Okay. Did you tell them about some of the things
20 that were happening?

21 A I did, including the penetration.

22 Q At that point what, what happened with you at that
23 point?

24 A I went to go stay at my grandparents house, I was
25 just told that he was, he had to leave--

1 MS. WILLIAMS: Objection, Your Honor, hearsay.

2 THE COURT: She doesn't need to go into that part of
3 it. She went to live with her grandmother.

4 MR. TEMPLETON: Yes.

5 THE COURT: Okay, thank you.

6 Q Approximately how much time did you stay with your
7 grandmother after that, do you remember?

8 A I, my recollection of it is around two weeks I was
9 living there. I went to school over there and everything.

10 Q Were you still coming back to Rollings?

11 A Yes. My grandmother was transporting me.

12 Q Okay.

13 A Back and forth to school.

14 Q Do you remember going down to the Lowcountry
15 Children's Center after these allegations came out?

16 A Yes.

17 Q Okay. Do you remember why you went down to the
18 Lowcountry Children's Center?

19 A I was taken down there to be given an exam and to be
20 given therapy, counseling.

21 Q So over a period of time you went down there for
22 counseling?

23 A Correct.

24 Q Do you remember doing a forensic interview, what is
25 called a forensic interview?

1 A I was told that I did an interview like that but I
2 don't recall it.

3 Q You don't remember it exactly?

4 A No.

5 Q How about a medical exam while you were down there?

6 A That also I don't recall.

7 Q After you left and went to your grandmother's house,
8 when was the next time you saw Samuel Jolly?

9 A 2013.

10 Q Why was it so long before you saw Mr. Jolly again?

11 A Once he was gone out of my house, then he was gone
12 from the State and they didn't bring, they didn't arrest
13 him for the--

14 Q They didn't find him until 2013?

15 A Correct. They didn't find him until 2013.

16 Q Okay. After 2013 was there some interaction between
17 the Solicitor's office and you during that period of time
18 as well as Detective Marshall?

19 A Correct.

20 Q Were we preparing to resolve that case at some point?

21 A Yes, we were.

22 Q And after that do you remember what Mr. Jolly did?

23 A He left again. He did not show up for his next
24 arraignment.

25 Q The next hearing that they had?

1 A Right.

2 Q After that do you remember the next time you saw Mr.
3 Jolly?

4 A That would be today.

5 Q Okay.

6 MR. TEMPLETON: I beg the Court's indulgence.

7 I have no further questions, Your Honor.

8 THE COURT: Anything on cross-examination?

9 MS. WILLIAMS: Yes, sir. May it please the Court.

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 By Ms. Williams:

13 Q Minor how old are you now?

14 A 31.

15 Q So these charges happened, these allegations come
16 from almost, over 20 years ago?

17 A Correct.

18 Q And the charges happened from a time when you and
19 your mom and Sammy, you called him Sammy at the time,
20 right?

21 A Everyone did.

22 Q You and your mom and Sammy lived together?

23 A We did.

24 Q And when that happened in 1997, I think the State has
25 gone over, Mr. Templeton has gone over with you a little

1 bit about what, the sequence of events. The first thing
2 that happened was DSS came and interviewed you?

3 A Correct, with the two police officers.

4 Q And the DSS worker's name was Ms. Elmore at the time,
5 it is Ms. Brown now, correct. So you had the DSS worker
6 and the two police officers to talk to you. And you gave
7 a statement to them right then and there about what was
8 happening and what had happened?

9 A Correct.

10 Q And what had happened to you. And I think you told
11 the State, I even told them that he had penetrated me. I
12 think that was your words?

13 A Right.

14 Q Then you move on a little bit. So that was on August
15 22nd, 1997. You move on a little bit and on September
16 5th, 1997 you then go to Lowcountry's Children's Center,
17 we call it LCC, right?

18 A Correct.

19 Q And that's where you had an interview and that
20 interview was recorded, right, you know it was recorded?

21 A I don't recall that actual first forensic interview.
22 The only time of a recording I can recall is being in the
23 room and they gave us these dolls that had genitalia and
24 we were left, like I was left alone in the room and there
25 was a video camera in there recording that period of time.

1 But I don't recall anything before that.

2 Q So you do recall being interviewed at LCC?

3 A Correct.

4 Q So that is what we are talking about when we talk
5 about the forensic interview, we are talking about you
6 being recorded and you being in the room with the dolls
7 and other people being there?

8 A Yes.

9 Q Right. And that would have been September 5th. And
10 then you entered into therapy?

11 A Correct.

12 Q With the same therapist at the Lowcountry Children's
13 Center and so that would have been from like September 8th
14 and that last for a while, maybe through December or even
15 into 1998 a little bit?

16 A The counselor I went to lasted six weeks. I went
17 once a week for six weeks or so.

18 Q That would have lasted until about December of 1997
19 then. So we have you telling a DSS worker in August of
20 '97 and the two police officers. We have you telling the
21 therapist and Detective Marshall at the LCC interview on
22 September 5th. And then we have the counseling sessions
23 from September 8th through December. And so you gave
24 three different recitations of what was going on between
25 you and Samuel Jolly right then and there in 1997. Then

1 in 2011, I am going to fast forward, this case just kind
2 of disappeared for a while, from your perspective, right.
3 There was no real, you didn't have any contact?

4 A Detective Marshall continued to contact me.

5 Q How frequently?

6 A Every couple of years.

7 Q So every couple of years you would hear from, he was
8 the detective at the time. Tom Marshall is the detective
9 that investigated at the time?

10 A Correct.

11 Q He is here today in fact, right. He is no longer a
12 detective, he is retired?

13 A Retired.

14 Q Which is why you called him Tom Marshall, right?

15 A Correct.

16 Q So we are going to call him Detective Marshall
17 because that was his job at the time. So you talked to
18 him every couple of years but other than that nothing
19 really happened?

20 A Correct.

21 Q And then in 2011 you met with him again?

22 A Right. And they thought they had found him, Mr.
23 Jolly. They thought they had located him and they were
24 trying to get another written--

25 Q And you gave another written statement in 2011?

1 A Yes.

2 Q So we have all of these different, and how old were
3 you in 2011?

4 A That was 15 years ago, I was 23, 24, I would have
5 been at that time.

6 Q And at that time you gave, I think probably a four or
7 five page written statement?

8 A I did.

9 Q About, again, about what had happened between you and
10 Sam back in 1997, right?

11 A Correct.

12 Q So that is kind of a timeframe of how many different
13 times you spoke about this?

14 A Correct.

15 Q And as you mentioned, the video from the Lowcountry
16 Children's Center, it is no longer available, it has been
17 destroyed, lost, destroyed, gone. So we can't even watch
18 that video at this point. When you first spoke to the DSS
19 worker, Ms. Brown, and the two police officers, when they
20 first came. What you told them was that Sammy put his
21 finger in your private part twice I think, right, that is
22 what you said. You also told them that Sammy plays around
23 a lot, right?

24 A Yes.

25 Q And you also told them that you would play tag with

1 Sammy and he would slap you on the butt and jerk your
2 shorts down?

3 A Yes.

4 Q And you told them, I know he is playing but it makes
5 me uncomfortable?

6 A Yes.

7 Q And you also told them, this happened about a week
8 and a half ago. I told my mom and it stopped.

9 A Yes. I don't recall any of that statement there, so
10 I can't really definitively say yes or no without actually
11 looking at it or reading it.

12 Q If I gave you the notes from the DSS worker or the
13 incident report, would that refresh your memory?

14 A I mean I am saying yes to whatever because you got it
15 on paper. I am not saying yes out of my own memory.

16 Q To the best of your recollection are those what you
17 described as happening to you when DSS came to talk to
18 you?

19 A Yes.

20 Q Because it was important that you tell them
21 everything?

22 A Correct.

23 Q Because this was finally your chance to make it stop,
24 right?

25 A From my own recollection I remember the two police

1 officers and DSS lady being at my house and I do remember
2 telling them about the finger penetration. I don't recall
3 telling them about, oh, it stopped and that kind of stuff.
4 But I did cover that story up a lot even with my mom and
5 my grandma out of fear and discomfort because I spent most
6 of my, ninety-five percent of time with him alone.

7 Q Well, I need to make sure. Is it your testimony that
8 you remember saying, I know he is playing around but his
9 playing makes me uncomfortable?

10 A I don't recall saying that but it is in the report.

11 Q Would it surprise you if it was in the DSS worker's
12 notes that you said that?

13 A No, it would surprise me. I was ten years old when I
14 made that statement.

15 Q And the only other thing that you told them at that
16 point was that Sammy walks around with no clothes on after
17 the shower. Do you recall telling them that?

18 A I don't recall saying that.

19 Q Would it surprise you if it was in the DSS worker's
20 notes?

21 A No, it wouldn't surprise me.

22 Q At that time you never told them about \$1,500.00
23 dollars on a table or sitting on someone's face?

24 A It was a short and they were literally at my house
25 less than ten minutes and then they left.

1 Q But you had another much more extensive meeting on
2 September 5th?

3 A Which I don't remember.

4 Q Okay. And we don't have a video of that either?

5 A Right.

6 Q Right. So would it surprise you if the notes from
7 that incident show that you talk about this happening
8 twice in Sammy's bed, at least once when he was tickling
9 you. Would that surprise you?

10 A It doesn't surprise me.

11 Q Would you like to see the notes from that to refresh
12 your recollection?

13 A Would you like me to, I will see them.

14 Q If it would refresh your recollection, if you would
15 be able to answer definitive answers if I gave you the
16 notes from the interview?

17 A Yes, yeah. That is fine.

18 MR. TEMPLETON: Your Honor, those aren't her notes.
19 I don't know how someone else's notes are going to refresh
20 her memory.

21 THE COURT: Well, I understand. These are notes,
22 supposedly--

23 Minor My testimony.

24 THE COURT: From your conversation with the DSS
25 worker, I believe those are the notes you are talking

1 about, right.

2 MS. WILLIAMS: Judge, she has already said she
3 doesn't need to see the DSS worker's notes. She doesn't
4 want to see the DSS worker's notes.

5 THE COURT: Well, whose notes are those?

6 MS. WILLIAMS: These notes are from Lowcountry
7 Children's Center, their interview with her of the video
8 that has been destroyed.

9 THE COURT: Okay.

10 MS. WILLIAMS: And she said these would refresh-

11 Minor Yeah, any documentation, I would love
12 to look at it.

13 THE COURT: Give her a chance to read it over and we
14 will see where we go.

15 MS. WILLIAMS: May I approach, Your Honor.

16 THE COURT: You may.

17 Q Okay, I am going to hand you the typewritten notes
18 from the Lowcountry Children's Center interview with you
19 on September 5th. That is my sticky and I apologize for
20 that. And that is the typewritten notes and this is the
21 typewritten notes from Detective Marshall who also sat in
22 on that interview.

23 (Whereupon, the witness reads the documents.)

24 Q Did you have a minute to look at those?

25 A Yes.

1 Q And do they refresh your recollection about that
2 Lowcountry Children's Center interview on September 5th?

3 A Not at all.

4 Q Thank you though. And you are aware that Detective
5 Marshall and the DSS worker are present today?

6 A Yes.

7 Q Would it surprise you that in these statements it is
8 recorded you said that Sammy did not put his finger inside
9 of you?

10 A I was, according to a previous incident, it says
11 later in the report that he did.

12 Q Okay. But it does say in here that he did not put
13 his finger inside of her?

14 A He touched my vagina on several occasions without
15 putting his finger in my vagina.

16 Q And in these reports it talks about the incident with
17 the teddy bear on both the September 5th reports. And in
18 these reports it says that, you had to use a white teddy
19 bear with a red bow?

20 A Correct.

21 Q To rub on, you went and got it and you rubbed it on
22 Sammy's penis?

23 A It was there on mom's headboard. There was several
24 stuffed animals there, there was also a Garfield stuffed
25 animal that was there.

1 Q We are going to get to the Garfield. But in these
2 reports that's the recollection at that time?

3 A Correct.

4 Q Correct. Okay. And it also says that you told them
5 that, really it doesn't have any mention of running around
6 the house and chasing you and pulling your pants down,
7 right. There is no mention of that in September 5, 1997,
8 right?

9 A Which report are you talking about. I am sorry.

10 Q The ones that you just reviewed?

11 A Right.

12 Q And there is nothing in there about sitting on
13 someone's face--

14 MR. TEMPLETON: Your Honor, I would object to this
15 point. She is just trying to get into impermissible
16 hearsay through these statements that we don't have, well,
17 Detective Marshall, we have in here that he will be able
18 to testify to it if she wants to do that. She could have
19 certainly subpoenaed the person that did these other
20 records from the LLC if she wanted to. This is not
21 permissible at this point, I don't believe.

22 THE COURT: If you would stick with Detective
23 Marshall's.

24 MS. WILLIAMS: I can do that.

25 THE COURT: That would be fine.

1 MS. WILLIAMS: Okay.

2 Q As specifically in Detective Marshall's it said that,
3 it had no mention of Sammy chasing you around the house
4 and pulling your pants down?

5 A Correct.

6 Q And this is exactly what had happened back in 1997,
7 there is no mention of you sitting on Sammy's face or
8 being offered to sit on his face for \$1,500.00 dollars?

9 A Correct.

10 Q Right. There is no mention of a Garfield doll or
11 have to rub a Garfield doll on a penis, right?

12 A Correct.

13 Q In here and it does say, and I think I underlined,
14 she said he did not put his finger inside of her, that
15 is--

16 A Later in that same exact report that he did, like one
17 paragraph later.

18 Q It says in here, the victim said one time the suspect
19 tried to get her to touch his penis, that she told him,
20 no, she would not touch it, she would get something for
21 him, she got him a white teddy bear and rubbed the teddy
22 bear with a red ribbon on his penis.

23 A You asked me about the incident where he put his
24 finger in my vagina.

25 Q It does say--

1 A You underlined where I said he didn't but later in
2 that exact report which I just read that he did put his
3 fingers in my vagina at a different time.

4 Q Okay.

5 THE COURT: If you will hand that, if it is there I
6 want her to read it out.

7 MS. WILLIAMS: Yes, sir.

8 A She then said that at another time he put his finger
9 inside her vagina. She said that this did not hurt her
10 but it did feel funny.

11 Q Thank you. And later on it talks about the white
12 bear with the red ribbon?

13 A Uh-huh.

14 Q Right.

15 COURT REPORTER: Is that a yes.

16 A Yes.

17 Q And then there is nothing in there about Fred
18 Flintstone?

19 A Correct.

20 Q The Fred Flintstone cartoon. There is nothing in
21 there about him telling you about the sex he has had with
22 other women?

23 A Correct?

24 Q So that is kind of the September of 1997, back when
25 this whole thing happened. That is kind of where we are.

1 None of those are--

2 A Well,--

3 COURT REPORTER: I didn't get, y'all will have to--

4 THE COURT: Will you repeat what you said.

5 A That is when I told, she is saying that all of the
6 incidences happened in September of '97 and that is when I
7 told what was happening, that is not when all of the
8 incidents occurred.

9 Q The question is and I am sorry, I must have
10 misphrased my question. That was everything that you
11 reported in 1997?

12 A That is what is on the paper.

13 Q Right. And there was a lot of stuff that was
14 missing?

15 A Right, correct.

16 Q And then fast forward when you were 23 years old and
17 you met again with Tom Marshall?

18 A Correct.

19 Q And that is the first time we start talking about
20 these new allegations that you have remembered, right?

21 A Correct.

22 Q And at that point that is when you start talking
23 about the Fred Flintstone cartoon, when you are 23 years
24 old. That is the first time you report that to anyone?

25 A I suppose so.

1 Q Then you tell Detective Marshall about Sammy talking
2 to you about different sexual partners he has had and that
3 is the first time you reported that, correct?

4 A I suppose so.

5 Q And then that is the first time you talk about the
6 \$1,500.00 dollars that he throws on a table and offers you
7 to come sit on his face and wiggle around?

8 A Correct.

9 Q In that particular statement you then say, I remember
10 specifically that I went and got a Garfield doll and to
11 rub that on his penis?

12 A There were two stuffed animals that were side by side
13 on my mother's headboard. One was the white bear with the
14 red ribbon and the other one was the Garfield so my memory
15 could be a little like shaky going back and forth between
16 the two dolls. But they were right there next to each
17 other.

18 Q Okay. And that was also the first time you talked
19 about him rubbing your breasts when they hurt?

20 A Correct.

21 Q In 2011?

22 A I did report that incident to my mom before that.

23 Q That was also the first time you reported about him
24 laying on top of you and putting his finger inside of you,
25 correct?

1 A I suppose so.

2 Q It was also the first time that you reported being
3 naked in the living room with him trying to tackle you and
4 telling you that you had a nice rear end?

5 A I suppose so.

6 Q Your testimony, when Mr. Templeton was asking you,
7 was that most of these incidences happened after school?

8 A Correct.

9 Q And that you were alone with Sammy?

10 A Correct.

11 Q After school. Your mom knew about these incidences,
12 you had already told her you were uncomfortable with him?

13 A I told her I was uncomfortable and I told her about
14 the couple of times that he touched me but I didn't tell
15 her the extent of everything that was happening.

16 Q And despite your allegations that you told her she
17 left you alone with him?

18 A Yes.

19 Q And this was after school because she worked during
20 the day, she was home at night?

21 A Correct.

22 Q And your testimony was that you were coming home
23 every day in fear?

24 A Correct.

25 Q And despite that a lot of these you said happened

1 when you were walking around the house in a t-shirt and
2 panties?

3 A Correct.

4 Q That is what you would change into--

5 A In the mornings, when I wake up in the mornings that,
6 I didn't change into that right home from school, no.

7 Q Was your mom present in the mornings?

8 A No, she was at work.

9 Q When did she go to work?

10 A There was a summer, a whole entire summer where I
11 wasn't in school and she was still working all day.

12 Q So these allegations happened in the summertime?

13 A Several of the allegations happened over the entire
14 of the year that we lived in that home. So there was a
15 summer and a school year.

16 Q And what was your mom's typical hours?

17 A She left before 7:00 a.m. and she would get home
18 between 6:00 and 7:00 p.m.

19 Q And where did she work?

20 A D.J. Powers Company, downtown Charleston at the time,
21 that is where the company was located. So it was a long
22 commute.

23 Q And like we talked about in the very beginning when I
24 first stood up here, it was you and your mom together in a
25 house when she brought Sammy to you and I think you said

1 introduced you as a potential wife-mate.

2 A It was my grandparents house, we all had lived there
3 together, my grandparents and me and my mom. And then
4 they moved out and me and my mom stayed there at that
5 moment.

6 Q And your mom loved Sammy?

7 A Yes.

8 Q In fact they are still married?

9 A Correct.

10 Q I think your testimony is that they are still married
11 today. And but you, when she brought him to the house,
12 you immediately disliked him?

13 A Correct.

14 MS. WILLIAMS: The Court's indulgence. I have no
15 further questions, Judge.

16 THE COURT: Anything on redirect.

17 MR. TEMPLETON: Just a couple, Your Honor.

18 REDIRECT EXAMINATION

19 By Mr. Templeton:

20 Q **Minor** Ms. Williams was just talking to you
21 about, asking you about when you first disclosed about the
22 sexual related cartoons?

23 A Correct.

24 Q I am going to show you Detective Marshall's report.
25 If you would, read the last two sentences of that report.

1 THE COURT: This is the report from September of
2 1997?

3 MR. TEMPLETON: It is, from Detective Marshall's
4 viewing of the LLC interview.

5 A The last two, the second to the last sentence
6 actually states, he also showed her some cartoons about
7 sex that was on the computer.

8 Q And go ahead and finish the--

9 A She also said that he was showing her how to french
10 kiss.

11 Q So you did report the allegations of--

12 MS. WILLIAMS: Objection, leading.

13 THE COURT: I am going to overrule that, I will let
14 you finish the question. Thank you.

15 Q Did you report the allegations of the sexual related
16 cartoons that Mr. Jolly was showing you?

17 A I did.

18 Q Okay. Regarding the stuffed animal, how many stuffed
19 animals were on their bed?

20 A Several. My mom always had knickknacks and stuffed
21 animals in her bedroom. So, probably at least four or
22 five up on that headboard.

23 Q Did that happen more than once, it only happened
24 once, do you recall?

25 A The detailed incident that I recall was the one time

1 but, like I said, there was, it happened so often and it
2 happened on a daily basis back then that it could have
3 been two different times.

4 Q And you were how old at this point?

5 A Between nine and ten.

6 Q Okay.

7 A I was probably ten.

8 MR. TEMPLETON: I beg the Court's indulgence for just
9 a second. That is all the questions that I have, Your
10 Honor.

11 THE COURT: Anything on recross limited to what--

12 MS. WILLIAMS: No, sir.

13 THE COURT: Okay, thank you, you may step down. We
14 will take a short break. Ladies and gentlemen, we are
15 going to take a short break. Y'all have been very
16 attentive which I appreciate and I know the parties
17 appreciate as well. We will take a short break so you can
18 stretch your legs. You can't start talking about any
19 testimony you have heard so far. Go to the jury room.

20 (Whereupon, the jury was excused from open court for
21 a break.)

22 THE COURT: We will take about a ten minute break.

23 (Whereupon, a short break was taken.)

24 THE COURT: Let's bring the jury back in.

25 (Whereupon, the jury came into open court at

1 approximately 4:20 p.m.)

2 THE COURT: Okay, everybody. This is Court's
3 exhibit. I need for y'all to know that the jury just sent
4 me a note asking if they could take notes and I said, no.
5 Okay. I am going to talk to them about it when they come
6 back in. But just so y'all know, I have already responded
7 without questioning y'all.

8 MR. TEMPLETON: That is fine with the State, Your
9 Honor.

10 (Whereupon, Court's Exhibit 2 was marked for
11 identification only.)

12 THE COURT: Is the State ready to proceed?

13 MR. TEMPLETON: We are, Your Honor.

14 THE COURT: Is the Defense ready?

15 MS. WILLIAMS: Yes, sir.

16 THE COURT: Bring the jury in, please. And tell them
17 to bring that note in with them.

18 (Whereupon, the jury came into open court at
19 approximately 4:20 p.m.)

20 THE COURT: I appreciate the note and it shows that
21 y'all are paying attention and that you want to make sure
22 that you do a good job. Let me tell you why we don't
23 allow note taking, just from my perspective of doing this.
24 What I want is your complete undivided attention of what
25 everybody is saying here on the witness stand. If one of

1 y'all or two of y'all or six of y'all are taking notes,
2 you are going to be like this. So number one, you are not
3 watching the witness. I want you to watch this witness
4 because it is important to watch the witness to help you
5 determine credibility, believability, those kind of
6 things. The other thing is, if one of you writes down one
7 thing and somebody doesn't write that thing, when y'all go
8 back there to deliberate one of y'all is going to say,
9 well, you know, I wrote this down. Well does that become
10 more important than what somebody remembers. Don't want
11 that to happen. So the reason we don't take notes, I want
12 you to pay close attention and to what somebody is saying.
13 So I want you to watch them. But I appreciate the thought
14 behind this because it tells me that y'all want to do a
15 good job and I know y'all are going to do a good job. I
16 just wanted to let y'all know why. Is the State ready to
17 call its next witness.

18 MR. SPEARS: We are, Your Honor.

19 THE COURT: Okay, you call it.

20 MR. SPEARS: The State calls Yvonnia Brown.

21 YVONNIA BROWN, being

22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Spears:

25 Q Good afternoon, Ms. Brown.

1 A Good afternoon.

2 Q Ms. Brown, can you tell the jury where you are
3 currently employed?

4 A I am employed with Merced County Behavioral Health as
5 a Director and that is in California.

6 Q Were you ever employed in South Carolina?

7 A Yes.

8 Q Where were you employed?

9 A Department of Social Services, Dorchester County.

10 Q And when were you employed there?

11 A From 1996 to 2003.

12 Q Can you just describe some of the nature of your
13 employment at the Department of Social Services?

14 A I was a CPS Investigator, also as a Supervisor at
15 some point.

16 Q At any capacity, as an employee of DSS, did you ever
17 conduct interviews with individuals?

18 A Yes.

19 Q And what would usually be the cause of that?

20 A We get allegations for alleged sexual abuse, physical
21 abuse or neglect.

22 Q So, let's go back to the time when you were employed
23 by DSS, we are going back specifically to 1997. Were you
24 involved with an investigation through DSS in reference to

25 Minor [REDACTED]

1 A Yes.

2 Q Okay. How did you become involved?

3 A Received an allegation and it was my job to go out
4 and investigate any issues that came in.

5 Q And when you say, go by and investigate. What do you
6 mean?

7 A To interview the alleged victim and the alleged
8 perpetrator.

9 Q Okay. And can you please tell the jury where this
10 investigation took place?

11 A It took place at the home of **Minor** on Shirley Lane in
12 Ladson.

13 Q And do you recall when specifically this happened?

14 A August 22nd of 1997.

15 Q And just please describe to the jury how, what
16 happened during this investigation, was there anyone
17 besides **Minor** there when you went there?

18 A **Minor** was the only one there but I went there with
19 law enforcement, two officers, Officer Caulder and
20 Cassenino.

21 Q Who conducted the interview?

22 A Myself.

23 Q And can you describe **Minor** as you recall her from
24 this interview?

25 A As it relates to?

1 Q Can you describe how old you think she was, what she
2 looked like, what type of presence she had, anything you
3 can recall from **Minor** at that time?

4 A **Minor** I think she was around about ten or eleven,
5 during that time. Very inviting, just kind of mature and
6 I think for her age.

7 Q Okay. And what was the nature of the questions that
8 you asked her, can you recall some of the questions you
9 asked her?

10 A Normalize kind of go over the alleged, I asked her
11 what happened with her and her step-father, asked her,
12 just tell me what happened. And she was just kind of
13 saying, hey, he--

14 MS. WILLIAMS: Objection, Your Honor, hearsay and
15 improper bolstering.

16 THE COURT: I don't know about, repeat the question
17 because I don't remember what--

18 MR. SPEARS: Your Honor, the question was, do you
19 recall **Minor's** response to your questions, if I am not
20 mistaken.

21 THE COURT: Okay. And tell me again your objection.

22 MS. WILLIAMS: Hearsay under Briggs versus State,
23 South Carolina case law and Sanchez versus State. It is
24 hearsay and improper bolstering testimony.

25 THE COURT: I need to look at those cases, I am not

1 familiar with what is going on. Ladies and gentlemen,
2 this, remember one of those times that I told y'all would
3 have to leave. You need to leave and remember you cannot
4 talk about the testimony.

5 (Whereupon, the jury was excused from open court.)

6 THE COURT: Okay. Ms. Williams, you were just asking
7 the witness a bunch of questions about an interview.
8 Okay. Now she is going to testify about an interview
9 where she interviewed the victim, is that correct?

10 MS. WILLIAMS: Judge, I was trying to pin the victim
11 down as to what she recalled.

12 THE COURT: I understand that.

13 MS. WILLIAMS: And that is what I was asking about.
14 I was trying to get the victim to testify as to what she
15 said, what happened at that point.

16 THE COURT: Okay. So how is this hearsay.

17 MS. WILLIAMS: Well, it is hearsay because this
18 individual is testifying as to what the victim told her,
19 what the alleged victim told her and that makes it
20 impermissible hearsay that doesn't meet any of the
21 exceptions. In addition, our Court in Briggs versus
22 State, that's 421 SC 316, decided in 2017. It was a PCR
23 case where the Court talks about improper bolstering
24 testimony, inadmissibility of improper bolstering
25 testimony. A forensic interview cannot bolster the

1 victim's credibility, cannot talk about what the victim
2 told them. The Court finds specifically that the
3 witnesses that are going to talk about, and specifically
4 in sex offense cases, the witnesses that talk about what
5 the victim told them are limited to time and place. I am
6 also relying on Sanchez versus State, Supreme Court of
7 South Carolina case, 351 SC 270, 2002; requiring counsel
8 to object to hearsay in child sexual assault cases where
9 the mother and father attempt to testify as to what the
10 victim told them, finding it is ineffective to fail to
11 object to that hearsay testimony which is also improper
12 bolstering.

13 MR. SPEARS: Judge, if I may and I am reading as I
14 speak. But it looks like a lot of the discussion around
15 improper bolstering is based around a forensic interviewer
16 telling the juvenile, the minor, how important it is to
17 tell the truth. And that was, she was asked if she told
18 the minor how important it is to tell the truth. And I
19 can understand how that is bolstering, that has nothing to
20 do with the question I asked Ms. Brown.

21 MS. WILLIAMS: Specifically in Sanchez versus State
22 and I am reading from the opinion. The rule against
23 hearsay prohibits the admissibility of an out-of-court
24 statement to prove the truth of the matter asserted unless
25 an exception to the rule applies. A well-settled

1 exception in criminal sexual conduct cases allows limited
2 corroborative testimony. When the victim testifies
3 evidence from other witnesses that the victim complained
4 of the sexual assault is admissible in corroboration.
5 However, such evidence is limited to the time and the
6 place of the assault and cannot include details or
7 particulars or the identity of the perpetrator.

8 MR. SPEARS: And, Your Honor, honestly that is fine.
9 If I have Ms. Brown testify that she was told about the
10 time and the place of the assault, I have really got no
11 issue. I didn't plan on going to that anyway.

12 MS. WILLIAMS: And I just wanted to limit the
13 testimony to that. She started to go into, **Minor** told me
14 and that is where I needed it to stop.

15 THE COURT: All right. She will testify that she
16 reported the sexual assault on these dates and times to
17 her.

18 MS. WILLIAMS: Yes.

19 THE COURT: Okay. And you understand that, Ms.
20 Brown.

21 MS. BROWN: Yes.

22 THE COURT: And you can't go, she also said he did
23 this.

24 MS. BROWN: Yes.

25 THE COURT: Okay. Are we ready?

1 MR. SPEARS: Yes, Your Honor.

2 THE COURT: Ms. Williams, are we ready?

3 MS. WILLIAMS: Yes, sir.

4 THE COURT: Let's bring the jury back in, please.

5 (Whereupon, the jury came into open court at
6 approximately 4:31 p.m.)

7 THE COURT: Ladies and gentlemen, we will continue
8 with Ms. Brown's testimony. Mr. Spears.

9 MR. SPEARS: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 CONTINUE DIRECT EXAMINATION

12 By Mr. Spears:

13 Q Ms. Brown, in your conversation with **Minor** at the
14 time, did she tell you anything?

15 A Yes.

16 Q And what did she tell you? Did she give you any
17 instance of something that happened to her at a specific
18 place. You know what, let me rephrase the question, let
19 me move on from this matter. After you spoke with **Minor**
20 did you ever return to that house?

21 A Yes.

22 Q When did you do that?

23 A On the 25th.

24 Q When you returned to the house what was the purpose
25 to go there?

1 A To interview Mr. and Ms. Jolly.

2 Q Now, when you came back were you accompanied by
3 anyone?

4 A No.

5 Q Were you able to speak with the Defendant when you
6 returned to the house?

7 A Yes.

8 Q Okay. Did you speak with the Defendant about any
9 alleged events?

10 A Yes.

11 Q Do you recall any specific questions that you might
12 have asked the Defendant?

13 A Yes.

14 Q And what were some of those?

15 A About did he touch **Minor** did he pull down her
16 shorts, did he play with her and tickle her breasts, did
17 he put his finger in her vagina, those type of questions.

18 Q And for those first three questions did he respond to
19 you?

20 A Yes.

21 Q What did he tell you?

22 A For the first three questions, did he tickle her,
23 pull down her pants, touched her breasts, exposed himself.
24 He said, yes.

25 Q And when you asked, as you previously said, about

1 whether he put his finger in her vagina. What did he tell
2 you?

3 A I don't recall.

4 Q Okay.

5 A That was his statement.

6 Q Now, after,--

7 MS. WILLIAMS: Judge, for the record, just to note my
8 pretrial objection of those statements.

9 THE COURT: I will note for the record your pretrial
10 objection and my pretrial ruling.

11 MS. WILLIAMS: Thank you, Judge.

12 THE COURT: Thank you, Ma'am. Go ahead.

13 Q After that, Ms. Brown, did he tell you anything else,
14 did the discussion continue after that?

15 A Just that he wanted his, **Minor** to trust him again.

16 And that he wanted the family back together.

17 Q Now, did you write anything down from this interview?

18 A Yes.

19 Q Now, I know this is 20 years ago, would that writing
20 help you recall anything from the interview?

21 A Yes.

22 MR. SPEARS: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 Q Can you tell the jury what this is?

25 A These are my worker activity notes, this is how we

1 write our contacts for our case investigations.

2 Q Now, if you can look at page, I believe it is five,
3 for me. After he said he did not recall, what else did he
4 say. You just read out to the jury what all he said?

5 THE COURT: If you want to help her, Mr. Spears, you
6 may approach and show her where you are talking about.

7 MR. SPEARS: All right, thank you.

8 THE COURT: Thank you, sir.

9 Q My mistake, on page four, after you asked, after he
10 told you he did not recall, what else did he tell you?

11 A Well, was willing to do whatever it takes to solve
12 the problem for **Minor** and trust him and feel safe. He
13 said I was sorry for hurting her, hurting **Minor** and his
14 wife and he loved both of them and started crying.

15 Q Now, what did you do with this case after you left
16 the house?

17 A I turned my case into the Sheriffs Department and I
18 also discussed it with my supervisor.

19 Q Now, did you tell him anything else in regards to the
20 case, what you were going to do with it?

21 A Yes.

22 Q And what did you tell him?

23 A I told him that, prior to the investigation that he
24 has the right to an attorney, at which time he said he
25 already had one and that his attorney advised him to

1 cooperate with the investigation. Told him that anything
2 that he used or say in this investigation can be used in
3 court. And I also said this application would be
4 forwarded to the Sheriffs Department.

5 Q All right. Please answer any questions the Defense
6 might have for you.

7 THE COURT: Ms. Williams.

8 MS. WILLIAMS: Thank you, Judge, may it please the
9 Court?

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 By Ms. Williams:

13 Q Ms. Brown, your name was Ms. Elmore at the time that
14 this happened, right?

15 A That is correct.

16 Q I apologize if I call you Ms. Elmore, that is how you
17 are in my brain right now.

18 A That's all right.

19 Q This happened back in 1997?

20 A Yes.

21 Q It was over 20 years ago?

22 A Yes.

23 Q And you worked for DSS at the time, the Department of
24 Social Services?

25 A That's correct.

1 Q You didn't work for the police, you worked for, it
2 was a civil entity, you investigate civil matters with
3 child abuse?

4 A Correct.

5 Q And you worked for them, I think you said seven or
6 eight years?

7 A From '96 to 2003.

8 Q So you are pretty familiar with their files?

9 A Yes.

10 Q Their files are huge, aren't they. When you come to
11 court you have got files that are huge, lots of paper work
12 generated?

13 A It depends on the case.

14 Q But often times, more likely than not there are huge
15 files?

16 A It depends on the case.

17 MS. WILLIAMS: May I approach, Your Honor.

18 THE COURT: You may.

19 Q Do you still have what you have. If you can refer to
20 that. Are those handwritten notes that you made?

21 A Yes.

22 Q And it is five pages, correct?

23 A Five pages, yes.

24 Q And these are notes that you made when you were doing
25 the investigation in 1997?

1 A That's correct.

2 Q And there would have been more to the DSS file than
3 just these notes?

4 A Absolutely.

5 Q There could have been lots more to that file. Do you
6 know where that file is today?

7 A I have no idea.

8 Q In regards to the notes that we do have, if you can
9 refer, is there a page five. It looks like it goes from
10 page one, page two or page three, it looks like it goes
11 from page one, page two, it skips page three, it goes to
12 page four, five and then six?

13 A Correct.

14 Q It looks like there is a page three that is missing?

15 A Correct.

16 Q And in addition, when you look at page six it looks
17 like its only got half a page, it looks like half of it
18 was cut off or erased or deleted or something, correct?

19 A Correct.

20 Q And this is all we have for you to go from in your
21 testimony over 20 years later, right?

22 A Correct.

23 Q Okay. If **Minor** had made inconsistent reports at some
24 point, that would have been logged in that DSS file,
25 right?

1 A Any acknowledgment or anything would have been
2 documented.

3 Q If there had been Guardian Ad Litem reports, that
4 would have been in that case file?

5 A In my history Guardian Ad Litem's are appointed
6 through foster care cases, not during investigations.

7 Q So, no?

8 A No.

9 Q If there had been anything that could have helped the
10 jury determine credibility that would have been in that
11 case regarding **Minor's** allegations, right?

12 A Depending on what information you are talking about.

13 Q But what we have are the five handwritten notes that
14 you made back in 1997, right?

15 A That's correct.

16 Q The notes reflect that on August 22nd, 1997 you went
17 to speak to **Minor** about these allegations?

18 A That's correct.

19 Q And you were escorted by the police?

20 A Correct.

21 Q Two police officers I think you said?

22 A Yes.

23 Q And after interviewing **Minor** you and the officers
24 decided that this case did not warrant, and I think you
25 put it, EPC, right. And EPT stands for Emergency

1 Protective Custody?

2 A Correct.

3 Q And so basically what the three of you, you and the
4 two police officers decided was that this case did not
5 warrant taking **Minor** into DSS custody?

6 A That's correct.

7 Q And you were going to wait until the investigation
8 was complete to really kind of make that determination?

9 A Correct.

10 Q In addition, for safety reasons you and the police
11 officers advised Mr. Jolly that he had to leave the
12 residence?

13 A Correct.

14 Q And the officers were with you mostly for your
15 safety, right, because you were going into a home and you
16 didn't know who was going to be there. Is that why you
17 contacted them?

18 A That is normal protocol back then.

19 Q A couple of days later on August 22nd, 1997 you went
20 and did meet with Samuel Jolly and his wife, Rebecca
21 Jolly?

22 A That's correct.

23 Q And told them they had the right to an attorney. And
24 I think it was on page four when we were talking about
25 that. The worker interviewed Samuel first, asked did he

1 pull down **Minor's** shorts and spank her on the butt, the
2 buttocks and tickled her on the chest while they were
3 playing. That was specifically what you asked him,
4 correct?

5 A Yes.

6 Q Those two things, did he pull down her pants to spank
7 her and did he tickle her on her chest while they were
8 playing, right?

9 A That's correct.

10 Q And those are the two questions you had and he said,
11 yes, I did these things. I pulled down her pants and
12 spanked her and I tickled her on the chest, right?

13 A That's correct.

14 Q And he did pull away his towel one time when he was
15 leaving the shower. He admitted to that?

16 A That's correct.

17 Q And then it says, the worker asked did he ever touch
18 or put his finger in **Minor's** vagina. And his answer was,
19 I don't recall?

20 A That's correct.

21 Q But I am willing to do whatever it takes to make
22 **Minor** feel safe?

23 A That's correct.

24 Q And I was sorry for hurting her and my wife and I
25 love both of them?

1 A That's correct.

2 Q So the two incidences that he admits to in that is
3 pulling down her pants and spanking her and tickling on
4 her chest while they were playing. Those are the two that
5 he firmly says, yes, I did those things?

6 A Yes.

7 Q And in conclusion to that Sammy told you, Mr. Jolly
8 told you, I will leave the home now to make them feel
9 safe?

10 A Yes.

11 MS. WILLIAMS: I have no further questions, Judge.

12 THE COURT: Anything on redirect?

13 MR. SPEARS: Just briefly, Your Honor.

14 REDIRECT EXAMINATION

15 By Mr. Spears:

16 Q Ms. Brown, in reference to these notes, just for
17 clarification purposes on my end, do you still have
18 memories of these interviews outside of what is written
19 down here. Do you still recall being at that house?

20 A Somewhat, yes.

21 Q As vague as it may be, I know it was 20 years ago.
22 But, so these notes aren't the sole source of your
23 recollections today?

24 A No.

25 Q Okay.

1 MR. SPEARS: Your Honor, if I can approach the
2 witness. These are actually the first two pages of her
3 notes from the same document.

4 THE COURT: You may.

5 Q I am sorry I didn't hand those to you the first time
6 I gave you the notes. On there, on page two, Ms. Brown.
7 Under where you have labeled discussion. You did write
8 that the officer did not want to do an EPC at this time?

9 A Correct.

10 Q Can you read what else you wrote immediately after
11 that.

12 A But he does want the father to leave or **Minor** until
13 the investigation is complete.

14 Q And then just the sentence after that too, please?

15 A **Minor** then stated that she was going to stay--

16 MS. WILLIAMS: Objection, Your Honor, hearsay.

17 THE COURT: Okay.

18 MR. SPEARS: That's fine, Your Honor, I will move on.

19 THE COURT: Okay.

20 Q Now you stated previously that what he, of your
21 questionings with Mr. Jolly. You stated that he admitted
22 to pulling down her pants, tickling her and that he stated
23 that he was sorry for hurting her, is that correct?

24 A That's correct.

25 Q Okay. Now, in your experience as a DSS worker, you

1 say you have done it for a number of years. And I believe
2 you already testified that you had been to a number of
3 in-house interviews, correct?

4 A Correct.

5 Q How often, when you ask someone if they recall
6 putting their finger in a minor's vagina do they tell you
7 that they don't recall doing that.

8 MS. WILLIAMS: Objection, Your Honor, irrelevant and
9 speculation. Her investigation in other situations
10 certainly is not relevant to this situation.

11 MR. SPEARS: Your Honor, I think this is just her
12 experience as a DSS worker.

13 MS. WILLIAMS: It is also improper bolstering
14 testimony having her give an opinion on the weight of the
15 evidence.

16 MR. SPEARS: I don't think it would be bolstering
17 anything, Your Honor.

18 THE COURT: And I appreciate y'all's continued
19 conversation over this. I tell you what I am going to do.
20 I am going to sustain her objection on that.

21 MR. SPEARS: Thank you, Judge.

22 MS. WILLIAMS: Thank you.

23 THE COURT: Continue asking questions.

24 MR. SPEARS: Your Honor, that is all the questions
25 that I have for Ms. Brown.

1 THE COURT: Anything on recross?

2 MS. WILLIAMS: Nothing, Your Honor.

3 THE COURT: Thank you, you may step down. Could I
4 see y'all up here for a second.

5 (Whereupon, a bench conference was held in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 THE COURT: Important discussions there is when we
9 are going to come back. And we are going to ask you to be
10 back here at 9:30 tomorrow morning. We have got to be
11 here sooner and we are going to try and take care of some
12 things before y'all get here. We will be here at 9:00 and
13 hopefully get that taken care of so when y'all get here at
14 9:30 we can start. Remember the most important thing is
15 you cannot talk about this case among yourselves or with
16 anybody else or do any kind of investigation about this
17 case. Y'all all understand that. Go and have a nice
18 evening and I will see y'all at 9:30. Thank you so much.

19 (Whereupon, the jury was excused from open court for
20 the day.)

21 THE COURT: I will see y'all at 9:00 o'clock in the
22 morning and then we will take care of whatever the issue
23 was with the Doctor.

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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2
3
4 CERTIFICATE OF REPORTER5 State of South Carolina)
6)
7 County of Newberry)8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Dorchester, South
14 Carolina on the 13th day of February, 2018.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17

18 April 30, 2018

19
20 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
 County of Dorchester) 2013-GS-18-00416
) 2014-GS-18-00126

The State of South Carolina)
)
 Plaintiff,)
)
 vs.)
)
 Samuel Jolly)
)
 Defendant.)
)
)
 _____)

February 14, 2018

St. George, South Carolina

B e f o r e:

The Honorable Edgar W. Dickson, Judge

A p p e a r a n c e s:

Ryan Templeton, Esquire
 Michael Spears, Esquire
 Attorneys for the Plaintiff

Michelle Williams, Esquire
 John Kornegary, Esquire
 Attorneys for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

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1 (The following is an excerpt from Day 2 of a trial for
2 the above captioned matter.)

3 (On the record at 9:04 a.m.)

4 THE COURT: Okay. So the motion -- is this your
5 memo?

6 MR. KORNEGAY: That's the memo. Yes, Your Honor.

7 THE COURT: Okay. So I got -- Mr. Kornegay, you're
8 telling me that under 705, since you can't disclose the
9 underlying facts of data, that it can't come in; is that
10 right?

11 MR. KORNEGAY: That -- that her expert opinions cannot
12 that -- that rely on information that we're not able to --
13 to examine or investigate ourselves. Yes, Your Honor.

14 THE COURT: Okay. She's going to be --

15 MR. KORNEGAY: And that was the purpose of her
16 testifying pre-trial was going to see what exactly she did
17 rely on in reaching this --

18 THE COURT: Well, I ---

19 MR. KORNEGAY: -- these conclusions.

20 THE COURT: If -- if I'm a medical doctor -- I can
21 pretty much tell you what she realized. She's a medical
22 doctor and she looked at the child.

23 MR. KORNEGAY: Well, Your Honor, her -- the -- the
24 report that we have from her has several sections that are
25 not filled out and just say, for instance (as read):

1 "Assessed by LCC and law enforcement." So it -- it appears
2 from her report that she received a lot of information, not
3 from the child, not from the mother, but from other people
4 in making this diagnosis.

5 THE COURT: Okay. If she's not giving an opinion that
6 the child -- is she giving an opinion -- are you asking her
7 to put into the record that she's giving an opinion that
8 the child -- that the -- the damage to the child is
9 consistent with being penetrated by some object?

10 MR. SPEARS: I -- I don't have to do that, Your Honor.
11 I mean ...

12 THE COURT: Okay. The only thing you're asking is,
13 "What did you find?"

14 MR. SPEARS: Right.

15 THE COURT: "What did you see?"

16 MR. SPEARS: Right.

17 THE COURT: Okay. And you're not asking for any kind
18 of opinion on that.

19 MR. KORNEGAY: No.

20 THE COURT: Okay. All right.

21 MR. KORNEGAY: I've even got a redacted -- I redacted
22 it myself where it has the opinion at the very end.

23 THE COURT: Okay.

24 MR. KORNEGAY: If that pleases the Court more or if --
25 however it's better received.

1 THE COURT: I -- I don't know that I even want the
2 report in.

3 MR. SPEARS: And I'm fine with that, Judge. I -- I do
4 think that she still needs to be qualified as an expert in
5 order to get into what -- her report.

6 The "annular transection at 6:30," I don't think a
7 layman would have come up with that phrase or ---

8 THE COURT: No. I don't think -- I don't think
9 whatever the investigative report -- the other things that
10 you said she relied on on making her diagnosis -- the only
11 thing she -- she's relying on in making her diagnosis in
12 this is just the -- the examination. What did the physical
13 exam find?

14 And I know Ms. Williams wants to say something, so Ms.
15 Williams, you are welcome to say something. Okay?

16 MS. WILLIAMS: Well, Judge, just -- there were
17 pictures taken, too. So I'm sure that when she made her
18 diagnosis, she looked at those pictures.

19 THE COURT: Right.

20 MS. WILLIAMS: Those are gone.

21 THE COURT: Uh-huh.

22 MS. WILLIAMS: So we can't look at them, we can't have
23 an expert look at them. She relied on the LCC report that
24 this child had been sexually abused. So she went in there
25 with the understanding that this allegation was that she

1 had been sexually abused.

2 THE COURT: Right.

3 MS. WILLIAMS: She then makes the finding.

4 THE COURT: Right.

5 MS. WILLIAMS: We don't have that. It's been lost.

6 THE COURT: Right.

7 MS. WILLIAMS: So that's also lost. So she relies on
8 a bunch more than just looking at it.

9 In addition, the fact that she makes an opinion that
10 there is an annular tear with transection at 6:30 is an
11 expert opinion.

12 THE COURT: I don't mind qualifying her as an expert -
13 --

14 MS. WILLIAMS: It's actually ---

15 THE COURT: I think she's a doctor.

16 MS. WILLIAMS: It's actually, though, we need to be
17 able to cross-examine her on the underlying facts and data
18 that she relied on and we can't. The rule requires that
19 they give that to us so that we can cross her on it.

20 THE COURT: Okay.

21 MS. WILLIAMS: Her answer to me is going to be, "I
22 don't know."

23 MR. SPEARS: Judge, the -- the underlying facts and
24 data and facts that's being referenced, the LCC report --

25 MS. WILLIAMS: Video.

1 MR. SPEARS: I'm sorry -- assessed by LCC, the
2 interview and the photos taken, everything like that. The
3 crux of our questioning here -- the point is going to be
4 did she see a tear on the hymen, however she phrases that.
5 I just want to get what she saw when she did the interview.
6 I don't need her to rely on anything else. I'm not going
7 to ask her to opine as to how it might have happened. I'm
8 just -- as a doctor, did she see this during her
9 examination? And that's it.

10 MS. WILLIAMS: That's an opinion by a doctor.

11 MR. SPEARS: It's ---

12 THE COURT: It is an opinion by a doctor. If you get
13 shot, and you come in and you look and you go, "I got shot"
14 --

15 MR. SPEARS: Uh-huh.

16 THE COURT: -- I don't care how -- if he says, "I
17 examined your arm. He was shot."

18 MS. WILLIAMS: If you look at pictures or listen to,
19 you know --

20 THE COURT: Uh-huh.

21 MS. WILLIAMS: -- we have the right to -- to cross-
22 examine on that.

23 THE COURT: You do have the right to cross-examine.

24 MS. WILLIAMS: But we can't because they're gone, and
25 we now are in violation of the rule and due process rights.

1 THE COURT: Okay.

2 MS. WILLIAMS: Which is why we tried to make this pre-
3 trial so that -- and I know there was witness problems.

4 THE COURT: Okay. Well -- all right. Well, when --
5 when the doctor comes in, I -- I'm -- I'm going to listen
6 to the doctor.

7 MS. WILLIAMS: Yes, sir.

8 THE COURT: You've got this. You got your argument.
9 I'm going to think about it.

10 Let me tell you what my problem is. I got a 20-year-
11 old rape case. Okay? I -- I know that a doctor examined
12 this little girl, you know, and as long as she doesn't give
13 an opinion about anything, I'm gonna read this over. I'm
14 gonna think about it.

15 MS. WILLIAMS: Thank you, Judge.

16 MR. KORNEGAY: Thank you, Judge.

17 THE COURT: Now. Okay. Soon as the doctor gets here
18 ---

19 MR. TEMPLETON: We'll let you know, Judge.

20 THE COURT: Do you have a -- do y'all have a -- other
21 memo? Y'all got a responding memo?

22 MR. SPEARS: I do not.

23 MR. TEMPLETON: This is the first time we saw it, Your
24 Honor, so...

25 MR. KORNEGAY: You had the motion.

1 MR. SPEARS: We had the motion, Your Honor. I do not
2 have a responding motion.

3 THE COURT: Okay. That's okay.

4 (Off the record at 9:10 a.m.)

5 (On the record at 9:26 a.m.)

6 THE COURT: All right. The Defendant had filed a
7 motion to exclude witness testimony regarding Dr. Elizabeth
8 Baker, and we're going to take some testimony by Dr. Baker,
9 out of the presence of the jury, to assist the Court in
10 ruling on this motion.

11 Taken a little bit of argument already -- taken a
12 little bit of argument already -- you got it? And now I'm
13 gonna decide how I'm gonna handle this. All right. We've
14 already done some of the arguments.

15 I want Dr. Baker called to the stand. I want to get
16 this thing going.

17 MR. SPEARS: The State calls Dr. Baker.

18 ELIZABETH BAKER, having been first
19 duly sworn, testifies as follows:

20 THE WITNESS: Okay. Can you hear me?

21 THE COURT: Yes.

22 THE WITNESS: Okay.

23 THE COURT: You might need to speak up a little louder
24 than that.

25 THE WITNESS: All right. I can do it.

DIRECT EXAMINATION BY THE COURT - ELIZABETH BAKER

11

1 THE COURT: And as you get to testifying, you're going
2 to have to do that.

3 DIRECT EXAMINATION

4 BY THE COURT:

5 Q But Ms. Baker, if -- now, you're -- Dr. Baker, your
6 full name is Dr. Elizabeth Baker?

7 A Yes. Elizabeth Lynn Baker.

8 Q Okay. And Ms. Baker, tell me your -- your medical
9 training.

10 A I received my B.S. degree in Biology from University
11 of South Carolina and then went to the University of South
12 Carolina School of Medicine. Finished in 1986. Did a
13 rotating internship year in Greenville at Greenville
14 Memorial Hospital, and then went and did a pediatric
15 residency at -- at Richland Memorial Hospital, and I
16 finished that in 1989.

17 Since then I've gone back to school, in 2012, and I am
18 now a general and child and adolescent psychiatrist.

19 Q Okay. Okay. In 1996 and 1997, were you doing
20 examinations for -- what is it, Low Country?

21 A Children's Medical Assessment Center.

22 MR. SPEARS: Yes, Your Honor.

23 THE COURT: I'm glad that we're both prepared, Mike.

24 MR. SPEARS: Had a brain freeze, Judge.

25 THE COURT: Huh?

DIRECT EXAMINATION BY MR. SPEARS - DR. ELIZABETH BAKER 12

1 MR. SPEARS: Had a brain freeze, Judge.

2 THE COURT: I understand. Okay. All right. Mr.
3 Spears, go ahead and ask whatever questions you want. I
4 wanted to get the background information out of the way.

5 DIRECT EXAMINATION

6 BY MR. SPEARS:

7 Q Dr. Baker, as the judge said, did -- where were you
8 employed in 1997?

9 A I was employed at Children's Medical Assessment
10 Center.

11 Q All right. And what were the nature of your duties
12 there?

13 A I was a forensic pediatrician and I did forensic
14 medical exams for kids that were either victims or alleged
15 victims of child physical abuse/child sexual abuse.

16 Q And can you describe to the Court the procedure of
17 these exams that you did?

18 A It varied to some extent, but for the physical exam, I
19 would get some background information and then do a general
20 exam and then do a detailed examination of their skin, of
21 the oral cavity, of their genital area, and their anal
22 area.

23 Q And these detailed examinations, did you record these
24 in any way?

25 A Yes.

DIRECT EXAMINATION BY MR. SPEARS - DR. ELIZABETH BAKER 13

1 Q Okay. And while you were recording them -- what did
2 you record during these examinations?

3 A I am -- I am almost positive, but I'm not totally
4 sure. We would take -- we would take videos of the -- the
5 actual genital exam and the skin area until we would come
6 to an agreement of, you know, and I -- I could go back and
7 look at it and then write it into a report and then I would
8 write it on the report.

9 Q All right. And on these reports, would you write down
10 your visual findings?

11 A Yes.

12 Q Okay. Did you have a chance to perform an exam on

13 **Minor**

14 A Yes.

15 Q All right. Did you write a report about that
16 examination?

17 A Yes.

18 Q Okay. In that report, did you do a pelvic exam?

19 A I did not do a pelvic exam. I did a genital
20 inspection.

21 Q My mistake. I -- I -- I misspoke.

22 A Okay.

23 Q You did a genital examination.

24 A Yes.

25 Q What did you see during that general -- genital

DIRECT EXAMINATION BY MR. SPEARS - DR. ELIZABETH BAKER 14

1 examination?

2 A A transection, which is an interruption of the hymen,
3 at 6:30, which is towards the -- towards the back. It'd be
4 towards the anus on the hymen.

5 Q When you say "interruption?"

6 A Instead of the hymen going smoothly --

7 Q Uh-huh.

8 A -- then there would be in interruption in the skin at
9 that point.

10 Q Okay. Just could you -- I've got a white board
11 present for you. Could you just give us a brief outline of
12 what you saw during the examination?

13 (Brief pause.)

14 A (Drawing on white board) So if these are the larger
15 outer lips of the female genitalia, called the "labia
16 majora," and then you have the smaller little inner lips,
17 called the "labia minora," and then the clitoris; then the
18 opening to the vagina is set down inside these structures a
19 bit.

20 And what I wrote is that there was "annular," meaning
21 that the hymen -- which is a little piece of skin that goes
22 around the entrance to the opening of the vagina -- went
23 all the way around except for an interruption at -- which
24 would be about 6:30.

25 So if you use a clock, twelve o'clock is towards the

DIRECT EXAMINATION BY THE COURT - DR. ELIZABETH BAKER 15

1 front, six is towards the back, nine is towards that side,
2 and three is towards that side. So it would be right at
3 6:30.

4 Q Okay. Thank you.

5 A You're welcome.

6 MR. SPEARS: Judge, that would be the extent of the
7 testimony we would try to take from Dr. Baker. I mean ...

8 DIRECT EXAMINATION

9 BY THE COURT:

10 Q Okay. Dr. Baker, when you did the examination and
11 recorded those findings, did you rely on anything else
12 other than your visual inspection of the --

13 A We had a colposcope, which was like a microscope that
14 allowed us to -- you know, to visualize it well, but it was
15 still visualized.

16 Q It was visualized without the microscope?

17 A I typically didn't look without the microscope --

18 Q Oh. Okay.

19 A -- you know, just because it was just so easy to look
20 with the microscope.

21 Q Okay. Okay. All right. Did -- did you rely on any
22 outside tests or anything like that --

23 A No, sir.

24 Q -- to do this -- this is your visual inspection of
25 this young lady?

CROSS-EXAMINATION BY MR. KORNEGAY - DR. ELIZABETH BAKER 16

1 A Yes, sir.

2 THE COURT: Okay. All right. Thank you.

3 Mr. Kornegay?

4 MR. KORNEGAY: Yes, Your Honor, may I ask just a
5 couple of questions?

6 THE COURT: You can ask four or five.

7 MR. KORNEGAY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. KORNEGAY:

10 Q As far as your memory to this specific examination, do
11 you have any independent recollection other than this --
12 the sexual assault information examination report?

13 A None.

14 Q Okay. How long did you work at the Children's Medical
15 Assessment Center?

16 A We started it in 1996, and I worked there until 2006.

17 Q Okay. So 10 years.

18 A Yes.

19 Q And you mentioned that you took video of the genital
20 exam. Did you also take photographs? Was that standard?

21 A You know, normally we took photographs, but I'll be
22 honest with you, I don't remember if this was a period
23 where we had the capability to do that or not. I can't
24 remember.

25 MR. KORNEGAY: May I approach, Your Honor?

CROSS-EXAMINATION BY MR. KORNEGAY - DR. ELIZABETH BAKER 17

1 A Yeah.

2 THE COURT: You may.

3 Q And you may have a copy of this --

4 A Oh. Does it say -- oh, it says "photographs taken."
5 So yeah, it would have been photographed.

6 Q Okay. So you would have taken video and photographs.
7 And you mentioned "we" when you -- after the examination
8 and report is written, is this the report you're talking
9 about or is there a long -- longer report detailing --

10 A Again, you know, this was in '97. I don't -- I don't
11 remember what our transition was. At some point around
12 this time we developed a much more detailed report that the
13 State Law Enforcement Division didn't accept. So we would
14 have to fill out the State Law Enforcement Division's form,
15 and then we would also fill out the other form. Those
16 forms would have been destroyed, you know, a long time ago.

17 Q And would it have just been you or would there have
18 been other medical professionals involved?

19 A Oh. At this -- at this time, I was the only ---

20 Q It would ---

21 A --- medical professional.

22 Q --- would have just been you.

23 A Right. I had an assistant in -- in with the exam with
24 me typically.

25 Q Okay.

CROSS-EXAMINATION BY MR. KORNEGAY - DR. ELIZABETH BAKER 18

1 A But -- but no. It would've just -- and for here it
2 was Pam Kelly.

3 Q Okay.

4 A So ...

5 THE COURT REPORTER: Pam ...

6 THE COURT: It was who?

7 A Pam Kelly was in the -- the exam room with me.

8 Q And you said that you got background information. Was
9 that background information provided to you from law
10 enforcement, from Low Country Children's Center, family
11 members? What sources did you have for that?

12 A Per the mother.

13 Q Okay.

14 MR. KORNEGAY: Court's indulgence.

15 (Brief pause.)

16 Q And Dr. Baker, did you examine the photos and the
17 video taken prior to writing your report?

18 A The photos I definitely would have.

19 Q Okay.

20 A The video -- if -- if -- if I got what I needed from
21 the photo, I wouldn't go to the video.

22 Q Okay. And did you see any LCC, Low Country Children's
23 Center, forensic video prior to writing your report?

24 A I don't think so.

25 Q That would not have been a ---

CROSS-EXAMINATION BY MR. KORNEGAY - DR. ELIZABETH BAKER 19

1 A That would ---

2 Q --- typical?

3 A --- not have been a typical thing.

4 Q Okay.

5 THE COURT: Hold -- hold on a second, if you don't
6 mind. Okay. Mr. Kornegay, you still getting --

7 MR. KORNEGAY: I apologize, Your Honor.

8 THE COURT: No, no, no.

9 Q Dr. Baker, is it fair to say that you would have
10 relied on those photographs in formulating your opinion as
11 to the examination?

12 A So typically, whenever I would do the visualization, I
13 wouldn't finish the exam until I had formulated my opinion.
14 But then I would need to make sure that was documented
15 appropriately. And so that the video and the -- the
16 photographs were typically used to make sure that it was
17 documented appropriately in case somebody wanted a second
18 opinion.

19 But I would have my own -- my own opinion would have
20 been formed before I finished the exam.

21 Q So essentially gathering this data and information
22 would be to allow another party to take a second look at it
23 and either confirm or -- or challenge your opinion?

24 A If someone so chose, right.

25 Q Okay.

DIRECT EXAMINATION BY THE COURT - ELIZABETH BAKER 20

1 MR. KORNEGAY: Thank you, Your Honor. I have no
2 further questions.

3 THE COURT: Okay. Double check you don't have
4 anymore. You're okay.

5 All right. Hold off, Mr. Spears. I've got a couple
6 of questions before you get up there.

7 MR. SPEARS: Okay.

8 DIRECT EXAMINATION

9 BY THE COURT:

10 Q Just -- just out -- out of curiosity. You said y'all
11 developed a more detailed report that law enforcement
12 didn't like?

13 A The -- so the State Law Enforcement Division developed
14 -- and actually I was involved in -- in developing -- this
15 protocol.

16 Q Uh-huh.

17 A But it wasn't anywhere close to as detailed as what --
18 what we wanted and what we felt was helpful.

19 Q Uh-huh.

20 A So we developed a much longer protocol and there were
21 meetings all over the state, you know, everybody kind of
22 agreed to it. It was a long -- quite a long process, and
23 then there was a new person came in at the -- the -- State
24 Office of Victim's Assistant --

25 Q Uh-huh.

1 A -- who did not accept the protocol, and they were the
2 ones that were in charge of it and so we were not allowed
3 to use it. And actually, they made us go back and take the
4 information that was on the 12-page protocol and put it on
5 this protocol, again, outside of the examination.

6 Q Okay.

7 A It was an odd set up, but no, they wouldn't accept it.

8 Q Even though it was more detailed.

9 A It was more detailed, way more detailed.

10 Q Okay. Now, that was -- that went on after you did
11 this, after you did this report in '96, or ...?

12 A Again, I can't remember at what point, you know, this
13 was happening. But eventually -- eventually, they did
14 accept a longer protocol, but again, I can't remember, you
15 know, exactly what year that was.

16 Q Okay. All right. And Pam Kelly who used to work with
17 you ---

18 A Uh-huh.

19 Q Any idea where ...?

20 A No idea.

21 Q Okay. And the back -- did you say you got background
22 information from the mom?

23 A Yes, sir.

24 Q Did the background information influence your physical
25 examination --

1 A No, sir.

2 Q -- of this young lady? Okay. All right. And --
3 okay. All right.

4 A Well, the only thing we -- we really needed the
5 background information for was timing primarily. So if --
6 if in fact it had happened the -- the alleged incident had
7 happened within 72 hours, we would have done a collection
8 kit --

9 Q Uh-huh.

10 A -- rather than a visual examination. But the visual
11 examination is just pretty much straight forward regardless
12 of what the history is.

13 Q Right. And that's what your report is, just straight
14 forward visual examination?

15 A Yes, sir.

16 Q You -- you take the photographs so that someone else
17 could go behind you and see what you saw.

18 A Yes, sir.

19 THE COURT: Okay. All right. Mr. Spears?

20 MR. SPEARS: No questions, Your Honor.

21 THE COURT: Mr. Kornegay, any follow-up to my
22 questions?

23 (No audible response.)

24 THE COURT: All right. Just to make it easier here --

25 MR. KORNEGAY: Yes, Your Honor.

CROSS-EXAMINATION BY MS. WILLIAMS - ELIZABETH BAKER 23

1 THE COURT: -- Ms. Williams, if you want to -- we'll -
2 - we'll dispense with formal procedure if you want to ask a
3 question.

4 MR. KORNEGAY: I think she may have a question, Your
5 Honor.

6 MS. WILLIAMS: Just a follow-up question.

7 CROSS-EXAMINATION

8 BY MS. WILLIAMS:

9 Q Dr. Baker, the protocol that you're talking about from
10 the State of South Carolina, would it have been called "The
11 Sexual Assault Protocol for the State of South Carolina"?

12 A I don't remember.

13 Q Would it have been created by the Attorney General,
14 Alan Wilson, in 2015?

15 A Oh, no, no. This was long before that. This was back
16 in the '90's.

17 Q The longer report I'm talking about, The one that
18 isn't here today.

19 A The -- the -- the long report, we actually developed
20 out of a committee.

21 Q Right.

22 A I'm the one that typed it up, but I mean, I think it
23 would have -- I think it would have been just the "Chronic
24 Child Sexual Abuse Protocol." But that would -- I -- I'm
25 pretty sure that would have been sometime in the '90's.

1 Q Do you -- are you pretty sure it happened before or
 2 State of South Carolina) In the Court of General Sessions
 3 after -- I'm just trying to get for whether or not there's
 County of Dorchester) 2013-GS-18-00416
 another report out there that we're missing 2013-GS-18-00126

4 A I -- I don't know.

5 The State of South Carolina)

6 MS. WILLIAMS: I have no further questions, Judge.

7 vs. THE COURT: All right. Dr. Baker, you can step down

8 single-willy)

9 THE WITNESS: Okay.)

10 THE COURT: I've gotta go -- I've got to listen to

11 some arguments and then I've got to make a decision.

12 February 14, 2018
 (The witness exits the stand.)

13 THE COURT: All right. St. George, South Carolina
 Who's gonna do the argument?

14 Mr. Kornegay?

15 The Honorable Judge W. Dickson, Judge

16 THE COURT: And remember, Mr. Kornegay, you've already

17 A p p e a r a n c e s:
 made some points on the record already. So ...

18 Ryan Templeton, Esquire
 MR. KORNEGAY: Yes, Your Honor. And Your Honor, I -- I

19 Attorneys for the Plaintiff
 believe you have a copy of -- of my memo.

20 Michelle Williams, Esquire

21 THE COURT: I do, Esquire

Attorneys for the Defendant

22 MR. KORNEGAY: I would -- I would just point Your

Honor to the second argument, Rule 705, South Carolina

23 Rules of Evidence.

Bonnie H. Kelly, CVR
 Circuit Court Reporter

24 THE COURT: Uh-huh.

25 MR. KORNEGAY: In discussing this rule -- so the

1 reason Rule 705 exists is because of Rule 703 that allows
2 experts to give expert opinion testimony.

3 THE COURT: If that -- she gives an opinion.

4 MR. KORNEGAY: Correct.

5 THE COURT: Okay. And your argument is that her
6 visual inspection, what she sees, is an opinion.

7 MR. KORNEGAY: Well, Your Honor, I -- I think there's
8 evidence of that by the fact that she gathers evidence and
9 information to allow other people to examine that and they
10 may come to a different diagnosis.

11 THE COURT: I understand that argument.

12 MR. KORNEGAY: So I -- so she testified that she took
13 video as well as photographs during this examination --

14 THE COURT: Uh-huh.

15 MR. KORNEGAY: -- for the purpose of preserving her
16 examination so that people could come behind her, such as
17 any experts hired by the Defense, and either confirm or
18 deny her diagnosis.

19 THE COURT: Right. Now, right now she's not make --
20 we're not talking about a diagnosis. We're talking about
21 just her visualization of what she saw.

22 MR. KORNEGAY: Sure. Her determination ---

23 THE COURT: She's not making an opinion as to what
24 caused it.

25 MR. KORNEGAY: Right. Not -- not as to causation --

1 THE COURT: Okay.

2 MR. KORNEYGAY: -- but that it is annular with
3 transection at 6:30.

4 THE COURT: Right.

5 MR. KORNEGAY: Right. I'm only -- right. I'm only
6 referring to that ---

7 THE COURT: Okay.

8 MR. KORNEGAY: --- that phrase --

9 THE COURT: Okay.

10 MR. KORNEGAY: -- in this argument.

11 THE COURT: Okay.

12 MR. KORNEGAY: She did not testify as to the
13 diagnostic of blunt force trauma, and -- and I understand
14 that. So my argument is focusing on that annular with
15 transection at 6:30.

16 However, Judge, I still think it implicates Rule 705.
17 The fact that we do not have those photographs, we do not
18 have that video. she said she was not sure if a longer
19 report was taken after that examination because of the time
20 line and when that longer report was developed.

21 THE COURT: Right.

22 MR. KORNEGAY: In quoting the advisory committee notes
23 to Rule 705, the Tenth Circuit wrote that (as read):
24 "Advanced knowledge through pre-trial discovery of an
25 expert witness basis for his opinion is essential for

1 effective cross-examination." And I would argue that not
2 having the video, not having the photographs, not being
3 able to consult another witness and have them look over
4 that discovery should prevent Dr. -- Dr. Baker from
5 testifying to that annular with transection at 6:30.

6 THE COURT: Okay.

7 MR. KORNEGAY: And that would be the basis for my
8 argument.

9 THE COURT: Okay. All right. Anything else?

10 MR. KORNEGAY: No, Your Honor.

11 THE COURT: Okay. All right. All right. Mr. Spears?

12 MR. SPEARS: Just briefly, Your Honor. I understand
13 the Defense's argument. The doctor got up there in her
14 capacity as a doctor, did not opine as an expert to
15 anything. She's basically stated as a lay witness what she
16 specifically saw herself during this examination.

17 What's been referenced by the Defense here is in
18 regards to rebutting expert testimony. We're not trying to
19 elicit expert testimony, we're not trying to get her to say
20 that she thinks that this interference came from anywhere.
21 We're simply asking her what she saw on this date.

22 Now, the fact that she was a doctor means that she was
23 the person doing this exam, and obviously, I would ask her
24 -- you know, her history, how she became a doctor, and
25 things like that; but I -- I'm not planning on qualifying

1 her as an expert to get her opinion on how this
2 interference came from. I'm just asking her what she saw
3 at this specific time. That's all, Your Honor.

4 THE COURT: Okay. Mr. Kornegay?

5 MR. KORNEGAY: Your Honor, my only response would be I
6 don't believe the State can call Dr. Baker to testify --
7 testify about this as a lay witness.

8 I -- I think Rule 701 states that (as read): "A lay
9 witness -- a witness is not testifying as an -- if a
10 witness is not testifying about an expert -- as an expert,
11 the witness's testimony in the form of opinions or
12 inferences is limited to those opinions or inferences which
13 are rationally based on the perception and do not require -
14 - section C -- do not require special knowledge, skill,
15 experience, or training."

16 I think it's clear from hearing the doctor testify
17 about the technology she was using, her training and
18 experience, that she has had special knowledge, skill,
19 experience, and training, and that that was essential to
20 her coming to this diagnosis. And because of that, I don't
21 think the State should be able to call her as a lay -- lay
22 witness to testify to that.

23 THE COURT: Well, a lay witness isn't going to be
24 doing that examination, correct?

25 MR. KORNEGAY: Correct.

1 THE COURT: Okay. Isn't that correct, Mr. Spears?

2 MR. SPEARS: That's correct, Your Honor. It's simply
3 asking her what she saw, though. I understand -- if an --
4 I asked an individual if they saw a knife wound on
5 somebody's leg, they wouldn't require expert testimony.

6 I understand that her position as a doctor put her
7 there, but she can still testify to what she saw even
8 though she's a doctor. I mean, if me, as an attorney, I
9 saw something happen in a courtroom, I can still testify to
10 what I saw without being an expert on the matter, without
11 having to be qualified as an expert to show that I belong
12 in a courtroom.

13 THE COURT: Okay. All right.

14 MR. KORNEGAY: Your Honor, I -- I would just argue
15 that I don't think any of us would have the same -- not
16 having the same knowledge as Dr. Baker, I don't believe
17 that any of us would know what we were looking at, how to
18 diagnose it.

19 She -- she testified that she used a colposcope. I
20 don't know what that is. I just don't believe that -- for
21 the purposes of this testimony, that she would be a lay
22 witness.

23 THE COURT: Let me ask you something, Mr. Kornegay. I
24 got a 20-year-old case. Okay. And a lot -- and -- and
25 we've discussed on the record a lot of evidence has been

1 gone. Okay. And I've got the doctor who did the
2 examination and individual examination, actually saw
3 something. She's not giving an opinion about what caused
4 it. She's just giving an opinion to the jury what she saw.
5 Okay.

6 And you're saying because it's an opinion as to what
7 she saw, it can't come in.

8 MR. KORNEGAY: I am saying, Your Honor, under Rule
9 705, without the ability to examine the information that
10 she had, it should not come in.

11 THE COURT: Okay. All right. And that gets to be my
12 call, doesn't it?

13 MR. KORNEGAY: That's correct, Judge.

14 THE COURT: Okay. You think you got everything on the
15 record that you need to protect you?

16 MR. KORNEGAY: I believe so, Your Honor.

17 THE COURT: Okay. All right. I'll be back in a
18 minute with my decision. Okay.

19 MR. KORNEGAY: Thank you, Your Honor.

20 THE COURT: Thank y'all.

21 MR. SPEARS: Thank you, Your Honor.

22 (Off the record at 9:52 a.m.)

23 (On the record at 10:37 a.m.)

24 THE COURT: All right, y'all. Let me go over some
25 things on the record. I'm afraid it's going to be in a

1 somewhat disjointed fashion, but hopefully will hit all the
2 points I want to make. And some of the stuff I'm looking
3 at and talking about comes from and I -- and I call y'all's
4 attention to *State v. Jones*, 417 South Carolina 319. It's
5 a 2016 case.

6 But concerning Dr. Baker's testimony -- oh. She's --
7 yeah. Thank you. Just making sure she was out of there.
8 Okay. Thanks. Okay.

9 After -- her testimony is obviously beyond the
10 ordinary knowledge of a juror in the sense that you've got
11 to have a doctor to do a physical examination.

12 Her testimony, the Court believes, is sufficiently
13 reliable. Her testimony does not improperly bolster the
14 testimony that I've heard so far, particularly that of the
15 victim; and the probative value of her testimony is
16 outweighed by the danger of unfair prejudice or
17 presentation of cumulative evidence.

18 Also, I find that the subject matter, again, as I've
19 already mentioned, is beyond the ordinary knowledge of the
20 juror and does require expert training in the sense that
21 she is a doctor. Okay. I find that the expert has that
22 requisite knowledge and skill to qualify on the subject she
23 will be testifying to, and I find that the testimony,
24 again, is reliable.

25 However, the difference between experts and lay

1 testimony is that in lay testimony, they can't -- an expert
2 is -- is allowed to testify as to opinion and a lay
3 testimony -- lay witness may only testify as to matters
4 within personal knowledge.

5 In this case, the doctor's testifying as to her
6 personal knowledge of having performed a physical and
7 visual examination of the victim; and in the physical
8 examination, the doctor reports findings. These are not
9 opinions, but observations based on education and
10 experience; and I feel like the doctor is available for
11 cross-examination to ensure reliability and credibility of
12 the examination.

13 Again, this is a unique case. A lot of the testimony
14 -- a lot of the evidence in this case is gone because it's
15 over 20 years old, things that they would rely on.

16 Lets see. The purpose behind qualifying someone as an
17 expert is to allow the expert to offer an opinion. In this
18 case, the doctor is not allowed to offer an opinion in any
19 matter and not allowed to offer an opinion as to causation.

20 However, to report on the physical examination of the
21 minor, it does require the expertise of a doctor to report
22 on the physical findings that she made, and I am going to
23 allow her to testify just as she did. Okay.

24 Now, Mr. Kornegay and Mr. Williams -- I mean, Ms.
25 Williams, I'm going to note your objection to my ruling so

1 that will be preserved. Is there any specific comments you
2 want to make on the record now, you -- you may.

3 MR. KORNEGAY: Judge, I would just ask that the memo
4 supporting our motion be made an exhibit for the record.

5 THE COURT: Okay.

6 MR. KORNEGAY: Thank you.

7 THE COURT: We can do that. Okay. Yeah. We'll make
8 this a Court's exhibit just so I'll have the -- the basis
9 for the examination.

10 And I think -- let me make sure I -- I've got a copy -
11 - I haven't made any notes in the -- yeah. Here's a copy
12 here. We'll make that Court's -- that -- I think that'd be
13 Court's --

14 THE COURT REPORTER: 3, Your Honor.

15 THE COURT: -- 3, yeah.

16 (Marked Court's Exhibit 3, memo, 4 pages.)

17 MS. WILLIAMS: That's your memo?

18 THE COURT: That's the copy of the memo. Okay. And I
19 believe that sets forth all of your objections to her
20 testimony.

21 MR. KORNEGAY: Thank you, Your Honor.

22 THE COURT: Okay. Thank you.

23 All right. Now, State ready to go?

24 MR. SPEARS: State's ready, Your Honor.

25 THE COURT: Defense ready?

1 MS. WILLIAMS: Judge, should we also make the report a
2 Court's exhibit if you relied on that in forming your
3 opinion?

4 THE COURT: Well, I didn't really ---

5 MS. WILLIAMS: Okay.

6 THE COURT: --- rely on that. I relied on her
7 testimony.

8 MS. WILLIAMS: Okay.

9 THE COURT: I have not even seen the report.

10 MS. WILLIAMS: Thank you, Judge.

11 THE COURT: Okay. All right. All right. Defense
12 ready?

13 MR. KORNEGAY: Yes, Your Honor.

14 THE COURT: Okay. If you'd bring the jury on in.

15 (Jury enters at 10:44 a.m.)

16 THE COURT: All right. Remember, you don't have
17 assigned seats except one person and the alternates, so...

18 (Brief pause.)

19 THE COURT: All right, ladies and gentlemen, let --
20 let me tell you -- we have been taking care of stuff in the
21 hopes that the testimony this morning would go in -- in a
22 smooth and relatively rapid fashion. So I -- I don't want
23 y'all to think we were eating donuts. We weren't,
24 unfortunately. I wish we were.

25 I -- I'm glad to see some of y'all are dressed in red,

1 Happy Valentine's Day to you. You know, I wish I'd have
2 told my wife that this morning before I left, but I forgot
3 so we'll see how this all plays out when I get home.

4 (Courtroom laughter.)

5 THE COURT: All right. Now, I -- I hope y'all have
6 not done any investigation, you hadn't talked to anybody
7 about the case. Okay. We're getting ready to continue
8 with the -- with the testimony of the State. Okay.

9 State prepared to call it's next witness?

10 MR. SPEARS: State's ready, Your Honor.

11 THE COURT: All right. Mr. Spears, call your next
12 witness.

13 MR. SPEARS: Your Honor, the State calls Dr. Elizabeth
14 Baker.

15 THE COURT: All right.

16 ELIZABETH BAKER, having been first
17 duly sworn, testifies as follows:

18 THE COURT: All right. Dr. Baker, you're going to
19 need to probably talk a little louder than that.

20 THE WITNESS: Okay. I can do that.

21 THE COURT: Okay. Good. Good. All right. It's your
22 -- she's your witness.

23 MR. SPEARS: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. SPEARS:

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1 Q Dr. Baker, where are you currently employed?

2 A I'm employed by Liberty Health Care.

3 Q And where were you employed in September of 1997?

4 A Children's Medical Assessment Center.

5 Q Now, briefly, can you just go over your educational
6 history for the jury?

7 A I received a B.S. degree in biology from the
8 University of South Carolina in 1982, and then I finished
9 med school at the University of South Carolina in 1986.

10 I did a rotating -- or a internship year at Greenville
11 Memorial Hospital, and then I finished a pediatric
12 residency at Richland Memorial Hospital in 1989.

13 Since then I've gone back to school, and from 2012 to
14 2015, I finished a general in child and adolescent
15 psychiatry fellowship.

16 Q Thank you, Doctor. Now, going back to your employment
17 in 1997, can you just describe for the jury some of the --
18 the nature of your duties there?

19 A I performed forensic medical exams for kids where
20 there were allegations or concerns that they might have
21 been physically or sexually abused.

22 Q And can you describe what you did during these
23 examinations?

24 A Get a little bit of background information, sometimes
25 from the child, sometimes from other people. And then I

DIRECT EXAMINATION BY MR. SPEARS - DR. ELIZABETH BAKER 37

1 would do a good general physical exam, and then I would do
2 a detailed examination of their oral area, the -- their
3 skin, their genital area, and their anal area.

4 Q Now, in 1997, did you have the opportunity to do an
5 exam on **Minor**

6 A Yes.

7 Q During your -- the physical exam, and that's all I'm
8 asking you about right now, did -- describe the physical
9 exam, what you did during that physical exam on Miss
10 **Minor**

11 A Her general exam was normal. There are no skin
12 findings that are documented. And then I did a -- an
13 inspection of her genital and anal area.

14 Q And what did you see when you did that inspection?

15 MR. KORNEGAY: Objection. Objection, Your Honor. I
16 raise my pre-trial objection.

17 THE COURT: I'll note your objection and my prior
18 ruling is preserved.

19 MR. KORNEGAY: Thank you, Your Honor.

20 THE COURT: Go ahead.

21 A The larger outer lips, the labia majora and labia
22 minora, the smaller inner lips, the vulva were all normal.
23 There was a little bit of mild discharge from her vagina.
24 Her posterior fourchette, which is where the lips come down
25 towards the bottom, were normal. Her -- the area between

DIRECT EXAMINATION BY MR. SPEARS - DR. ELIZABETH BAKER 38

1 her genital area and her anal area was normal and her anus
2 was normal.

3 Her hymen -- which is a little piece of skin that
4 surrounds the entrance to the vagina, it had an
5 interruption at 6:30 which was towards the back.

6 Q All right. When you say "an interruption at 6:30,"
7 can you -- can you show us what you mean?

8 A Do you want me to draw it?

9 Q If you don't mind.

10 A Okay.

11 (The witness complies.)

12 A (Drawing) So these are the larger outer fatty lips
13 called the labia majora, and then the smaller inner lips,
14 and the clitoris, and the urethra where the urine empties
15 from the bladder.

16 Then set inside these structures is the opening to the
17 vagina, and there is a little piece of skin -- inside skin
18 like on the inside of your mouth, that goes around the
19 entrance to the opening of the vagina, and that's called
20 the hymen.

21 So hers, according to what is documented, would have
22 gone all the way around except for a little area at 6:30.
23 So we used a clock so that twelve o'clock is towards the
24 front, six -- hold on. Let me draw this so it'd be more
25 the 3. This is six o'clock, three o'clock, and nine

CROSS-EXAMINATION BY MR. KORNEGAY - DR. ELIZABETH BAKER 39

1 o'clock. And so there was an interruption in that skin at
2 that point.

3 Q And when you say an "interruption," can you clarify
4 what that is, what you saw.

5 A (Indicates) So this would be continuous and then this
6 would be where there was an interruption, and so it wasn't
7 continuous and smooth across.

8 MR. SPEARS: All right. Please answer any questions
9 the Defense might have for you.

10 THE COURT: Any questions of the doctor on cross-
11 examination?

12 MR. KORNEGAY: Just a few, Your Honor. Thank you.

13 THE COURT: Your witness.

14 MR. KORNEGAY: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. KORNEGAY:

17 Q Good morning, Dr. Baker.

18 A Good morning.

19 Q So back in 1997, you were working at the Children's
20 Medical Assessment Center ---

21 A Yes.

22 Q --- is that correct? And how long did you work there?

23 A We opened it in June of '96, and then it closed in
24 January of 2006.

25 Q And as a part of these examinations, did you gather

CROSS-EXAMINATION BY MR. KORNEGAY - DR. ELIZABETH BAKER 40

1 photographs as a part of the standard examination?

2 A Yes.

3 Q And in this case did you gather -- gather photographs?

4 A Yes.

5 Q Do we have those photographs? Have you been able to
6 look at them, refer to them?

7 A No. These records from -- from our possession were
8 destroyed a long time ago.

9 Q Okay. And in addition to photographs, did you also
10 take video of the examination?

11 A Yes.

12 Q And do you have access to that video? Have you been
13 able to review that?

14 A No. All of those records were destroyed a long time
15 ago.

16 Q Have -- do you have any independent recollection of
17 the examination, other than what's been provided to you by
18 the State?

19 A No.

20 Q The purpose of the photographs and the video, is that
21 to allow other medical professionals, doctors to examine
22 that evidence and make their own determination as to what
23 they're looking at?

24 A Yes.

25 Q Okay. So essentially it's to allow other parties that

CROSS-EXAMINATION BY MR. KORNEGAY - DR. ELIZABETH BAKER 41

1 may be involved in the investigation to formulate their own
2 opinion and come to their own conclusions?

3 A Yes.

4 Q Is that fair to say?

5 MR. KORNEGAY: Court's indulgence.

6 THE COURT: Take your time.

7 MR. KORNEGAY: Nothing further, Your Honor.

8 THE COURT: Anything on re-direct?

9 MR. SPEARS: Nothing from the State, Your Honor.

10 THE COURT: Thank you, Dr. Baker.

11 THE WITNESS: Thank you.

12 THE COURT: I appreciate you coming down. Okay?

13 MR. SPEARS: Your Honor, the State would request that

14 Dr. Baker -- Baker be excused.

15 THE COURT: Any problem with her being excused?

16 MR. KORNEGAY: No objection, Your Honor.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Thank you.

19 (The witness exits the stand.)

20 THE COURT: The State prepared to call it's next
21 witness?

22 MR. TEMPLETON: We are, Your Honor.

23 THE COURT: Okay.

24 MR. TEMPLETON: State calls Detective Tom Marshall.

25 TOM MARSHALL, having been first

DIRECT EXAMINATION BY MR. TEMPLETON - THOMAS MARSHALL 42

1 duly sworn, testifies as follows:

2 THE COURT: All right. Detective, you're going to
3 need to speak up.

4 THE WITNESS: Yes, sir.

5 THE COURT: Oh. You did that real good. Okay.
6 All right. Your witness.

7 MR. TEMPLETON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. TEMPLETON:

10 Q Detective Marshall, where were you employed back in
11 1997?

12 A The Dorchester County Office.

13 Q Sheriff's Office?

14 A Yes.

15 Q Okay. And when -- did you retire from the Sheriff's
16 Office a couple years ago?

17 A About six years I think now.

18 Q Okay. And what were your duties with the Sheriff's
19 Department back in 1997?

20 A At that time I handled most of the sex -- most of the
21 investigations on children who'd been ---

22 Q Sexually assaulted?

23 A --- sexually assaulted.

24 Q Okay. And did you get a report in this case of a
25 sexual assault ---

1 A Yes, I did.

2 Q --- to investigate?

3 A Yeah.

4 Q Okay. Do you recall going down to the Low Country
5 Children's Center in this case?

6 A Yes, I do.

7 Q Okay. Down at Low Country Children's Center, what did
8 you -- what happened at the Low County Children's Center in
9 this case?

10 A Well, there's -- there's two rooms. One is where I'm
11 sitting, and of course, nobody knows that I'm back there.
12 And then the -- the child that was injured or anything goes
13 into another room. And then there's a woman who comes in
14 there and then talks to the child to see exactly what
15 happened.

16 Q Is that what we call a "forensic interview"?

17 A Yes, that's correct.

18 Q Would a medical exam also have been done at that
19 location?

20 A Yes. It would have been done, but they -- it was
21 lost.

22 Q Gotcha. After you saw the -- the -- the forensic
23 interview in this case, what was your next step in your
24 investigation? Did you try and go talk to anyone?

25 A Yes. After -- after that, yeah, I did. I went out

DIRECT EXAMINATION BY MR. TEMPLETON - THOMAS MARSHALL 44

1 and started my stuff on getting in -- seeing what happened,
2 how it happened, what's going on.

3 Q Okay. Did you attempt to make contact with Mr. Jolly?

4 A Yes, I did.

5 Q Were you ever successful in -- in getting contact with
6 Mr. Jolly?

7 A No.

8 Q Okay. Were you able to contact any of his family
9 members?

10 A During the calls, I found his -- the -- the brother of
11 the Defendant, and from there I went over there and -- and
12 talked to him and asked him if he'd seen -- and ...

13 Q Did you tell his -- his -- sorry. Let me repeat that.
14 Did you tell Mr. Jolly's brother what you were looking for
15 him for?

16 A Yes. I told -- told him that, "Hey, there's something
17 going on." I didn't go into great detail, just, "And I
18 need to talk to him."

19 Q Okay. Ultimately, did you find Mr. Jolly back in
20 1997?

21 A No, I did not.

22 Q Okay. What did you do during your investigation since
23 you were not able to find Mr. Jolly?

24 A Pretty much after -- after that, I took the -- the --

25 Q Did you try and get a warrant in the case?

DIRECT EXAMINATION BY MR. TEMPLETON - THOMAS MARSHALL 45

1 A Yeah.

2 Q All right. And I'm going to show you the warrant you
3 got in this case just to refresh your memory on when you
4 got that warrant.

5 (Mr. Templeton hands a document to the witness.)

6 Q And it's on that page. Tell the jury when you
7 ultimately get -- got a warrant for Mr. Jolly in this case.

8 A The 9th day. I can't make out the rest of it.

9 Q Is it October, 1997?

10 A Yeah.

11 Q Okay. So on October 9, 1997, you ultimately got a
12 warrant for Mr. Jolly's arrest.

13 A That's correct.

14 Q Okay. Do you know about how much time it took before
15 Mr. Jolly was actually brought back to South Carolina?

16 A I can't give you the exact -- I mean --

17 Q Okay. And -- and I can show you when the warrant was
18 served on him. Was it -- was it January 30, 2013?

19 A Yes, that's correct.

20 Q Okay. So between 1997 and 2013, was there any contact
21 -- were you ever able to find Mr. Jolly during that period
22 of time?

23 A It was like he kind of dropped off and I couldn't find
24 him until --

25 Q Okay.

CROSS-EXAMINATION BY MS. WILLIAMS - TOM MARSHALL

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1 A -- until later.

2 Q Do you know what state he was ultimately found in?

3 A Yeah. Florida.

4 Q He was found down in Florida? Okay. Do you remember

5 --

6 MR. TEMPLETON: Beg the Court's indulgence for just a
7 second.

8 THE COURT: Okay.

9 MR. TEMPLETON: All right. That's actually going to
10 be all the questions I've got for you, Detective Marshall.
11 If you would answer any questions that Ms. Williams may
12 have.

13 THE COURT: Ms. Williams?

14 MS. WILLIAMS: Thank you, Judge. May it please the
15 Court?

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MS. WILLIAMS:

19 Q Deputy Marshall, you had just testified that when you
20 spoke to Samuel Jolly's brother, that you advised him, "I
21 need to talk to Samuel Jolly." That's what you just
22 testified to, right?

23 A Yeah.

24 Q Not that he was wanted or that he was under arrest for
25 anything or that you had an arrest warrant, but only that

1 you just needed to talk to him.

2 A I needed to talk to him.

3 Q To your knowledge, did Samuel Jolly ever change his
4 name?

5 A (No response.)

6 Q Did he ever get a false ID?

7 A Not that I -- stuff I had on him is -- is what I got.

8 Q So to your knowledge he never changed his name or used
9 a false identification.

10 A Not that I could tell.

11 Q You just testified that you had sat in on an interview
12 with **Minor** back on September 5, 1997. That was the
13 forensic interview, correct?

14 A Yes.

15 Q And at that time, she alleged that Samuel Jolly abused
16 her, correct?

17 A Yes.

18 Q And you know that that interview was recorded on
19 video.

20 A Yes, that's correct.

21 Q Do you have that video for the jury to see today?

22 A No.

23 Q Has that video been destroyed?

24 A Yes.

25 Q Or lost?

CROSS-EXAMINATION BY MS. WILLIAMS - TOM MARSHALL

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1 A It looks like it.

2 Q DSS originally was who investigated this case, right?
3 DSS?

4 A They -- they were the ones that got -- notified us,
5 yes.

6 Q And DSS stands for the Department of Social Services.

7 A That's correct.

8 Q They do not have arrest powers. They just investigate
9 potential child abuse cases.

10 A That's correct.

11 Q And that was in August of 1997 when DSS began their --

12 A Yes.

13 Q -- interviewing and looking into this case. Your
14 warrant was not sworn out until October of 1997?

15 A Yes. Whatever it says on the -- yes.

16 Q And you -- when you got this case -- I think you got --
17 -- so it started in August of '97. You didn't get the case
18 until September of '97 when you sat in on the forensic
19 interview, correct?

20 A Yes.

21 Q And that's when you started kind of looking into the
22 case.

23 A Yes.

24 Q And you are the lead investigator of this case, right?

25 A Yes.

1 Q You would have had access to all of the reports in
2 this case, right?

3 A Yes.

4 Q You would have generated a report in this case.

5 A Yes.

6 Q Do we have that report today?

7 A There's -- yes. There's a section in there where my
8 basic notations and everything else --

9 Q But there's no written report of your investigation,
10 no investigatory report.

11 A No.

12 Q We don't have that today --

13 A No.

14 Q -- correct?

15 A No.

16 MR. WILLIAMS: May I approach, Your Honor?

17 THE COURT: You may.

18 Q I'm gonna hand you the incident report in this case.
19 This would have been part of what you looked at as the lead
20 investigator, correct?

21 A Yes.

22 Q And it would have been just the first report from the
23 two police officers that originally went with the DSS
24 worker, right?

25 A That's right.

CROSS-EXAMINATION BY MS. WILLIAMS - TOM MARSHALL

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1 Q Nowhere in that report does it say that the officers
2 were going to arrest Samuel Jolly, does it?

3 A Yeah.

4 Q No, it doesn't say --

5 A No, it does not say that. Yeah.

6 Q Nowhere in that report does it say that Samuel Jolly
7 was being investigated for potential criminal charges, does
8 it?

9 A No. Yes, but ...

10 Q What we have from you are handwritten notes that you
11 took in your investigation, correct?

12 A That's correct.

13 MS. WILLIAMS: May I approach, Your Honor?

14 THE COURT: You may.

15 Q I'm gonna hand you these notes. I've stapled them
16 together. Do these look like the notes that you took --
17 your own handwriting, the notes you took during your
18 investigation?

19 A This is not.

20 Q Okay. Is the second page or is any of that your
21 handwritten notes?

22 A None of that's mine.

23 Q Would those have been notes in reference to this
24 investigation? Would you have had access to them during
25 your investigation?

1 A It appears that somebody wrote something down here. I
2 don't know who it was. I don't have contact with that.
3 But yes, I mean, that's not my writing. It -- who the
4 other person, I don't know who that could be.

5 Q Is it in reference to this case even, do we know?

6 A Well, it -- it got -- it has something, appears, that
7 would make me look at it with -- you're saying on separate
8 -- on this date and time. So it could be. I don't know.
9 I can't say with anything --

10 Q Well, it's got the name Samuel Carl -- Carl Jolly ---

11 A Yes, I see it.

12 Q --- written on it.

13 A I see that, yes.

14 Q And one of the things it -- things it indicates on
15 here is that there was a U-haul that was rented and taken
16 to Florida.

17 A Yes. I don't know about that.

18 Q To your knowledge, until 2013, was Samuel Jolly ever
19 told he was wanted for his arrest by you or any other law
20 enforcement officer?

21 A No.

22 MS. WILLIAMS: Court's indulgence.

23 THE COURT: Okay.

24 (Brief pause.)

25 MS. WILLIAMS: I have no further questions, Judge.

1 Thank you, Deputy Marshall.

2 THE COURT: Anything on redirect?

3 MR. TEMPLETON: Nothing, Your Honor.

4 THE COURT: Thank you, Detective.

5 THE WITNESS: Yes, sir.

6 THE COURT: Appreciate it.

7 (The witness exits the stand.)

8 THE COURT: The State prepared to call it's next
9 witness?

10 MR. TEMPLETON: At this point, the State rests, Your
11 Honor.

12 THE COURT: All right.

13 MS. WILLIAMS: Judge, may I get that incident report
14 from up there?

15 THE COURT: Sure.

16 (Brief pause.)

17 THE COURT: All right. Ladies and gentlemen, you've
18 now heard all of the testimony from the State at this time.
19 We're gonna need to take a break to take up some matters
20 outside of y'all's presence as we discuss.

21 Now, you cannot begin talking about this case. Okay.
22 Remember you cannot begin talking about this case until
23 after we hear all the testimony, the attorneys make their
24 closing arguments, and I charge you on the law. And I'm
25 gonna find out in a few minutes how much more testimony

1 we're gonna take. Okay.

2 So I'm gonna let y'all go back in the jury room for a
3 little while, then I'll bring y'all back out in a minute.
4 Okay. Thank you.

5 (Jury exits the courtroom at 11:00 a.m.).

6 THE COURT: All right. Ms. -- Ms. Williams.

7 MS. WILLIAMS: Thank you, Judge. At this point, the
8 Defense would make a motion for a directed verdict.

9 THE COURT: Okay.

10 MS. WILLIAMS: This motion is based on Rule 19 of the
11 rules of criminal procedure, South Carolina case law and
12 its progeny which states that at the end of the State's
13 case, the Defense may make a motion. At this point I'm
14 renewing all my pretrial motions.

15 THE COURT: Yes, ma'am.

16 MS. WILLIAMS: And I'm moving that you should consider
17 the existence or non-consistent -- non-existence of
18 evidence in this case and its weight.

19 And that's pretty specific. Direct quote from the
20 directed verdict rule on Rule 19. Specifically in this
21 motion, Judge, I'm going to talk about the non-existence of
22 evidence in this case.

23 What we have -- and -- and I made this motion pretrial
24 -- and I think it's come to light throughout the course of
25 the State's case -- is we have a DSS worker who testified

1 pursuant to notes that were incomplete, that were missing a
2 page -- page 3 to be specific -- and were missing half of
3 page 6. The rest of the DSS file has been lost or
4 destroyed.

5 What we have is a police officer that testified, had a
6 report at some point or at least testified that he would
7 have done an investigatory report and that it is not here
8 today for us to use in our cross-examination of him or --
9 or to at least flesh out the allegations.

10 We have a Low Country Children's Center interview that
11 was done contemporaneous with these allegations. Those
12 have been lost or destroyed, the -- the video of that, so
13 that we could at least determine credibility of the
14 witnesses.

15 We have a doctor who testified regarding some physical
16 findings of -- of what we believe to be opinion testimony
17 about her findings that we are completely and totally
18 unable to cross-examine on because, while we don't dispute
19 that she's an expert, we can't see what she saw. We -- we
20 have no report. She testified that she probably maybe made
21 a much longer report that we don't have access to, that she
22 definitely took pictures, that she took a video. We don't
23 have access to any of those things. We're unable to hire
24 our own expert or even accurately cross-examine her
25 regarding that opinion.

1 Based on all of the lack of evidence in this case, the
2 destruction and loss of this evidence -- which the State
3 can tell you til you're blue in the face it's because my
4 client delayed prosecution. The reality is the testimony
5 is that he never changed his name. He never assumed a
6 false identify. Pretrial we've heard that -- you know,
7 that the victim's mother was in touch with him and knew how
8 to contact him.

9 The reality is is that the State failed to preserve
10 critical evidence and that the Defendant is being penalized
11 for their failure today. And that is a real due process
12 violation and we're asking you to issue a directed verdict
13 in this case based on my pretrial motions and based on this
14 motion at the end of the State's case.

15 THE COURT: Okay.

16 MS. WILLIAMS: Thank you, Judge.

17 THE COURT: Yes, sir.

18 MR. TEMPLETON: Your Honor, in response, to begin with
19 there are -- is some evidence on each of the elements of
20 these crimes, enough to put this to the jury.

21 Ultimately we have testimony from the victim in this
22 case indicating that the Defendant is who did this. We
23 have testimony that she -- this victim has a tear to her
24 vagina. We have the testimony of this DSS worker.
25 Although there may have been other things in that DSS file

1 at some point, ultimately what our Supreme Court has held
2 regarding the destruction of evidence, regarding lost
3 evidence, is that it is only to be construed against us if
4 the State destroyed it in bad faith, which I believe the
5 Defense, in at least their pretrial motions, had indicated
6 they did not believe any of this was done in bad faith or
7 that the evidence possessed exculpatory value apparent at
8 the time the evidence was destroyed. We don't -- we have
9 no way to say that this evidence was exculpatory at the
10 time that it was -- that it did exist and the Defendant
11 cannot obtain it by other means.

12 Ultimately we've got a DSS worker that came in to
13 testify about what she remembered and about what was in her
14 notes. Regarding Low Country Children's Center, there are
15 notes from those interviews. And regarding Dr. Baker's
16 notes, there are notes from those interviews. There's a
17 way to get to that evidence.

18 And therefore, I -- I don't believe that it would be
19 appropriate to dismiss this case at this point. I believe
20 it is a question for the jury at this point, and the State
21 would allege that a lot of these things are missing because
22 of Mr. Jolly's actions after these events. And I don't
23 believe that his actions after these events should be
24 construed against the State.

25 THE COURT: Okay. Well --

1 MS. WILLIAMS: Judge, if I may quickly --

2 THE COURT: Oh, yeah. Sure.

3 MS. WILLIAMS: Just in characterizing the evidence,
4 the -- the testimony is that there was an interruption in
5 the hymen. There's a -- there's a real leap between
6 interruption in the hymen to tear in the hymen, and I just
7 -- I think that's a mischaracterization of the evidence for
8 the purposes of this argument, but also in any further
9 argument to the jury there will be an -- an objection to
10 that.

11 THE COURT: Okay.

12 MS. WILLIAMS: In addition, I -- I still think it is -
13 - it is improper burden shifting to say that it is the
14 Defendant's fault that this evidence had been lost or
15 stolen. He has no burden. He does not need to produce
16 evidence, and it is the State's failure wholly and
17 completely to have this evidence available today. Thank
18 you.

19 THE COURT: And thank you, Ms. Williams.

20 There is -- you know, when you're doing a directed
21 verdict, I -- I just look at whether or not there is any
22 evidence in the record. There is some evidence in the
23 record that would allow this case to go to a jury for it to
24 make a determination of whether or not there is sufficient
25 evidence to convict him beyond a reasonable doubt.

1 All of the arguments that you've made are all
2 arguments to be made -- that -- that you are allowed to
3 make in front of the jury. Okay.

4 But as far as your motion for directed verdict and
5 your reference to my earlier decisions on the -- on my
6 motions, I'm denying your directed verdict motion and I'm
7 renewing the -- the opinions I made for the motions in
8 limine that we've been going through pretty much all
9 through this trial. Okay.

10 MS. WILLIAMS: Yes, sir.

11 THE COURT: All right. Now, do you need a moment to
12 talk with your client?

13 MS. WILLIAMS: I would request -- and I know it's
14 early -- an early lunch break, just to go over some of the
15 new things that came out, some of the testimony from the
16 doctor that we weren't exactly anticipating, and whether or
17 not my client wishes to testify at this point.

18 THE COURT: Okay. Well, then what time -- if -- if we
19 take an early lunch break, what time -- how long will it
20 take --

21 MS. WILLIAMS: I would ---

22 THE COURT: -- you want me to tell them to be back at
23 -- see it's only ten minutes after eleven right now.

24 MS. WILLIAMS: I know. I will be more than ready in
25 an hour or even 30 minutes.

1 THE COURT: Well, why don't we -- why don't we -- why
2 don't we do 30 minutes. Let then sit for 30 minutes ---

3 MS. WILLIAMS: Okay.

4 THE COURT: --- and then we -- we can go from there.
5 Okay. All right.

6 MS. WILLIAMS: Thank you, Judge.

7 THE COURT: We'll take a break for 30 minutes.

8 MR. TEMPLETON: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Off the record at 11:14 a.m.)

11 (On the record at 11:51 a.m.)

12 THE COURT: All right. Ms. Williams, have you talked
13 with Mr. Jolly about whether or not he wishes to testify in
14 this case?

15 MS. WILLIAMS: Yes, sir, I have.

16 THE COURT: Okay. And I need to go over -- you want
17 me to go over those questions with him concerning his right
18 to testify?

19 MS. WILLIAMS: Yes, sir. He does wish to testify is -
20 - is my -- my -- the information that I have at this point
21 is that he does wish to testify.

22 THE COURT: He does?

23 MS. WILLIAMS: Yes.

24 THE COURT: Okay.

25 MS. WILLIAMS: So I'd like for you to go over those

1 questions with him.

2 THE COURT: All right. Mr. Jolly, I need for you to
3 stand, please sir.

4 (The Defendant complies.)

5 THE COURT: All right.

6 THE CLERK: Judge, do you want to swear him in?

7 THE COURT: Yeah, I guess so. Just to be on the safe
8 side.

9 (SAMUEL JOLLY, having been first
10 duly sworn, testifies as follows:

11 THE COURT: All right. And Mr. Jolly -- y'all --
12 y'all can sit down. Okay. And Mr. Jolly, if you're more
13 comfortable sitting down, that's fine, too. Okay.

14 All right, Mr. Jolly, at this time I'm going to
15 explain to you your rights. If you don't understand
16 something I say, please let me know. If you want me to
17 explain anything in more detail, also let me know. Do you
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Can you hear me okay?

21 THE DEFENDANT: (No audible response.)

22 THE COURT: Can you hear me better now?

23 THE DEFENDANT: (No audible response.)

24 THE COURT: Okay. Well, let's go -- keep the -- keep
25 the headphones on then. Okay.

1 We've now reached the stage in the trial where you may
2 present your defense. You have the right to claim the
3 protections given you by the Fifth Amendment to the
4 Constitution of the United States. This amendment states
5 in part that no person shall be compelled in any criminal
6 case to be a witness against himself. This means that you
7 cannot be required to testify in this case.

8 You have the right to testify on your own behalf;
9 however, no one can make you testify. This is a personal
10 right, and no one can waive this right except you. If you
11 decide to testify, you will be subject to the same rules
12 that govern other witnesses, and you may be examined and
13 cross examined on any relevant issue in this case.

14 In addition, if you have any convictions involving
15 dishonesty or false statement or for crimes punishable by
16 imprisonment by more than one year, and this Court
17 determines that the probative value of admitting this
18 evidence outweighs its prejudicial effect to you, the
19 Solicitor will be able to introduce your record to attack
20 your credibility. Do you understand that?

21 A Yes, sir.

22 Q Okay. If you decide to testify, this decision on your
23 part must be freely, voluntarily, and intelligently made
24 with knowledge of the protections given you by the Fifth
25 Amendment and the consequences of your decision to testify.

1 If you decide not to testify, I will instruct the
2 jurors that they cannot give the fact that you did not
3 testify any consideration whatsoever, and that there is to
4 be absolutely no prejudice to you because you did not
5 testify. It is left entirely up to you whether or not you
6 testify. You may talk with you attorney, your family and
7 friends, or anyone else, but the final decision is left
8 entirely up to you. Do you understand what I've explained
9 to you?

10 A Yes, sir.

11 Q Do you have any questions about what I've explained to
12 you?

13 A No, sir.

14 Q Okay. Have you discussed with your lawyers whether
15 you should or should not testify?

16 A Yes, sir.

17 Q Okay. Do you wish to talk to your lawyers anymore at
18 this time?

19 A No, sir.

20 Q Do you wish to testify?

21 A Yes, sir.

22 Q Okay.

23 THE COURT: All right. Ms. Williams, he has indicated
24 to you that -- indicated to the Court that he wishes to
25 testify in this case. Are you prepared to go forward now?

1 You want to take a break for lunch? Tell me what your --
2 your general ...

3 MS. WILLIAMS: I would love to go forward right now,
4 but I will tell you, my stomach is already growling. So it
5 -- it -- I would leave it to the discretion of the Court
6 whether you want to take a lunch break or ...

7 The Court: Well, it -- we -- we're six minutes away
8 from noon right now. I know the jury's been sitting due to
9 my inability to find what I wanted, but I can send the
10 bailiff's back out there and tell them they -- if they can
11 be back here at one, we can begin the case at 1:15.

12 MS. WILLIAMS: I don't think the testimony is gonna
13 take extraordinarily long. So I can't see it lasting
14 longer than 30 to 45 minutes.

15 THE COURT: Well, I mean, if you want to go ahead and
16 do it now, we can do it now. Whatever you want to do. You
17 wanna ...

18 MS. WILLIAMS: And then break before closing?

19 THE COURT: Yeah.

20 MR. TEMPLETON: I think that would be best.

21 MS. WILLIAMS: That -- that would be fine by me,
22 Judge. I think that's probably best at this point. W --
23 we're ready to go.

24 THE COURT: Okay.

25 MS. WILLIAMS: If the only thing holding us up is my

1 growling stomach, then I think we should probably go
2 forward.

3 THE COURT: Okay. All right. All right.

4 A Is the State ready to go?

5 MR. SPEARS: We are, Your Honor.

6 THE COURT: Defense ready to go?

7 MS. WILLIAMS: Yes, sir.

8 THE COURT: Okay. Would you bring the jury on in?
9 Thank you.

10 (Brief pause.)

11 THE COURT: All right. (To the bailiff) Bring the
12 jury on in, please.

13 (Jury enters at 11:58 a.m.)

14 THE COURT: All right. Ladies and gentlemen, I
15 apologize for the delay in getting y'all back in here. I
16 misplaced something I needed and it took me longer to find
17 it and -- and y'all didn't want to see -- see me while I
18 was looking for it. Okay.

19 All right. Now we're getting ready to -- to go
20 forward with the Defendant's part of the case. Okay.

21 Ms. Williams, y'all prepared to call your first
22 witness?

23 MS. WILLIAMS: Yes, sir, we are.

24 THE COURT: All right. Is that Mr. Jolly?

25 MS. WILLIAMS: Mr. Samuel Carl Jolly, yes, sir.

1 THE COURT: (To court clerk) Okay. If you'd swear Mr.
2 Jolly in please.

3 (SAMUEL JOLLY, having been first
4 duly sworn, testifies as follows:

5 THE COURT: All right. Mr. Jolly, you need to speak
6 up.

7 THE DEFENDANT: Got it.

8 THE COURT: Okay. All right. Maybe a little louder
9 than that.

10 THE DEFENDANT: Okay.

11 THE COURT: That's good. All right. He's your
12 witness, Ms. Williams.

13 MS. WILLIAMS: Thank you, Judge. May it please The
14 Court?

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q Mr. Jolly, other than nicknames like Sam or Sammy,
19 have you ever gone by any other name?

20 A Sammy, Sammy J.

21 Q Have you ever gone by any other last name or any other
22 alias?

23 A No.

24 Q And so, for the jury, again, what is your name?

25 A Samuel Carl Jolly.

DIRECT EXAMINATION BY MS. WILLIAMS - SAMUEL JOLLY

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1 Q Tell the jury a little bit about yourself, your age,
2 where you're from.

3 A Well, I'm 60 years old. I'm from downtown Charleston
4 originally. I grew up west of the Ashley also, and a
5 little bit in North Charleston. I've been playing music
6 and doing entertainment since I was young, and that's what
7 I do.

8 Q Where's your family at now?

9 A My family? My -- my father is deceased and my
10 mother's deceased and both my siblings, my sister and my
11 brother, passed away also.

12 Q Do you have family in Florida?

13 A I do.

14 Q Well, who you got in Florida?

15 A I have a nephew and his family which is quite large in
16 Florida.

17 Q Do you have any children?

18 A I have one child. One girl.

19 Q What is her name?

20 A Her name is Jessica Marie.

21 Q And so I'm assuming -- were you married or did you
22 have a significant other prior to 1997?

23 A Yes. I -- I divorced her mother and became a single
24 parent for quite -- quite a long time until I one day
25 realized that it was time for her to have a mother, and so

1 I -- I gave custody back to her at -- at that point.

2 Q Where is Jessica now?

3 A She lives in Panama City.

4 Q Florida?

5 A Florida. Uh-huh.

6 Q Do you remember meeting Rebecca -- what was Rebecca's
7 name when you met her? What was her name before she became
8 Rebecca Jolly?

9 A I don't remember.

10 Q Do you remember meeting her?

11 A I'm sorry?

12 Q Do you remember meeting her?

13 A Yes.

14 Q How did you meet her?

15 A Well, it was actually, like, wow. I was setting up at
16 a place, setting up as far as playing music and
17 entertaining. You go early and you do that. And I believe
18 she was in -- in there having an after dinner -- I mean, an
19 after work cocktail, and I just -- I walked by and bingo,
20 bingo.

21 Q You began dating?

22 A Somewhat after that. Uh-huh.

23 Q How long did you date her before ---

24 A Awhile. I -- I don't remember exactly. Year, two
25 years. Year and a half about.

DIRECT EXAMINATION BY MS. WILLIAMS - SAMUEL JOLLY

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1 Q A year and a half?

2 A Pretty much.

3 Q And ultimately y'all got married. Do you remember
4 when you got married?

5 A Yes, I do remember where we got married. We got
6 married in our backyard, which, our backyard went out to
7 the -- the lake, and so the view was -- was absolutely
8 stunning and it was great, and such as was our marriage.

9 Q I -- I notice you've been wearing headphones. Are you
10 hard of hearing?

11 A I am.

12 Q Okay.

13 A And I apologize. Sometimes I can't hear that well
14 because of my many, many years of playing music.

15 Q My question to you was, "Do you remember when you got
16 married?"

17 A When. The exact date?

18 Q Uh-huh.

19 A I do not. I think it was -- I think it was '96.

20 Q Are y'all still married?

21 A Yes.

22 Q Do you remember meeting **Minor**

23 A I do.

24 Q Did you meet her while you were dating ---

25 A Yes.

1 Q --- Rebecca Jolly, or did you meet her after you --
2 when did you meet her?

3 A Well, we -- we dated and then, as far as I recall, we
4 -- our relationship took off and pretty quick. I -- I knew
5 early on that I --

6 Q Let me stop -- when did you meets her? Did you meet
7 her before or after you married Rebecca Jolly?

8 A I met her before, I think.

9 Q Okay.

10 A And what was your relationship like when you met her
11 and -- and after the marriage? What was your relationship
12 like with Minor

13 A When I met her, I -- I was -- I thought she was a
14 adorable, wonderful person, and you know, I thought we hit
15 it off pretty -- pretty doggone good and so did her mother.

16 Q And how would you characterize the relationship? Was
17 it father/daughter? Did she have any other fathers in her
18 world?

19 A There was -- there was -- the only person in her life
20 at that time was her grandfather, and I -- as -- as the
21 relationship grew, it was -- it -- it turned out -- it was
22 -- it -- it was good. It was -- was fine. It was -- she
23 was a -- she was a -- a -- a nice person to be around.

24 Q So would you -- how would you characterize your
25 relationship with her? Was it father/daughter? Was it

DIRECT EXAMINATION BY MS. WILLIAMS - SAMUEL JOLLY

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1 friend? Were you the parent? Or were you just ---

2 A We were ---

3 Q --- her step-dad?

4 A --- we were friends. We -- we were friends. We -- we
5 -- we did things together, I took her places. I worked
6 during the day, sometimes at a music store. I would take
7 her in which she absolutely adored. She got to collect
8 money, she got to associate with people.

9 I'm -- I'm -- I would -- at that time I was a fairly -
10 - fairly popular person in the area. So people would come
11 in and got to know her and say hi to her. She enjoyed it.
12 She had a good time there.

13 Q Where did you live in 1997?

14 A I believe it was Shirley Lane.

15 Q And where were you working? You said you worked at a
16 music store?

17 A I -- I -- I had -- I did 3 jobs part-time, which --
18 during the day, I -- I worked at a music store on call
19 because I'm, and still am, somewhat of an expert in the
20 music field as far as instrumentation and -- and knowing
21 pricing. And so I would get called in during the day. If
22 -- if the person that owned the store needed to take time
23 off, I would take the -- the -- I would take control of the
24 store 'til he got back.

25 At night I worked. I had a couple of steady places

1 that I played at night, played music. And then I worked
2 piecemeal as far as getting a lot of jobs through a studio
3 which I had to work late night. After I got off work from
4 both jobs and late night -- I would go and spend almost all
5 night, but it was -- the money was so good back then I
6 couldn't turn it down, so I mean, and it's -- you only get
7 that when you get it, you know. So -- and that's -- I
8 could say that's three part-time jobs and they weren't all
9 the time constant, but per the job, you know.

10 Q Was Rebecca working at that time?

11 A Yes. She -- she was.

12 Q Where did she work? What were her hours?

13 A Well, I don't exactly remember the name of the
14 company, but she worked early. She would go to work early,
15 seven o'clock in the morning. I -- I don't -- I don't
16 actually remember the exact time, but it was early. And
17 she would come home late, not all the time. But she worked
18 hard. She was -- she's a very hard worker.

19 Q The reason we're here today, these allegations --
20 you've been sitting in court and you've heard the
21 allegations.

22 A Yes.

23 Q When was the first time you heard about these
24 allegations from **Minor**

25 A The very first time was when the -- the DSS worker

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1 came to the home, I believe it was.

2 Q And how did you respond to these allegations?

3 A Oh. I was -- I -- I had no clue whatsoever that
4 something like this was happening, and I -- I was shocked,
5 I was -- I was -- to use a word, I was mortified.

6 Q Did you -- do you remember meeting with the DSS worker
7 at that point?

8 A Vaguely, yes. Some -- some --

9 Q Where -- where did you meet the -- the social services
10 worker?

11 A It was -- it was at the home.

12 Q At your home with Rebecca and **Minor**

13 A With Rebecca and **Minor** yes.

14 Q Who was present for that meeting?

15 A I believe it was my wife and the DSS worker.

16 Q Do you remember the questions the DSS worker asked
17 you?

18 A Vaguely. Some of them I do, some of them I don't.

19 Q Do you remember being asked whether or not you pulled
20 down **Minor** Steven's pants and spanked her?

21 A I believe so. I -- I'm not quite sure, but I -- I
22 think so.

23 Q Do you remember what your answer was?

24 A I -- it -- I -- absolutely not, but in the home, you
25 know, this -- this -- I had spanked her, and I assumed

1 that's what she -- they were talking about.

2 Q So do you remember your -- are you saying you don't
3 remember your answer to her or you do remember your answer?

4 A I vaguely do. I -- I -- I read the answers and
5 sometimes that will, you know, jog your memory.

6 Q So when you were asked if you had spanked **Minor** what
7 was your answer?

8 A I would say I would have said, "Yes." I don't
9 remember exactly.

10 Q And when they asked her if you tickled **Minor** do you
11 remember being asked that question?

12 A Vaguely.

13 Q Do you remember what your answer was to that question?

14 A Yes. I -- I -- I think I do. Because we used to play
15 and have fun. We were -- we were friends and I -- I would
16 tickle her, or -- or -- or -- or -- or she -- she would
17 chase me around the couch or I'd chase her. I mean, it was
18 kind of -- it's -- it's what families do, right?

19 Q Do you remember the DSS worker asking if you touched
20 **Minor's** vagina?

21 A Yes.

22 Q And what was your answer to that?

23 A I said, "No." Well, I said, "I don't remember,"
24 because I was thinking -- you understand, I was upset. And
25 I was thinking that because of certain things that might

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1 have happened such as a bath or helping her with something
2 on or clothing or something. But as far as -- as far as --
3 as far as on -- on purpose, I -- I -- it -- I -- no.

4 Q Have -- you've heard the testimony that you -- you at
5 one point said, "I'm sorry for hurting **Minor** and her
6 mother."

7 A That's correct.

8 Q Can you explain why you would have said something like
9 that?

10 A Well, everything started seems like after the
11 spanking, really -- really, I mean, just went "boom". And
12 all I can think of is saying, you know, "I'm sorry if I --
13 if I hurt her." And -- and -- and I'm sorry if it hurt --
14 initially it hurt our whole family and our -- our whole
15 lifestyle, and I -- you know, I would've done anything to
16 fix it, you know?

17 But I -- I was -- I would have just said, "I'm sorry.
18 I didn't do it."

19 Q After the interview with DSS, what was your
20 understanding of what you were supposed to do at that
21 point?

22 A My understanding was -- I -- I believe there were some
23 options. I -- I don't remember exactly word for word
24 options, but until we could get this fixed through DSS,
25 through Social Services, I was -- one of the options was

1 for me to leave.

2 Q And did you leave?

3 A I did.

4 Q Where'd you go?

5 A I -- I moved in with a friend of mine for a short
6 time.

7 Q And after that?

8 A I -- I moved to Florida.

9 Q Did you stay in contact with your wife?

10 A I did.

11 Q Did you see her after ---

12 A I did.

13 Q --- you moved out? Where did you see her at?

14 A I -- there was -- periodically she would come down and
15 visit me and there was different places, places I was
16 playing. Places ---

17 Q Did you attempt to reconcile?

18 A Yes.

19 Q Were y'all attempting to reconcile?

20 A Yes. There was a point in time where we talked about
21 it. There was no for sure reconciliation going on, but --
22 except we were -- we were definitely talking about it and
23 wanted to because Becky and I -- we were soul mates.

24 Q Did you ever change -- did you ever know that you --
25 that there was a warrant for your arrest?

DIRECT EXAMINATION BY MS. WILLIAMS - SAMUEL JOLLY

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1 A I did not.

2 Q What did you think was going on in South Carolina?

3 Did you think it was a criminal action? A civil action?

4 What did you think was going on here?

5 A I was waiting for some type of -- something to happen

6 through the social workers because I was hoping -- and I

7 asked if we could get this fixed, and I would do anything

8 possible to get this fixed, you know, some type of

9 counseling, if we need to do -- whatever we needed to do to

10 fix this. I -- I wanted my family back together.

11 Q What were you doing when you were in Florida? Were

12 you performing?

13 A I was, and I was working at a studio. I also do

14 computer work a little bit and electronic work. I was

15 working at a -- an electronics store and a computer store

16 at the same time.

17 Q The performances, specifically about your performances

18 in Florida, were you ---

19 A Quite ---

20 Q --- performing publicly?

21 A Yes.

22 Q Were you using your name, Samuel Jolly, when you were

23 performing?

24 A Yes. One of the bands I -- I performed in was called

25 "Sammy J and the Guys."

1 Q Prior to 2013, did anyone ever come to your house to
2 arrest you or tell you about some sort of criminal
3 investigation?

4 A No.

5 Q When were you arrested? Do you remember the year?

6 A 2013.

7 Q And eventually were you released from jail after that?

8 A Yes.

9 Q You were arrested for this charge?

10 A Yes, that's correct.

11 Q And what did you do after you were arrested? Did you
12 move back to Florida?

13 A Initially I -- I moved in with someone, a friend of
14 mine, and started performing. I got lucky and got in a --
15 in a band and was able to do work in this area. And
16 eventually, as this type of work goes, it goes "boom," and
17 so I went -- I -- I moved back to Florida -- well, I just -
18 - I left and went to Florida.

19 Q Did you have a court date that you didn't come back
20 for?

21 A Yes.

22 Q Why?

23 A Truthfully, I had the wrong date on my phone. That's
24 the real reason.

25 Q And then after that?

DIRECT EXAMINATION BY MS. WILLIAMS - SAMUEL JOLLY

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1 A Well, my attorney called me and -- and said, "Guess
2 what? They're going to put you under the bus, under the
3 jail, for -- you know, forever." And I was, like, scared
4 to death. And so, I mean, I -- at that point I was like,
5 "Oh, my goodness. For something I didn't do. You know,
6 I'm accused of something terrible, and I didn't do this."
7 And I was like holy ...

8 Q These allegations that you sexually abused **Minor**
9 **██████████** are they true?

10 A They are not true.

11 Q These allegations that you ran because you're guilty,
12 is that true?

13 A That is not true.

14 Q Have you had a chance to watch the video from 1997 of
15 **Minor ██████████** telling what happened?

16 A No. I understand it's -- it's not available.

17 Q So you haven't been able to see it because it's been
18 lost.

19 A It's been lost. Yeah.

20 Q In preparing to testify today or to defend yourself on
21 these allegations, have you had a chance to look at the
22 Department of Social Service's file regarding the
23 allegations against you?

24 A No.

25 Q Why?

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL JOLLY 79

1 A I understand that's been lost also.

2 Q Have you had a chance to review the police
3 investigative report or all of the police reports in this
4 case?

5 A I have not. I understand that's also lost.

6 Q Have you had a chance to look at the pictures from the
7 medical doctor or any of the videos that were done in med -
8 - any medical examinations?

9 A No, ma'am. It -- it's been lost. All of that
10 evidence has been lost.

11 Q Thank you, Mr. Jolly. Please answer any questions The
12 State has for you.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Templeton, he's your witness.

15 MR. TEMPLETON: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. TEMPLETON:

19 Q Good Afternoon, Mr. Jolly.

20 A How are you, sir?

21 Q I'm doing well. I'm gonna go through a little bit of
22 what Ms. Williams just went over with you, but ---

23 A Okay.

24 Q How did you first meet **Minor** What was the first --
25 first thing you remember when you met **Minor**

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 80

1 A I -- vaguely, it was -- we went over to -- I came over
2 to the house -- her -- their house and to -- to meet her.

3 Q Okay.

4 A And I don't remember the full meeting, but it -- I
5 mean, it was fine. Everything was -- I mean, I thought she
6 was a wonderful child.

7 Q And about when did you meet her? Just a general time
8 frame.

9 A Like, date?

10 Q Just a year would be great.

11 A Okay. Like, early '95 -- I mean, late '95, early '96.

12 Q Okay. And how old were you at that point?

13 Approximately's fine. In -- in your late 30's or early
14 40's?

15 A In my late 30's.

16 Q Okay. Let's talk about where you were working back
17 during that time frame.

18 A Okay.

19 Q You said during the day you were just kind of on call
20 at this music shop?

21 A That's correct.

22 Q So you would go in sometimes, not go in sometimes.

23 A That's correct.

24 Q And then in the evenings, I assume you were at -- at
25 bars and different places playing music?

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 81

1 A Well, it wasn't always bars.

2 Q Okay.

3 A It was -- it was just regular general restaurants or
4 wherever I could get a pick-up job. I'd play piano.

5 Q Okay.

6 A I played downtown at the Hilton, you know, wherever --
7 -

8 Q Wherever you could find a job.

9 A Yes.

10 Q Okay.

11 A That's the nature of my -- my business.

12 Q Absolutely. And then after that you would go into a
13 music studio in the evenings a lot of times?

14 A A music studio. We did -- we did an awful lot of
15 recording late night --

16 Q Okay.

17 A -- because it's -- it seems like your brain slows down
18 and you can do more work late night, you know.

19 Q Okay. But during the day, for the most part, were you
20 at home then?

21 A No. I -- I -- I -- I mean, I did a lot of work at the
22 -- at the store.

23 Q Okay.

24 A Yes. But not all the time.

25 Q But you'd sleep a lot during the day ---

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 82

1 A I did sleep ---

2 Q --- after being up all night?

3 A Actually, I -- I would come home from the studio and
4 take a couple hours and go into work if I had to, come back
5 and take a couple more hours and then go to -- go set up.
6 Sometimes come back and take another couple hours.

7 A It just depended on the day.

8 Q Yes, yes.

9 A I mean, were you home alone with **Minor** a decent amount
10 then?

11 A Sometimes yes and quite -- quite a bit, actually.

12 Q Okay.

13 A Yes.

14 Q And you said her mom worked. Somewhere around seven
15 o'clock in the morning she'd leave and she'd get back mid,
16 maybe late evening, somewhere in that range?

17 A Yes. Uh-huh.

18 Q Six o'clock, seven o'clock, something like that?

19 A Absolutely, yes.

20 Q She ---

21 A But she was a hard worker.

22 Q Okay.

23 A She -- she still is.

24 Q Okay. Do you remember when **Minor** would get home?

25 A Mid to late afternoon.

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 83

1 Q Okay. I think she testified 2:30 or 3. Does that
2 sound about right?

3 A I don't remember. I don't recall the exact time.

4 Q Okay. And you said you remembered talking to the DSS
5 worker at least vaguely, right?

6 A Yes.

7 Q And she talked -- when -- she asked you some questions
8 that day, correct?

9 A Correct.

10 Q All right. And she asked you about pulling down
11 **Minor's** pants and spanking her, correct?

12 A That is correct in -- in that statement.

13 Q And you did that, correct?

14 A I -- I did.

15 Q Okay. How often did that happen?

16 A It was -- I --

17 Q Was it a one time occurrence? Was it regularly?

18 A I -- I -- I believe it was -- I -- I can remember
19 twice.

20 Q Okay.

21 A Maybe twice. It was -- it was because of bad things
22 that happened.

23 Q Okay.

24 A It -- it's just -- it's what -- you know, my parents
25 did it to me and my brother, you know, it's just -- you

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 84

1 know, you spank the child.

2 Q Okay.

3 A When they -- when they curse at you and did bad
4 things, you know.

5 Q Okay. And she also asked you about -- or I think you
6 may have actually volunteered to her about flashing **Minor**
7 at least on one -- on one occurrence. Do you remember
8 that?

9 A I do not.

10 Q Okay. Do you remember -- have you seen the discovery
11 in this case?

12 A I have seen what we have.

13 Q Okay. Do -- have you seen her notes in this case, the
14 DSS worker's notes?

15 A I believe so.

16 Q Okay. And in her notes she indicates that you flashed
17 **Minor** when you were getting out of the shower. Do you
18 remember that?

19 A Yes. I was trying to explain -- figure that out in my
20 -- in my head.

21 Q Okay.

22 A And it -- and -- she came into my bathroom three or
23 four times before I started locking my door because I took
24 showers -- I would get ready for work in the afternoon.

25 And she -- she came in my -- she would come in my bathroom

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 85

1 once in a while just to come in, and I'd say, "Stop. Don't
2 -- don't do that."

3 Q Okay.

4 A You know, and -- but that's not flashing. I mean,
5 that's just, "Get out of here." And then I started locking
6 my door after awhile to take my shower.

7 Q Okay. She also asked you about -- about tickling her
8 chest. What was that about?

9 A I don't believe she said -- well, I -- I don't
10 remember exactly what -- what ---

11 Q Okay.

12 A --- the phrasing of the question was, but the -- like
13 I said, we used to play around and have fun, and -- and you
14 know, tickling was part of it. A child loves to be tickled
15 --

16 Q Okay.

17 A -- you know, and I -- I'm trying to be a good father,
18 trying to do things, trying to be right for the child and -
19 I -- I found out that, you know, try -- you know, you
20 should be a good parent. Not be the best friend, be the
21 best parent, and I ...

22 Q But you said you were friends with **Minor** right?

23 A That's correct.

24 Q Okay.

25 A Which I thought.

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 86

1 Q Okay. All right. Let's move onto the allegations
2 that **Minor** has levied against you. All right. She says
3 that at times you would call her into the bedroom ---

4 A That's not true.

5 Q --- while you were in bed.

6 A That is not true.

7 Q That's never happened?

8 A I -- I would never call her into the bedroom.

9 Q Okay. You never asked her to rub a stuffed animal --

10 A No.

11 Q -- on your penis?

12 A No.

13 Q Okay. You never talked to her about puberty, rubbing
14 her breasts?

15 A I never rubbed her breasts.

16 Q Okay.

17 A I talked to her about puberty.

18 Q Okay.

19 A She asked me questions and I tried to answer them as -
20 - you know, eventually I was -- I said, "You need to talk
21 to your mother for the rest of this."

22 Q Okay. During that conversation you never rubbed her
23 breasts?

24 A No.

25 Q You never touched her pubic hair?

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 87

1 A I did not.

2 Q Okay. Do you remember showing her graphic cartoons?

3 A I did not.

4 Q Okay. Do you remember a computer being in kind of the
5 -- I -- I think she said a closed in garage or something
6 like that on Shirley Lane?

7 A Of course.

8 Q Okay. Do you remember a computer being in there?

9 A There was one.

10 Q Okay.

11 A It was -- it was totally password protected, too.

12 Q Okay.

13 A And ...

14 Q Okay. You don't remember ever showing her Flintstones
15 cartoons that were sexually graphic?

16 A No. I would not have done that.

17 Q You don't remember ever having her on your lap at that
18 computer showing her those cartoons, do you?

19 A I -- I -- it's not that I don't remember. I'm sure I
20 did not.

21 Q Okay. We were talking about -- or I think Ms. -- Ms.
22 Williams ask you about the -- why you responded with "I
23 don't recall" to putting your fingers inside of **Minor**

24 **██████████** Do you remember that?

25 A Vaguely. But I have read it 150 times because I was

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 88

1 upset about -- about it written down. Yes.

2 Q I think in your direct testimony you said that, "Yeah.
3 Maybe it happened when I was giving her a bath or helping
4 her put clothings on." Did you do that a lot with a 10-
5 year-old?

6 A No. You go back to the testimony, I -- you -- you're
7 talking about -- there was ever -- never ever any type of
8 sexual type -- if something bumped into something because I
9 was trying to help her, that's -- that's totally different
10 and you're trying to be a parent, trying to help.

11 Q Okay.

12 A But ---

13 Q I mean, did you have to help her with baths when she
14 was 10 years old?

15 A No.

16 Q Okay.

17 A And that ---

18 Q Did you ---

19 A That would not have happened.

20 Q Okay.

21 A This is probably about a little earlier.

22 Q Okay. At 8 years old? 9 years old?

23 A I -- I -- and I -- I don't think so, but I remember --
24 and I might even be confused --

25 Q Okay.

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 89

1 A -- because of when I had my daughter and she was --
2 she needed help sometimes.

3 Q Okay.

4 A She's a little -- a little slow, honestly.

5 Q How old is your daughter?

6 A She's -- she'll be 35 this year.

7 Q So maybe four or five years older than **Minor**

8 A Somewhere in that area.

9 Q Somewhere in that range.

10 A Yes.

11 Q Okay. Did you ever have to -- when -- when you knew

12 **Minor** did you ever have to help her putting on her
13 clothes?

14 A I don't think so.

15 Q Okay.

16 A I mean, I could have.

17 Q Okay.

18 A I -- I don't remember. We were friends and if she
19 needed something -- some help, I would have helped her. Of
20 course I would.

21 Q Okay. You did talk to DSS, though. You do remember
22 that, correct?

23 A I remember talking ---

24 Q Okay.

25 A --- to DSS.

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 90

1 Q And do you remember, as best you can, what she told
2 you about having to get out of the house.

3 A Go ahead.

4 Q Can I say it -- do I need to say it again?

5 A Yeah.

6 Q If you could, what do you remember the DSS worker
7 telling you about needing to leave the house or **Minor** leave
8 the house? Do you remember that?

9 MS. WILLIAMS: Objection, Your Honor. Improper --
10 he's soliciting improper hearsay testimony. He's asking my
11 ---

12 THE COURT: Well ---

13 MS. WILLIAMS: He's asking the witness to say what
14 someone else told him.

15 MR. TEMPLETON: It's already been testified to.

16 THE COURT: He's asking the witness to say what --
17 it's not -- it's not asserted for the truth of the matter,
18 it's just what -- what he was told. You asked him why he
19 left.

20 MS. WILLIAMS: I asked him -- I asked him, "Based on
21 your conversation, what did you do".

22 THE COURT: Right.

23 MS. WILLIAMS: Right.

24 THE COURT: Okay. And he just asked him what did she
25 tell him.

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 91

1 MS. WILLIAMS: That's right, Judge.

2 THE COURT: Okay. All right. So I overrule your
3 objection. I'll let you answer it.

4 MS. WILLIAMS: Thank you, Judge.

5 THE COURT: Thank you.

6 BY MR. TEMPLETON:

7 Q What did she tell you? I -- I'll ask the full
8 question.

9 A Please.

10 Q So you had conversations with DSS back in, I believe
11 it was September of 1997 -- or yeah, September of 1997.

12 A It -- it was August.

13 Q Okay. But when you had that conversation with DSS --
14 you only had one conversation with DSS, right?

15 A Yes.

16 Q Okay. During that conversation, did she tell you you
17 needed to leave the house?

18 A There were options brought forth ---

19 Q Okay.

20 A --- to me.

21 Q What were those options?

22 A I -- I -- I don't remember all of them, but the one
23 that we decided on was to leave -- to leave -- for me to
24 leave for awhile while this was sorted out, and we -- we
25 tried to do whatever we needed to do to fix all this and

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 92

1 get it all straightened out.

2 Q Okay. Ultimately you left the house?

3 A That's correct.

4 Q And ultimately you leave the State, too, correct?

5 A Eventually.

6 Q Okay. How much -- how long after you left the house
7 did you leave the State? Within a week? Within a month?

8 A Within the month.

9 Q Within the month?

10 A Yes.

11 Q Okay. That DSS worker also told you that she was
12 referring this case to the Sheriff's Department, didn't
13 she?

14 A Told me what?

15 Q That she was referring this case to the Sheriff's
16 Department.

17 A She did not.

18 Q You remember reading that in the discovery with this
19 case?

20 A Well, I -- I -- I will say this, I don't remember her
21 saying that.

22 Q Okay. That's fine. Ultimately you get arrested down
23 in Florida, right, in this -- for this case, correct?

24 A In 2013.

25 Q And that was in 2013.

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 93

1 A Yes.

2 Q I think you ultimately get back to Dorchester County
3 somewhere around January 30, 2013. Does that sound about
4 right?

5 A That sounds about right.

6 Q Okay. You're able to -- to be released, correct?

7 A Yes, I -- I was.

8 Q Okay.

9 A I was released on a very small bond.

10 Q Okay. And actually that bond requires that you not
11 leave the State of South Carolina; isn't that correct?

12 A I didn't know that.

13 Q I can show you the ---

14 A I believe you if you say so, sir.

15 Q Okay. So you were not allowed to leave the State
16 while this action was pending, correct?

17 A Okay.

18 Q Is that correct?

19 A I -- I did not know that.

20 Q I can show you the form.

21 A No. I believe it, but I -- I never read the statute
22 [sic] or -- or what it entails. I'll -- I'll say yes.

23 Q Okay. So you were not allowed to leave the State of
24 South Carolina and you knew that, didn't you?

25 A I did not know that ---

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 94

1 Q All right.

2 A --- at that time.

3 Q I'm gonna show you the bond form that would have been
4 given to you.

5 MR. TEMPLETON: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 (Mr. Templeton hands a document to the witness.)

9 Q That would have been given to you after you were -- by
10 the -- by the bond judge. Does that look familiar at all?

11 A It does not.

12 Q Okay. What does it say regarding you leaving the
13 state?

14 A I don't have my glasses.

15 Q We can pass them up to you.

16 A I'm sorry. I should have had them.

17 Q Absolutely. You never know when you need to read
18 something.

19 MR. TEMPLETON: May I approach again, Your Honor?

20 THE COURT: You may.

21 (Mr. Templeton hands eyeglasses to the witness.)

22 A Thank you, sir. Okay.

23 Q And if you would, were you allowed to leave the state?
24 And you can ---

25 A It says (as read): "Do not depart the state without

CROSS-EXAMINATION BY MR. TEMPLETON - SAMUEL CARL JOLLY 95

1 permission of the Court."

2 Q Okay. Did you ever get permission of the Court to
3 leave the state?

4 A I did not.

5 Q Okay. Ultimately you get rearrested when?

6 A (No audible response.)

7 Q Do you know about when you end up getting rearrested
8 again in Florida?

9 A June, 2016.

10 Q Okay. And you just told this jury that the reason you
11 didn't come back is because you didn't know the correct
12 date that you were supposed to be in court, right?

13 A I had the -- the wrong date written in -- in -- every
14 -- every -- yes. That's correct. I didn't know the date.
15 I had it wrong.

16 Q Okay. But even after your lawyer spoke to you, which
17 you just testified to, you decided still not to come back
18 to South Carolina, correct?

19 A I was scared.

20 Q Okay.

21 MR. TEMPLETON: Beg the Court's indulgence just a
22 moment, Your Honor.

23 THE COURT: Take your time.

24 (Brief pause.)

25 MR. TEMPLETON: That's all the questions I have, Your

REDIRECT EXAMINATION BY MS. WILLIAMS - SAMUEL JOLLY

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1 Honor.

2 THE COURT: Anything on redirect?

3 MS. WILLIAMS: Judge, may I approach to take a look at
4 this?

5 THE COURT: You may.

6 MS. WILLIAMS: I can't find it in my file.
7 If I could, Judge.

8 REDIRECT EXAMINATION

9 BY MS. WILLIAMS:

10 Q Mr. Jolly, did you sign this? Is that your signature
11 at the bottom?

12 A I don't see a signature that's mine, no.

13 Q No. Your signature's not on that?

14 A It is not.

15 Q Do you remember ever receiving this?

16 A No, I don't.

17 MS. WILLIAMS: I have no further questions, Judge.

18 THE COURT: Anything on re-cross?

19 MR. TEMPLETON: Nothing, Your Honor.

20 THE COURT: All right. All right. We're gonna take a
21 break, ladies and gentlemen. I think we'll take a break
22 for lunch now?

23 MS. WILLIAMS: Yes, please.

24 THE COURT: Okay. All right. And I'm gonna ask y'all
25 -- if y'all could be back -- well, it's a little after

1 1:30. If y'all could be back here about 1:45. Okay.

2 And we'll continue with the case at that time.

3 Remember, you cannot talk about the case among
4 yourselves, to anybody else, can't do any investigation.
5 Okay. We'll see y'all at 1:45. Y'all have a good lunch.
6 Okay. Thank you.

7 (Jury exits at 12:36 p.m.)

8 THE COURT: Okay. You can get up now, Mr. Jolly, and
9 head on back. Okay.

10 THE DEFENDANT: Thank you.

11 THE COURT: Yes, sir.

12 (The Defendant exits the stand.)

13 THE COURT: All right. Ms. Williams, how many more
14 witnesses do y'all have?

15 MS. WILLIAMS: That's all. Defense rests.

16 THE COURT: Okay. All right. So we come back, I'll
17 bring the jury out here. You can -- well, when we come
18 back, even though you have rested, I'll let you renew your
19 motions. Okay. So we can hear those. You know, we need
20 to -- we need to do that one more time for the record --

21 MS. WILLIAMS: Yes.

22 THE COURT: -- to make sure everybody's happy in
23 Columbia. And then I'll let you rest and we will do our
24 closings. Y'all be prepared to do your closings ---

25 MS. WILLIAMS: Yes, sir.

1 THE COURT: --- then? Y'all be ready?

2 MR. TEMPLETON: Yes, sir.

3 THE COURT: Okay. All right. And you -- and we've
4 gone over, I think, all the corrections. We've gone over
5 that. Y'all seen the verdict form?

6 MR. TEMPLETON: We have, Your Honor.

7 THE COURT: Okay.

8 MR. TEMPLETON: I don't have any objections to the
9 verdict form.

10 THE COURT: Any -- any problems with -- have you seen
11 the verdict form?

12 MS. WILLIAMS: Can I -- can I look at it again?

13 THE COURT: Oh, yeah. You can.

14 MS. WILLIAMS: I gave you my copy.

15 THE COURT: Okay.

16 MS. WILLIAMS: I wrote on the back of it and handed it
17 to your clerk.

18 THE COURT: Okay. With further directions that he was
19 supposed to do.

20 (Brief pause.)

21 MS. WILLIAMS: Looks good to me.

22 THE COURT: Okay. All right. We'll see y'all at 1:45
23 then.

24 MR. TEMPLETON: Thank you, Your Honor.

25 MR. SPEARS: Thank you, Your Honor.

1 THE COURT: Thank y'all.

2 (Off the record at 12:38 p.m.)

3 (On the record at 1:51 p.m.)

4 THE COURT: All right.

5 MS. WILLIAMS: Judge, at this time, the Defense is
6 getting to rest -- getting ready to rest our case. We have
7 no further witnesses. Prior to resting, however, we would
8 like to renew all prior motions and objections we've had
9 during the course of this trial.

10 THE COURT: Okay. And I'm going to note on the record
11 that you are raising all of them, including the ones in
12 limini, and my -- my decisions are going to remain the same
13 as we've stated on the record earlier. Okay.

14 MS. WILLIAMS: Thank you, Your Honor.

15 And I would also note for the record that we have had
16 a charge conference at the bench, and we are in agreement
17 with the charges that this Court intends to present the
18 jury.

19 THE COURT: And you've already reviewed the verdict
20 form as well.

21 MS. WILLIAMS: Yes, sir.

22 THE COURT: Okay. All right.

23 MR. TEMPLETON: The State's also in agreement with all
24 of this.

25 THE COURT: Okay. Thank y'all.

1 (To the bailiff) If you'd bring the jury on in. Thank
2 you.

3 Now, you're still gonna rest on the record, right?

4 MS. WILLIAMS: Yes, Your Honor.

5 THE COURT: Thank you, ma'am.

6 (Jury enters at 1:52 p.m.)

7 THE COURT: All right. Ladies and gentlemen, I hope
8 y'all had a good lunch. Okay. All right. Defense ready
9 to proceed?

10 MS. WILLIAMS: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. WILLIAMS: At this time the Defense rests.

13 THE COURT: Thank you, ma'am.

14 All right. Ladies and gentlemen, the -- as you just
15 heard, the Defense rested. That means she's not -- the
16 Defense is not putting up anymore evidence. That means you
17 have now heard all the evidence in this case 'cause the
18 State doesn't have any rebuttal testimony.

19 MR. TEMPLETON: None, Your Honor.

20 THE COURT: Okay. We're now getting ready to proceed
21 with the closing arguments, and then I will charge you with
22 the law. Okay.

23 Now, again, you're not going to be able to talk about
24 this case until I tell you to begin your deliberations,
25 just in case we happen to take a break at some time when

1 we're doing the closing arguments and my -- my charge on
2 the law. Okay.

3 All right. Mr. Templeton.

4 MR. TEMPLETON: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 MR. TEMPLETON: Ladies and gentlemen, I kind of want
7 to start with a time line of kind of what's happened
8 throughout this case.

9 So as you've heard, back on -- between August 1996 and
10 1997, this is when all of these allegations occurred. All
11 of the incidences of touching, all of the incidences of
12 lewd, lascivious conduct, and the ultimate penetration in
13 this case happened during that time frame.

14 You heard that on August 22, 1997, DSS worker, Ms.
15 Brown -- we all heard her testify -- went to talk to **Minor**
16 **██████████** talk to her about what happened. A few days
17 later, August 25, 1997, she goes back to that same house on
18 Shirley Lane, speaks to Samuel Jolly and speaks to Rebecca
19 Jolly.

20 Now, I'm going to go into a little bit about what she
21 testified later on. But after that, September 5, 1997,
22 there's a medical exam done. You'll hear -- I'll tell you
23 a little bit about what our doctor said about that, Dr.
24 Baker.

25 October 9, 1997, Detective Marshall told you that's

1 when ultimately the warrant was signed by a magistrate
2 judge for Mr. Jolly's arrest. We have a huge break in the
3 middle.

4 Mr. Jolly takes off. Between October 9, 1997, and
5 January 30, 2013, he's left the state. Can't find him.
6 He's taken off.

7 Bring him back to South Carolina. He's able to be
8 released, and he runs again. In 2014, he runs again. Is
9 again not found until 2016.

10 So let's talk about each one of the witnesses that
11 have come and -- and spoken to y'all this week. The first
12 person that spoke to y'all was Minor [REDACTED] She told you
13 about the things that that man did to her. She was 10
14 years old at the time. She testified that she was born on
15 [REDACTED] [REDACTED], And these allegations came out on August
16 22, 1997. She was 10 years, 11 months, and 15 days old
17 when these allegations were ultimately brought out by DSS.

18 She told you about meeting Mr. Jolly the first time
19 down in Charleston County, about the marriage to her
20 mother, and ultimately moving up here to Dorchester County
21 where all of these alleged incidents occurred. She was
22 going to Rollings Middle School. She was in fifth and end
23 of sixth grade, and that's when Mr. Jolly terrorized her.

24 What'd she tell you? She told you these kind of
25 things were happening every two weeks, three weeks. Couple

1 times a month. She told you about a few of the individual
2 incidences she vividly remembers and having her rub a
3 stuffed animal on his penis on that waterbed. She
4 remembers those small facts. About having -- where he
5 would have her sit on his lap, in front of a computer, and
6 show her extremely disturbing cartoons. This is a child.
7 She's 10 years old. She knows what cartoons are supposed
8 to look like and that's not this.

9 She tells you about him offering her money. She tells
10 you she didn't comprehend that amount of money. She's a 10
11 -- she's 10 years old. She doesn't comprehend \$1500, but
12 she does comprehend what she's ask -- what he is asking her
13 to do: To sit on his face.

14 She talked about his actions regarding when she was
15 going through puberty. She's 10 years old, she's starting
16 into that process and asking questions, and he's taking
17 advantage of that. He's caressing her breasts. This is a
18 10 year old. And he's commenting on her pubic hair. A 10
19 year old.

20 And ultimately she testifies that she vividly
21 remembers the final act, the culmination of all of these
22 other smaller acts and the penetration in this case.
23 There's two different charges in this case. Lewd act,
24 which are all of these things leading up to that final
25 penetration; and the penetration, which is criminal sexual

1 conduct with a minor in the first degree. That's what
2 happened in this case.

3 She told you about that penetration. She told you
4 about him breathing on her, on top of her when he committed
5 these, how Mr. Kornegay said, "heinous crimes".

6 The next person that came and testified was Ms. Brown.
7 We kind of messed up with her name a few times. Back in
8 1997, she was Ms. Elmore. Today she was -- or yesterday
9 she was Ms. Brown. And she told you about the interview
10 she had with **Minor** just that basically there were
11 allegations of sexual misconduct.

12 And then she went into real detail with what she
13 remembers and what her notes reflect from her interview
14 with Samuel Jolly and Rebecca Jolly. And you can -- and
15 you'll go back through your mind, you'll remember what she
16 said, but I want to tell you what I remember her saying.

17 She started by advising him of his rights, that he had
18 a right to an attorney. She then went through each of the
19 allegations that she had against him at that point, that he
20 pulled down her pants and spanked her. He admitted to
21 that. He admitted to that on the stand.

22 And then she confronted him about tickling her chest.
23 And we're not talking about at 2-year-old playing a little
24 bit. This is a 10-year-old. She's going through puberty
25 and you're tickling her chest? That is a lewd act. He

1 admits to that.

2 And then she tells you he volunteers -- she didn't ask
3 him about that -- he volunteers that getting out of the
4 shower he's flashing her with his penis. That is a lewd
5 act.

6 Next, she asks him about the digital penetration in
7 this case, him putting his finger inside of **Minor's** vagina.
8 And what does he say? "I don't recall. I don't recall."
9 He doesn't deny it. He doesn't recall?

10 Finally, Ms. Brown tells you about that -- she tells
11 him either he's gotta leave the house or **Minor's** gotta
12 leave the house until this investigation's over. **Minor**
13 leaves the house. She testified she went to her
14 grandmother's house for a week, maybe two. She doesn't
15 remember exactly.

16 But so does Mr. Jolly. Mr. Jolly doesn't just leave
17 the house. He leaves the house, the city, the county, the
18 state. He cuts off communication with everyone. He knew
19 his time was up, and it was time to get out of Dodge.

20 Next, we heard this morning from Dr. Baker. And what
21 she reported to you was that she did a medical exam on
22 **Minor** within, I -- I believe, a couple of weeks of
23 these allegations coming out.

24 What'd she tell you? That there's a transection to a
25 10-year-old little girl's hymen. She drew a picture for

1 you. She drew a picture for you of what happened to that
2 10-year-old little girl.

3 Finally, Detective Marshall came up. He talked to you
4 about all of his attempts to find Mr. Jolly. Mr. Jolly'd
5 taken off. Fallen off the face of the earth as far as we
6 knew, and it took until 2013, it took 16 years to find Mr.
7 Jolly. Brought him back to South Carolina, and he runs
8 again for another two years before we were able to find
9 him.

10 Next we heard from Mr. Jolly, and you've gotta judge
11 the credibility of witnesses. That's part of your job in
12 this case. Who do you believe?

13 He told you how adorable **Minor** was, how good of
14 friends they were. That's not what **Minor** said.

15 He testified he was home with **Minor** alone a lot. He
16 had the opportunity to do this and he did. Of course he
17 denied all of these allegations. He stood -- sat there and
18 denied every one of them.

19 But you've got to think: Who has a reason to lie in
20 this case? And that's Mr. Jolly.

21 Ladies and gentlemen, there's two charges in this
22 case. Charge of lewd act, and lewd means obscene, lustful,
23 lecherous. Lascivious means to insight lust. Lewd,
24 indecent, obscene, or actions depraving the morals in
25 respect to sexual relations. That's happened through all

1 of these incidents leading up to that -- leading up to what
2 Mr. Jolly really wanted in the end, the penetration of this
3 little girl.

4 The other charge we have in this case is criminal
5 sexual conduct with a minor in the first degree. We've
6 established that **Minor** was under the age of 11. She was 10
7 years old when all of these incidences occurred. And after
8 that, that penetration is the sexual battery that matters
9 in this case, period.

10 When you go back in your jury room, I want you to
11 think about something. It's been 20 years since these
12 events occurred. **Minor** doesn't have any reason to lie
13 about these at this point, but Mr. Jolly has every reason
14 to lie about these things. Thank you.

15 THE COURT: Thank you, Mr. Templeton. Ms. Williams.

16 MS. WILLIAMS: Thank you, Judge. May it please the
17 Court?

18 THE COURT: Yes, ma'am.

19 MS. WILLIAMS: There is one thing we can agree on, all
20 of us, every single person in this courtroom: The
21 allegations in this case are heinous. We said it in the
22 beginning, we've said it the entire time we've had this
23 case, we'll continue to say it. The allegations are
24 heinous. They're hard to listen to, they're hard to think
25 about, they're hard to defend against. They are heinous

1 allegations. One of the worst types of crimes you can
2 commit.

3 I need you to imagine yourselves being charged with a
4 heinous crime. The worst possible crime that you can be
5 charged with. I need you to imagine that you are charged
6 with this, and you find out about this almost 20 years from
7 the date that it happens that you are being criminally
8 charged for this.

9 I need you to think about what you would do if all of
10 the evidence that supported -- allegedly supported this was
11 gone, and you stood in front of a jury of your peers
12 without the ability to actually defend yourself because you
13 can't get a look at why they're saying what they're saying.

14 There's one person in the room that does not need to
15 imagine that. There's one person in the room who doesn't
16 need to wonder what it would feel like to be falsely
17 accused of something or what it would feel like to not be
18 able to answer because they just can't get a look at what
19 they're answering to. And that one person is Samuel Jolly.
20 He doesn't have to imagine that.

21 The judge is gonna tell you what he -- they do this
22 jury charge when we're all done, and the judge is gonna
23 tell you some things about what your job is. And -- and I
24 don't wanna steal his thunder, but I want -- I wanna talk a
25 little bit about what your job is as the jury. It is the

1 most important job in this courtroom. It's certainly more
2 important than my job. I think the judge would probably
3 admit it's more important than his job.

4 Your job to -- to -- to make it as basic as possible,
5 is threefold. Your job is to look at the facts, the
6 evidence that was presented to you these past two days.
7 Your job No. 2 is to weigh that evidence. How much do --
8 how much weight do you put here, how much weight do you put
9 here? And your third job is to finally determine, based on
10 all of that weighing and determining of credibility and
11 evidence, whether or not the State has given you enough to
12 find a person guilty of these charges beyond a reasonable
13 doubt. And that's the most important job in this entire
14 courtroom, those three things. Listen to the evidence,
15 weigh the evidence, and determine whether the -- whether
16 the evidence rises to proof beyond a reasonable doubt.

17 And when you go back to the jury room to do those
18 three things and to think about what you've heard and to
19 start weighing in your mind what you've heard, I want to
20 talk a little bit about what the State has called evidence
21 in this case.

22 The State brought a DSS worker to the stand. She
23 relied on five pages of notes. It should have been six
24 pages, but she told you, "It's missing page 3 and half of
25 page 6 is gone, too." There would have been a lot more,

1 but it was destroyed.

2 Whose responsibility was it to keep that? Not the
3 Defense. The State has that burden. The State has to
4 preserve that evidence, but it's gone. It's gone. And so
5 we don't have anything else other than five pages. One
6 page missing and half a page missing of notes from over 20
7 years ago.

8 And what the DSS worker told you was she asked Samuel
9 Jolly questions. She asked him, "Did you pull down her
10 pants and spank her on the bottom?" His answer was, "Yes."
11 unequivocal, "Yes." "Did you tickle her on her chest?"
12 unequivocal, "Yes." Again, these are -- these are typical
13 things that you do with a kid. If -- if any of you have
14 kids, if any of you has an eight-year-old, like I have an
15 eight-year-old, these are things you do with kids.

16 And then he -- she asked him, "Did you touch her
17 vagina?" And at that point, you're hearing these
18 allegations for the first time. I -- did I bathe her, did
19 I -- did I -- and he tells you, "Did I bathe her? Did I
20 help her put her clothes on? I don't know. I don't
21 recall. If I hurt her, if I hurt her mom, I wanna fix
22 this."

23 And they tell him to leave, and that's what he does.
24 He leaves.

25 Would there be a way to look at the DSS file and

1 determine whether or not **Minor** made inconsistent
2 allegations at that time in 1997, to determine whether or
3 not DSS thought that her allegations were credible, to
4 determine what happened when DSS finished their allegation
5 -- their investigation? Would there be a file to tell us
6 all of that? Yes. Is it here? No. And yet the State
7 asks you to stand here in judgement of another -- of a man
8 and find proof beyond a reasonable doubt.

9 The second person -- or the other person they called
10 to the witness stand was Dr. Baker. Did Dr. Baker say,
11 "This child was sexually molested"? No. Dr. Baker told
12 you she did an examination. There was an interruption in
13 the hymen. An interruption caused by what? Caused by her
14 falling on a balance beam? Caused by her falling off a
15 bicycle or onto a bicycle? These are all reasons that
16 would've caused that, and probably are very typical in a
17 10-year-old child.

18 Do you have anything to connect that finding to sexual
19 abuse? No. Have they given you anything to make that
20 connection, to make that jump? No. They've given you none
21 of that.

22 Would there have been a video that another doctor
23 could've looked at and said, "Nahh, that's just pretty
24 typical for a 10-year-old"? Would there have been pictures
25 that another doctor could've looked at and said, "Ah, well,

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1 this is typical findings"? Yeah, there would've been. She
2 told you from the witness stand. She told you there
3 would've been these things, there would've been a final
4 report. But guess what? They're gone. Gone.

5 Whose responsibility was it to keep those? It was the
6 State's responsibility to preserve the evidence. That's
7 their job, that's their duty. Cases like this don't come
8 to court really quickly. It takes a long time. And a lot
9 of times there's delayed reporting. It's their job to keep
10 that evidence and they didn't do it, and yet they put the
11 burden on you to make this determination of proof beyond a
12 reasonable doubt.

13 They called Detective Marshall to the witness stand
14 and he told you himself, "Yeah, I would've done an
15 investigative report." Where is it? Not here.

16 I would -- there would've been a Low Country
17 Children's Center Video. A contemporaneous -- we could've
18 showed it to you. We could've put it on the screen, you
19 could've seen what **Minor** said back in 1997. Do we
20 have it? Do you have it? Do we have it? Nobody has it.
21 It's gone. So we can't see that either.

22 So what we have to rely on at this point is **Minor**
23 Steven's testimony. And I think it was pretty clear that
24 what she said in 1997 and what she said on the witness
25 stand yesterday were two completely different stories.

1 What she told you on the witness stand yesterday were
2 things that she never told. And she admitted it to you.
3 "I never told anybody about having to look at \$1500 --
4 \$1500." Somebody pulled out \$1500? A musician pulled out
5 \$1500 and threw it on a table and asked her to sit on his
6 face. First time she ever said that was to a detective in
7 2011? She told you that. "No, I never said that back in
8 1997."

9 First time she ever talked about a Garfield stuffed
10 animal doll was in 2011. Never said it back in 1997.

11 She told you first time she ever talked about him
12 rubbing her breasts was in 2011.

13 She told you first time she ever talked about a
14 Flintstones cartoon and pornographic cartoons and -- and a
15 trunk and -- was in 2011. Over 15 years after this
16 happened.

17 So when you talk about weighing her credibility, you
18 need to think about the inconsistent testimony. Could we
19 have found out what she said in 2000 -- in 1997? Yeah, we
20 could've, but we don't -- we can't because we don't have
21 it.

22 The State, I think, is trying to argue to you that
23 somehow Sam left South Carolina in -- in 1997 because he
24 was guilty. He left in 1997 because as the DSS worker told
25 you, as the detective told you, as he told you himself,

1 they told him to leave. Leave the house. And he stayed in
2 the area for a while, but his family was in Florida, his
3 life was in Florida, and that's where he went. Did he
4 change his name? Nope.

5 And when the State argued to you a minute ago that
6 they looked high and low for him or they looked everywhere
7 for him, the officer couldn't even tell you that he had
8 notes tracking him. There was no -- there was no tracking
9 done. There was -- this case just went cold.

10 Why did it go cold? I don't know. Did -- did it --
11 did it go cold because they just didn't believe the
12 allegations? Is there any support to that theory, that
13 maybe, at the time that this happened, the credibility of
14 Minor [REDACTED] was in question.

15 The two police officers that reported to the scene,
16 the testimony to you from the DSS worker was that, "We
17 weren't going to put her in emergency protective custody."
18 Why? If they really believed this child was being
19 molested, why wouldn't they put her in emergency protective
20 custody? Why would they just say, "Hey, you just leave the
21 house, Mr. Jolly, 'til we get this investigation complete"?

22 If her mother believed her story, why would she try to
23 reconcile with the man who molested her child? Why would
24 she stay married to him? Do you have a question about the
25 credibility of the 10-year-old? Do you have a question

1 about the credibility of the witness that testified before
2 you yesterday?

3 Proof beyond a reasonable doubt means argue as a
4 reasonable person, hesitate. Does any of this make you
5 hesitate to act? The judge is going to tell you that.
6 These are not my words, I didn't make this up. The judge
7 is going to tell you that. Are you hesitating? And if
8 you're hesitating, that is not proof beyond a reasonable
9 doubt, ladies and gentlemen.

10 When we look at this case and we look at the burden of
11 proof and we look at your job as the jury, we look at the
12 fact that the DSS file's missing, that the DSS notes that
13 we had are incomplete and inaccurate, that the
14 investigative reports are missing, that the medical
15 findings are missing, that every piece of the -- the Low
16 Country Children's Center Video is missing, when we look at
17 that, and then to ask you, "You do the hard part. You find
18 proof beyond a reasonable doubt."

19 If you're hesitating, you need to think about a man's
20 life that hangs in the balance. If you're hesitating, you
21 need to think that the judge isn't gonna tell you this
22 isn't a hard decision or these aren't heinous crimes. If
23 you're hesitating, the judge is going to tell you you have
24 to find Samuel Jolly not guilty. Thank you.

25 THE COURT: Thank you, Ms. Williams. Anything in

1 reply?

2 MR. TEMPLETON: Just a couple things, Your Honor.

3 THE COURT: Okay.

4 MR. TEMPLETON: Ladies and gentlemen, we do have to
5 prove this case beyond a reasonable doubt. We have to
6 provide you with evidence that leaves you firmly convinced
7 of his guilt. Not beyond all doubt, but you have to be
8 firmly convinced.

9 There are some missing things in this case. If this
10 case had been tried in 1998 or in 1999, we'd have them.

11 Ms. Williams just talked about the DSS worker again a
12 little bit, and then about Mr. Jolly's response on the
13 stand: Maybe he touched her vagina when he was bathing
14 her? I don't know many 10-year-olds that are still having
15 help bathing by their step-father.

16 She talked about some inconsistencies. She talked
17 about the stuffed animal. So in 1997, there's conversation
18 of a stuffed animal. And in 2011, there's conversations
19 about a stuffed animal; and in 2018, she talks about that
20 stuffed animal. She talks about the porn cartoons not
21 being in 1997, but we talked about those being in Detective
22 Marshall's report in 1997, in 2011, and in 2018.

23 Even if you don't believe that he ran the first time,
24 what about in 2014? We talked about the bond requirement
25 that he stay in the State of South Carolina. He said,

1 "Yeah, that was a requirement." He disregarded it anyway
2 and it was another two years before we were able to find
3 him.

4 And finally she talked about the police officer
5 deciding not to put this child into emergency protective
6 custody, "EPC" some people call it. They were making sure
7 she was safe. She was out of that house going to her
8 grandmother's house already so that there wouldn't be any
9 contact between Mr. Jolly and her anymore.

10 Ladies and gentlemen, there is a lot of evidence in
11 this case. Everything points to that man right there.
12 Ladies and gentlemen, I ask you -- I tell you that I
13 believe the State has proved this case beyond a reasonable
14 doubt, and we ask you to return a verdict of guilty. Thank
15 you.

16 THE COURT: Thank you, Mr. Templeton. All right,
17 ladies and gentlemen, Mr. Foreman, you've heard the
18 evidence, you've heard the arguments of both parties. Now
19 it is my duty to explain to you the law.

20 During this trial, you and I have specific duties to
21 perform. As the trial judge it is my responsibility to
22 preside over the trial. It is your responsibility to
23 consider the testimony that has been presented from this
24 witness stand during this trial. I'm required to charge
25 you on the law applicable in this case.

1 As the presiding judge, I am the sole judge of the law
2 in this case. It is your duty as jurors to accept and
3 apply the law as I now state it to you. If you believe you
4 have any idea as to what the law is or what the law ought
5 to be and it does not agree with what I now tell you the
6 law is, you must abandon your idea because you are sworn to
7 accept the law and apply the law exactly as I now state it
8 to you.

9 Your duty is to determine the facts. In every case,
10 the jury is the sole and exclusive judge of the facts. A
11 trial judge cannot suggest, state, comment on, or make any
12 statement to a jury about the facts in a case. Since you
13 the jury are the sole judges of the facts, you are not to
14 infer by what I have said during this trial in ruling upon
15 the admissibility of evidence or otherwise or anything that
16 I say now during the course of this instruction to you that
17 I have an opinion about the facts. The law does not allow
18 me to have opinion about the facts in this case. This is a
19 matter solely for you, the jury, to determine.

20 As jurors, it is your duty to determine the effect,
21 value, weight, and truth of the evidence that has been
22 presented to you.

23 The indictments charge the Defendant with criminal
24 sexual conduct in the first degree and lewd act on a minor.
25 I remind you that the fact that the Defendant was arrested,

1 charged, and indicted is not evidence and cannot be
2 considered by you as evidence of guilt. It does not create
3 any evidence or presumption of guilt or inference of guilt.
4 The indictment is simply the formal written documents
5 containing the charges made against the Defendant. It is
6 the formal document by which this case is brought into
7 court.

8 The Defendant has pled not guilty to these
9 indictments. That puts the burden on the State to prove
10 the Defendant guilty beyond a reasonable doubt. A person
11 charged with committing a criminal offense in South
12 Carolina is never required to prove himself innocent. I
13 charge you that the Defendant in a criminal trial, no
14 matter how serious the charge, is always presumed to be
15 innocent of the crime for which the indictment was issued
16 unless guilt is proven by evidence satisfying you of that
17 guilt beyond a reasonable doubt.

18 This presumption of innocence does not end when you
19 being your deliberations. It -- it accompanies the
20 Defendant throughout the trial until you -- until you reach
21 a verdict of guilt based on evidence satisfying you of the
22 Defendant's guilt beyond a reasonable doubt.

23 The presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the Defendants
25 which remain with the Defendant until it has been stripped

1 from him by evidence satisfying you of the Defendant's
2 guilt beyond a reasonable doubt.

3 The presumption of innocence is not mere legal theory.
4 It is not just a legal phrase. It is a real and
5 substantial right to which every Defendant is entitled
6 unless you the jury are satisfied from the evidence of the
7 Defendant's guilt beyond a reasonable doubt.

8 What is reasonable doubt in the law? A reasonable
9 doubt is the kind of doubt that would cause a reasonable
10 person to hesitate to act. The State has the burden of
11 proving the Defendant guilty beyond a reasonable doubt.

12 Some of you may have served as jurors in civil cases
13 where you were told it is only necessary to prove a fact is
14 more likely true than not true, such as by the greater
15 weight or preponderance of the evidence. In criminal
16 cases, the State's proof must be more powerful than that.
17 It must be beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that leaves
19 you firmly convinced of the Defendant's guilt. There are
20 very few things in this world that we know with absolute
21 certainty. In criminal cases the law does not require
22 proof that overcomes every possible doubt. Based on your
23 consideration of the evidence, if you are firmly convinced
24 that the Defendant is guilty of the crime charged, you must
25 find the Defendant guilty. On the other hand, if you think

1 there's a real possibility that the Defendant's is not
2 guilty, you must give the Defendant the benefit of the
3 doubt and find him not guilty.

4 Two types of evidence are generally presented during a
5 trial: Direct evidence and circumstantial evidence.
6 Direct evidence is the testimony of a person who claims to
7 have actual knowledge of a fact, such as an eye witness.
8 It is evidence which immediately establishes the main fact
9 to be proved. Circumstantial evidence is proof of a chain
10 of facts and circumstances indicating the existence of a
11 fact. It is evidence which immediately establishes
12 collateral facts from which the main fact may be inferred.
13 Circumstantial evidence is based on inference and not on
14 personal knowledge or observation.

15 The law makes no distinction between the weight or
16 value given to either direct or circumstantial evidence,
17 nor is a greater degree of certainty required of
18 circumstantial evidence than direct evidence. You should
19 weigh all of the evidence in this case.

20 To the extent the State relies on circumstantial
21 evidence, all of the circumstances must be consistent with
22 each other, and when taken together, point conclusively to
23 the guilt of the accused beyond a reasonable doubt.

24 After weighing all of the evidence, if you are not
25 convinced of the guilt of the Defendant beyond a reasonable

1 doubt, you must find the Defendant not guilty.

2 When a party loses or destroys evidence, an inference
3 may be drawn that the destroyed or lost evidence would have
4 been adverse to that party. The Defendant must demonstrate
5 either that the State destroyed the evidence in bad faith
6 or that the State destroyed evidence that possessed an
7 exculpatory value that is apparent before the evidence was
8 destroyed and the Defendant cannot obtain other evidence of
9 comparable value by other means.

10 Necessarily you must determine the credibility of the
11 witnesses who have testified. Credibility simply means
12 believability. It is your duty as jurors to analyze and to
13 evaluate the evidence and determine which evidence
14 convinces you of its truth.

15 In determining the believability of witnesses who have
16 testified in this case, you may believe one witness over
17 several witnesses or several witnesses over one witness.
18 You may believe a part of a testimony of a witness and
19 reject the remaining part of the testimony of that same
20 witness. You may believe the testimony of a witness in its
21 entirety or reject the testimony of a witness in its
22 entirety. You may consider whether any witness has
23 exhibited to you any interest, bias, prejudice, or other
24 motive. You may also consider the appearance and manner of
25 a witness while on the witness stand.

1 In order to establish criminal liability, criminal
2 intent is required. For example, the mental state required
3 to be proven by the State for a particular crime might be
4 purpose, intent, knowledge, recklessness, or civil
5 negligence. Criminal intent must be proven by the State
6 beyond a reasonable doubt.

7 Criminal intent is always a matter that must be
8 determined by the jury from the circumstances surrounding
9 the situation. There is no way to prove intent to a
10 mathematical certainty. There is no way medical science
11 can dissect a person's brain and determine what the person
12 had in mind. So the law says that criminal intent may be
13 inferred from the circumstances shown to have existed. You
14 must make a determination of whether or not the element
15 requiring intent was present.

16 It is not necessary to establish intent by direct and
17 positive evidence, but intent may be established by
18 inference in the same way as any other fact by taking into
19 consideration the acts of the parties and all of the facts
20 and circumstances of this case.

21 Criminal intent is a mental state, a conscious
22 wrongdoing. It is up to you to determine what the -- what
23 the Defendant intended to do based on the circumstances
24 that existed at that time. Criminal intent can arise from
25 action or from a failure to act. It may rise from

1 negligence, recklessness, or an indifference to duty or to
2 consequences that are considered by the law to be the -- to
3 be equivalent of criminal intent.

4 The Defendant is charged with first degree criminal
5 sexual misconduct with a minor. The State must prove
6 beyond a reasonable doubt that the Defendant engaged in a
7 sexual battery with a victim who, at the time, is less than
8 11 years of age.

9 A sexual battery is any sexual intercourse,
10 cunnilingus, fellatio, anal intercourse; or any intrusion,
11 however slight, on any part of a person's body or of any
12 object into the genital or anal openings of another
13 person's body, except when the intrusion is accompanied --
14 is accomplished by medically recognized treatment or for
15 diagnostic purposes. Consent, willingness, indifference,
16 or ignorance on the part of the minor, if any, as to what
17 was taking place does not in any way affect the charge of
18 criminal sexual conduct with a minor because an unmarried
19 woman under the age of 14 cannot legally consent to sexual
20 intercourse.

21 The Defendant is charged with committing a lewd act on
22 a minor. A minor is a person under the age of 18. The
23 State must first prove beyond a reasonable doubt that the
24 Defendant -- that the Defendant was over the age of 14.
25 Next, the State must prove that the Defendant willfully and

1 lewdly committed or attempted a lewd or lascivious act on
2 or with the body or its parts of a child under the age of
3 16 years with the intent to arouse, appeal to, or gratify
4 the lust, passions, or sexual desires of the Defendant or
5 the child.

6 "Willfully" means voluntarily and intentionally with
7 the specific intent to do something the law forbids.

8 "Lewd" means obscene, lustful, indecent -- indecent or
9 lecherous. "Lascivious" means tending to incite lust,
10 lewd, indecent, obscene, or tending to deprave the morals
11 in respect to sexual relations.

12 I have declared the law to you through these
13 instructions to help guide you to a just and lawful
14 verdict. Whether some of these instructions apply will
15 depend upon what you find to be the facts. The fact that I
16 have instructed you on various subjects must not be taken
17 as indicating an opinion of this Court as to what you
18 should find to be the facts or as to what your verdict
19 should be. Your verdict must represent the considered
20 judgment of each juror.

21 In order to return a verdict, it is necessary that
22 each juror agree. Your verdict must be unanimous. All 12
23 of you must agree on this verdict. Your verdict cannot be
24 based on sympathy, passion, prejudice, emotion, or any
25 other consideration not in evidence in this case.

1 Remember at all times you are not partisan's favoring
2 one party over another. You are the judges of the facts.
3 Your sole interest is to seek the truth from the evidence
4 that you have heard in this case.

5 All right. Ladies and gentlemen, if you'll bear with
6 me one second. Mr. Foreman, I'm coming down there, and I'm
7 going to go over the verdict form with you. Okay.

8 (The Court exits the bench.)

9 THE COURT: Okay. Now, Mr. Foreman, remember I told
10 you one of your duties is completing the verdict form?
11 (Indicates) This is the verdict form. What it tells you is
12 where we are. State of South Carolina, County of
13 Dorchester. This is the way the case is styled. State of
14 South Carolina versus Samuel Jolly, who is the Defendant.
15 Over here it tells you we're in general sessions. I told
16 y'all when we came here general sessions is criminal court.
17 Okay. It tells you in the First Circuit. As I told you
18 when you came in here -- was it Monday?

19 JURORS: Tuesday.

20 THE COURT: Tuesday. Okay. -- that we're in the
21 First Circuit. Okay. The indictment numbers are the
22 indictment numbers that are assigned to each one of these
23 charges. That's just part of the bookwork that we do.

24 It says (as read): "Verdict Form." The directions
25 say, "Please circle the appropriate verdict below and

1 follow the accompanying instructions carefully."

2 Now, he's got two indictments. Y'all have got to make
3 a decision regarding two different charges. They are not
4 placed in any particular order. This is just the way I had
5 it typed up.

6 The first one is (as read): "As to the charge of
7 criminal sexual conduct with a minor in the first degree,
8 we, the jury, unanimously find the Defendant ..." and you
9 have to choose either "guilty" or "not guilty".

10 The second question (as read): "As to the charge of a
11 lewd act on a minor, we, the jury, unanimously find the
12 Defendant ..." and again, you must decide whether he's
13 either "guilty" or "not guilty".

14 After you've decided those things, Mr. Foreman, you
15 will sign and you will date this verdict form. Okay.

16 I'm not giving you this now. The reason I'm not
17 giving it to you now -- excuse me -- the reason I'm not
18 giving it to you now is, I've gone over all those
19 instructions and I've had to read the law to you. Can't be
20 varied. I have to charge you the law as it is in South
21 Carolina. And these attorneys were listening carefully to
22 what I was saying-- hopefully y'all were as well -- but if
23 I misspoke or left something out or anything like that,
24 they're going to want me to correct it. So if I have to
25 correct something, I will bring you back out here and I

1 will read you the correction or the correct statement of
2 the charge of the law. Okay. Until you get the correct
3 statement of the law, you cannot begin your deliberations.

4 So what's going to happen is y'all are going to go
5 back into the jury room. The attorneys going to tell me
6 whether we're okay or not. If everything is okay, the --
7 the bailiff is going to bring you the verdict form back
8 there and tell you to begin your deliberations. Until you
9 are told to begin your deliberations, you cannot start
10 talking about this case. Do we understand?

11 JURORS: Yes, sir.

12 THE COURT: All right. Okay. Y'all go on back in the
13 jury room. Thank y'all for your attention. Y'all have
14 been doing real good.

15 (Jury exits at 2:38 p.m.)

16 THE COURT: All right. Any -- any corrections
17 regarding -- from the State?

18 MR. TEMPLETON: None from the State, Your Honor.

19 THE COURT: Anything from Defense?

20 MS. WILLIAMS: None, Your Honor.

21 THE COURT: Okay. Would you pull the -- you pull the
22 ---

23 MS. WILLIAMS: Yes, sir.

24 THE COURT: Alternates -- they're not in there? Okay.
25 We didn't have any exhibits, right?

1 MS. WILLIAMS: None.

2 THE COURT: Okay. All right. (To the bailiff) Then
3 if you'd take the verdict form back there and tell them to
4 begin the deliberations. If the alternates wanna come back
5 in here, I -- I'll be glad to excuse them.

6 THE BAILIFF: Okay.

7 THE COURT: If they just wanna go ahead and leave or I
8 can walk out there. Are they out there?

9 THE BAILIFF: Yes, sir.

10 THE COURT: They're in the hall?

11 THE BAILIFF: Yes.

12 THE COURT: Okay. All right. Anything from y'all
13 before I let the alternates go?

14 MS. WILLIAMS: Nothing, Your Honor.

15 MR. TEMPLETON: Nothing, Your Honor.

16 THE COURT: Okay. All right. We'll -- we'll be in
17 recess. Thank y'all. Y'all did good.

18 (Off the record at 2:40 p.m.)

19 (On the record at 2:42 p.m.)

20 THE COURT: I didn't even think they had time.

21 MS. WILLIAMS: I know.

22 THE COURT: The question I have (as read): "Are we
23 able to view the document evidence during the
24 deliberations?". And there isn't any. I'm just gonna put
25 --

1 MR. TEMPLETON: We didn't introduce any ---

2 THE COURT: None of that was introduced into evidence,
3 but I think I -- I -- rather than to just write it down, I
4 kind of feel like I need to tell them that. Or do y'all
5 just want me to write it here, "There was no evidence
6 actually introduced."

7 MS. WILLIAMS: I would prefer if you just wrote it.

8 THE COURT: Okay. All right. I'm just gonna write
9 down, "No evidence was introduced into the record." Okay?

10 MR. TEMPLETON: Fine with me.

11 THE COURT: Okay.

12 MS. WILLIAMS: Yes, sir. That sounds good.

13 (Off the record at 2:42 p.m.)

14 (On the record at 2:44 p.m.)

15 THE COURT: Okay. I understand that there is a
16 verdict. So. We'll find out.

17 (To the bailiff) If you'd bring the jury on out.
18 State ready?

19 MR. TEMPLETON: We are, Your Honor.

20 THE COURT: Defense ready?

21 MS. WILLIAMS: Yes, sir.

22 (Jury enters at 4:31 p.m.)

23 THE COURT: Mr. Foreman, has the jury reached a
24 verdict?

25 JURY FOREPERSON: The jury has reached a verdict.

1 THE COURT: Is it unanimous?

2 JURY FOREPERSON: It is unanimous, Your Honor.

3 THE COURT: Okay. Hand it to the bailiff, please,
4 sir. Thank you, sir.

5 (The foreperson complies.)

6 THE COURT: All right. Madam Clerk, would you please
7 publish the verdict?

8 THE CLERK: Yes, sir.

9 THE COURT: Thank you, ma'am.

10 THE CLERK: In the matter of State of South Carolina
11 vs. Samuel Jolly, indictment Nos. 2013-GS-18-0416 and 2014-
12 GS-18-0126. As to the charge of criminal sexual conduct
13 with a minor in the first degree, we the jury unanimously
14 find the Defendant guilty.

15 As to the charge of lewd act on a minor, we the jury
16 unanimously find the Defendant guilty.

17 Signed and dated February 14, 2018, by Juror
18 Foreperson, James Wright.

19 THE COURT: Thank you, ma'am. All right. Anything
20 for the jury before I excuse them?

21 MS. WILLIAMS: No, sir.

22 THE COURT: Okay. All right. Ladies and gentlemen of
23 the jury, y'all -- y'all had a difficult task. Y'all were
24 attentive. I really appreciate that. I know it wasn't a
25 pleasant fact situation to have to listen to.

1 Y'all are now free to go. Okay. Y'all are -- y'all
2 have done your duty. I appreciate it. I appreciate y'all
3 paying attention and serving as jurors. So now -- now
4 y'all can go or, if you want to, y'all can go in the back
5 and -- and see what happens. Okay. Whatever y'all want to
6 do. Okay. Thank y'all very much for your service. Okay.
7 Appreciate it.

8 (Jury exits at 4:34 p.m.)

9 MR. TEMPLETON: We're going to print sentencing sheets
10 right now, Your Honor.

11 THE COURT: Okay. And it's 30 and 10, right?

12 MR. TEMPLETON: I believe it's 30 and 15.

13 THE COURT: Lewd act is 0 to what?

14 MS. WILLIAMS: Lewd act doesn't exist anymore, Judge.
15 It's now CSC third.

16 THE COURT: Oh.

17 MS. WILLIAMS: So we're having to go back to the 1997

18 ---

19 MR. TEMPLETON: Yeah.

20 THE COURT: Okay.

21 MR. TEMPLETON: The law changed January 1, 1996,
22 making it 0 to 15. So this time frame would be -- all
23 these allegations are before January 1, 2000 -- or sorry --
24 1996.

25 THE COURT: Right.

1 MR. TEMPLETON: So this would be a 0 to 15.

2 THE COURT: 0 to 15?

3 MR. TEMPLETON: Yes, Your Honor.

4 THE COURT: Okay. And -- okay. All right. The
5 victim under 11 is 0 to 30, right?

6 MR. TEMPLETON: Yes, Your Honor.

7 THE COURT: Okay. All right. Ms. Williams, anything
8 in mitigation? Any -- any arguments or anybody speaking on
9 the Defendant's behalf or anything?

10 MS. WILLIAMS: Judge, very, very, very little. You
11 know, you -- you've gotten to know Mr. Jolly through the
12 course of this trial. You've heard about him. You've
13 gotten to hear from him, about his background, and who he
14 is and what he's done.

15 I will point out for the Court something that didn't
16 come out during the trial is he's got a very minimal
17 record. He's got a breach of trust. He has no allegations
18 of this type before this, no allegations since this.
19 Obviously it was in '97. He's been in no trouble since
20 1997. So we would just ask you to take that into
21 consideration in sentencing in this case. We would ask for
22 a 30-year sentence, Judge, which is the minimum available
23 to this Court.

24 THE COURT: All right.

25 MS. WILLIAMS: And that these sentences be run

1 concurrent.

2 THE COURT: Okay.

3 MR. TEMPLETON: Your Honor, the victim would like to
4 be heard by the Court.

5 THE COURT: I'll be glad to hear from her.

6 (The victim comes forward.)

7 THE COURT: Right there's fine, **Minor** Yes, ma'am.
8 What would you like to tell me?

9 **Minor**: Okay. My name is **Minor**
10 and I just have a slight, short thing I wrote for this.

11 (As read) "Twenty-two years ago I was a normal, happy
12 child living a modest life with my nose buried in books.
13 Even though I was being raised by a single mother, I still
14 had a loving little family full of laughter and joy. I
15 excelled in school, and I had a good foundation to continue
16 a bright future. I know my mother struggled to provide
17 what was needed for us, and I know she was lonely.

18 I was excited for her when she told me that she had
19 met someone. She wanted to be smart about the situation,
20 so she made sure she was serious about the man before she
21 introduced him to me.

22 The day we first met I knew there was something off
23 about him. I didn't know what, but I was given a very
24 uneasy feeling. I did not object to him right away because
25 I didn't know any better at that age. I just wanted to see

1 my mother happy.

2 But not long after he moved in with us, that feeling
3 was given weight by his actions. Of course he was smart
4 about his intentions. He made sure to stay -- to start off
5 easy and slow, giving my mother time to become completely
6 invested in the relationship and making sure that I was
7 unable to fully realize what was going on was not normal.

8 Part of me thought that possibly this kind of thing
9 was normal. Father figures were supposed to talk about sex
10 openly and even teach young girls about sexual things to
11 prepare them for future relationships. But part of me also
12 felt like it was something bad and something dirty, so I
13 kept it a secret from my family and my friends.

14 After some time the advances got worse, more
15 prominent, and more obvious in their sexual nature and
16 intentions. Once I started feeling like I wanted it to
17 stop, I began confiding in my mother and grandmother. But
18 by this point, my mother was, in a sense, brainwashed by
19 her husband. I was told directly by him several times that
20 my mother would never believe me over him and that I should
21 just give up.

22 During this time I was starting to develop physically
23 and became very aware of my body changing. I felt ashamed
24 of my own skin. I felt reclusive and buried my feelings.
25 I attached myself to a very close friend who lived nearby,

1 and I spent as much time at her house as possible when I
2 knew that he was home. He scared me, making me think that
3 if I didn't let him continue what he wanted to do with me,
4 I would end up getting punished. He would ground me for
5 months at a time for small infractions to make sure that I
6 was stuck at home with him while my mother was at work,
7 unable to see what was going on.

8 Finally, after a sex education class in P.E. in fifth
9 grade, I got the courage to tell my teacher what was going
10 on. The ball was rolling from there, and it was a blur of
11 cops, social workers, and I was put into therapy. He was
12 forced to leave the house and await charges after
13 investigation, but I knew in my heart that he was guilty.
14 And he fled the state.

15 I can remember being terrified daily walking to the
16 bus stop from school and thinking that he was going to pull
17 up in car and kidnap me. I've had many thoughts and dreams
18 running -- of running into him over the years, always
19 knowing that he was out there somewhere. His face haunted
20 me. I felt totally alone, even in a room full of people.
21 I felt awkward around people and I felt depressed. I
22 didn't know how to cope with the feelings I had about what
23 I had endured from the few years before.

24 My mother at that time was emotionally unavailable to
25 me. Having been betrayed by her husband and overcome with

1 guilt, she withdrew. Our relationship crumbled into ruins.
2 I resented her for not helping me. I felt like an orphan.
3 My abuse was swept under the rug and never talked about in
4 my house. But I was in pain and I was angry.

5 When I first discovered alcohol, I felt like I'd found
6 God. It took away my pain and it gave me confidence to be
7 around people to try and be what I thought people wanted me
8 to be. Of course this feeling would go away when I was
9 sober, and so I started drinking more and more and then I
10 discovered drugs.

11 A combination of getting high and drunk was even
12 better than anything I'd felt before, but I still felt
13 hollow. I moved through the days as a robot who was trying
14 to pass as human. I learned to fake emotions and be
15 perceived as normal around my peers. I began having sex at
16 the age of 14. I wanted to feel love, and I thought that
17 sex was love. When the first boy didn't love me, I went to
18 the next and I did this for a few years. A pattern: Sex,
19 drugs, alcohol, every single day. I skipped school more
20 than I went. I became completely shut off from my family.
21 I tried changing locations to see if that would make my
22 life better, but I could not run away from my past. The
23 past always follows you. It took me many years to realize
24 that fact.

25 I dropped out of school after losing my grandfather to

1 cancer and I left home. I became nomadic, never being able
2 to stay in one place for too long, always looking for an
3 exit plan or a way out. Over the last 15 years I have
4 thrown away every chance at happiness I have ever had. I
5 threw away a life that I thought I just wasn't good enough
6 for. I used people, manipulated people, I let people use
7 me, I became dangerously selfish, and dependant on drugs
8 and alcohol.

9 I am now a single mother. Well, not anymore, thank
10 goodness. I have a fiancé now who is a wonderful man. I
11 have three beautiful children who spent the beginning of
12 their lives with an absentee addict for a mother. I've
13 never had a successful relationship 'til now or even really
14 a friend for that matter because I can never let someone
15 break my walls down in a desperate fear for me not to be
16 hurt. I have put my own life and many others' lives at
17 risk with my actions in my addiction, and I have walked
18 through life carrying a pain and emptiness that has led me
19 to attempt to take my own life three times.

20 I cannot blame Mr. Jolly for the choices that I made,
21 for those choices were mine alone. But I can hold him
22 accountable for theft. This man stole nearly 20 years of
23 my life. He stole my innocence, my bravery, my confidence,
24 my desire for greatness. He stole my understanding of
25 love, making it something dark and gruesome. This has not

1 affected me, but my family as well. They were forced to
2 stand helpless and watch me tumble down a destructive path,
3 helping me as they could, when they could, but never able
4 to bring me back to the light.

5 After I hit rock bottom, I finally decided that I'd
6 had enough. I got clean and sober and I started a program
7 of recovery that has literally saved my life. Although I
8 have only just barely begun my journey, I can already see
9 the changes for the positive.

10 I look at my beautiful, bright, 12-year-old daughter,
11 and I know that she is just barely older than I was when
12 Mr. Jolly came into my life and turned my world upside
13 down. She is pure and innocent and full of promise, and I
14 cannot bear to think of something so sick and terrible
15 happening to her. I want to provide all of my children
16 with long, happy, and joyous childhoods, safe from harm and
17 pain that I was forced to grow up with.

18 After -- after 16 years, I'm finally trying to patch
19 my relationship with my mother, and I'm learning to accept
20 my life and live it on life's terms one day at a time. I
21 believe there are no coincidences.

22 Today I stand here confident with a clear mind and a
23 solid purpose. I am so thankful to be here to finally get
24 the justice for the crime committed against me. I may
25 finally know peace. I'm here for closure so that I may

1 move on with my life, and I can leave this guilt, sadness,
2 and emptiness behind me. But I am not only here for
3 myself. I am here for all of the other voiceless victims
4 that were too scared and ashamed to come forward.

5 I hope, Your Honor, that you can see that this man
6 deserves to have his freedom taken away from him. Although
7 I have walked this earth outside of a cell all these years,
8 I was in a prison inside my mind and my heart while this
9 man walked free to carry on as if nothing ever happened. I
10 have been chained to my past, forced to drag this heavy
11 burden, and I will never forget. No abuse should ever be
12 taken lightly, and no amount of time passing should make
13 the crime less severe.

14 My memories are still fresh wounds reminding me
15 everyday of my suffering, and today is but another small
16 victory in this huge war against child abuse. Thank you.

17 THE COURT: Thank you, **Minor**

18 Any -- Anything in reply?

19 MS. WILLIAMS: Yes, sir. I -- I -- I -- it's not in
20 rebuttal. I misspoke. I don't know -- when talking about
21 sentencing, there's a giant sentencing discretion here.
22 Anywhere from 0 to 30 on the criminal sexual conduct, and 0
23 to 15 on the lewd act. And there's a reason for that
24 discretion. It's to take into account all of the factors
25 in a case.

1 And in this case, again, you know, Mr. Jolly is 60
2 years old. Any sentence you give him will, in effect, be a
3 life sentence for him. As he presents to you, you can tell
4 he's got medical issues, not only ones you can see, but
5 ones you can't see. He's -- high blood pressure and
6 different issues going on with him medically.

7 In addition to that, like I pointed out earlier,
8 Judge, you know, he -- he's had no prior allegations of
9 this before or after, and certainly no convictions that
10 would show that he's a violent individual. And we would
11 ask for you to consider all of that when using your
12 discretion in sentencing.

13 THE COURT: Okay. Mr. Templeton, is there something -
14 --

15 MR. TEMPLETON: Your Honor, just briefly. This is a
16 horrible crime. At the end of the day, I think because of
17 what occurred in this case, we need to get Mr. Jolly out of
18 society for a long period of time. The State does believe
19 that a 30-year sentence is appropriate in this case, and we
20 would ask that you impose that.

21 THE COURT: Okay. All right.

22 (Brief pause.)

23 THE COURT: Mr. Jolly, the jury has heard the case,
24 heard testimony, and found you guilty of both criminal
25 sexual conduct with a minor under 11 in the first degree

1 and lewd act upon a child under the age of 16.

2 As a result, the sentence on the lewd act upon a child
3 under the age of 16 -- the sentence of this Court, is
4 you're committed to the State Department of Corrections for
5 a period of 15 years.

6 On the criminal sexual conduct with a minor victim
7 under 11 years of age in the first degree, the sentence of
8 this Court is you're committed under the state -- you're
9 committed to the State Department of Corrections for a
10 period of 30 years. These sentences are concurrent. I
11 will give you credit for the time you served. Good luck to
12 you.

13 (Marked Juror Note, Court's Exhibit No. 4.)

14

15 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court, for Dorchester County, South Carolina, on the 14th day of February, 2018.

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

E/Bonnie H. Kelly

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

April 12, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAMUEL JOLLY,

APPELLANT

APPELLATE CASE NO. 2018-000259

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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The trial judge erred by refusing to quash the indictments for first degree criminal sexual conduct with a minor and lewd act upon a child as vague and overbroad when the indictments, which covered over a year period, failed to state the offense with sufficient certainty and particularity to enable Appellant to know what he was called upon to answer and whether he could plead an acquittal, particularly given the surrounding circumstances, namely that the alleged conduct occurred over twenty years before trial and almost all of the documentation and records related to the investigation, including the videotape of the forensic interview, were lost or destroyed. 7

2.

The trial judge abused his discretion by refusing to exclude evidence of prior bad acts pursuant to Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), where the state, by procuring vague and overbroad indictments, was permitted to admit unlimited evidence of alleged sexual misconduct committed by Appellant over a thirteen month period without meeting any of the exceptions contained within Rule 404(b), SCRE, or proving the alleged conduct by clear and convincing evidence.....15

3.

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STATEMENT OF ISSUES ON APPEAL

1.

Did the trial judge err by refusing to quash the indictments for first degree criminal sexual conduct with a minor and lewd act upon a child as vague and overbroad when the indictments, which covered over a year period, failed to state the offense with sufficient certainty and particularity to enable Appellant to know what he was called upon to answer and whether he could plead an acquittal, particularly given the surrounding circumstances, namely that the alleged conduct occurred over twenty years before trial and almost all of the documentation and records related to the investigation, including the videotape of the forensic interview, were lost or destroyed?

2.

Did the trial judge abuse his discretion by refusing to exclude evidence of prior bad acts pursuant to Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), where the state, by procuring vague and overbroad indictments, was permitted to admit unlimited evidence of alleged sexual misconduct committed by Appellant over a thirteen month period without meeting any of the exceptions contained within Rule 404(b), SCRE, or proving the alleged conduct by clear and convincing evidence?

3.

Did the trial judge abuse his discretion by permitting a medical doctor to give opinion testimony, specifically that Minor allegedly had an interruption of the hymen, which required special knowledge, skill, experience, and training, without qualifying the witness as an expert in violation of Rules 701 and 702, SCRE?

4.

Did the trial judge abuse his discretion by refusing to exclude expert testimony from Dr. Elizabeth Baker in violation of Appellant's constitutional rights under the Confrontation Clause and pursuant to Rule 705, SCRE, where the underlying facts, data, and evidence relied upon by the witness had been lost or destroyed, thereby preventing Appellant from effectively cross-examining the witness and retaining his own expert to challenge the witness's opinion testimony concerning her physical examination of the minor child?

STATEMENT OF THE CASE

A Dorchester County Grand Jury indicted Appellant on February 10, 2013 for first degree criminal sexual conduct with a minor and, on February 3, 2014, for lewd act upon a child. R. 309-312. His case was called to trial on February 12, 2018 before the Honorable Edgar W. Dickson, and a jury. R. 1. Assistant Solicitors Ryan Templeton and Michael Spears represented the state, and Michelle Williams and John Kornegay represented Appellant. R. 1. On February 14, 2018, the jury found Appellant guilty as indicted. R. 293, ll. 10-18. He was sentenced to thirty years for first degree criminal sexual conduct with a minor and fifteen years concurrent for lewd act. R. 304, ll. 2-12.

This appeal follows.

STATEMENT OF THE FACTS

On August 22, 1997, the Department of Social Services (DSS) began an investigation after Minor told her physical education teacher that Appellant, her stepfather, had sexually assaulted her. R. 126, ll. 12-21; R. 152, ll. 2-14. Yvonnia Brown, a social worker employed by DSS, accompanied by two law enforcement officers with the Dorchester County Sheriff's Office, interviewed Minor at her home on that date.¹ R. 152, ll. 5-22. Minor disclosed allegations of sexual abuse. R. 126, ll. 17-21; R. 157, ll. 13-15. Three days later, on August 25, 1997, Brown returned to the residence and interviewed Appellant. R. 157, l. 19 – 158, l. 10. When questioned, Appellant allegedly admitted to tickling Minor, pulling down her pants, touching her breasts, and exposing himself to her. R. 158, ll. 11-24. When asked whether he had digitally penetrated Minor, Appellant allegedly told Brown he did not recall. R. 158, l. 25 – 159, l. 5. Brown ultimately turned the investigation over to law enforcement. R. 160, ll. 15-18.

On September 5, 1997, Minor attended a forensic interview at the Lowcountry Children's Center. R. 127, l. 14 – 128, l. 4; R. 211, ll. 4-17; R. 215, ll. 11-14. On that same day, Minor underwent a physical examination by Dr. Elizabeth Baker, who at the time was employed by the Children's Medical Assessment Center. R. 204, l. 3 – 205, l. 6; R. 211, ll. 18-21. Dr. Baker, who was never qualified as an expert, testified over Appellant's objection that Minor's "hymen - - which is a little piece of skin that surrounds the entrance to the vagina . . . had an interruption at 6:30." R. 206, ll. 3-5. She later clarified that an "interruption" meant the skin was not "continuous and smooth across." R. 207, ll. 3-7. This was the only physical evidence of alleged sexual abuse presented by the state.

¹ Yvonnia Brown was known as Yvonnia Elmore at the time of the investigation. R. 161, ll. 13-15.

A warrant was issued for Appellant's arrest on October 9, 1997. R. 213, ll. 2-13. However, it was not served on Appellant until January 30, 2013. R. 213, ll. 17-19. Due to the significant passage of time, almost all of the documentation and records related to the investigation were either lost or destroyed, including the videotape of Minor's forensic interview, the Department of Social Service's file, photographs and a videotape taken by Dr. Baker during her physical examination of Minor, Dr. Baker's detailed report containing her findings, and most of law enforcement's file. See R. 35, l. 19 – 39, l. 12.

Minor, who was thirty-one years old at the time of trial, explained during her testimony that Appellant and her mother married at some point during 1996 when she was nine years old. During that same year, the family moved from North Charleston to a home in Dorchester County. R. 114, l. 15 – 115, l. 11. Minor alleged that after the family moved to Dorchester, Appellant began sexually abusing her. Specifically, she claimed Appellant fondled her breasts after she complained of pain and tenderness caused by puberty. R. 116, l. 11 – 117, l. 5. She further alleged Appellant would show her cartoon pornography on a computer in the garage. During these encounters, Minor was sitting on Appellant's lap and he would allegedly "stick his hands down in [her] panties" and touch her vagina. R. 117, l. 6 – 118, l. 10.

On another occasion, Minor claimed Appellant pulled down her "panties," touched her vagina, and explained to her why she was "growing pubic hair there." R. 119, l. 18 – 120, l. 6. She claimed she saw Appellant naked every day. On one occasion while Appellant and Minor were laying in bed, Appellant allegedly handed her a stuff animal "and asked [her] to rub his penis with the stuffed animal to arouse him." She supposedly complied. R. 122, l. 16 – 123, l. 14. Minor described several other incidents involving improper touching. R. 121, l. 20 – 122, l. 15; R. 124, l. 5 – 125, l. 12.

This alleged conduct eventually progressed to a single incident of alleged digital penetration. Minor claimed she remembered Appellant getting on top of her while they were laying in her parents' bed and inserting his middle finger into her vagina. R. 120, l. 18 – 121, l. 19.

Minor first disclosed the alleged abuse to her mother. When “that did really go anywhere,” she told her grandmother about the abuse. However, nothing “came out of telling” her grandmother either. Minor eventually told her “gym teacher,” who told the guidance counselor, who in turn contacted DSS, which led to law enforcement’s investigation. R. 125, l. 23 – 126, l. 21.

Appellant testified in his own defense. He denied sexually abusing Minor. R. 240, ll. 8-13. Appellant asserted that these allegations surfaced after he spanked Minor. When he admitted to the social worker that he had pulled down Minor’s pants, he was referencing the spanking. He assumed that is what the social worker was talking about. R. 234, l. 19 – 235, l. 9. Appellant also admitted to tickling Minor when they “used to play and have fun” together. R. 235, ll. 10-18. As far as touching Minor’s vagina, Appellant told the social worker in 1997 that he did not remember because he may have inadvertently touched her during a bath or while helping her dress. As far as improperly touching her “on purpose,” Appellant vehemently denied ever doing so. R. 235, l. 19 – 236, l. 3.

The jury ultimately found Appellant guilty as indicted. He was sentenced to thirty years for first degree criminal sexual conduct with a minor and fifteen years for lewd act.

ARGUMENT

1.

The trial judge erred by refusing to quash the indictments for first degree criminal sexual conduct with a minor and lewd act upon a child as vague and overbroad when the indictments, which covered over a year period, failed to state the offense with sufficient certainty and particularity to enable Appellant to know what he was called upon to answer and whether he could plead an acquittal, particularly given the surrounding circumstances, namely that the alleged conduct occurred over twenty years before trial and almost all of the documentation and records related to the investigation, including the videotape of the forensic interview, were lost or destroyed.

Motion and Ruling

Citing to State v. Baker, 411 S.C. 583, 769 S.E.2d 860 (2015) and State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 (Ct. App. 2007), Appellant moved pretrial to quash both indictments. Defense counsel emphasized the standard articulated in Baker and argued the span of time alleged in each indictment, August 1, 1996 to August 22, 1997, was “insufficient to give Mr. Jolly [Appellant] and the defense the ability to sufficiently address the accusations brought by the state,” particularly given the circumstances of the case where the conduct was alleged to have occurred over twenty years ago. R. 3, l. 10 – 5, l. 9.

When confronted by the trial judge with our Supreme Court’s holding in State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991), in which the Court held the two year time period alleged in the indictment was not unconstitutionally vague or overbroad, defense counsel easily distinguished this case based on the unusual surrounding circumstances. Specifically, counsel again emphasized that “the prosecution of this case is over 20 years after the allegations.” R. 5,

ll. 13-22. As a result, he explained that almost all of the documentation and records related to the investigation, which existed at the time the charges were brought, have been lost or destroyed. R. 5, l. 23 – 6, l. 6. Counsel argued that under Baker, the trial court must consider these surrounding circumstances. R. 6, ll. 2-6.

Specific to the lewd act indictment, counsel argued the indictment should be quashed because it failed to identify or describe any specific conduct or incidents of alleged misconduct thereby preventing Appellant from effectively combating the charge against him. Counsel maintained, “Essentially, in the lewd-act indictment, the state has repeated the statute with names thrown in. They have not given any detail as to a specific time/date, any details as to what occurred. And I don’t believe that is sufficient under the case law.” R. 7, l. 23 – 8, l. 7. Under Baker, counsel argued the indictment “must state the allegations of this particular incident.” He concluded the lewd act indictment failed to comply with this requirement because it merely contained “the language of the statute with the name Samuel Jolly [Appellant] and [Minor] put in.” R. 8, l. 11 – 9, l. 8.

The solicitor argued that “as far as the lewd act is concerned” merely “putting the time frame, along with a victim, along with the basic requirements [elements] of . . . that particular charge” is sufficient to put the defendant on notice of what he is called upon to answer. R. 9, ll. 17-22. He concluded that based on the indictments “along with all the discovery that’s been put forward in this case, he’s able to determine these are basically sexual touchings, along with the ultimate act, . . . which is the digital penetration.” R. 9, l. 22 – 10, l. 2.

In response, defense counsel explained that in the limited discovery Appellant received there are numerous allegations of “different incidents” and the defense does not “know which of these incidents the state is pursuing as a lewd act.” He argued, “And with all these different

accusations that potentially the state could be pursuing under this charge, having just the statute listed in the indictment does not provide the defense with sufficient notice to effectively answer those charges.” R. 10, ll. 10-24. When the judge inquired, counsel asserted there were eleven separate allegations that could constitute lewd act contained in the lead investigator’s notes from his observation of Minor’s forensic interview and eighteen separate allegations in the notes from the forensic interviewer about the same interview. Counsel concluded that the general lewd act indictment “doesn’t give us, as the defense, a direction or a target to know, okay, this is what we need to answer.” R. 10, l. 25 – 11, l. 20.

Expanding on this argument at a later point during Appellant’s motion in limine to exclude evidence of prior bad acts, which is argued *infra*, defense counsel asserted:

[T]he Court [trial judge] has talked about the realm of the indictment being what happened in Dorchester County. And I’ve been through the evidence that’s been provided to me with a fine-tooth comb. And the reality for me – and maybe/maybe not for the state – is I don’t know what those are.

The very first thing the handwritten notes from the therapist [forensic interviewer] at the LCC [Lowcountry Children’s Center] is there is a difficulty with recall of dates from the victim. **So she [Minor] is inconsistent with where things happened and when they happened.** She tells one person that the first thing that happened is that Samuel Jolly [Appellant] showed his privates to her by lifting the sheet while they were in bed.

She tells Detective Marshall – he writes in his notes that these problems have been happening since she was 2 years old. **So here I am, trying to read these notes, because the LCC video [videotape of the forensic interview] is gone, and trying to figure out, with some sort of specificity, some sort of ballpark figure, what are the dates that these allegations happened and where did they happen. I don’t know.**

She goes on to tell the therapist that the first incident – she tells the therapist, however, that the first incident was in the computer home [room] of the – where the family lived before the marriage, where Samuel Jolly put his hands down her shorts. **I don’t know where that is. I don’t know when that is. I don’t know if they’re going to try to bring that in.**

So that was one of the reasons why I kept saying, What is the lewd act? If you want to tell me that the lewd act is the rubbing the teddy bear on genitalia and

this and that and this, then I think we're getting somewhere. Because I don't – I can't tell from – and **part of the problem is that we've [the state has] lost the evidence.**

And so **I can't piece together what the allegations are and what is going to become a prior bad act.** And that's one of the reasons I brought it pretrial, is because I don't want to be standing up like, you know, a jack-in-the-box every time she says something to say, "Objection. I think this is *Lyle*."

So – and that – and that was one of the reasons I wanted to get it cleared up before court and – and try to figure out – and – and also, we have to – if we're going to amend the indictment, we obviously have to do it before . . . the jury is sworn. So I just wanted to say that. I don't know. And **I don't know that the state knows when certain incidences happened and where they happened. Because the record that we have is not accurate.**

R. 27, l. 21 – 29, l. 17 (emphasis added).

The judge ultimately refused to quash the indictments. He ruled, "I'm not going to dismiss any of them based on the indictment." R. 14, l. 23 – 15, l. 2.

Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." State v. Baker, 411 S.C. 583, 588, 769 S.E.2d, 863 (2015) (quoting State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)) (internal quotation marks omitted). It is "bound by the trial court's factual findings unless they are clearly erroneous." Id. (quoting Wilson, 345 S.C. at 6, 545 S.E.2d at 829) (internal quotation marks omitted).

Discussion

The trial judge erred by refusing to quash the indictments for first degree criminal sexual conduct with a minor and lewd act upon a child as vague and overbroad when the indictments, which covered over a year period, failed to state the offense with sufficient certainty and particularity to enable Appellant to know what he was called upon to answer and whether he could plead an acquittal, particularly given the surrounding circumstances, namely that the

alleged conduct occurred over twenty years before trial and almost all of the documentation and records related to the investigation, including the videotape of the forensic interview, were lost or destroyed.

“An indictment is a critical document in criminal defense preparation that is grounded in constitutional and statutory principles.” State v. Baker, 411 S.C. 583, 588, 769 S.E.2d 860, 863 (2015) (citing S.C. Const. art. I, § 11 (“No person may be held to answer for any crime 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 . . .”) and S.C. Code Ann. § 17-19-10 (2014) (“No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury . . .”)).

As our Supreme Court explained in State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005):

The indictment is the charge of the state against the defendant, **the pleading by which he is informed of the fact, and the nature and scope of the accusation.** When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. *He may question the propriety of the accusation, the manner in which it has been presented*, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter,—when found guilty of the crime charged,—to be permitted to go back to the former, and inquire as to the manner and means by which the charge was presented.

Id. at 102, 610 S.E.2d at 499-500 (internal citations omitted) (emphasis added).

If 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 particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be

charged.” Id. at 102-103, 610 S.E.2d at 500. “In determining whether an indictment meets the sufficiency standard, the trial court must look at the indictment with a practical eye *in view of all the surrounding circumstances.*” State v. Tumbleston, 376 S.C. 90, 97, 654 S.E.2d 849, 853 (Ct. App. 2007) (emphasis added). In doing so, “one is to look at the ‘surrounding circumstances’ that existed pre-trial, in order to determine whether a given defendant has been ‘prejudiced,’ i.e., taken by surprise and hence unable to combat the charges against him.” Baker, 411 S.C. at 589, 769 S.E.2d at 864 (quoting State v. Wade, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991)).

Gentry, “the seminal case in analyzing the sufficiency of an indictment,” sets forth two requirements that are relevant and dispositive in the instant case. Baker, 411 S.C. 589, 769 S.E.2d at 864. The first being a defendant’s right to question the propriety of the accusation and the manner in which it has been presented, which Appellant has done. The second is the Court’s determination as to whether the offense is stated with sufficient certainty and particularity to enable the defendant to know what he is called upon to answer and whether he may plead an acquittal.

Examining the indictments in view of all the surrounding circumstances, there was no way for Appellant to know whether he could plead an acquittal given the vast time period covered by the indictments, and the vagueness of the lewd act indictment, which merely contained the elements of the offense and identified Minor as the complainant.

Both indictments covered a thirteen month period, which occurred more than twenty years before trial. This expansive time period, which would never pass constitutional muster in any other class of criminal case, rendered the indictments vague and overbroad because it lacked specificity as to when the alleged acts occurred. As our Supreme Court exclaimed in Baker: “Although we recognize the difficulty the prosecution faces in identifying exact dates in child

sexual abuse cases, the class of criminal case should not translate into an exception that operates to circumvent constitutional and statutory principles.” Baker, 411 S.C. at 592, 769 S.E.2d at 865. Having to defend against events that allegedly occurred over a continuous thirteen month period prevented Appellant from effectively combating the charges against him.

To complicate matters further, due to the passage of time, almost all of the documentation and records related to the investigation were either lost or destroyed. Perhaps most significant was the loss of the videotape of Minor’s forensic interview, which prevented Appellant from knowing what Minor alleged occurred and when Minor alleged it occurred. Moreover, the materials available, specifically Detective Marshall’s notes from his observation of the forensic interview and the notes from the forensic interviewer herself, contained an extensive number of allegations that could constitute a lewd act. This undoubtedly prevented Appellant from determining what alleged conduct the state intended to prosecute and from preparing any sort of meaningful defense.

As our Supreme Court exclaimed in Baker, “It is axiomatic that an indictment must include more than the elements of the charged offense.” Baker, 411 S.C. at 592, 769 S.E.2d at 865. However, that is exactly what the lewd act indictment encompassed: the elements contained in the statute and Minor’s identity as the complainant. It failed to allege any specific conduct the state intended to prosecute as a lewd act. Again, this prevented Appellant from knowing what he was called upon to answer and whether he could plead an acquittal.

Because the indictments were unconstitutionally overbroad and vague, which significantly limited Appellant’s ability to combat the charges against him, this Court should hold the trial judge erred by refusing to quash the indictments, reverse Appellant’s convictions and sentence, and remand for a new trial.

2.

The trial judge abused his discretion by refusing to exclude evidence of prior bad acts pursuant to Rule 404(b), SCRE, and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923), where the state, by procuring vague and overbroad indictments, was permitted to admit unlimited evidence of alleged sexual misconduct committed by Appellant over a thirteen month period without meeting any of the exceptions contained within Rule 404(b), SCRE, or proving the alleged conduct by clear and convincing evidence.

Motion and Ruling

Appellant moved pretrial to exclude evidence any prior bad acts pursuant to Rule 404(b), SCRE, and *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Defense counsel asserted that one of the reasons Appellant needed the indictments to be specific and particular is because the defense anticipated the state would “bring up an entire year of bad acts.” R. 15, ll. 6-24. Counsel argued the state likely would present evidence that “not only did he [Appellant] have a sexual touching – and that’s the lewd act – but he [also showed] pornographic material. He had sexual play with a teddy bear.” R. 15, 21-24. She argued “by making this general indictment,” the state “opened the door to all this prior bad act material that [the defense] can’t keep out. And [all] they’re [going] to do with it is show propensity: ‘Oh, well, he showed her pornographic material.’” R. 18, ll. 7-18. Moreover, counsel asserted that by having a vague and overbroad indictment, the state would be permitted to introduce prior bad acts without satisfying the requirements of Rule 404(b), SCRE, and *Lyle*, specifically meeting one of the exceptions, such as common scheme or plan and identity, and proving the existence of the prior bad acts by clear and convincing evidence. R. 18, ll. 19-25.

In support of her argument, counsel cited to State v. Pierce, 326 S.C. 176, 485 S.E.2d 913 (1997), where our Supreme Court held prior accusations of child abuse, specifically allegations that Pierce had inflicted a “split lip and a swollen eye” on the child, were not admissible in Pierce’s trial for homicide by child abuse because there was no clear and convincing proof that Pierce inflicted the injuries. R. 22, l. 11 – 24, l. 20; See Pierce, 326 S.C. at 178, 485 S.E.2d at 914. The Court further held that Pierce’s “rough treatment” of the child in which she “jerked [the child] off the counter by his arm and put him in his stroller” was not admissible because the prior act was “not of such a close similarity to homicide by child abuse so as to overrule its prejudicial effect,” which is required under the common scheme or plan exception of Rule 404(b) and Lyle. Pierce, 326 S.C. at 178, 485 S.E.2d at 914.

The solicitor argued that all of the sexual abuse allegations that occurred in Dorchester County were covered by the indictments and therefore not prior bad acts. He claimed only the misconduct that allegedly occurred in Charleston County before the family moved to Dorchester were prior bad acts because such conduct was not covered by the indictment. R. 24, l. 25 –26, l. 3.

In reply, as discussed above, defense counsel asserted:

[T]he Court [trial judge] has talked about the realm of the indictment being what happened in Dorchester County. And I’ve been through the evidence that’s been provided to me with a fine-tooth comb. And the reality for me – and maybe/maybe not for the state – is I don’t know what those are.

The very first thing the handwritten notes from the therapist [forensic interviewer] at the LCC [Lowcountry Children’s Center] is there is a difficulty with recall of dates from the victim. **So she [Minor] is inconsistent with where things happened and when they happened.** She tells one person that the first thing that happened is that Samuel Jolly [Appellant] showed his privates to her by lifting the sheet while they were in bed.

She tells Detective Marshall – he writes in his notes that these problems have been happening since she was 2 years old. **So here I am, trying to read**

these notes, because the LCC video [videotape of the forensic interview] is gone, and trying to figure out, with some sort of specificity, some sort of ballpark figure, what are the dates that these allegations happened and where did they happen. I don't know.

She goes on to tell the therapist that the first incident – she tells the therapist, however, that the first incident was in the computer home [room] of the – where the family lived before the marriage, where Samuel Jolly put his hands down her shorts. **I don't know where that is. I don't know when that is. I don't know if they're going to try to bring that in.**

So that was one of the reasons why I kept saying, What is the lewd act? If you want to tell me that the lewd act is the rubbing the teddy bear on genitalia and this and that and this, then I think we're getting somewhere. Because I don't – I can't tell from – and **part of the problem is that we've [the state has] lost the evidence.**

And so **I can't piece together what the allegations are and what is going to become a prior bad act.** And that's one of the reasons I brought it pretrial, is because I don't want to be standing up like, you know, a jack-in-the-box every time she says something to say, "Objection. I think this is *Lyle*."

So – and that – and that was one of the reasons I wanted to get it cleared up before court and – and try to figure out – and – and also, we have to – if we're going to amend the indictment, we obviously have to do it before . . . the jury is sworn. So I just wanted to say that. I don't know. And **I don't know that the state knows when certain incidences happened and where they happened. Because the record that we have is not accurate.**

R. 27, l. 21 – 29, l. 17 (emphasis added).

Before ruling, the trial judge expressed his concern. He told the solicitor that "when's going to be an issue." R. 29, ll. 18-21. The judge later asserted, "I'm concerned . . . if my ruling is that she [Minor] can testify as to the lewd acts that occurred on August 1, 1996 to August 22, 1997, *we got to be pretty sure of what those acts are.* She can't come in here and start saying, 'Well, you know, when I was 2,' because I'm assuming at 2 was before this." R. 31, ll. 13-20 (emphasis added).

The solicitor claimed, in preparation for trial, that Minor was able to articulate to the solicitor which "events occurred in that house in Dorchester County." R. 32, ll. 12-25. When

the trial judge asked whether the defense was “aware of which events” Minor alleged occurred in Dorchester County, defense counsel asserted, “No . . . *I have no clue.*” R. 33, ll. 3-13 (emphasis added). Counsel later exclaimed, “I assume she’s going to be saying things that I am completely unprepared for.” R. 34, ll. 4-5.

The solicitor ultimately agreed the state would not present any evidence of the allegations that occurred in Charleston County, which would clearly fall outside of the indictments and constitute prior bad acts. He concluded, “The state . . . only intend[s] to go into the allegations that occurred in Dorchester County during the time listed in the indictment.” R. 22, ll. 17-23.

Appellant continued to object. Noting that her motion to quash the indictments as vague and overbroad and her motion to exclude evidence of prior bad acts were intertwined, defense counsel argued, “I think there needs to be an incident date and an incident and then all the other acts [would constitute prior bad acts]. If they [the state] wanted to indict [Appellant] for all the other acts I think they probably should have indicted it. Otherwise, there is a reason why we have Lyle so we don’t do things like this. So I would object to everything.” R. 23, ll. 4-19.

The trial judge ultimately ruled Minor “can testify to any of the lewd acts that occurred from August 1st of 1996 . . . [t]o August 22nd of 1997,” which is the period covered in the indictment. R. 23, l. 20 – 24, l. 5.

Standard of Review

“In criminal cases, the appellate court sits solely to review errors of law.” State v. Cope, 405 S.C. 317, 334, 748 S.E.2d 194, 203 (2013) (citing State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006)). “The trial judge has considerable latitude in ruling on the admissibility of evidence and his decision should not be disturbed absent prejudicial abuse of discretion.” Cope, 405 S.C. at 334-335, 748 S.E.2d at 203 (quoting State v. Clasby, 385 S.C. 148, 154, 682

S.E.2d 892, 895 (2009)) (internal quotation marks omitted). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law.” *Id.* (citing State v. Washington, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008)).

Discussion

The trial judge abused his discretion by refusing to exclude evidence of prior bad acts pursuant to Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), where the state, by procuring vague and overbroad indictments, was permitted to admit unlimited evidence of alleged sexual misconduct committed by Appellant over a thirteen month period without meeting any of the exceptions contained within Rule 404(b), SCRE, or proving the alleged conduct by clear and convincing evidence.

“Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” State v. Cope, 405 S.C. 317, 337, 748 S.E.2d 194, 204 (2013) (citing Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 415-416, 118 S.E. 803, 807 (1923)) (internal quotation marks omitted). “However, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.” Cope, 405 S.C. at 337, 748 S.E.2d at 204 (citing Rule 404(b), SCRE) (internal quotation marks omitted). “As a threshold matter, the trial court must determine whether the proffered evidence is relevant as required under Rule 401, SCRE.” Cope, 405 S.C. at 337, 748 S.E.2d at 204 (citing State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009)). “If the trial court finds the evidence is relevant, it must then determine whether the bad act evidence fits within an exception in Rule 404(b).” *Id.*

“When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act

evidence to determine whether there is a close degree of similarity.” State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277-278 (2009) (citing State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993)). “When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).” Id. at 433, 683 S.E.2d at 278.

“If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing.” Cope, 405 S.C. at 337, 748 S.E.2d at 204 (citing State v. Gaines, 380 S.C. 23, 29, 667 S.E.2d 728, 731 (2008)) (internal quotation marks omitted). “Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant.” Cope, 405 S.C. at 337-338, 748 S.E.2d at 204-205 (citing Clasby, 385 S.C. at 155, 682 S.E.2d at 896).

Here, compounding his error in refusing to quash the indictments as unconstitutionally vague and overbroad, the trial judge abused his discretion by permitting the state to admit unlimited evidence of alleged sexual misconduct committed by Appellant over a thirteen month period without meeting any of the exceptions contained within Rule 404(b), or proving the alleged conduct by clear and convincing evidence. By failing to narrow the scope of the indictment by identifying specific incidents of alleged misconduct and the corresponding dates, the state easily circumvented the requirements of Rule 404(b). See Baker, 411 S.C. at 592, 769 S.E.2d at 865 (“Although we recognize the difficulty the prosecution faces in identifying exact dates in child sexual abuse cases, the class of criminal case should not translate into an exception that operates to circumvent constitutional and statutory principles.”). Specifically, the state was erroneously allowed to introduce alleged sexual misconduct that occurred over a vast thirteen month period without satisfying the common scheme or plan exception articulated in Rule

404(b) or proving the alleged acts by clear and convincing evidence, neither of which it could have done if required. This allowed the state to liberally introduce propensity evidence that was extremely prejudicial to Appellant.

Under the standard announced in Wallace, the state could not satisfy the requirements of the common scheme and plan exception because any similarities between the various acts alleged by the state were greatly outweighed by the dissimilarities. See Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277-278. The acts alleged by Minor were separate and distinct. Moreover, the state could not prove the alleged conduct by clear and convincing evidence since the acts were mere accusations levied by Minor.

Accordingly, the trial judge abused his discretion by permitting the state to introduce evidence of prior bad acts without satisfying one of the exceptions of Rule 404(b) or proving the alleged conduct by clear and convincing evidence. Respectfully, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

3.

The trial judge abused his discretion by permitting a medical doctor to give opinion testimony, specifically that Minor allegedly had an interruption of the hymen, which required special knowledge, skill, experience, and training, without qualifying the witness as an expert in violation of Rules 701 and 702, SCRE.

Motion and Ruling

Appellant moved pretrial to exclude expert testimony from Dr. Elizabeth Baker, who physically examined Minor in September 1997, pursuant to Rule 705, SCRE, and the Confrontation Clause because the underlying facts, data, and evidence Baker relied on in reaching her conclusion were either lost or destroyed, which prevented the defense from effectively cross-examining the doctor and retaining its own expert to challenge Baker's opinion that Minor allegedly suffered an interruption of the hymen.

Before proffering Dr. Baker's testimony, the assistant solicitor admitted, "*I do think that she still needs to be qualified as an expert* in order to get into what - - her report. The 'annular transection at 6:30,' *I don't think a layman would have come up with that phrase.*" R. 174, ll. 3-7 (emphasis added). Defense counsel likewise asserted, "[T]he fact that she [Baker] makes an opinion that there is an annular tear with transection at 6:30 *is an expert opinion.*" R. 175, ll. 9-11 (emphasis added).

Even the trial judge initially agreed that Dr. Baker's opinion that Minor's hymen had a transection was an expert opinion:

Mr. Spears [Assistant Solicitor]: The crux of our questioning here - - the point is going to be did she [Dr. Baker] see a tear on the hymen, however she phrases that . . . I'm not going to ask her to opine as to how it might have happened. I'm just - - *as a doctor*, did she see this during her examination? And that's it.

Ms. Williams [Defense Counsel]: That's an opinion by a doctor.

The Court: *It is an opinion by a doctor.*

R. 176, ll. 2-12 (emphasis added).

The state ultimately proffered Dr. Baker's testimony. Baker testified *in camera* about her educational background and experience. She earned a Bachelor of Science degree in biology from the University of South Carolina in 1982 and a medical degree from the University of South Carolina School of Medicine in 1986. She then completed a one year rotating internship at Greenville Memorial Hospital. After her internship, she did a two year pediatric residency at Richland Memorial Hospital. R. 179, ll. 5-16.

In 1997, Baker was employed by the Children's Medical Assessment Center where she performed forensic medical examinations for children where there were allegations of physical or sexual abuse. After obtaining some background information, Baker would perform a general examination and then conduct a detailed examination of the child's skin, oral cavity, and genital and anal areas. R. 180, ll. 7-22. During these examinations, Dr. Baker would take photographs and video to support her findings. She would later record her visual findings in a written report. R. 180, l. 13 – 181, l. 11.

Dr. Baker testified that she examined Minor in 1997. R. 181, ll. 12-14. During her examination of Minor, she took photographs and a video to document and support her findings. R. 184, l. 19 – 185, l. 5. She admitted she would have relied on the photographs, and possibly the video, when completing the written report of her findings. R. 186, ll. 16-21. However, she said she would have formulated her opinion before completing the physical examination. Baker asserted, "[T]he photographs were typically used to make sure that it was documented appropriately in case somebody wanted a second opinion." R. 187, ll. 9-20.

Dr. Baker also obtained basic background information from Minor's mother. She said the information from the mother was primarily for "timing" purposes because if the alleged event had occurred with seventy two hours of the exam, she "would have done a collection kit." R. 189, l. 21 – 190, l. 12. Baker claimed she did not rely on any other sources of information, including the videotape of Minor's forensic interview. R. 183, l. 21 – 184, l. 1.

In addition to completing and submitting the condensed report required by the State Law Enforcement Division (SLED), Dr. Baker developed and completed "a much more detailed report" containing her findings. This more detailed report was destroyed "a long time ago." Consequently, Dr. Baker, who admitted she had no independent recollection of the examination or her findings, relied solely on the report required by SLED, which was still available, to testify during Appellant's trial. R. 184, l. 10 – 185, l. 16; R. 188, l. 10 – 189, l. 15.

After Dr. Baker's *in camera* testimony, the following colloquy occurred between defense counsel and the trial judge:

Mr. Kornegay: I would just point Your Honor to the second argument, Rule 705, South Carolina Rules of Evidence . . . In discussing this rule - - so the reason Rule 705 exists is because of Rule 703 that allows experts to give expert opinion testimony.

The Court: If . . . she gives an opinion.

Mr. Kornegay: Correct.

The Court: Okay. And *your argument is that her visual inspection, what she sees, is an opinion.*

Mr. Kornegay: Well, Your Honor, I - - *I think there's evidence of that by the fact that she gathers evidence and information to allow other people to examine that and they may come to a different diagnosis.*

The Court: I understand that argument.

Mr. Kornegay: So I - - so she testified that she took video as well as photographs during this examination for the purpose of preserving her examination so that

people could come behind her, such as any experts hired by the Defense, and either confirm or deny her diagnosis.

The Court: Right. Now, . . . we're not talking about a diagnosis. We're talking about just her visualization of what she saw.

Mr. Kornegay: Sure. Her determination - -

The Court: *She's not making an opinion as to what caused it.*

Mr. Kornegay: Right. *Not - - not as to causation - - but that it is annular with transection at 6:30.*

The Court: Right.

Mr. Kornegay: Right. I'm only . . . referring to that . . . phrase - - in this argument. She did not testify as to the diagnostic of blunt force trauma, and - - and I understand that. So my argument is focusing on that annular with transection at 6:30. However, Judge, I still think it implicates Rule 705. The fact that we do not have those photographs, we do not have that video. She said she was not sure if a longer report was taken after that examination because of the time line and when that longer report was developed.

The Court: Right

Mr. Kornegay: In quoting the advisory committee notes to Rule 705, the Tenth Circuit wrote that (as read): "Advanced knowledge through pre-trial discovery of an expert witness basis for his opinion is essential for effective cross-examination." And I would argue that not having the video, not having the photographs, not being able to consult another witness and have them look over that discovery should prevent Dr. - - Dr. Baker from testifying to that annular with transection at 6:30.

R. 192, l. 21 – 195, l. 5 (emphasis added).

The assistant solicitor claimed in reply that Dr. Baker testified *in camera* "in her capacity as a doctor" and "did not opine as an expert to anything." He maintained Baker testified "as a lay witness what she specifically saw herself during this examination." R. 195, ll. 12-16. Notably this argument was in direct conflict with the solicitor's earlier admission that, "*I do think that she still needs to be qualified as an expert in order to get*

into what - - her report. The ‘annular transection at 6:30,’ *I don’t think a layman would have come up with that phrase.*” R. 174, ll. 3-7

The solicitor then asserted:

What’s been referenced by the Defense here is in regards to rebutting expert testimony. *We’re not trying to elicit expert testimony, we’re not trying to get her to say that she thinks that this interference [transection] came from anywhere. We’re simply asking her what she saw on this date.*

Now, the fact that she was a doctor means that she was the person doing this exam, and obviously, I would ask her . . . her history, how she became a doctor, and things like that; but . . . *I’m not planning on qualifying her as an expert to get her opinion on how this interference came from. I’m just asking her what she saw at this specific time.*

R. 195, l. 17 – 196, l. 3 (emphasis added).

Defense counsel was adamant that the state could not call Dr. Baker to testify as a lay witness. Citing to Rule 701, SCRE, counsel argued that Dr. Baker’s “special knowledge, skill, experience, and training” were “essential to her coming to this diagnosis” that Minor had a transection of the hymen. R. 196, ll. 5-22. He later asserted that without “the same knowledge as Dr. Baker, I don’t believe any of us would know what we were looking at, how to diagnose it. She testified that she used a colposcope. I don’t know what that is. *I just don’t believe that - - for purposes of this testimony - - that she would be a lay witness.*” R. 197, ll. 14-22 (emphasis added).

Acknowledging the difference between expert testimony and lay testimony, the trial judge asserted “an expert is . . . allowed to testify as to opinion” but a “lay witness may only testify as to matters within [her] personal knowledge.” R. 199, l. 25 – 200, l. 4. He concluded, “In this case, the doctor’s testifying as to her personal knowledge of having performed a physical and visual examination of the victim; and in the physical examination, the doctor reports

findings. *These are not opinions, but observations based on education and experience*; and I feel like the doctor is available for cross-examination to ensure reliability and credibility of the examination.” R. 200, ll. 5-12 (emphasis added).

The judge later continued, “The purpose behind qualifying someone as an expert is to allow the expert to offer an opinion. In this case, *the doctor is not allowed to offer an opinion in any matter and now allowed to offer an opinion as to causation. However, to report on the physical examination of the minor, it does require the expertise of a doctor* to report on the physical findings that she made, and I am going to allow her testify just as she did.” R. 200, ll. 16-23 (emphasis added).

Testimony Before the Jury

Dr. Baker reviewed her educational background and experience before the jury. R. 204, ll. 5-15. She then explained that, in September 1997, she was employed at the Children’s Medical Assessment Center, where she performed forensic medical examinations for children when there were allegations or concerns of physical or sexual abuse. R. 204, ll. 3-21. During these examinations, Baker would obtain background information from the child and from other sources, perform a general physical examination, and then conduct a detailed examination of the child’s skin and oral, genital, and anal areas. R. 204, l. 22 – 205, l. 3.

In 1997, Dr. Baker physically examined Minor. She testified that Minor’s general examination was “normal” and that there were “no skin findings . . . documented.” R. 205, ll. 4-13. As far as her detailed examination of Minor’s genital and anal area, Baker opined:

The larger outer lips, the labia majora and labia minora, the smaller inner lips, the vulva were all normal . . . Her posterior fourchette, which is where the lips come down towards the bottom, were normal. Her - - the area between her genital area and her anal area was normal and her anus was normal.

Her hymen - - which is a little piece of skin that surrounds the entrance to the vagina, it had an interruption at 6:30 which was towards the back.

R. 205, l. 21 – 206, l. 5 (emphasis added).

Baker later drew a diagram of her findings for the jury to help the jurors better understand her findings. R. 206, l. 6 – 207, l. 7. She later clarified that an “interruption” meant the skin was not “continuous and smooth across.” R. 207, ll. 3-7. In accordance with the judge’s ruling, Baker did not testify as to what may have caused the interruption.

Dr. Baker admitted on cross-examination that she had no independent recollection of her examination of Minor and was relying solely on records provided to her by the state to testify as to her findings. R. 208, ll. 16-19. She further explained that during her examination, she would have taken photographs and a videotape to support her findings and to allow other doctors or medical professionals to examine the evidence and formulate their own opinion and conclusions. However, these photographs and videotape “were destroyed a long time ago.” R. 207, l. 25 – 209, l. 3.

Standard of Review

“The admission or exclusion of evidence is a matter within the trial court’s sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a ‘manifest abuse of discretion accompanied by probable prejudice.’” State v. Westmoreland, 421 S.C. 410, 418-419, 807 S.E.2d 701, 706 (Ct. App. 2017) (quoting State v. Commander, 396 S.C. 254, 262-263, 721 S.E.2d 413, 417 (2011)); See State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.”

Westmoreland, 421 S.C. at 419, 807 S.E.2d at 706 (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

Discussion

The trial judge abused his discretion by permitting Dr. Baker to give opinion testimony, specifically that Minor allegedly had an interruption of the hymen, without qualifying her as an expert since such testimony indisputably required special knowledge, skill, experience, and training.

The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

“Expert testimony may be used to help the jury to determine a fact in issue based on the expert’s specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.” Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). “Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions.” Id. at 445-446, 699 S.E.2d at 175 (citing Rule 703, SCRE). “On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.” Id. at

446, 699 S.E.2d at 175 (citing Rules 602 and 701, SCRE). “For these reasons, expert testimony receives additional scrutiny relative to other evidentiary decisions.”

Id.

In Watson, our Supreme Court specified the following three prong test for expert testimony:

[I]n executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable.

Id. (internal citations omitted).

“Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate.” Id. at 446-447, 699 S.E.2d at 175.

Rule 701, SCRE, states, “If the witness is not testifying as an expert, the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness’ testimony or the determination of a fact in issue, and (c) *do not require special knowledge, skill, experience or training.*” (emphasis added).

It was a manifest abuse of discretion for the trial judge to admit Dr. Baker's opinion, based on her physical examination, that Minor had a transection of the hymen without qualifying Baker as expert since this opinion without a doubt required special knowledge, skill, experience, and training. See Rule 701(c), SCRE. The judge acknowledged Dr. Baker's findings were "observations *based on education and experience*" and that "to report on the physical examination of the minor, it does require the *expertise* of a doctor," yet he permitted Baker to testify as to her findings without qualifying her as an expert. R. 200, ll. 5-23 (emphasis added). This was clearly error in violation of Rule 701, SCRE.

The trial judge's error in permitting Dr. Baker to testify as to her opinion that Minor had a transection on her hymen without qualifying her as an expert was highly prejudicial to Appellant since Baker's testimony was the only physical evidence of sexual abuse presented by the state.

Respectfully, this Court should hold the trial judge abused his discretion by permitting Dr. Baker to testify as to her opinion, which required special knowledge, skill, experience, and training, without qualifying her as an expert, reverse Appellant's convictions and sentence, and remand for a new trial.

4.

The trial judge abused his discretion by refusing to exclude expert testimony from Dr. Elizabeth Baker in violation of Appellant's constitutional rights under the Confrontation Clause and pursuant to Rule 705, SCRE, where the underlying facts, data, and evidence relied upon by the witness had been lost or destroyed, thereby preventing Appellant from effectively cross-examining the witness and retaining his own expert to challenge the witness' opinion testimony concerning her physical examination of the minor child.

Motion and Ruling

Appellant moved pretrial to exclude expert testimony from Dr. Elizabeth Baker, who physically examined Minor in September 1997, pursuant to Rule 705, SCRE, and the Confrontation Clause because the underlying facts, data, and evidence Baker relied on in reaching her conclusion were either lost or destroyed, which prevented the defense from effectively cross-examining the doctor and retaining its own expert to challenge Baker's opinion that Minor allegedly had an interruption or transection of the hymen. Appellant filed a written memorandum in support of his motion, which was marked as Court's Exhibit No. 3. R. 305.

In response to Appellant's motion, the state proffered Dr. Baker's testimony. Baker testified *in camera* about her educational background and experience. She earned a Bachelor of Science degree in biology from the University of South Carolina in 1982 and a medical degree from the University of South Carolina School of Medicine in 1986. She then completed a one year rotating internship at Greenville Memorial Hospital. After her internship, she did a two year pediatric residency at Richland Memorial Hospital. R. 179, ll. 5-16.

In 1997, Baker was employed by the Children's Medical Assessment Center where she performed forensic medical examinations for children where there were allegations of physical

or sexual abuse. After obtaining some background information, Baker would perform a general examination and then conduct a detailed examination of the child's skin, oral cavity, and genital and anal areas. R. 180, ll. 7-22. During these examinations, Dr. Baker would take photographs and video to support her findings. She would later record her visual findings in a written report. R. 180, l. 13 – 181, l. 11.

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Dr. Baker also obtained basic background information from Minor's mother. She maintained that the information from the mother was primarily for “timing” purposes because if the alleged event had occurred with seventy two hours of the exam, she “would have done a collection kit.” R. 189, l. 21 – 190, l. 12. Baker claimed she did not rely on any other sources of information, including the videotape of Minor's forensic interview.

In addition to completing and submitting the condensed report required by the State Law Enforcement Division (SLED), Dr. Baker developed and completed “a much more detailed report” containing her findings. This more detailed report was destroyed “a long time ago.” Consequently, Dr. Baker, who admitted she had no independent recollection of the examination or her findings, relied solely on the report required by SLED, which was still available, to testify during Appellant's trial. R. 184, l. 10 – 185, l. 16; R. 188, l. 10 – 189, l. 15.

After Dr. Baker's *in camera* testimony, the following colloquy occurred between defense counsel and the trial judge:

Mr. Kornegay: I would just point Your Honor to the second argument, Rule 705, South Carolina Rules of Evidence . . . In discussing this rule - - so the reason Rule 705 exists is because of Rule 703 that allows experts to give expert opinion testimony.

The Court: If . . . she gives an opinion.

Mr. Kornegay: Correct.

The Court: Okay. And your argument is that her visual inspection, what she sees, is an opinion.

Mr. Kornegay: Well, Your Honor, I - - I think there's evidence of that by the fact that she gathers evidence and information to allow other people to examine that and they may come to a different diagnosis.

The Court: I understand that argument.

Mr. Kornegay: So I - - *so she testified that she took video as well as photographs during this examination for the purpose of preserving her examination so that people could come behind her, such as any experts hired by the Defense, and either confirm or deny her diagnosis.*

The Court: Right. Now, right now she's not make - - we're not talking about a diagnosis. We're talking about just her visualization of what she saw.

Mr. Kornegay: Sure. Her determination - -

The Court: She's not making an opinion as to what caused it.

Mr. Kornegay: Right. Not - - not as to causation - - but that it is annular with transection at 6:30.

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Mr. Kornegay: Right. I'm only . . . referring to that . . . phrase - - in this argument. She did not testify as to the diagnostic of blunt force trauma, and - - and I understand that. So my argument is focusing on that annular with transection at 6:30. However, Judge, *I still think it implicates Rule 705. The fact that we do not have those photographs, we do not have that video.* She said she was not sure if a longer report was taken after that examination because of the time line and when that longer report was developed.

The Court: Right

Mr. Kornegay: In quoting the advisory committee notes to Rule 705, the Tenth Circuit wrote that (as read): “*Advanced knowledge through pre-trial discovery of an expert witness basis for his opinion is essential for effective cross-examination.*” And I would argue that not having the video, not having the photographs, not being able to consult another witness and have them look over that discovery should prevent Dr. - - Dr. Baker from testifying to that annular with transection at 6:30.

R. 192, l. 21 – 195, l. 5 (emphasis added).

The assistant solicitor claimed in reply that Dr. Baker testified *in camera* “in her capacity as a doctor” and “did not opine as an expert to anything.” He maintained Baker testified “as a lay witness what she specifically saw herself during this examination.” R. 195, ll. 12-16. He then asserted:

What’s been referenced by the Defense here is in regards to rebutting expert testimony. We’re not trying to elicit expert testimony, we’re not trying to get her to say that she thinks that this interference [transection] came from anywhere. We’re simply asking her what she saw on this date.

Now, the fact that she was a doctor means that she was the person doing this exam, and obviously, I would ask her . . . her history, how she became a doctor, and things like that; but . . . I’m not planning on qualifying her as an expert to get her opinion on how this interference came from. I’m just asking her what she saw at this specific time.

R. 195, l. 17 – 196, l. 3.

Acknowledging the difference between expert testimony and lay testimony, the trial judge asserted “an expert is . . . allowed to testify as to opinion” but a “lay witness may only testify as to matters within [her] personal knowledge.” R. 199, l. 25 – 200, l. 4. He concluded, “In this case, the doctor’s testifying as to her personal knowledge of having performed a physical and visual examination of the victim; and in the physical examination, the doctor reports findings. These are not opinions, but observations based on education and experience; and I feel

like the doctor is available for cross-examination to ensure reliability and credibility of the examination.” R. 200, ll. 5-12 (emphasis added).

The judge later continued, “The purpose behind qualifying someone as an expert is to allow the expert to offer an opinion. In this case, the doctor is not allowed to offer an opinion in any matter and now allowed to offer an opinion as to causation. However, to report on the physical examination of the minor, it does require the expertise of a doctor to report on the physical findings that she made, and I am going to allow her testify just as she did.” R. 200, ll. 16-23 (emphasis added).

Because the trial judge concluded Baker did not need to be qualified as an expert to testify about her opinion that Minor had a transection to the hymen, he did not specifically address Appellant’s argument that her expert testimony should be excluded pursuant to Rule 705, SCRE.

Testimony Before the Jury

Dr. Baker reviewed her educational background and experience before the jury. R. 204, ll. 5-15. She then explained that, in September 1997, she was employed at the Children’s Medical Assessment Center, where she performed forensic medical examinations for children when there were allegations or concerns of physical or sexual abuse. R. 204, ll. 3-21. During these examinations, Baker would obtain background information from the child and from other sources, perform a general physical examination, and then conduct a detailed examination of the child’s skin and oral, genital, and anal areas. R. 204, l. 22 – 205, l. 3.

In 1997, Dr. Baker physically examined Minor. She testified that Minor’s general examination was “normal” and that there were “no skin findings . . . documented.” R. 205, ll. 4-13. As far as her detailed examination of Minor’s genital and anal area, Baker opined:

The larger outer lips, the labia majora and labia minora, the smaller inner lips, the vulva were all normal . . . Her posterior fourchette, which is where the lips come down towards the bottom, were normal. Her - - the area between her genital area and her anal area was normal and her anus was normal.

Her hymen - - which is a little piece of skin that surrounds the entrance to the vagina, it had an interruption at 6:30 which was towards the back.

R. 205, l. 21 – 206, l. 5 (emphasis added).

Baker later drew a diagram of her findings for the jury to help the jurors better understand her findings. R. 206, l. 6 – 207, l. 7. She later clarified that an “interruption” meant the skin was not “continuous and smooth across.” R. 207, ll. 3-7. In accordance with the judge’s ruling, Baker did not testify as to what may have caused the interruption.

Dr. Baker admitted on cross-examination that she had no independent recollection of her examination of Minor and was relying solely on records provided to her by the state to testify as to her findings. R. 208, ll. 16-19. She further explained that during her examination, she would have taken photographs and a videotape to support her findings and to allow other doctors or medical professionals to examine the evidence and formulate their own opinion and conclusions. However, these photographs and videotape “were destroyed a long time ago.” R. 207, l. 25 – 209, l. 3.

Standard of Review

“The admission of evidence is within the trial judge’s discretion and will not be disturbed on appeal absent abuse of that discretion.” State v. Slocumb, 336 S.C. 619, 626-627, 521 S.E.2d 507, 511 (Ct. App. 1999) (citing State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995)). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Westmoreland, 421 S.C. at 419, 807 S.E.2d at 706 (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

Discussion

The trial judge abused his discretion by refusing to exclude expert testimony from Dr. Baker in violation of Appellant's constitutional rights under the Confrontation Clause and pursuant to Rule 705, SCRE, where the underlying facts, data, and evidence relied upon by the witness had been lost or destroyed thereby preventing Appellant from effectively cross-examining Baker and retaining his own expert to challenge Baker's opinion concerning her physical examination of Minor, namely that she had an interruption on her hymen.

The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

“Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge.” Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010). “Expert testimony differs from lay testimony in that an expert witness is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions.” Id. at 445-446, 699 S.E.2d at 175 (citing Rule 703, SCRE). “On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.” Id. at

446, 699 S.E.2d at 175 (citing Rules 602 and 701, SCRE). “For these reasons, expert testimony receives additional scrutiny relative to other evidentiary decisions.”

Id.

In Watson, our Supreme Court specified the following three prong test for expert testimony:

[I]n executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony. First, the trial court must find that the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Next, while the expert need not be a specialist in the particular branch of the field, the trial court must find that the proffered expert has indeed acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter. Finally, the trial court must evaluate the substance of the testimony and determine whether it is reliable.

Id. (internal citations omitted).

“Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. Thus, only after the trial court has found that expert testimony is necessary to assist the jury in resolving factual questions, the expert is qualified in the particular area, and the testimony is reliable, may the trial court admit the evidence and permit the jury to assign it such weight as it deems appropriate.” Id. at 446-447, 699 S.E.2d at 175.

The Confrontation Clause

The Confrontation Clause of the Sixth Amendment guarantees that “in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. Our state constitution likewise protects an accused’s right to confront the witnesses against him. See S.C. Const. art. I, § 14 (“Any person charged with an offense shall enjoy the right . . . to be confronted with the witnesses against him.”). “This right

to confront and cross-examine witnesses ‘is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial.’” State v. Stokes, 381 S.C. 390, 399, 673 S.E.2d 434, 438 (2009) (quoting State v. Martin, 292 S.C. 437, 439, 357 S.E.2d 21, 22 (1987)). [T]he decisions of [the United States Supreme] Court and other courts throughout the years have constantly emphasized the necessity for cross-examination as a protection for defendants in criminal cases.” Pointer v. Texas, 380 U.S. 400, 404 (1965).

Essential to this right is having access to the evidence relied upon to reach conclusions and opinions concerning a defendant’s guilt or innocence. Without access to the underlying facts, data, and evidence relied upon by an expert, the accused is unable to effectively confront and challenge the witness’ opinion and ultimately the charges against him.

Here, because the documents and records related to the investigation were either lost or destroyed, Appellant was never afforded the opportunity to examine or investigate evidence Dr. Baker relied upon in reaching her opinion that Minor had an interruption on her hymen. Specifically, the photographs and video Dr. Baker took during her physical examination of Minor and her detailed report containing her findings and conclusions were lost or destroyed. This evidence was unavailable for Appellant to investigate or examine and its destruction prevented Appellant from retaining his own expert to challenge Dr. Baker’s findings. Presenting an expert witness whose opinion was based upon facts, data, and evidence unavailable to the defense violated Appellant’s right to confront and cross-examine the witnesses against him. Consequently, the trial judge abused his discretion by admitting Dr. Baker’s expert testimony over Appellant’s objection.

Rule 705, SCRE

Rule 705, SCRE states, “The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. **The expert may in any event be required to disclose the underlying facts and data on cross-examination.**” (emphasis added).

This Court has recognized that “Rule 705 is the cross-examiner’s sword.” State v. Slocumb, 336 S.C. 619, 631, 521 S.E.2d 507, 513 (Ct. App. 1999) (quoting United States v. A & S Council Oil Co., 947 F.2d 1128, 1135 (4th Cir.1991). As stated in the Advisory Committee Note to Rule 705, “advance knowledge through pretrial discovery of an expert witness’s basis for his opinion is essential for effective cross-examination.” Smith v. Ford Motor Co., 626 F.2d 784, 793 (10th Cir. 1980) (internal citation omitted).

In this case, the information Dr. Baker relied upon in reaching her opinion that Minor had an interruption or transection of the hymen was lost or destroyed and therefore unavailable to the defense. This prevented Appellant from effectively exploring any facts or assumptions Baker may have had at the time she developed her opinion. It further made any challenge to her expert opinion through cross-examination impossible and prevented Appellant from retaining his own expert to challenge Dr. Baker’s findings. Consequently, the trial judge abused his discretion by allowing Dr. Baker to testify as to her expert opinion in violation of Rule 705, SCRE.

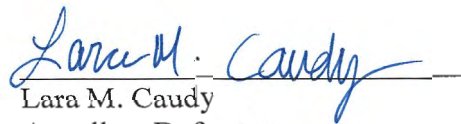
Dr. Baker’s testimony was highly prejudicial to Appellant because it was the only physical evidence presented by the state that Minor had been sexually abused, particularly where Appellant testified in his own defense and vehemently denied improperly touching Minor.

Respectfully, this Court should reverse Appellant’s convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully Submitted,


Lara M. Caudy
Appellate Defender

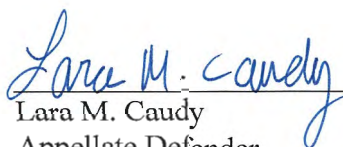
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This 9th day of October, 2018.

CERTIFICATE OF COUNSEL

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

October 9, 2018



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

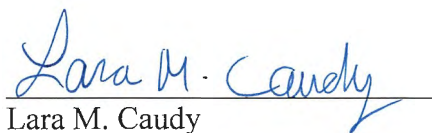
V.

SAMUEL JOLLY,

APPELLANT

CERTIFICATE OF SERVICE

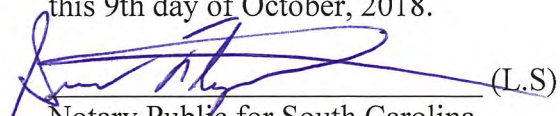
The undersigned hereby certifies that a true copy of the Final Brief of Appellant has been served upon Joshua A. Edwards, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of October, 2018.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2018.



(L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2018-000259

THE STATE,

Respondent,

v.

SAMUEL JOLLY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Lewd Act indictment was adequate to give Appellant notice of charged offense where Appellant received discovery and was aware of specific factual allegations.

II.

CSC and Lewd Act indictments alleging acts spanning one year period were not temporally overbroad.

III.

The trial court correctly admitted evidence of Appellant's continuous pattern of abusive conduct.

IV.

Appellant's argument that the trial court erred by failing to qualify Dr. Baker as an expert is not preserved for review because he did not raise this issue at trial. Even if preserved, the record shows the trial court properly qualified Dr. Baker as an expert. Furthermore, Appellant cannot show prejudice because Dr. Baker was in fact qualified.

V.

The trial court did not err by allowing expert testimony that Victim had an interrupted hymen when testimony was based on doctor's own visual observations and she did offer an opinion based on any underlying facts or data.

STATEMENT OF THE CASE

A Dorchester County grand jury indicted Appellant for one count of Criminal Sexual Conduct with a Minor in the First Degree (CSC) and one count of Lewd Act upon a Child (Lewd Act).¹ Although the arrest warrants were issued in 1997, Appellant evaded arrest until 2013. After being released on bond, Appellant failed to appear for court. Following his re-arrest, Appellant proceeded to jury trial before the Honorable Edgar W. Dickson on February 12, 2018. Following a three day trial, Appellant was convicted on both counts and sentenced to thirty years' incarceration for CSC and fifteen years' incarceration for Lewd Act, to be served concurrently. This appeal follows.

¹ Appellant was charged under Section 16-15-140 of the 1976 Code. This section was repealed in 2012 and replaced with the new statutory offense of Criminal Sexual Conduct with a Minor 3rd Degree, S.C. Code § 16-3-655(C). See 2012 South Carolina Laws Act 255 (H.B. 3667). For the purposes of this case, the elements of the two offenses are identical.

STATEMENT OF FACTS

Appellant married Victim's mother in 1996. R. 230. That same year, Appellant, Victim, and Victim's mother moved together to a house in Ladson. R. 115. Victim was approximately ten years old at the time. R. 114. Appellant worked irregular hours as a musician and was often home alone with Victim while her mother was at work. R. 120.

Victim was beginning to go through puberty at the time, and one day made a comment to her mother and Appellant that her breasts had started hurting. R. 116. Later, when they were alone, Appellant told Victim to lift her shirt and began fondling her breasts while explaining it was normal for breasts to hurt when they begin to grow during puberty. R. 116-17. This was the first of many episodes of inappropriate sexual touching Victim recalled. On another occasion, Appellant showed Victim a pornographic cartoon and rubbed her pubic area as she sat on his lap. R. 117-18. On another occasion, Appellant pulled down Victim's underwear and touched the outside of her private parts, explaining why she was growing pubic hair. R. 120. On another occasion, Appellant offered Victim money to "sit on his face," but Victim "laughed it off" and went to play with her friends instead. R. 122. On another occasion, Appellant and Victim were lying in bed together. Appellant lifted the sheet to expose himself to Victim and requested that she rub his penis with a stuffed animal. Victim complied. R. 122-23. Victim described another incident where Appellant chased her around the house, pulled her underwear down, and fondled her buttocks. R. 124-25. Finally, on at least one occasion Appellant digitally penetrated Victim. R. 121.

Victim testified that these types of episodes occurred regularly, "at least once a month" or even "on a daily basis," but she could not precisely recall the time intervals between the incidents, or give a specific date for any one incident. R. 118; 148. Victim testified she only

remembered one incident of penetration, but Appellant pulling down her pants “and that kind of thing” happened regularly over the course of that year. R. 125; 145. Victim was thirty one years old at the time of trial. R. 129.

Victim reported Appellant’s conduct to her mother and grandmother, but “that didn’t really go anywhere.” R. 126. Finally, Victim reported the abuse to her gym teacher at school, and the school alerted DSS. R. 126. Victim disclosed details of the abuse in an interview with a DSS caseworker on August 22, 1997, but did not recall many details of the interview at the time of trial. R. 126; 134-35; 153. Following the DSS interview, Victim went to live with her grandparents. R. 126. Victim participated in a forensic interview at the Lowcountry Children’s Center on September 5, 1997. R. 215. The interview was recorded, but the recording had been lost or destroyed by the time of trial. R. 215. She also underwent a medical exam with Dr. Elizabeth Baker. R. 205. Dr. Baker discovered Victim had an interrupted hymen. R. 206-07. Dr. Baker took photographs and a video to document the exam, but they also had been destroyed by the time of trial. R. 208. At trial, Victim could not recall the medical exam and only vaguely recalled the forensic interview. R. 127-28; 131. In the years between the reported abuse and Appellant’s arrest, Victim stayed in contact with law enforcement and gave another written statement in 2011. R. 132-33.

Yvonna Brown was the DSS caseworker who interviewed Victim on August 22, 1997. R. 152. She also interviewed Appellant. R. 158. Appellant admitted that he pulled down Victim’s pants “to spank her,” “tickled” her breasts, and exposed himself to her after a shower. R. 158; 166. When asked whether he digitally penetrated Victim, he said he did not recall. R. 158-59. He tearfully told Brown that he just wanted Victim to trust him again, he was sorry for

hurting her, and he wanted the family back together. R. 159-60. Brown told Appellant the matter would be forwarded to the Sheriff's Office. R. 161.

Tom Marshall investigated the case for the Sheriff's Office. R. 210-11. He attempted to make contact with Appellant, but was unsuccessful. He left a message with Appellant's brother for Appellant to call him, but Appellant never called. R. 212. Instead, Appellant left Dorchester County and moved to Florida. Victim's mother testified Appellant was aware that law enforcement was looking for him. R. 212; 215. Investigator Marshall obtained a warrant for his arrest on October 9, 1997, but Appellant remained at large until 2013, when he was finally arrested on these charges. R. 213; 237. Appellant claimed at trial he did not know about the arrest warrants. R. 238. Appellant and the State took steps to resolve the charges in 2013, but Appellant did not show up for his court date. R. 262. Appellant claimed that he put the wrong date in his phone. R. 239. At trial, Appellant admitted to innocuous "tickling," and stated that "something may have bumped into something," but gave a blanket denial of Victim's allegations of sexual abuse, stating simply that they were "not true." R. 240; 247-50.

ARGUMENT

I.

Lewd Act indictment was adequate to give Appellant notice of charged offense where Appellant received discovery and was aware of specific factual allegations.

Appellant argues the trial court should have quashed the Lewd Act indictment because “it failed to allege any specific conduct the state intended to prosecute as a lewd act,” preventing Appellant from “determining what alleged conduct the state intended to prosecute and from preparing any sort of meaningful defense.” Brief of Appellant, 14-15. His argument fails because the State is not required to recite each factual allegation within an indictment charging a single Lewd Act count arising from a continuing course of conduct. Appellant received discovery and was aware of each allegation. He therefore had actual notice of the charges against him and suffered no prejudice. The State was not required to plead its evidence in the indictment, and doing so would not have given Appellant any better notice, nor would it have changed his defense. The indictment, supplemented with discovery, was adequate to serve its purpose—to identify the charged offense, provide Appellant with sufficient notice to prepare his defense, and to establish the scope of prosecution to prevent double jeopardy. Accordingly, the trial court properly refused to quash the indictment.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Baker, 411 S.C. 583, 588, 769 S.E.2d 860, 866 (Ct. App. 2006). The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Tumbleston, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007).

Discussion

An indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). It is “the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation.” Id. (citing State v. Faile, 43 S.C. 52, 59-60, 20 S.E. 798, 801 (1895)). “Fairness and due process of law require that the defendant receive notice of the charges against him sufficient to enable him to prepare his defense.” State v. Butler, 277 S.C. 452, 456, 290 S.E.2d 1, 3 (1982). Prejudice may result if a defendant is “taken by surprise and hence unable to combat the charges against him.” State v. Wade, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991). However, an indictment need not lay out the State’s case in order to give adequate notice. “The State is not required to plead its evidence in the indictment.” State v. Thompson, 305 S.C. 496, 500, 409 S.E.2d 420, 423 (Ct. App. 1991). An indictment serves its purpose “if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution.” State v. Wade, 306 S.C. 79, 82, 409 S.E.2d 780, 782 (1991); See also S.C. Code §17-19-20.²

The specificity required in an indictment depends on the circumstances. “[T]he sufficiency of an indictment must be judged from a practical standpoint, with all of the circumstances of the particular case in mind.” State v. Nicholson, 366 S.C. 568, 574, 623 S.E.2d 100, 103 (Ct. App. 2005). “The true test of the sufficiency of an indictment is not whether it

² “Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.” S.C. Code Ann. § 17-19-20.

could have been more definite and certain, but whether 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. Ham, 259 S.C. 118, 129, 191 S.E.2d 13, 17 (1972). A defendant’s right to reasonable notice is not infringed “provided the crime charged, however general the language used, is yet so described as reasonably to inform the accused of the nature of the charge.” Bartell v. United States, 227 U.S. 427, 432 (1913) (in prosecution for sending obscene materials through the mail, government was not required to describe obscene content in body of indictment when it identified recipient and date and place of mailing). No better description is required than the circumstances permit. State v. Hiott, 276 S.C. 72, 81, 276 S.E.2d 163, 167 (1981).

Whether Appellant had adequate notice to meet the charge is not to be judged based on the indictment alone. Rather, this Court must look to the record to determine whether Appellant had **actual notice** of the charges. State v. Shoemaker, 276 S.C. 86, 88, 275 S.E.2d 878, 879 (1981) (rejecting claim of inadequate notice where “the parties evidently engaged in voluntary, mutual discovery prior to the trial. Shoemaker therefore had actual knowledge of the State’s case against her.”); State v. Gunn, 313 S.C. 124, 128, 437 S.E.2d 75, 77–78 (1993) (rejecting claim of inadequate notice in State Grand Jury prosecution where defendant was “permitted to review, and to reproduce, the transcript of the testimony of the witnesses who appeared before the Grand Jury”); Franklin v. White, 803 F.2d 416, 417 (8th Cir. 1986) (“If a defendant is actually notified of the charge, due process notice requirements may be met, even if the [indictment] is deficient.”); 5 Wayne R. LaFave et al, Criminal Procedure, § 19.3(c) (4th ed. 2017) (“[T]he presence of actual notice determines the appropriate remedy for a lack of specificity, as courts here look to the level of discovery obtained (or available), and ask whether the defendant was

actually taken by surprise, and if so whether prejudice resulted.”). Even prior to mandatory discovery in criminal cases, South Carolina courts focused on actual notice, allowing a “general indictment” to be supplemented by an additional “writing.” See State v. Napier, 63 S.C. 60, 41 S.E. 13, 15 (1902) (sufficient notice in barratry prosecution where “conformably to the practice in relation to general indictments, the defendant was served with a notice in writing of the particular act of barratry which would be relied on in behalf of the prosecution, and to these the evidence of the trial was confined”); State v. Chitty, 17 S.C.L. 379, 380 (S.C. App. L. & Eq. 1830) (same).

Defense counsel argued at length at trial that the lack of specificity in the indictment made it impossible for her to defend the case. However, in doing so, counsel revealed she was intimately familiar with Victim’s allegations because she went through discovery “with a fine-toothed comb.” R. 27. She continued— “What is the lewd act? If you want to tell me that the lewd act is the rubbing of the teddy bear on genitalia and this and that and this, then I think we’re getting somewhere. Because I don’t— I can’t tell from— and part of the problem is we’ve lost the evidence.” R. 28-29. She also discussed the allegation that Appellant “put his hand down her shorts,” and the accusation he “showed his privates to her by lifting the sheet while they were in bed.” R. 28. She went on to detail the various inconsistencies and omissions in Victim’s various statements, illustrating exactly how familiar she was with each allegation. R. 16-17. The prosecutor confirmed to the court that he disclosed all of the discovery in his file. R. 9. Appellant admitted he received discovery, but nevertheless insisted that “having just the statute listed in the indictment does not provide the defense with sufficient notice to effectively answer those charges.” R. 10. Appellant’s formalistic argument boiled down to the assertion that the State should have been required list each act in the indictment, and only then would he have

adequate notice to defend the charges. R. 14. Despite Appellant's protestations, the record demonstrates he was not taken by surprise. See State v. Pierce, 263 S.C. 23, 28, 207 S.E.2d 414, 417 (1974) (defense counsel's cross-examination showed defendant was not taken by surprise).

Appellant has not offered any rationale explaining how his notice would have been enhanced by the State listing each act in the body of the indictment. Nor has he explained how his preferred procedure would have changed his defense. Appellant made a blanket denial, claiming each of Victim's allegations was simply "untrue." Because Appellant had actual notice of each specific allegation, he was perfectly capable of preparing a defense.

Appellant cites State v. Tumbleston to support his argument. In that case, however, this Court approved a nearly identical indictment. That indictment alleged:

That [appellant] did in Charleston County on or between 2001 and June 2004 willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body of one [B.J.], a child under the age of sixteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of himself or such child. This is in violation of § 16-15-140 of the South Carolina Code of Laws (1976) as amended.

State v. Tumbleston, 376 S.C. 90, 101, 654 S.E.2d 849, 855 (Ct. App. 2007). The indictment was deemed adequate because it "clearly identif[ied] the elements of each offense charged, substantially tracking the statutory language so plainly that the nature of the offense charged can be easily understood." Id. The indictment in this case is sufficient for the same reasons.

Whether Appellant had adequate notice of the charges against him is a question of fact. See State v. Baldonado, 124 N.M. 745, 747, 955 P.2d 214, 216 (1998) (remanding CSC case to trial court for hearing on whether the State could reasonably have provided greater specificity of times of alleged offenses and whether the State's failure in this regard prejudiced Defendant). Because there is evidence in the record to support the trial court's ruling, this Court should affirm.

II.

CSC and Lewd Act indictments alleging acts spanning one year period were not temporally overbroad.

Appellant asserts the trial court erred by denying his pretrial motion to quash both indictments because they alleged a one year and twenty one day window in which the acts occurred. Appellant claims this prevented him from preparing a defense. However, South Carolina courts have consistently upheld multi-month and multi-year CSC and Lewd Act indictments because time is not an element of either offense and the circumstances typically surrounding sexual abuse against a minor justify a temporally broad allegation. The time period alleged in the indictments was reasonable under the circumstances and more precise temporal allegations would have made no difference to Appellant's defense. Accordingly, the trial court properly denied Appellant's motion to quash.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Baker, 411 S.C. 583, 588, 769 S.E.2d 860, 866 (Ct. App. 2006). The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Tumbleston, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007).

Discussion

Where time is not an essential element of the offense, an indictment need not allege a specific date and time the offense allegedly occurred. State v. Tumbleston, 376 S.C. 90, 101, 654 S.E.2d 849, 855 (Ct. App. 2007); State v. Peak, 134 S.C. 329, 340, 133 S.E. 31 (1926) (holding in murder prosecution "[i]t is not necessary to prove the precise day or even year laid in the indictment, except where time enters into the nature of the offense, or is made part of the

description of it”). There is no time element of CSC or Lewd Act. Tumbleston, 376 S.C. 90 at 101, 654 S.E.2d at 855. Accordingly, numerous South Carolina cases affirm that a specific date and time need not be alleged in indictments alleging sexual abuse against a minor when circumstances justify a broader range. See State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991); State v. Wingo, 304 S.C. 173, 403 S.E.2d 322 (Ct. App. 1991); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991); State v. Nicholson, 366 S.C. 568, 623 S.E.2d 100 (Ct. App. 2005); State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 (Ct. App. 2007); State v. Richey, 88 S.C. 239, 70 S.E. 729, 729 (1911) (carnal knowledge with a minor). Indeed, “[t]he State is not required to denote the precise day, or even year, of the accused conduct in an indictment charging criminal sexual conduct.” Tumbleston, 376 S.C. at 101, 654 S.E.2d at 855.

“[I]ndictments for a sex crime that allege offenses occurred during a specified time period are sufficient when the circumstances of the case warrant considering an extended time frame.” Tumbleston, 376 S.C. at 101–02, 654 S.E.2d at 855. South Carolina courts have recognized that the nature of sexual abuse against a minor allegations present unique circumstances. State v. Rayfield, 369 S.C. 106, 117, 631 S.E.2d 244, 250 (2006), overruled on other grounds by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016) (explaining that “the Legislature recognized that crimes involving criminal sexual conduct fall within a unique category of offenses”). The youth of victims, “stealth and repetitive nature” of abuse, and the resulting phenomenon of delayed disclosure often make pinpoint accuracy in date and time allegations impossible, and “compels identification of the broader time period.” Tumbleston, 376 S.C. at 102, 654 S.E.2d at 855; see also Wade, 306 S.C. at 84–85, 409 S.E.2d at 783, quoting State v. Rogers, 48 Idaho 567, 570, 283 P. 44, 45 (1929) (“It would be a very weak rule of law that would permit a man to ravish a fifteen year old girl ... and then say in effect, ‘you cannot

convict me of this crime, as you did not guess the right date.’ ”); State v. Perry, 410 S.C. 191, 213, 763 S.E.2d 603, 614 (Ct. App. 2014) (“Where the victim is a child, such cases often involve continued offenses over an extended period of time or, as in this case, are not reported until sometime after their commission. Thus, a specificity requirement would serve to prevent many prosecutions in child sexual abuse cases.”).

Appellant relies on State v. Baker, 411 S.C. 583, 769 S.E.2d 860 (2015), to support his claim. In Baker, the State originally indicted the defendant for four counts of lewd act and one count of CSC occurring during the summers of 2002, 2003, and 2004. Id., 411 S.C. at 586, 769 S.E.2d at 862. However, two weeks prior to trial the State amended the lewd act indictments. Id. The amended indictments alleged the acts occurred between June 1, 1998 and September 1, 2004, a six year window. Id., 411 S.C. at 587, 769 S.E.2d at 862. Baker also alleged the trial court erred by qualifying the forensic interviewer as an expert witness. The Supreme Court reversed, with two justices finding the amended indictments were insufficient to give the defendant adequate notice of the charged crimes based largely on the last-minute expansion of the time frame. Two justices dissented, with another voting to affirm in result only. Although Baker is not binding precedent because only two justices joined in the opinion’s rationale, it is nevertheless instructive and clearly distinguishable from this case.

The indictments in this case covered a thirteen month period, as opposed to the six year period in Baker. By comparison, the appellate court approved of a two year indictment in Wade and a three year indictment in Tumbleston. Perhaps more importantly, the indictments in Baker were amended two weeks before trial, requiring the defendant to defend against allegations covering a six year span instead of only three particular summers. Therefore, there was an element of surprise, the crucial ingredient in the prejudice prohibited by Wade. See Wade, 306

S.C. at 86, 409 S.E.2d at 784 (holding prejudice may result if a defendant is “taken by surprise and hence unable to combat the charges against him.”). There were no last-minute expansions of the allegations in this case. Because of these distinctions, even Baker’s persuasive value is not applicable to the facts of this case. Finally, despite the prejudicial element of surprise in Baker, the court still opined that had the indictment alleged only the summer months of the years 1998-2004, it would have been sufficient. Surely, having to answer allegations occurring in a continuous one-year period is no worse than having to answer allegations from six separate years totaling eighteen months. The temporal scope of the allegations in these indictments is well within what is allowable under controlling precedent and was reasonable under the circumstances.

Finally, Appellant has not shown prejudice. His defense was a complete denial. He did not claim alibi, as the defendant did in Baker. Instead, he claimed the accusations were simply “untrue” and the jury rejected his defense. See Tumbleston, 376 S.C. at 102, 654 S.E.2d at 855 (no prejudice from indictment alleging three year window where appellant “proceeded with the defense of denial, and the jury simply rejected this defense”); Wade, 306 S.C. at 83, 409 S.E.2d at 783 (no prejudice from indictment alleging two year window where “defendant proceeded with a defense of denial, and presented evidence of factual impossibility. The jury simply rejected these defenses.”). Not only was the time frame established as far as practicable in the circumstances, more precise temporal allegations would have made no difference in Appellant’s defense. In other words, it doesn’t matter when it happened, just that it happened. Therefore, Appellant suffered no prejudice. Accordingly, the trial court did not err by denying Appellant’s motion to quash the indictments.

III.

The trial court correctly admitted evidence of Appellant's continuous pattern of abusive conduct.

Appellant asserts the trial court erred by admitting evidence of his continuous pattern of abusive conduct against Victim, claiming the State only offered this evidence to show Appellant's propensity to sexual deviancy and alleging the State improperly used an overbroad indictment to circumvent the rule against propensity evidence. This argument fails because the acts described by Victim were part and parcel of a single course of inextricably related conduct, relevant to prove both CSC and Lewd Act. They were not introduced to show that Appellant was predisposed to pedophilia. Indeed, under the State's charging documents they were not prior bad acts at all, but rather substantive proof of the Lewd Act charge. What Appellant styles as a Lyle issue is in essence an argument that the State should not have been allowed to prosecute Appellant for all the alleged acts at one time, even though Appellant made no motion at trial to sever the proceedings. In any case, the State was not required to charge the Lewd Act as multiple counts because the decision of which charge and how many counts to bring is within the prosecutor's discretion. Finally, even if the State had charged multiple counts of Lewd Act, each act was relevant to prove both Lewd Act and CSC under the common scheme or plan exception to Rule 404(b). Accordingly, the trial court properly admitted the evidence.

Standard of Review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 57-58 (2011). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." *Id.*

Discussion

The State disagrees with Appellant's characterization of the testimony detailing Appellant's pattern of abuse as prior bad act evidence. The prohibition against character evidence bars admission of uncharged conduct. The State made clear it was pursuing a general Lewd Act indictment, charging a single count supported by evidence of numerous distinct but related acts which could independently support guilt. R. 24; 265. As the prosecutor argued before trial, "those aren't prior bad acts. Those are the acts that we're talking about for my lewd-act indictment." R. 57. All of the incidents described by Victim at trial clearly meet the elements of Lewd Act, with the possible exception of the incident where Appellant offered Victim money to "sit on his face," which did not result in a physical touching. R. 122. Therefore, under the State's theory of the case, the details of Appellant's lewd sexual behavior towards Victim leading up to the "ultimate act" of digital penetration constituted substantive proof of guilt for a charged offense.

When viewed this way, as it appropriately should be viewed, Appellant's argument is essentially an argument against joinder of multiple possible charges for a single trial. However, it is clear from controlling precedent that the State would have been entitled to try Appellant on each closely related accusation in a single trial. See State v. Beekman, 405 S.C. 225, 229–30, 746 S.E.2d 483, 486 (Ct. App. 2013) (allowing joinder of CSC charges against two victims because the offenses were "of the same general nature involving connected transactions closely related in kind, place and character"). The question is closely connected with Appellant's raised issue because "[p]rejudice to a defendant may occur where the defendant is jointly tried on charges resulting in the admission of prior bad act evidence that would have otherwise been inadmissible." Id. (quoting State v. Cutro, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005)).

However, because Appellant did not move to have the individual acts charged as separate crimes, and does not raise the issue of joinder in his brief, any claims along these lines are not preserved for review. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on a specific ground at trial to preserve an appeal).

The trial court accepted the State's theory of the case that the acts described by Victim leading up to the digital penetration were substantive evidence of guilt under the Lewd Act indictment, not prior uncharged acts. Consistent with this theory, the court made clear that the state would be limited to proving the acts that occurred within Dorchester County in the time period alleged in the indictment. The court recognized, "when you start getting outside the realm of the indictment, outside of when it occurred, then I'm starting to deal with prior bad acts." R. 27. The court instructed the State that Victim must not testify to allegations that occurred before August 1996 or outside of Dorchester County, even though there was evidence that Appellant's grooming of Victim started earlier.

Furthermore, the common evidentiary issues in minor sexual abuse cases, particularly the lack of specificity possible from a minor victim who suffered under a continuing pattern of abuse, present unique considerations justifying wide discretion for prosecutors deciding how to charge these acts. Generally, prosecutors have wide discretion in their charging decisions. Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."). As long as the defendant receives sufficient notice to prepare a defense, a prosecutor's decision which charge and how many counts to bring is a matter within his discretion. See Short v. United States, 91 F.2d 614, 624 (4th Cir. 1937) (in conspiracy

prosecution, “blanket” indictments are allowable, “but they must not be used in such a way as to contravene constitutional guaranties”). An indictment may be limited to one specific act, justifying punishment for and barring future prosecution of that act only. Alternatively, a prosecutor may frame an indictment in more general terms, allowing him to rely on several alternative acts to support a single conviction. See State v. Solomon, 245 S.C. 550, 565, 141 S.E.2d 818, 826 (1965) (in prosecution for conducting business on a Sunday, “[t]he indictment covered, in general terms, violation of the statute on May 13, 1962, and but one conviction can be had against the defendant for the period covered by the indictment” despite the fact that the State did not specify any specific transaction and could have prosecuted Solomon for multiple transactions occurring in that time frame).

The State sacrifices procedural advantages when it pursues a general indictment. “It is allowable for the State to make general factual allegations in an indictment, and it does so at its own peril. If the defendant is acquitted under a general indictment, he may not be tried again for accusations that would have been covered in the first indictment.” State v. Dewees, 76 S.C. 72, 56 S.E. 674, 675 (1907). Because double jeopardy will bar future prosecution for any acts which would support conviction under the general indictment, the State forgoes the possibility of obtaining separate convictions and sentences for multiple counts. In this way, prosecution of the acts as a single count is hugely beneficial for defendants. State v. Martinez, 250 Neb. 597, 601, 550 N.W.2d 655, 658 (1996) (charging a pattern of sexual abuse as a single count is “quid pro quo” between state and accused). Appellant seemed to suggest at trial that the State should be required to separately indict Appellant for each act. However, defense counsel stopped short of making this request, presumably to avoid exposing her client to multiple convictions and a much longer period of incarceration. Following his conviction under the Lewd Act indictment,

Appellant clearly cannot be prosecuted again for any of the allegations brought at trial, or for any other allegations which could have been brought under the indictment. See Russell v. United States, 369 U.S. 749, 764 (1962) (explaining a defendant can “rely upon other parts of the present record in the event that future proceedings should be taken against them”).

The propriety of a general indictment in sex abuse cases has been persuasively approved by appellate courts in other states. See, e.g. State v. Petrich, 101 Wash.2d 566, 571, 683 P.2d 173, 178 (1984) (“Whether the incidents are to be charged separately or brought as one charge is a decision within prosecutorial discretion. Many factors are weighed in making that decision, including the victim's ability to testify to specific times and places.”); State v. Generazio, 691 So. 2d 609, 611 (Fla. Dist. Ct. App. 1997) (noting courts have “allowed the matter of how to charge these sensitive and difficult-to-define acts of sexual abuse to rest in the discretion of prosecutors”). As explained by the court in State v. Altgilbers, 109 N.M. 453, 466, 786 P.2d 680, 693 (1989):

The state faces a dilemma when prosecuting on evidence such as that in this case. On one hand, charging one count for each week, or even a shorter period, throughout a multi-year period can be logistically overwhelming (hundreds of counts and jury instructions), oppressive to defendant, and to no purpose. On the other hand, one count may well seem inadequate to represent a great number of serious criminal offenses[....] Recognizing this dilemma, courts have deferred to the prosecutor's charging pattern in such circumstances[....] The charging pattern that best reconciles the community's interest in proper enforcement of the laws and the interest (shared by the community and the defendant) in fairness to the defendant may well be a charging pattern fitting between the two extremes.

The prosecutor's decision to charge a single count rather than piling on as many counts as possible was a commendable act of restraint. Appellant is not entitled to have it both ways; he cannot demand the State charge him separately for each act, yet retain his limited exposure to a single conviction and sentence. And regardless of how many counts are brought, a defendant

cannot prevent the State from introducing relevant, admissible evidence of his continuous course of sexual abuse against a single victim.

The prosecutor's actions in this case compare favorably to those taken by the prosecutor in Valentine v. Konteh, 395 F.3d 626 (6th Cir. 2005). In that case, as in this one, the defendant engaged in a continuous pattern of sexual abuse over an extended time. The minor victim testified she was forced to perform fellatio on the defendant in their living room "about twenty" times, defendant digitally penetrated her "about fifteen" times, and anally penetrated her "about ten" times. She could not articulate a specific date or time for any of the acts. Rather than charge a single count, the prosecutor brought twenty identical indictments for child rape and twenty identical indictments for felonious sexual penetration. Id., 395 F.3d at 636. Valentine was sentenced to forty consecutive life sentences. The Sixth Circuit Court of Appeals admonished the prosecutor for "piling on," and held that the forty convictions would be treated as a single conviction for each offense, and that defendant could not "be subsequently charged with the same crimes against the stepdaughter during the stated period." Id.

The validity of the indictments is a distraction from the true issue; whether the State should have been limited to alleging an isolated act of sexual abuse without providing the jury with essential context. Even if the Court views the Lewd Act allegations as prior bad acts, Victim's testimony regarding Appellant's continuous pattern of conduct fits squarely within the common scheme or plan exception to prior bad act evidence. State v. Weaverling, 337 S.C. 460, 469, 523 S.E.2d 787, 791 (Ct. App. 1999) (testimony regarding a pattern of sexual abuse is "quintessential common scheme or plan evidence"); State v. Whitener, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955) (common scheme or plan exception is "generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the

indictment is held admissible as tending to show continued illicit intercourse between the same parties”); State v. Taylor, 399 S.C. 51, 60, 731 S.E.2d 596, 601 (Ct. App. 2012) (“In our view, the concept of continued illicit intercourse between the same parties in sexual abuse cases is another way of stating the common scheme or plan exception to Rule 404(b).”). Indeed, our courts have gone much farther than the trial court went here by allowing prior bad act evidence to prove conduct towards a different victim. State v. McClellan, 283 S.C. 389, 392, 323 S.E.2d 772, 774 (1984) (in CSC prosecution where defendant engaged in similar course of conduct towards multiple child victims, court held it would be “difficult to conceive of a common scheme or plan more within the plain meaning of the exception than that presented by this evidence”); State v. Hallman, 298 S.C. 172, 175, 379 S.E.2d 115, 117 (1989) (similar pattern of sexual abuse against multiple foster children admissible as common scheme or plan); State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) (testimony from former employee detailing similar sexual abuse as victim was admissible as common scheme or plan). The State did not dig up unrelated, distant allegations of abuse in order to demonize Appellant’s character or suggest guilt on an improper basis. The State’s case was limited to Appellant’s predatory conduct toward his stepdaughter over a specific, continuous period of time. The admission of the evidence was proper.

Finally, if this Court agrees that Victim’s testimony amounted to prior bad act evidence, it should defer to the trial court’s ruling that the State proved each incident by clear and convincing evidence. Because this determination was based on Victim’s statements and testimony, it rests solely on her credibility. Witness credibility is the province of the trial judge, and his decision in this regard is not reviewable by an appellate court. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001) (appellate court does not “review a trial judge’s ruling on the admissibility of

other bad acts by determining *de novo* whether the evidence rises to the level of clear and convincing. If there is any evidence to support the admission of the bad act evidence, the trial judge's ruling will not be disturbed on appeal"); State v. Douglas, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) ("[T]he abuse of discretion standard of review does not allow this court to reweigh the evidence or second-guess the trial court's assessment of witness credibility"). For all of these reasons, this Court should affirm the trial court's ruling.

IV.

Appellant's argument that the trial court erred by failing to qualify Dr. Baker as an expert is not preserved for review because he did not raise this issue at trial. Even if preserved, the record shows the trial court properly qualified Dr. Baker as an expert. Furthermore, Appellant cannot show prejudice because Dr. Baker was in fact qualified.

Appellant argues on appeal that the trial court improperly allowed Dr. Elizabeth Baker to give opinion testimony without first qualifying her as an expert in violation of Rule 701 SCRE. This argument is not preserved for review because Appellant did not object on this basis at trial. Rather, he argued the expert should not have been allowed to testify at all because certain documentary evidence she produced following her examination had been lost. Defense counsel argued he was not able to cross-examine Dr. Baker on the "basis of her opinion," citing Rule 705 SCRE. Because defense counsel did not object to Dr. Baker's qualification as an expert at trial, Appellant's argument is not preserved for review. Even if preserved, it is without merit. The judge conducted an in camera hearing and found the witness qualified to give the proffered testimony, and the record reflects she was qualified. Appellant suffered no prejudice from the fact that the court never announced Dr. Baker as an expert in the presence of the jury, and Appellant made no such request at trial. Accordingly, the trial court did not err.

Standard of Review

The trial court's ruling on the admissibility of expert testimony will not be reversed absent a prejudicial abuse of discretion. State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999); State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011).

Discussion

At the start of the third day of trial, Appellant moved to exclude the testimony of Dr. Elizabeth Baker, the forensic pediatrician who performed Victim's medical exam and discovered that she had an interrupted hymen. Specifically citing Rule 705 SCRE, Appellant asked the court to exclude Baker's testimony because he was not able to examine the "information" she relied on in her examination of Victim. R. 172. Dr. Baker's in camera testimony revealed she did not rely on any outside data or information to make her findings, but rather conducted a pure visual exam and made her findings based exclusively on her own observations. The State made clear it would not elicit Dr. Baker's opinion about what caused the interruption, only the fact that Victim did in fact have an interrupted hymen.

Dr. Baker testified she received her medical degree from the USC School of Medicine and completed her pediatric residency at Richland Memorial Hospital. She practiced forensic pediatric medicine until she went back to school to earn her degree in child and adolescent psychology in 2012. R. 179. After explaining her exam procedure, she stated her finding that Victim had an interrupted hymen. The parties then made arguments regarding the admissibility of her testimony, and the court announced its ruling. Although it questioned whether Dr. Baker's testimony could accurately be called opinion testimony, the court nevertheless found her testimony did "require the expertise of a doctor to report on the physical findings that she made, and I am going to allow her to testify as she just did." R. 200. However, the court also ruled that Dr. Baker could not offer an opinion as to the cause of the interrupted hymen.

Contrary to Appellant's assertions, the above-cited testimony shows the court did qualify Dr. Baker as an expert. The court heard her qualifications, listened to her proffered testimony, and found her testimony admissible based on her specialized knowledge and experience. The

court explicitly stated: “I find that the expert has the requisite knowledge and skill to qualify on the subject she will be testifying to[.]” R. 199. The court also found her testimony reliable and that the subject matter was beyond the ordinary knowledge of a lay juror. R. 199.

Appellant never objected to Dr. Baker’s qualifications or the trial court’s findings. His argument was limited to the alleged prejudicial effect caused by the destruction of the photographs and videos Dr. Baker took to document her exam. Because Appellant did not object to Dr. Baker’s qualifications at trial, he may not do so for the first time on appeal. State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (objection must be entered on a specific ground at trial to preserve an appeal). If Appellant’s argument is that the court should have declared her an expert in front of the jury, this argument is likewise not preserved because the judge was never given an opportunity to rule on that issue either. The State presumably did not tender Dr. Baker as an expert in front of the jury because the court had already found her qualified. But because Appellant did not object on that basis at trial, he may not now argue the issue on appeal. Tucker v. Doe, 413 S.C. 389, 406, 776 S.E.2d 121, 130 (Ct. App. 2015) (holding defendant must have objected to expert testimony at trial on same ground as appeal).

Regardless, Appellant cannot show prejudice from the court’s ruling because the record reflects Dr. Baker was in fact qualified to give expert testimony. United States v. York, 572 F.3d 415, 422 (7th Cir. 2009) (holding any error harmless where witness “would have easily qualified as an expert had the court conducted the formal Rule 702 analysis”). To announce her as an expert in front of the jury would have served no purpose, and may actually have prejudiced Appellant. United States v. Bartley, 855 F.2d 547, 552 (8th Cir.1988) (noting that “[a]lthough it is for the court to determine whether a witness is qualified to testify as an expert, there is no requirement that the court specifically make that finding in open court upon proffer of the

offering party. Such an offer and finding by the Court might influence the jury in its evaluation of the expert and the better procedure is to avoid an acknowledgment of the witnesses' expertise by the Court").

In short, the court properly qualified Dr. Baker as an expert and correctly allowed her testimony. Appellant did not request the court announce her as an expert in the presence of the jury, and has cited no case or offered any rationale explaining why the court should have done so. Accordingly, this Court should affirm the trial court's ruling.

V.

The trial court did not err by allowing expert testimony that Victim had an interrupted hymen when testimony was based on doctor's visual observations and she did not offer an opinion based on any underlying facts or data.

Lastly, Appellant claims the trial court erred by allowing Dr. Baker to give her opinion that Victim had an interrupted hymen. Citing Rule 705 SCRE and the Confrontation Clause of the Sixth Amendment to the United States Constitution, Appellant claims her testimony should have been excluded because the pictures and video Dr. Baker took following her visual exam and a written report documenting her findings were destroyed in the twenty year period between the exam and trial. Appellant equates these documentary pictures and videos with "underlying facts, data, and evidence relied upon by the witness," and claims the absence of these items made Dr. Baker ineligible to testify. Appellant's argument is without merit because (1) Dr. Baker did not give an opinion, and (2) she did not rely on any "underlying facts, data, and evidence," but rather her own observations. Therefore, there were no underlying facts or data to disclose. Accordingly, the trial court did not err by allowing her testimony.

Standard of Review

The trial court's ruling on the admissibility of expert testimony will not be reversed absent a prejudicial abuse of discretion. State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999); State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 57-58 (2011).

Issue Preservation

Although Appellant cites the Confrontation Clause in his brief, he did not raise it as the basis for his motion at trial. Therefore, the issue is not preserved for review. State v. Sims, 348

S.C. 16, 25, 558 S.E.2d 518, 523 (2002) (“On appeal, appellant also argues the trial court's ruling violated the Sixth Amendment of the Constitution; however, this issue is not preserved for review because it was not raised at trial.”).

Discussion

Specifically citing Rule 705, Appellant moved to exclude Dr. Baker's testimony, alleging her expert opinion relied on “information that we're not able to examine or investigate.” R. 172. The “information” to which Appellant referred was the pictures, video, and one of the written reports Dr. Baker produced after her exam of Victim. However, Dr. Baker testified she did not rely on the pictures, video, or report to reach her conclusion. Instead, she conducted a pure visual exam and made her diagnosis based only on her perceptions. The pictures and video were for documentary purposes only. She explained: “Whenever I would do the visualization, I wouldn't finish the exam until I had formulated my opinion. But then I would need to make sure it was documented appropriately. And so that the video—the photographs were typically used to make sure it was documented appropriately in case somebody wanted a second opinion. But I would have my own— my own opinion would have been formed before I finished the exam.” R. 187. Likewise, she did not rely on any other outside information. Although she was aware of the abuse allegations, they did not factor into her diagnosis because “[t]he visual examination is pretty straightforward regardless of what the history is.” R. 189-90. In other words, there was no “information” that Dr. Baker relied on to reach her conclusion. Rather, her testimony was based on her own observations.

Rule 702 provides that a qualified expert may testify regarding the area of her expertise “in the form of an opinion **or otherwise.**” SCRE 702 (emphasis added). Rule 705 provides that an expert “**may** testify in terms of opinion or inference and give reasons therefor without first

testifying to the underlying facts or data, unless the court requires otherwise. The expert **may** in any event be required to disclose the underlying facts or data on cross-examination.” Rule 705 SCRE (emphasis added). Thus, an expert may give opinion or non-opinion testimony, and the decision whether to require the expert to disclose the underlying “facts or data” of an opinion is within the trial court’s discretion.

It is dubious to refer to Dr. Baker’s testimony as opinion testimony, even though Dr. Baker herself referred to it as such. She merely stated her observation that Victim’s hymen was interrupted, a perception made credible and admissible by her specialized knowledge and training as a medical doctor. The trial court recognized the flaw in Appellant’s argument “that her visual inspection, what she sees, is an opinion.” R. 193. The trial court astutely noted that Dr. Baker did not opine about the **cause** of the interruption. Indeed, Dr. Baker did not even entertain any hypothetical questions about what could have caused it. Defense counsel even argued in closing that Dr. Baker’s **lack of an opinion** as to causation made her testimony unimportant, and accepted the testimony as truth: “Did Dr. Baker say, ‘this child was sexually molested?’ No. Dr. Baker told you she did an examination. There was an interruption in the hymen. An interruption caused by what? Caused by her falling off a balance beam? Caused by her falling off a bicycle or onto a bicycle?” R. 273. This is the type of inference Rule 705 contemplates as opinion testimony.

Even if the Court views Dr. Baker’s diagnosis as an opinion, Rule 705 does not apply because there was no underlying data to be disclosed. Dr. Baker based her findings on her own perception. The court did not err by failing to order disclosure of something that didn’t exist. Even if underlying data did exist, the decision to order disclosure is not mandatory. Rather, the rule states that the court **may** require disclosure on cross-examination. Appellant has failed to

show how Rule 705 applies to these facts, much less an abuse of discretion in the court's admission of competent testimony.

Finally, as to Appellant's Confrontation Clause argument, even if this Court finds it preserved, it is meritless. Although Appellant claims he was denied meaningful confrontation because he was not able to see the pictures and video Dr. Baker took following her visual exam, his argument lacks substance because the pictures were irrelevant to Dr. Baker's conclusion. They were merely documentation of her findings. Cf. State v. Slocumb, 336 S.C. 619, 521 S.E.2d 507 (Ct. App. 1999) (holding where psychiatric expert based his opinion on defendant's DJJ incident reports, State was allowed to cross-examine him regarding those reports). Most importantly, Appellant exercised his right to confrontation when he cross-examined Dr. Baker. Notably, he made no attempt to show that her observations could have been mistaken. Rather, he just drew attention to the missing pictures and video. R. 207-09. In doing so, Appellant forfeited his opportunity to question the actual validity of Dr. Baker's testimony, the true purpose of confrontation. The prosecutor noted the hypocrisy in Appellant's argument by pointing out that the materials likely would not have been lost or destroyed if Appellant had not evaded justice for more than twenty years. Appellant should not benefit from his own wrongdoing. See, e.g. Delahouse v. State, 369 S.C. 522, 633 S.E.2d 158 (2006) (holding that when a prisoner escapes from prison, he should not be given credit against his South Carolina sentence for time served in another jurisdiction on a subsequent crime).

Because Appellant has not shown that Dr. Baker relied on any underlying facts or data to reach her conclusion, and has not shown an abuse of discretion in the trial court's decision not to order disclosure of nonexistent evidence, this Court should affirm.

CONCLUSION

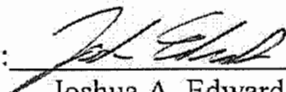
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 9, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2018-000259

THE STATE,

Respondent,

v.

SAMUEL JOLLY,

Appellant.

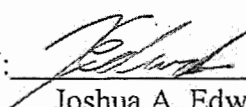
CERTIFICATE OF COUNSEL

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

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ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
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Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2018-000259

THE STATE,

Respondent,

v.

SAMUEL JOLLY,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by delivering two copies addressed to Lara M. Caudy, 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 9th day of October, 2018.


Anne A. Mueller
Legal Assistant for Respondent

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Samuel Jolly, Appellant.

Appellate Case No. 2018-000259

Appeal From Dorchester County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2020-UP-327
Heard October 15, 2020 – Filed December 2, 2020

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Joshua Abraham Edwards, both of
Columbia, and Solicitor David Michael Pascoe, Jr., of
Orangeburg, all for Respondent.

PER CURIAM: Samuel Jolly married the mother of a nine-year-old girl (Victim) in 1996 and moved in with them. Over the course of the next year, Jolly sexually

abused Victim. When Victim reported the abuse to a teacher, an investigation began, leading to arrest warrants for Jolly. Jolly, however, had moved to Florida, and the warrants were not served until he was apprehended in 2013. In 2013, he was indicted for one count of Criminal Sexual Conduct (CSC) with a Minor, and in 2014, he was indicted for one count of Lewd Act upon a Child. Both indictments listed the time frame of the crime as "August 1, 1996 to August 22, 1997." The indictment for Lewd Act upon a Child did not list the type of lewd act alleged to have been committed; however, before his trial, Jolly received discovery, including two statements of the Victim alleging Jolly committed up to sixteen discreet instances of lewd acts during the time period stated in the indictment.

At his 2018 trial, Jolly moved to quash his indictments; the motion was denied. Jolly also moved to exclude evidence of any lewd acts that occurred outside the scope of his indictment, asserting that, unless the Lewd Act indictment listed the specific act the State was prosecuting him for, the State was circumventing the rules regarding propensity evidence. The trial court ruled no evidence of lewd acts occurring before the indictment's timeframe could be entered into evidence at trial, but it refused to exclude evidence of lewd acts occurring within the timeframe of Jolly's indictment as prior bad acts.

Jolly also moved to exclude testimony from the forensic pediatrician who physically examined Victim in 1997 and found Victim's hymen was torn. She documented the exam with photographs and video, but by the time Jolly's trial occurred in 2018, only the notes from the exam still existed. Jolly asserted the photographs and video of the exam were the "underlying facts or data" upon which the pediatrician had relied in forming her expert opinion Victim's hymen was torn. Jolly argued that allowing the pediatrician to testify to this expert opinion without disclosing the photographs and video violated both Rule 705, SCRE,¹ and his confrontation clause rights. The trial court disagreed, and, after taking *in camera* testimony from the pediatrician, it ruled: 1) the pediatrician's testimony was reliable; 2) the pediatrician's testimony did not improperly bolster Victim's testimony; 3) the probative value of the pediatrician's testimony was not outweighed by the danger of unfair prejudice; 4) the subject matter of the testimony was "beyond the ordinary knowledge of the juror and [did] require

¹ "The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination." Rule 705, SCRE.

expert training in the sense that [the pediatrician] is a doctor"; and 5) the pediatrician had the requisite knowledge and skill to testify on the subject of her testimony. The trial court then allowed the pediatrician to testify as to her physical exam finding of a torn hymen but ruled she could not testify to any opinion as to what caused the tear in the hymen.²

After hearing testimony from Victim, the investigators, and the pediatrician, as well as Jolly's testimony in defense, the jury convicted Jolly on both indictments. Jolly now appeals, contending the trial court erred in: 1) finding Jolly's indictments were not vague or overbroad; 2) failing to exclude evidence of his prior bad acts against Victim; 3) admitting opinion evidence from the pediatrician without properly qualifying her as an expert; and 4) admitting expert testimony from the pediatrician regarding the exam she completed on Victim when the photographs and video taken during the exam were lost. We affirm.

I.

The trial court did not err in denying Jolly's motion to quash his indictments, as they were not vague or overbroad. *See State v. Baker*, 411 S.C. 583, 588, 769 S.E.2d 860, 863 (2015) ("In criminal cases, the appellate court sits to review errors of law only." (citation omitted)). The timeframe of Jolly's indictments was not overly broad. *Compare State v. Wade*, 306 S.C. 79, 80, 409 S.E.2d 780, 781 (1991) (upholding indictment for CSC First Degree with a Minor alleging digital penetration of the victim's vagina, even though the timespan of the indictment was written as "during 1984 through 1985"), *and State v. Tumbleston*, 376 S.C. 90, 101–02, 654 S.E.2d 849, 855 (Ct. App. 2007) (upholding indictments for CSC First Degree with a Minor and Lewd Act upon a Child which covered a three-year timespan because "indictments for a sex crime that allege offenses occurred during a specified time period are sufficient when the circumstances of the case warrant considering an extended time frame"), *with Baker*, 411 S.C. at 590–91, 769 S.E.2d at 864 (quashing Baker's indictment for Lewd Act upon a Child because Baker was re-charged two weeks before trial and his new indictment spanned a six-year timeframe instead of the timeframe of his previous indictment, which included three summers only).

² The trial court was not asked to and did not charge the jury on the meaning and significance of expert testimony at any point during the trial; however, whether this was an error is not an issue before us on appeal. *See State v. Bray*, 342 S.C. 23, 27 n.2, 535 S.E.2d 636, 639 n.2 (2000) (finding it is error for an appellate court to consider an issue not raised to it).

Further, we find the effect of the loss of the documents from 1997 implicates a sufficiency of the evidence argument but does not bear on whether Jolly's indictment gave him sufficient notice of the charges against him. *See State v. Massey*, 430 S.C. 349, 358, 844 S.E.2d 667, 671 (2020) ("A motion to quash does not test the sufficiency of the State's evidence; the sufficiency of the evidence can properly be challenged only by a motion for a directed verdict following the State's presentation of its case at trial.").

Next, we find Jolly's indictment for Lewd Act upon a Child enabled the trial court to know what judgment to pronounce and apprised Jolly of the elements of the offense. *See State v. Gentry*, 363 S.C. 93, 102–03, 610 S.E.2d 494, 500 (2005) ("[T]he circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged."); S.C. Code Ann. § 17-19-20 (2014). However, it is a closer question whether Jolly's indictment on its face gave Jolly enough specificity to know what lewd act he would be called upon to answer at his trial. *See State v. Gunn*, 313 S.C. 124, 128–30, 437 S.E.2d 75, 77–78 (1993) (finding it was questionable whether "on its face" a general indictment for conspiracy which tracked the language of the trafficking statute "in most of its many permutations" without giving facts about the conspiracy charged "sufficiently apprised the appellants of the charges against them").

We do not, however, believe this potential facial deficiency required quashing the indictment. *See Baker*, 411 S.C. at 589, 769 S.E.2d at 864 ("In determining whether an indictment meets the sufficiency standard, the trial court must look at the indictment with a practical eye in view of all the surrounding circumstances" that "existed pre-trial, in order to determine whether a given defendant has been 'prejudiced,' i.e., taken by surprise and hence unable to combat the charges against him." (internal citations omitted)). Looking at the surrounding circumstances before Jolly's trial, Jolly had access to Victim's statements describing the lewd acts alleged to have occurred in time to prepare a defense. *Compare Baker*, 411 S.C. at 590–92, 769 S.E.2d at 864–65 (quashing indictment when pre-trial surrounding circumstances resulted in Baker having only two weeks to prepare for trial under new, general indictment for Lewd Act upon a Child), *with Gunn*, 313 S.C. at 129–30, 437 S.E.2d at 78 (upholding general indictment for conspiracy when the defendants had access to evidence presented to the State Grand Jury before their trial and, therefore, had notice of the facts leading to their charge); *see also* LaFave

et al., 5 Criminal Procedure § 19.3(c) (4th ed. 2019) (collecting cases of specificity challenges to general indictments in child sex abuse prosecutions and stating the key to providing notice in a case where a victim is repeatedly "subjected to the same criminal actions by the same offender in the same place over a period of time . . . may lie more in providing discovery" than in specifying facts in the indictment). Therefore, we find no error in the denial of Jolly's motion to quash his indictment for Lewd Act upon a Child.

Further, even if the indictment was insufficient on its face and was not saved by the pretrial surrounding circumstances and discovery, Jolly has not demonstrated how he was prejudiced. *Cf. State v. Samuels*, 403 S.C. 551, 556–57, 743 S.E.2d 773, 776 (2013) (finding a conviction resulting from a duplicitous indictment should be upheld unless the defendant can prove the indictment: 1) failed the *Gentry* sufficiency test; and 2) actually prejudiced the defendant by implicating a defendant's rights "to notice of the charge against him, to a unanimous verdict, to appropriate sentencing[,] and to protection against double jeopardy in a subsequent prosecution"). First, through discovery, Jolly had actual notice of the alleged acts leading to his charges. Second, the lack of specificity as to which act could give rise to a conviction of Lewd Act upon a Child does not implicate Jolly's right to a unanimous verdict. *See State v. Adams*, 430 S.C. 420, 432–37, 845 S.E.2d 217, 223–26 (Ct. App. 2020) (finding Adams' right to a unanimous verdict for one count of CSC First Degree with a Minor was not implicated even though evidence was presented during trial indicating he committed several sexual batteries upon the child—and of different types). Third, we cannot perceive how Jolly is prejudiced by double jeopardy concerns. In our view, the State's decision to indict him for only one count of Lewd Act upon a Child over the whole year when the State could have charged him with eleven to sixteen discrete charges for the same time period means Jolly may actually benefit from the State's discretion: the State cannot recharge him for those discrete acts. *See State v. Dewees*, 76 S.C. 72, 76, 56 S.E. 674, 675 (1907) (double jeopardy bars prosecution if "the facts charged in the second indictment would, if true, have sustained the first").

Finally, the State did not circumvent the rules regarding propensity evidence by charging Jolly with one count of Lewd Act upon a Child over the course of a year instead of charging him with multiple counts during the same time period. Accordingly, the trial court did not err in finding evidence of the lewd acts committed by Jolly against Victim within the timeframe of the Lewd Act indictment were direct evidence of a crime Jolly was being prosecuted for committing, rather than prior bad acts. *See State v. Hurell*, 424 S.C. 341, 351, 818 S.E.2d 21, 26 (Ct. App. 2018) ("The admission of evidence is within the discretion

of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." (citations omitted)).

II.

The trial court did not abuse its discretion in ruling: 1) the pediatrician was an expert; 2) the pediatrician could testify as to her physical exam finding of a torn hymen; and 3) the pediatrician could not testify to her opinion as to what caused the tear in the hymen. *See State v. Simpson*, 425 S.C. 522, 536–37, 823 S.E.2d 229, 236–37 (Ct. App. 2019) (stating both the qualification of a witness as an expert and the admission of expert testimony are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion). First, the pediatrician's visual finding of Victim's torn hymen required more understanding of a child's genitalia than a lay person would have and was, therefore, expert testimony. *See* Rule 702, SCRE ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."). Next, the trial court made appropriate findings on the record to qualify the pediatrician as an expert on the subject matter of her testimony. *See Simpson*, 425 S.C. at 536, 823 S.E.2d at 236 (stating "[b]efore a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) . . . the expert's testimony is reliable" (internal citation removed) (alterations in original)). Additionally, the pediatrician's method for forming the opinion Victim's hymen was torn was reliable, and the "underlying facts or data" on which her opinion was based was the exam itself. Rules 702, 703, and 705, SCRE; *State v. Jones*, 423 S.C. 631, 636, 817 S.E.2d 268, 270 (2018) ("In determining whether to admit expert testimony, the trial court must make three inquiries: (1) whether the evidence will assist the trier of fact; (2) whether the expert has acquired the requisite knowledge and skill to qualify as an expert in that particular subject matter[;] and (3) whether the substance of the testimony is reliable."); *Simpson*, 425 S.C. at 537, 823 S.E.2d at 237 ("A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion whe[n] the ruling is manifestly arbitrary, unreasonable, or unfair." (alterations in original) (quoting *State v. Grubbs*, 353 S.C. 374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003))). Jolly seizes on the trial court's statement that the torn hymen finding was not an expert opinion but an observable fact based on personal knowledge. The trial court, however, stated the pediatrician's testimony included "observations

based on education and experience." The trial court stated, "it does require the expertise of a doctor to report on the physical findings that she made, and I am going to allow her to testify just as she did." Even if the trial court's ruling was contradictory, we may affirm for any reason appearing in the record, and the record supports the conclusion the pediatrician's testimony as to the torn hymen was a proper expert opinion. Rule 220(c), SCACR (stating the court may affirm on any ground in the record).

Further, Jolly's Rule 705, SCRE argument is without merit. The pediatrician gave a full description of how the exam was conducted, why it was conducted, and what she discovered during the exam. Accordingly, the pediatrician's testimony exposed the jury to the underlying facts relevant to her opinion formation and, in doing so, went above and beyond the requirements outlined in Rule 705, SCRE.

Finally, the loss of the photographs and video did not implicate Jolly's confrontation clause rights. The pediatrician's physical exam finding was not based on testimonial hearsay, and she was available for cross-examination about her qualifications as well as her method of conducting and documenting the physical exam. *See State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994) ("Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses."); *State v. McCray*, 413 S.C. 76, 90, 773 S.E.2d 914, 921–22 (Ct. App. 2015) (finding expert opinion testimony may violate the confrontation clause if the opinion is based on testimonial hearsay and not independent judgment).

Accordingly, Jolly's convictions are

AFFIRMED.

THOMAS, HILL, and HEWITT, JJ., concur.

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of DORCHESTER)
)
SAMUEL JOLLY #375455)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS

2021-CP-18-875

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-0416 (CSC 1ST DEGREE) 2013-GS-18-0416
 - (b) 2014-GS-18-0126 (LEWD ACT)

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 CLERK OF COURT
 DORCHESTER COUNTY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2-14-18 (30 YEARS) CONCURRENT
- (b) 2-14-18 (15 YEARS) CONCURRENT
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. DECEMBER 2, 2020
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHMENTS
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENTS
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? X
 (c) your sentencing? N/A
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. TRIAL- MICHELLE R. WILLIAMS, 107 WEST 6TH N. STREET,
SUMMERVILLE, SC 29483
 ii. _____
 iii. APPEAL- LARA MARY CAUDY, P.O. BOX 11589, COLUMBIA, SC
29211
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL- MICHELLE R. WILLIAMS
APPEAL- LARA MARY CAUDY
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

VACATE AND REMAND

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

VERIFICATION

I, "SAMUAL C. JOLLY", being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Samuel C. Jolly

SWORN to and subscribed before me this 12th
day of May, 2021.

Tamara Conwell (L.S.)
Notary Public

My Commission Expires September - 25 - 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, "SAMUAL C. JOLLY", hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Samuel C. Jolly
Applicant

SWORN or affirmed to and subscribed before me this

12th day of May, 2021.

Tamara Conwell
Notary Public

My Commission Expires September-25-2023

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2021 MAY 14 PM 4:21
CHERYL GRAHAM
CLERK OF COURT
DOVER/DELAWARE COUNTY

- 10(A) INEFFECTIVE ASSISTANCE OF COUNSEL
- (B) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (C) FRAUD UPON THE COURT, 60, (B), (3)
- (D) NEWLY DISCOVERED EVIDENCE AND SUBJECT MATTER JURISIDICIION

11(A)(1) FAILURE OF COUNSEL AND THE TRIAL COURT TO INVESTIGATE THE LAWS OF SOUTH CAROLINA AS TO WHETHER THEY WERE "AFFIXED" WITH THE IMPRESSION OF THE GREAT SEAL OF SOUTH CAROLINA. SECTION 16-1-60 OF THE 1976 CODE AS LAST AMENDED BY ACT 184 OF 1993 IS FURTHER AMENDED TO READ:

S.C. CONST. ART. 111, SECTION 18

§ 18. FORMALITIES OF ACT

NO BILL OR JOINT RESOLUTIONS HAVE THE FORCE OF LAW UNTIL IT SHALL HAVE BEEN READ (3) TIMES AND ON (3) SEVERAL DAYS IN EACH HOUSE, HAS HAD THE (GREAT SEAL) OF THE STATE AFFIXED TO IT AND HAS BEEN SIGNED BY THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES: PROVIDED THAT EITHER BRANCH OF THE GENERAL ASSEMBLY MAY PROVIDE BY RULE FOR A FIRST AND THIRD READIND OF ANY BILL OR JOINT RESOLUTION BY IT'S TITLE ONLY.

CHIEF CLERK
 CLERK OF COURT
 CHARLESTON COUNTY

2021 MAY 14 PM 4:21

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"NEWLY DISCOVERED EVIDENCE"
AND "FRAUD UPON THE COURT"

THE APPLICANT ASSERTS UPON BELIEF AND FACTS THAT ON OR AROUND NOVEMBER 2017, THE STATE NEWSPAPER REPORTED THE GREAT SEAL OF THE STATE MISSING FROM CERTAIN LAWS HERE IN SOUTH CAROLINA.

FUTHERMORE, THE APPLICANT HAS RESEARCHED THIS NEWLY DISCOVERED EVIDENCE WITH THE S.C. DEPARTMENT OF ARCHIVES AND HISTORY, WITH A MR. STEVEN TUTTLE CONFIRMING THE GREAT SEAL OF SOUTH CAROLINA IS NOT AFFIXED TO THE 1993 ACT NO.184 (SEE EXHIBIT 1).

ALSO, THE APPLICANT WILL SUBMIT A LETTER FROM A MR. STEPHEN DRAFFIN ADDRESSED TO MR. SPENCER HEWITT, THAT STATES THE ORIGINAL 1995 ACT NO.7 HAS BEEN LOST AND ONLY A DUPLICATE COPY RESIDES AT THE S.C. DEPARTMENT OF ARCHIVES AND HISTORY. (SEE EXHIBIT 2).

"ARGUMENT"

BOTH THE FEDERAL AND STATE CONSTITUTIONS FORBID ANY LAW IMPARING THE OBLIGATIONS OF CONTRACTS. THEREFORE, THE OBLIGATION OF A CONTRACT IS THAT DUTY OF PERFORMING THE CONTRACT TO ITS TERMS AND INTENT WHICH THE LAW RECOGNIZES AND ENFORCES. AGAIN, LIKE ANY ORDINARY BILL MUST IN ORDER TO HAVE THE FORCE OF LAW (MUST) HAVE THE GREAT SEAL OF THE STATE ATTACHED THERETO.....

FUTHERMORE, SOUTH CAROLINA'S SECRETARY OF STATE HAS FAILED TO PERFORM HIS CONSTITUTIONAL DUTY OF "AFFIXING" THE GREAT SEAL OF THE STATE ONTO ACTS AND RESOLUTIONS PASSED BY THE S.C. GENERAL

ASSEMBLY. THE ARTICLE 111, SECTION 18 OF THE SOUTH CAROLINA'S CONSTITUTION "NO BILL OR JOINT RESOLUTION SHALL HAVE THE FORCE OF LAW UNTIL IT SHALL HAVE BEEN READ (3) TIMES AND ON (3) SEVERAL DAYS IN EACH HOUSE, HAS HAD THE GREAT SEAL OF THE STATE AFFIXED TO IT".

ACCORDING TO THE S.C. CONSTITUTION ARTICL 111, SECTION 18 "NO SEAL NO LAW". ADDITIONALLY, THE 1993 ACT NO.184, HAD NOT BEEN PROPERLY FILED WITH THE S.C. DEPARTMENT OF ARCHIVES AND HISTORY BECAUSE OF THE LACK OF THE STATE SEAL ATTACHED TO THE CRIMINAL BILL. THE LAW THAT THE APPLICANT WAS CONVICTED OF WASN'T CONSTITUTIONALLY VALID. (SEE EXHIBIT 4)

THEREFORE, THE TRIAL COURT LACKED SUBJECT MATTER JURISIDITION TO IMPOSE ANY SENTENCE.

"CONCLUSION"

THEREFORE, DUE TO THE FACTS OF EVIDENCE ON THIS ISSUE, THE APPLICANT ASSERTS THAT THIS MATTER IS A DUE PROCESS VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION AND THE S.C. CONSTITUTION ARTICLE 111, SECTION 18.

- (2) COUNSEL FAILED TO PROPERLY AND FULLY INVESTIGATE THE CASE.
- (3) COUNSEL FAILED TO FULLY PREPARE THE APPLICANT FOR TESTIMONY AT TRIAL.
- (4) COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE ALLEGED CRIME SCENE OR THE ALLEGATIONS SO AS TO BE PREPARED TO PRESENT TESTIMONY THROUGH DIRECT AND CROSS-EXAMINATION OF RELEVANT EVIDENCE RELATED TO THE MATTER.
- (5) COUNSEL FAILED TO PROVIDE A PROPER DEFENSE FOR TRIAL.
- (6) COUNSEL FAILED TO MOVE AND REQUEST THE TRIAL COURT TO CHARGE THE JURY ON THE MEANING AND SIGNIFICANCE OF EXPERT TESTIMONY DURING THE TRIAL.
- (7) COUNSEL FAILED TO ADEQUATELY CHALLENGE AND EFFECTIVELY CROSS-EXAMINE THE ALLEGED VICTIM, "Minor [REDACTED]" ON HER INCONSISTANT STATEMENTS TO THE LOWCOUNTY CHILDREN'S CENTER AND DETECTIVE MARSHALL, ABOUT THE ALLEGATIONS.
- (8) COUNSEL FAILED TO CHALLENGE THE TESTIMONY OF THE STATE'S WITNESS, YVONNIA BROWN, AND FAILED TO EFFECTIVELY CROSS-EXAMINE THE DSS INVESTIGATOR ON HER TESTIMONY.
- (9) COUNSEL FAILED TO CHALLENGE DR. BAKERS TESTIMONY ABOUT HER METHOD OF DOCUMENTING AND CONDUCTING THE PHYSIAL EXAM ON THE ALLEGE VICTIM, "Minor [REDACTED]".
- (10) COUNSEL FAILED TO REQUEST A PRELIMINARY HEARING SO THE APPLICANT COULD MORE ADEQUATELY BE INFORMED ABOUT THE CASE. THE CHARGES COULD HAVE BEEN POTENTIALLY DISMISSED FOR LACK OF EVIDENCE.

(11) COUNSEL FAILED TO OBJECT TO IMPROPER BOLSTERING OF THE VICTIM, [Minor] S CREDIBILITY OF TESTIMONY, DURING CLOSING ARGUEMENTS. THE PROSECUTOR COMMENTED, THAT "WHEN YOU GO BACK IN YOUR JURY ROOM, I WANT YOU TO THINK ABOUT SOMETHING. IT'S BEEN 20 YEARS SINCE THESE EVENTS HAVE OCCURRED. [Minor] DOESN'T HAVE ANY REASON TO LIE ABOUT THESE AT THIS POINT, BUT MR. JOLLY HAS EVERY REASON TO LIE ABOUT THESE THINGS". THESE COMMENTS BY THE PROSECUTOR WAS IMPROPER BOLSTERING, AND TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO SUCH COMMENTS. TR. T. PAGE 107,11-14.

(12) APPELLATE COUNSEL FAILED TO ARGUE AND RAISE THE ISSUE OF THE "MOTION TO DISMISS" ON DIRECT APPEAL, BECAUSE OF THE LACK OF EVIDENCE BY THE STATE IS A DUE PROCESS VIOLATION FOR NOT BEING ABLE TO PROPERLY PREPARE FOR TRIAL. THE STATE LACKED A DSS FILE OF THE VICTIM SO TO PREPARE TO EFFECTIVELY CROSS-EXAMINE THE DSS WORKER AND POTENTIALLY IMPEACH THE VICTIM, AND ALSO, NO VIDEO INTERVIEW FROM THE LOWCOUNTRY CHILDREN'S CENTER, AND NO DNA OR POLICE FILE. ALSO, THE STATE FAILED TO PROVIDE A FINAL REPORT AND PICTURES BY DR.BAKER OF THE MEDICAL EVALUATION OF THE ALLEGE VICTIM [Minor]. THIS LACK OF EVIDENCE DID PREJUDICE THE APPLICANT FROM HAVING A FAIR TRIAL, AND APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS MERITORIOUS ISSUE. TR.T. PAGE 39,12-25. TR.T. PAGE 40,41,42,43,44,45.

(13) APPELLATE COUNSEL FAILED TO ARGUE AND RAISE THE ISSUE OF THE MOTION TO PRECLUDE THE STATE FROM ARGUING FLIGHT AS EVIDENCE OF GUILT ON DIRECT APPEAL. THE APPLICANT WAS UNAWARE OF ANY WARRANT FOR HIS ARREST, AND FUTHERMORE, THE APPLICANT WAS

TOLD TO LEAVE HIS HOUSE BY DSS AND LAW ENFORCEMENT. THE APPLICANT WAS NEVER ADVISED THAT HE COULD NOT LEAVE THE STATE. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS MERITORIOUS ISSUE ON DIRECT APPEAL. TR.T. PAGE 61,62,63,1-18. TR.T. PAGE 65,19-25. TR.T. PAGE 67,2-4. TR.T. PAGE 84.

(14) APPELLATE COUNSEL FAILED TO RAISE THE ISSUE OF THE MOTION OF A DIRECTED VERDICT ON DIRECT APPEAL. AGAIN, THE STATE LACKED A SUFFICIENCY OF EVIDENCE, THAT INCLUDED A MISSING DSS FILE, AND NO VIDEO INTERVIEW OF THE VICTIM, AND NO DNA OR POLICE REPORTS. THE APPLICANT ONLY HAS ONE BITE OF THE APPLE, AND APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THIS MERITORIOUS ISSUE ON DIRECT APPEAL. TR.T. PAGE 53,54,55,1-14.

Exhibit 1



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CHERYL GRAHAM
CLERK OF COURT
CORNER STREET COUNTY

21 April 2021

Mr. Samuel C. Jolly #375455
Perry Correctional Institution Q1B-111
430 Oaklawn Road
Pelzer, SC 29669

Dear Mr. Jolly:

I checked the following act that you requested but could not locate a visible impression of the Great Seal: 1993 Act No. 184.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven D. Tuttle". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Steven D. Tuttle
Deputy Director
Archives & Records Management

South Carolina Legislative Council

451

DAVID H. WILKINS, CHAIRMAN
SPEAKER OF THE HOUSE OF REPRESENTATIVES

GLENN F. MCCOMMELL
CHAIRMAN, SENATE JUDICIARY COMMITTEE
THE SENATE

JAMES H. HARRISON
CHAIRMAN, HOUSE JUDICIARY COMMITTEE
THE HOUSE OF REPRESENTATIVES

ROBERT L. PEELER
PRESIDENT OF THE SENATE

JIM MILES
SECRETARY OF STATE



Exhibit 2

STATE HOUSE, FIRST FLOOR
AND
DENNIS BUILDING, SUITE 434
1000 ASSEMBLY STREET
P.O. BOX 11489, COLUMBIA, S.C. 29211-1489
TELEPHONE: (803) 734-2145
FAX: (803) 734-2425

STEPHEN T. DRAFFIN
CODE COMMISSIONER AND DIRECTOR

October 21, 2002

Mr. Spencer Hewitt
Secretary of State's Office
Edgar Brown Building
Columbia, South Carolina 29211

Dear Spencer:

You asked us recently to help locate the original of H.4323 of 1994 (Ratification Number 585 of 1994 and Act Number 7 of 1995) which became law on January 12, 1995, without the signature of the Governor. As we indicated in our telephone conversation, the Governor's office sends acts directly to the Secretary of State's office without transmitting them back through any office of the General Assembly. It is our best guess if you have no record of it that the original was lost during the changeover from the Campbell administration to the Beasley administration in January 1995, especially since the Governor didn't sign it. We asked Steve Tuttle at Archives to go through the boxed materials of these administrations, and he indicated that after doing so the original of this act could not be found. We did not check with Governor Hodges' office but it may be worth trying to follow up there although this would be a long shot.

In order that you can have a record of this act in the Secretary of State's office, we have prepared a duplicate from the computer files maintained by Legislative Printing. This is the same procedure we follow from time to time when bills are misplaced while under the consideration of the General Assembly. This should provide you with a sufficient record of what was ratified by the General Assembly and what became law without the signature of the Governor. If we can be of further help, please let us know.

Very truly yours,

A handwritten signature in black ink, appearing to be "SK" or similar initials, followed by a horizontal line.

Stephen T. Draffin

STD/gjk
Enc.

CHERYL GRAHAM
CLERK OF COURT
DOUGHERTY COUNTY

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Exhibit 3

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CLERK OF COURT
CHESIER COUNTY

A person convicted of an offense for which the term of imprisonment is contingent upon the value of the property involved must, if the offense is a third or subsequent offense, be punished as prescribed by the provisions of this section.

SECTION 16-3-69 of the 1976 Code, as last amended by Act 184 of 1992, is amended to read:

"Section 16-3-69. For purposes of definition under South Carolina law a violent crime includes the offenses of murder (Section 16-3-10); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-654); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-657); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-31); armed robbery (Section 16-11-330); drug trafficking as defined in Section 44-53-70(e) and 44-53-375(C); arson in the first degree (Section 16-11-311); burglary in the first degree (Section 16-11-311); and burglary in the second degree (Section 16-11-312(B)); engaging a child for sexual performance (Section 16-3-810); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specified in this section are considered violent offenses."

Mandatory minimum terms

SECTION 16-11-330 of the 1976 Code, as last amended by Act 184 of 1992, is amended to read:

"(A) Any person convicted of the crime of robbery with a dangerous weapon, such as a knife, slingshot, metal knuckles, razor, or other dangerous weapon, shall be imprisoned for a mandatory minimum term of not less than thirty years, no part of which may be suspended. A person convicted under the provisions of this section shall be ineligible for parole until he has served at least seven years of the term of imprisonment."

"(B) Any person sentenced under the provisions of the South Carolina Sentencing Act) convicted of armed robbery shall receive a minimum sentence of at least three years, no part of which may be suspended. The person is not eligible for parole or probation until he has served a three-year minimum sentence."

"(C) A person between the ages of twenty-one and twenty-five, who is convicted of armed robbery, may not be sentenced under the provisions of the South Carolina Sentencing Act).

M. HOPE BLACKLEY

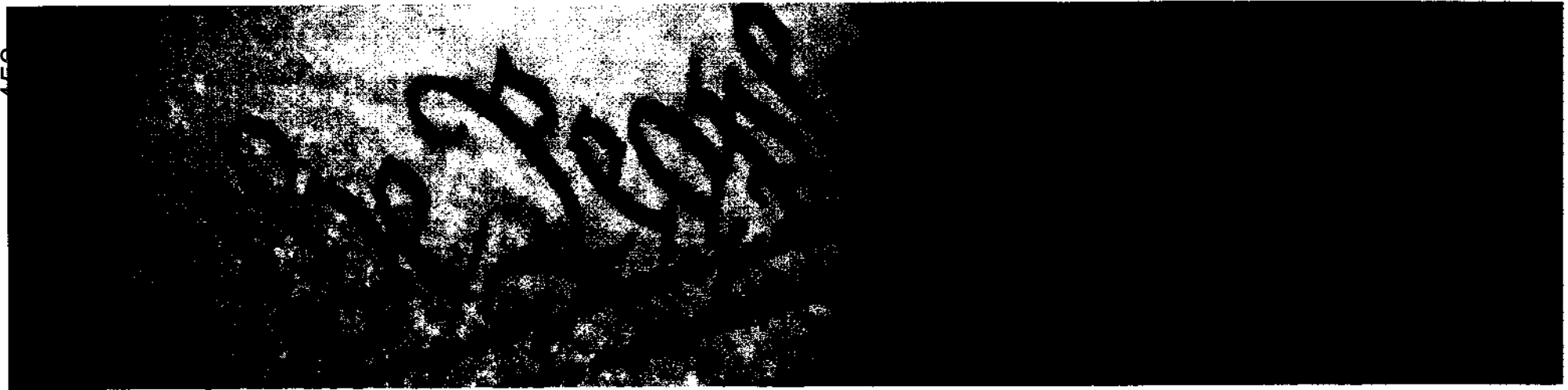
2018 NOV -5 PM 1:58

CLERK OF COURT
CHESIER COUNTY

Exhibit 4

Exhibit 4

pg. 1



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#SealMageddon: Origins, Escalation

The origins of South Carolina's latest (and greatest?) display of government incompetence ...



Published 3 years ago on November 17, 2017
By **FITSNews**



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CHERYL GRAY
CLERK OF COURT
DOUGHERTY

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CHERYL GRAHAM
CLERK OF COURT
DOUGHERTY COUNTY

Yesterday, this news site broke open a scandal we're christening #SealMageddon ...

For those of you who missed our exclusive report, it boils down to this: For an undetermined period of time (rumored to be several years), South Carolina's Secretary of State Mark Hammond allegedly failed to perform his constitutional duty of affixing the "Great Seal" of the state onto acts and resolutions passed by the S.C. General Assembly.

This ministerial task – in which the state seal is physically "stamped" onto original acts and resolutions passed by the legislature – has fallen to the Secretary of State for as long as anyone in state government can remember.

Does the seal matter?

Yes ...

According to Article III, Section 18 of South Carolina's constitution ([.pdf](#)), "No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, ***has had the Great Seal of the State affixed to it***, and has been signed by the President of the Senate and the Speaker of the House of Representatives."

(Emphasis added).

In other words, "no seal, no law."

So ... *how did we get here?*

Good question ...

pg. 3

pg. 3

Multiple state legislators were briefed on the situation late Thursday after reporter **Meg Kinnard** of The Associated Press picked up this story and ran with it. 4

Apparently Kinnard's report – and our story preceding it – prompted mass panic within the legislative branch.

According to these lawmakers – who were briefed on the matter by one of their colleagues – #SealMaggedon has been a closely guarded secret in the state capital for the past three months. They told us the problem was discovered three months ago when a defendant representing themselves (i.e. *pro se*) in a criminal case decided to visit the S.C. Department of Archives and History (SCDAH).

The defendant apparently wanted to view the actual law they were being charged with in an effort to determine whether it had been properly filed. 4

Upon viewing the document, the defendant noticed the absence of the state seal and quickly made the constitutional connection. Shortly thereafter, they filed a motion to have the charges against them dismissed on the grounds that the law they were accused of violating wasn't constitutionally valid.

See where this is going?



(Via: FITSNews.com)

Not long thereafter, a local solicitor – alarmed by the potential implications of the situation – contacted legislators in an effort to determine why one of their laws had been filed without a seal affixed to it.

That's when the true dimensions of #SealMaggedon came into focus, we're told.

Armed with the solicitor's concerns, top legislative staffers (and their bosses) quickly launched a discreet inquiry – at which point they realized Hammond's office had failed to affix the seal to *thousands of acts and resolutions* dating back for a period of up to ten years. This reportedly led to a vigorous debate between legislative and executive branch officials over whether Hammond was in fact responsible for performing this constitutional duty.

For several weeks this summer, we're told Hammond refused to accept responsibility for the situation – but ultimately acquiesced and acknowledged he had been derelict in his duty. At this point, an effort was undertaken to "fix" the problem – although it's not immediately clear how fruitful that fix has been.

Or whether retroactively applying the seal will create even bigger constitutional issues ...

We don't yet have precise dates or an exact number of potentially impacted acts and resolutions, but this news site submitted a Freedom of Information Act (FOIA) request to the Secretary of State's office yesterday seeking this information.

According to our sources, the Secretary of State is currently in possession of all acts and resolutions dating from 2005 to the present. Acts and resolutions from previous years are stored at SCDAH. A review of these acts and resolutions is currently being undertaken by state representative Joshua Putnam, who is running against Hammond in next spring's GOP primary election for Secretary of State.

"There are several acts from his tenure here without the seal," Putnam told us, adding that he was in the process of reviewing all of the documents currently in possession of SCDAH.

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What happens next?

Good question ...

Lawmakers told us they have been presented with a solution to the problem – one that they hope to pass into law as soon as they reconvene in January.

As soon as we get additional information on that “solution,” we’ll pass it along to our readers ...

UPDATE: *This is getting serious ... Putnam has discovered over 100 acts or resolutions which did not receive the seal from Hammond’s first two years in off*

WANNA SOUND OFF?

Got something you’d like to say in response to one of our stories? Please feel free to submit your own guest column or letter to the editor via-email HERE. Got a tip for us? CLICK HERE. Got a technical question? CLICK HERE. Want to support what we’re doing? SUBSCRIBE HERE.

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RELATED TOPICS: ##SEALMAGGEDON #FEATURED #FOIA #GREAT SEAL OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Samuel Jolly, SCDC #375455,	)	Case No. 2021-CP-18-00875
	)	
Applicant,	)	RETURN TO THE APPLICATION
	)	FOR POST-CONVICTION RELIEF
v.	)	AND PARTIAL MOTION TO DISMISS
	)	(Counsel Already Appointed)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent the State of South Carolina, making its return to the application for post-conviction relief filed by Samuel Jolly¹ on May 14, 2021, and received by the South Carolina Attorney General's office on May 19, 2021², would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its February 2013 term, the Dorchester County Grand Jury indicted Applicant for criminal sexual conduct with a minor – victim under 11 years of age – first degree (2013-GS-18-00416). The Dorchester County Grand Jury also indicted Applicant for lewd act, committing or attempting lewd act upon a child under 16, during its February 2014 term (2014-GS-18-00126).

¹ Applicant filed this post-conviction relief application *pro se*. Counsel, Ashley B. Cornwell, has since been appointed.

² Respondent's return was due to be filed on August 17, 2021. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

On February 12-14 2018, Applicant proceeded to a jury trial before the Honorable Edgar W. Dickson. Michelle Williams, Esquire and John Kornegay, Esquire (Trial Counsels) represented Applicant. Assistant Solicitors Ryan D. Templeton and Michael T. Spears of the First Circuit Solicitor's Office prosecuted the case.

At the conclusion of trial, the jury found Applicant guilty of each charge. Following the verdict, Judge Dickson sentenced Applicant to concurrent terms of thirty years' for first degree criminal sexual conduct with a minor, and fifteen years' imprisonment for the lewd act upon a child charge.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Lara Mary Caudy of the South Carolina Commission on Indigent Defense – Office of Appellate Defense (Appellate Counsel). On appeal, Appellate Counsel raised four issues:

1. Did the trial judge err by refusing to quash the indictments for first degree criminal sexual conduct with a minor and lewd act upon a child as vague and overbroad when the indictments, which covered over a year period, failed to state the offense with sufficient certainty and particularity to enable Appellant to know what he was called upon to answer and whether he could plead an acquittal, particularly given the surrounding circumstances, namely that the alleged conduct occurred over twenty years before trial and almost all of the documentation and records related to the investigation, including the videotape of the forensic interview, were lost or destroyed?;
2. Did the trial judge abuse his discretion by refusing to exclude evidence of prior bad acts pursuant to Rule 404(b), SCRE, and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), where the state, by procuring vague and overbroad indictments, was permitted to admit unlimited evidence of alleged sexual misconduct committed by Appellant over a thirteen month period without meeting any of the exceptions contained within Rule 404(b), SCRE, or proving the alleged conduct by clear and convincing evidence?;
3. Did the trial judge abuse his discretion by permitting a medical doctor to give opinion testimony, specifically that Minor allegedly had an interruption of hymen, which required special knowledge, skill, experience, and training, without qualifying

- the witness as an expert in violation of Rules 701 and 702, SCRE?; and
4. Did the trial judge abuse his discretion by refusing to exclude expert testimony from Dr. Elizabeth Baker in violation of Appellant's constitutional rights under the Confrontation Clause and pursuant to Rule 705, DCRE, where the underlying facts, data, and evidence relied upon by the witness had been lost or destroyed, thereby preventing Appellant from effectively cross-examining the witness and retaining his own expert to challenge the witness's opinion testimony concerning her physical examination of the minor child?

On December 2, 2020, after oral arguments, the South Carolina Court of Appeals issued an unpublished opinion affirming Applicant's convictions. State v. Jolly, 2020-UP-327 (S.C. Ct. App. Filed December 2, 2020). The Remittitur was issued on December 31, 2020.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this post-conviction relief action on May 14, 2021. Applicant asserts he is being held in custody unlawfully, alleging³:

1. Ineffective assistance of counsel
 - a. Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination
 - b. Counsel failed to fully prepare the Applicant for testimony at trial
 - c. Counsel failed to provide a proper defense for trial
 - d. Counsel failed to request the trial court charge the jury on the meaning and significance of expert testimony
 - e. Counsel failed to challenge and effectively cross-examine the alleged victim, 'Minor [REDACTED]
 - f. Counsel failed to challenge the testimony of the State's witness, Yvonnia Brown, and failed to effectively cross-examine her on her testimony
 - g. Counsel failed to challenge Dr. Baker's testimony about her method of documenting and conducting the physical exam on the alleged victim, 'Minor [REDACTED]
 - h. Counsel failed to request a preliminary hearing
 - i. Counsel failed to object to improper bolstering of the victim's credibility during closing arguments
2. Ineffective assistance of appellate counsel
3. Newly discovered evidence/ Fraud upon the court
4. Lack of subject matter jurisdiction

³ Applicant's allegations have been summarized for clarity and brevity.

Applicant requests relief as follows:

“vacate and remand”.

Attached to this return and incorporated by reference are the Dorchester County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; a full and complete record of Applicant’s direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Trial Counsels

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of Trial Counsels. Specifically, Applicant contends counsel “failed to move and request the trial court to charge the jury on the meaning and significance of expert testimony during the trial” and “counsel failed to request a preliminary hearing so the Applicant could more adequately be informed about the case”. The State submits these claims are without merit.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a

defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. *Id.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland's* deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. *See id.* at 695 (Where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have

had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show

Trial Counsels were ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsels; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

A. Failure to Investigate and Prepare for Trial

Applicant also contends Trial Counsels were ineffective for failing to "properly and fully investigate the case"; failing to "adequately investigate the alleged crime scene of the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence"; failing to "fully prepare the Applicant for testimony at trial" and failing to prepare a defense. The State submits these claims are without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46 (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (noting that “this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show Trial Counsels were ineffective. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsels; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record

before the lower court”).

B. Failure to Object and Preserve Issues for Appellate Review

Applicant also asserts Trial Counsels were ineffective for failing to object and preserve issues for appellate review. Applicant contends Trial Counsels were ineffective for failing to object to “improper bolstering of the victim, **Minor**’s credibility of testimony, during closing arguments” and failed to “challenge the testimony of the State’s witness, Yvonnia Brown”. The State submits these claims are without merit.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. *See Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800–01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); *see also id.* at 380, 811 S.E.2d at 804 (“[T]he proper inquiry for determining prejudice . . . is whether there is evidence in the record to support the trial court’s finding If so, an appellate court would necessarily have affirmed the trial court’s [ruling] . . .”).

Similarly, “[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence.” *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally ‘unreasonable’ action, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*; *see Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

Additionally, the solicitor's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335, 339 (1981). "The solicitor may not rely on statements not in evidence during closing argument." *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) However, [t]he solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses." *State v. Raffaldt*, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995). "[C]onsiderable latitude is generally allowed in matters of drawing and arguing inferences and deductions from evidence." *Johnson v. Life Ins. Co. of Ga.*, 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955).

To prevail on a claim that trial counsel was ineffective for failing to object to a solicitor's purportedly improper comment during closing argument, the PCR applicant "bears the burden of demonstrating the improper comment deprived him of a fair trial." *Johnson v. State*, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). "Improper comments do not require reversal if they are not prejudicial . . . , and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." *Randall v. State*, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). In other words, the applicant must demonstrate that, had counsel objected, there is a "reasonable probability . . . that the [jury] would have had reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. "A new trial will not be granted unless the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Huggins*, 325 S.C. at 107, 481 S.E.2d at 116.

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show Trial Counsels were ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsels; therefore, the State requests an evidentiary

hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

C. Failure to Be Adversarial to the State

Applicant further alleges Trial Counsels were ineffective for failing to put the State’s case to adversarial testing through effective cross-examination. Specifically, Applicant asserts Trial Counsels failed to “adequately challenge and effectively cross-examine the alleged victim, ‘Minor [REDACTED]’ on her inconsistent statements to the Lowcount[r]y Children’s Center and Detective Marshall”; failed to “effectively cross-examine the DSS Investigator on [Yvonnia Brown’s] testimony; and “counsel failed to challenge Dr. Baker’s testimony about her method of documenting and conducting the physical exam on the allege[d] victim, [Minor [REDACTED]]

The manner and extent of cross-examination should not be second-guessed. *See Sallie v. North Carolina*, 587 F.2d 636, 640 (4th Cir. 1978) (*Marzullo* is not intended to promote judicial second guessing on questions of strategy as basic as handling of a witness); *United States v. Nersesian*, 824 F.2d 1294, 3121 (2d Cir. 1987) (“decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature” and will not support an ineffective assistance claim); *Gustave v. United States*, 627 F.2d 901, 906 (9th Cir. 1980). *Strickland* requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689.

Therefore, Respondent submits Applicant’s allegations lacks merit. For the above-reasons,

Applicant cannot satisfy either requirement of *Strickland*, nor show Trial Counsels were ineffective. However, Respondent requests an evidentiary hearing be held on this issue to fully resolve the matter. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

IV. Response to Allegation of Ineffective Assistance of Appellate Counsel

Applicant claims appellate counsel failed to raise multiple issues on direct appeal, including: appellate counsel failed to “argue and raise the issue of the ‘motion to dismiss’ on direct appeal”; appellate counsel “failed to argue and raise the issue of the motion to preclude the State from arguing flight as evidence of guilty on direct appeal”; and appellate counsel “failed to raise the issue of the motion of a directed verdict on direct appeal”.

Beyond the right to effective assistance of counsel at trial, a criminal defendant is constitutionally entitled to the effective assistance of appellate counsel on direct appeal. *Evitts v. Lucey*, 469 U.S. 387, (1985) (finding that to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair). However, appellate counsel is *not* obligated to raise every non-frivolous issue that is presented by the record. *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990); *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000); *cf. Jones v. Barnes*, 463 U.S. 745, 752 (1983) (“There can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review.”). Indeed, “[w]innowing out weaker arguments on appeal and focusing on those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy.” *Smith v. Murray*, 477 U.S. 527, 536 (1986). “For [courts] to second-guess reasonable

professional judgments and impose on [appellate] counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” *Jones*, 463 U.S. at 754.

In analyzing a claim of ineffective assistance of appellate counsel, the reviewing court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *E.g.*, *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). The applicant must demonstrate (1) that his “counsel’s representation fell below an objective standard of reasonableness” in light of the prevailing professional norms, *Strickland*, 466 U.S. at 688, and (2) that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different,” *Id.* at 694; *see Smith v. Robbins*, 528 U.S. 259 (2000) (holding that habeas applicant must demonstrate that “counsel was objectively unreasonable” in failing to file a merits brief addressing a nonfrivolous issue and that there is “a reasonable probability that, but for his counsel’s unreasonable failure . . . , he would have prevailed on his appeal”).

Specifically, when an applicant contends appellate counsel rendered ineffective assistance for failing to argue a specific issue on appeal, he must show failure to raise that issue was objectively unreasonable and that, but for this failure, there is a reasonable probability he would have prevailed on appeal. *Southerland*, 337 S.C. at 616, 524 S.E.2d at 836; *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). In applying *Strickland* to claims of ineffective assistance of counsel on appeal, however, “reviewing courts must accord appellate counsel the presumption that he decided which issues were most likely to afford relief on appeal.” *Jarvis*, 236 F.3d at 164 (internal citation omitted). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” *Id.*

(quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

For the above-reasons, Applicant cannot show Appellate Counsel was ineffective. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of appellate counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Partial Motion to Dismiss in Response to Newly-Discovered Evidence Allegation

Applicant further asserts he is being held in custody unlawfully as a result of newly-discovered evidence. Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he is entitled to an evidentiary hearing, is without merit. The Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4).

"If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed *within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.*" S.C. Code Ann. § 17-27-45(C) (emphasis added). An applicant requesting a new trial based on after-discovered evidence following a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

In this instance, Applicant alleges his conviction is unconstitutionally invalid because there is no visible impression of the Great Seal on the following Acts of which he was convicted: 1993 Act No. 184, 1995 Act No. 7. This allegation is without merit, as our Supreme Court has held that absolute literal compliance is not essential to valid legislation, but substantial compliance is sufficient. *Smith v. Jennings*, 67 S.C. 324, 45 S.E. 821, 824 (1903); *see, e.g., S.C. Op. Att’y Gen.*, 2017 WL 6189878 (S.C.A.G. Dec. 1, 2017). Further, under the Enrolled Bill Rule, an act is deemed to be properly passed when it has been ratified by the presiding officers of the General Assembly, approved by the Governor, and enrolled in the Office of Secretary of State. *Med. Soc. of S.C. v. Med. Univ. of S.C.*, 334 S.C. 270, 278, 513 S.E.2d 352, 356 (1999); *Beaufort Cty. v. Jasper Cty.*, 220 S.C. 469, 487, 68 S.E.2d 421, 430 (1951); *State v. Town Council of Chester*, 39 S.C. 307, 17 S.E. 752, 755 (1893) (“when the bill . . . is deposited in the department of state, according to law, its authentication as a bill that has passed congress is complete and unimpeachable”).

Other jurisdictions have upheld acts challenged as invalid because there was not strict compliance with a constitutional provision. *See Taylor v. Wilson*, 17 Neb. 88, 22 N.W. 119 (1885) (finding an act was not unconstitutional when the president of the senate did not sign it as required by the state’s constitution); *Leavenworth Cty. Comm’rs v. Higginbotham*, 17 Kan. 62 (1876) (“[T]he mere failure of the president of the senate to do his duty cannot have the effect to invalidate the law.”).

Our Supreme Court has held codification of an act will cure a constitutional defect, and is part of the general statutory law of the State. *S.C. Tax Comm’n v. York Elec. Co-op., Inc.*, 275 S.C. 326, 333, 270 S.E.2d 626, 629–30 (1980). Therefore, these laws are enforceable, and Applicant’s

allegation lacks merit.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch*, 246 S.C. 258, 143 S.E.2d 455. In this case, Applicant's discovery of the missing Great Seals under Article III, Section 18 does not constitute newly-discovered evidence because the Act at issue here meets the "substantial compliance" requirement, making it enforceable and Applicant's allegations meritless. Applicant has therefore failed to meet his burden under sections 17-27-20(A)(4) and 17-27-45(C).⁴

In addition to being meritless, the State submits this allegation is not a cognizable PCR claim. A PCR action does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(B); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). In a PCR action, "when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel." *Drayton v. Evatt*, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993). Applicant's allegation that there is no visible impression of the Great Seal on certain Acts of which he was convicted could have been raised at trial and thereafter on appeal. Accordingly, the State moves to summarily dismiss this allegation pursuant to section 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

⁴ Similarly alleging his due process rights were violated, Applicant urges this Court to allow him to proceed with PCR action, based on alleged fraud upon the court. Based on the above analysis, Applicant's claim is legally meritless. As a result, Applicant has failed to prove by clear and convincing evidence that the missing Great Seal has stopped the judicial machinery from "perform[ing] in the usual manner." *Sanders v. Smith*, 431 S.C. 605, 613, 848 S.E.2d 604, 608 (Ct. App. 2020); *See Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Thus, Applicant's allegations of fraud are baseless and offer him no grounds for relief.

VI. Partial Motion to Dismiss in Response to Allegation the Circuit Court Lacked Subject Matter Jurisdiction

The State submits that the Applicant's allegation that the circuit court lacked subject matter jurisdiction is meritless, and therefore this allegation should be summarily dismissed. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Dorchester County Grand Jury. That indictment was true-billed and signed by the foreman of the Grand Jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). Here, Applicant cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, the Court should summarily dismiss this allegation.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428

S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment. . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP. *See also* Rules 15(a)–(b), SCRCPP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IX. Conclusion

WHEREFORE, the State moves to dismiss the allegations of newly-discovered evidence and the allegation that the circuit court lacked subject matter jurisdiction. Additionally, Respondent respectfully requests an evidentiary hearing be held on the allegations of ineffective assistance of counsel and ineffective assistance of appellate counsel.

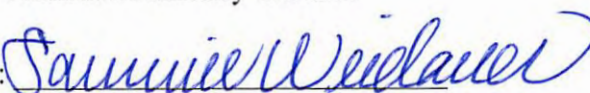
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
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By: 
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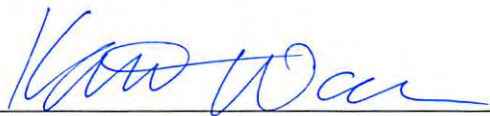
August 24, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Samuel Jolly, #375455	)	
	)	Case No.: 2021-CP-18-00875
Applicant,	)	
	)	
v.	)	Affidavit of Service by Mail
	)	
State of South Carolina	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return to the Application for Post-Conviction Relief, Partial Motion to Dismiss, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley B. Cornwell, Esquire
Cornwell Law Firm, LLC
1470 Ben Sawyer Blvd., Suite 14
Mount Pleasant, SC 29464

DATED this 24th day of August, 2021.



 Katie Wade, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA	)	NO. 2021-CP-18-00875
VS.	)	<u>TRANSCRIPT OF RECORD</u>
SAMUEL JOLLY	)	PCR Hearing

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

DATE: Wednesday, September 6, 2023

2:02 p.m.

Saint George, South Carolina

A P P E A R A N C E S:

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Reported by: Cathy J. Provost, RMR, Official Court Reporter

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COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought

ellipses ... trailing off

[ph] phonetically written

[sic] written as said

[indiscernible] unable to be understood due to low volume or
quality of audio

1 -- P R O C E E D I N G S --

2 ASST. ATTORNEY GENERAL HALL: Good afternoon, Your Honor,
3 and may it please the Court. Brian Hall for the Attorney
4 General's Office. The State will call Samuel Jolly for Samuel
5 Jolly v. State of South Carolina. The case citation is
6 2021-CP-18-00875.

7 Mr. Jolly was indicted by the Dorchester Grand Jury back in
8 February of 2013 for criminal sexual conduct with a minor, in the
9 first degree. That indictment number is 2013-GS-18-00416. The
10 following year the Dorchester Grand Jury brought a second
11 indictment in February of 2014 for a lewd act upon a child, and
12 that indictment number is 2013-GS-18-00126.

13 Between February's 12th and 14th of 2018, Mr. Jolly
14 proceeded to a jury trial before The Honorable Edgar Dickson.
15 Solicitors Ryan Templeton and Michael Spears prosecuted the case,
16 and Mr. Jolly was represented by Michelle Williams - now Michelle
17 Hubrich and Mr. John Kornegay. The jury found Mr. Jolly guilty
18 on both indictments, and he was sentenced to 30 years for the CSC
19 minor, in first degree, and 15 years for the lewd act on a minor.

20 Mr. Jolly filed an appeal that was timely filed, and he was
21 represented by Appellant Defender Laura Caudy. And in December
22 of 2020, after oral arguments, the Court of Appeals affirmed his
23 conviction.

24 Mr. Jolly then filed this PCR on May 14th of 2021, and he
25 alleges ineffective assistance of counsel, with the following

1 allegations: For failure to investigate; failure to prepare
2 Mr. Jolly for at-trial testimony; failure to present testimony
3 through direct and cross-examination; failure to provide a proper
4 defense; failure to request that the trial court charge the jury
5 on expert testimony; failure to effectively cross-examine the
6 victim, **Minor** [ph]; failure to effectively cross-examine
7 the State's witness, Yvonnea Brown, who is a DSS investigator;
8 failure to challenge Dr. Baker's testimony; failure to request a
9 preliminary hearing; and failure to object to improper bolstering
10 of the victim during closing arguments.

11 Mr. Jolly also brought additional claims for ineffective
12 assistance of appellate counsel; fraud upon the Court for the
13 Great Seal not being attached to the 1993 Act under which
14 Mr. Jolly was indicted; and lack of subject matter jurisdiction.

15 Mr. Jolly is present and represented by Ashley Cornwell.
16 And we'll let Ms. Cornwell ...

17 THE COURT: Ms. Cornwell.

18 ATTORNEY CORNWELL: Your Honor, we would call Mr. Jolly to
19 the stand.

20 THE COURT: All right.

21 CLERK OF COURT: State your full name for the record.

22 THE WITNESS: Samuel Carl Jolly.

23 SAMUEL C. JOLLY,

24 having first been duly sworn, is examined and testifies as
25 follows:

DIRECT EXAMINATION

BY ATTORNEY CORNWELL:

Q Good afternoon, Mr. Jolly. I understand that you filed a PCR application in this case after you were convicted at trial for CSC with a minor, in the first degree, and lewd act? Is that your understanding?

A Yes.

Q So what I want to do is kind of go through your case with you and give you the opportunity to explain to the Court why you think you had ineffective assistance of counsel and why PCR should be granted. Okay.

So looking back through your case file, these allegations originally came about in 1977; is that correct?

A Yes.

SECURITY DEPUTY: You're going to have to talk louder. The court reporter got to get it down.

THE COURT: Mr. Jolly, you're going to have to speak up a lot more than that. I can't hear you right here.

A Ninety-six, '97, I think it was. Somewhere -- I think it was '97.

Q And can you tell the Court how you know the alleged victim in this case, Minor

A The victim?

Q Yes.

A She is my daughter-in-law.

1 Q Is it your daughter-in-law or your stepdaughter?

2 A Oh, I'm sorry. Step, she's my stepdaughter. Sorry.

3 Q And so are you still married to her mother today?

4 A Yes.

5 Q And when the allegations came about in 1997 you spoke with
6 somebody through DSS; is that correct?

7 A I did what?

8 Q Did you speak with somebody --

9 A Yes, I did.

10 Q -- from DSS?

11 A Yes, I did.

12 Q And at that time you were never placed under arrest,
13 correct?

14 A No.

15 Q They just told you you had to leave the house; is that
16 right?

17 A I had to leave the house.

18 Q Prior to this had anybody ever made any allegations against
19 you of a similar nature?

20 A Never. Not even -- nothing.

21 Q And so you left the house and never really heard anything
22 else about it again until 2013; is that accurate?

23 A That's correct.

24 Q And between 1977 and 2013 were you still in contact with
25 your wife?

1 A I was.

2 Q And so to your knowledge law enforcement never tried to
3 contact you during that time?

4 A Not that I knew.

5 Q And then it seems like at some point you were back in South
6 Carolina around 2013 and was pulled over on a traffic stop or
7 something and that's how you found out you had warrants against
8 you?

9 A No. Somebody evidently found out, or decided to reopen the
10 case, or something, and they sent somebody to arrest me.

11 Q And that was in 2013?

12 A Yes.

13 Q And when you were arrested in 2013 did you hire an attorney
14 or did you have one appointed to you through the court?

15 A I hired an attorney.

16 Q So you paid an attorney to represent you?

17 A But he -- it wasn't very long.

18 Q Who was that?

19 A I'm trying to remember. His last name is Lingenfelter.

20 Q And did you have an opportunity to meet with Mr. Felder
21 [sic] and go through the allegations that were made against you
22 and through your discovery?

23 A Yes.

24 Q And then at some point you were placed back in custody; is
25 that correct?

1 A That's correct.

2 Q And during that time was it Mr. Felder representing you, or
3 did you have a different attorney appointed?

4 A I asked for a public defender.

5 Q And that's when Ms. Williams was appointed to you, correct?

6 A Yes.

7 Q From the time Ms. Williams was appointed to you, were you
8 ever released on bond or released from custody?

9 A No.

10 Q And during the time that Ms. Williams represented you
11 approximately how many times would you say you got to meet with
12 Ms. Williams?

13 A I think I recollect -- I think it was about three times. It
14 could have been more. And maybe one time with John.

15 Q And during those meetings did you have the opportunity to go
16 over the allegations that had been made against you and any
17 evidence that the State had?

18 A As far as I remember, yes.

19 Q And did you discuss any plea offers that the State had made
20 with you?

21 A Right before the trial, yes.

22 Q During your meetings you indicated that you did not wish to
23 take a plea offer and you wanted to go to trial; is that
24 accurate?

25 A That's correct, being an innocent man.

1 Q In preparing for trial, how many times did you meet with
2 Ms. Williams to prepare for trial?

3 A As far as I remember, it was right before the trial. I mean
4 that day.

5 Q Where was that meeting?

6 A Here.

7 Q And that was in the courthouse before --

8 A Yes.

9 Q -- trial? During that meeting were you able to discuss
10 whether or not you were going to testify at trial?

11 A Yes.

12 Q And tell the Court a little bit about what your discussion
13 was and how Ms. Williams prepared you to testify at trial?

14 A As far as I remember, because it was a few years ago and my
15 memory's not so good, sorry, she spoke with me and said this is,
16 we're going to go over this, pretty much of how the trial was
17 going to work, and that she was going to put me on the stand.
18 She told me -- oh, I remember she told me to be, just to -- calm,
19 deliver my speech so the judge can hear me.

20 Q Sure.

21 A And that's all I remember right now.

22 Q You indicate in your application for PCR that you felt
23 Ms. Williams failed to properly and fully investigate your case.
24 What part of the case against you did you feel wasn't properly
25 investigated?

1 A Well, there was evidence, I guess, submitted and there were
2 pieces of those evidence, both of those, missing, and so that was
3 kind of puzzling. But she fought pretty hard for that to try to
4 get it taken out, or not admitted, but then that was it.

5 I thought maybe we should do an expert witness or something
6 to at least evaluate what it was, or to come in and say, hey,
7 this can't be evidence because those pieces are missing, you
8 know. And so those things are ...

9 Q So other than you testifying in your own defense at trial --

10 A I'm sorry?

11 Q Other than you testifying in your own defense at trial, do
12 you recall any other witnesses put up on your behalf during
13 trial?

14 A No. No.

15 Q And so to the best of your knowledge and recollection,
16 Ms. Williams, nor Mr. Kornegay, ever retained an expert on your
17 behalf to look over the case or had consulted with an expert on
18 your behalf to challenge what the State's witnesses were saying?

19 A Not that I remember. I do not think so. I remember her
20 discussing an investigator, but I don't know to what degree.

21 Q And when we talk about the evidence in this case, and you
22 did mention that she fought pretty hard to try to keep some of it
23 out --

24 A Yes.

25 Q -- there were incomplete records of this evidence. The

1 records weren't maintained from DSS, from the Lowcountry
2 Children's Center, and from the medical examiner, correct?

3 A Yes. And the police report also.

4 Q So based on not having all of that your ability to present a
5 full and complete defense and challenge the evidence against you,
6 would you say that it was impaired?

7 A Yes. I mean, if you don't have everything there -- and the
8 charges were 20 years old or so -- and if you call someone to --
9 I mean, even people that have great memories, if they, I don't
10 believe, can remember, if they had so many cases, you know, that
11 they couldn't remember it word for word or anything that, you
12 know, it happened, or the deposition or whatever it is happened,
13 you know.

14 Q So for you not having that evidence, there was no way for
15 your defense attorney to know if that evidence was corroborated
16 or if people were just giving inconsistent statements now on the
17 stand because it was 20 years later and you didn't have anything
18 to reference from the initial allegations? Is that a fair
19 assessment?

20 A That is correct. Yes.

21 Q You also indicated that counsel failed to request the trial
22 court charge the jury on the meaning and significance of expert
23 testimony during trial. What do you mean by that?

24 A Can you repeat that one more time.

25 Q Sure. In your application you state that counsel failed to

1 move and request the trial court to charge the jury on the
2 meaning and significance of expert testimony during trial.

3 A About the ...

4 Q Was that the medical doctor that --

5 A That was the medical doctor that was coming. They asked her
6 to just remember, and she said, oh, sure, I remember. And, you
7 know, this was 20 years ago.

8 Q And I believe, in looking at the transcript, Ms. Williams
9 challenged the testimony of that doctor because she had not been
10 qualified as an expert --

11 A Right.

12 Q -- and so there was a challenge as to whether or not she
13 should be able to give opinion testimony? Does that sound right?

14 A Right. Right. Right.

15 Q And I think that based on what you're saying here, because
16 she was never actually qualified as an expert there was never a
17 jury charge as to what experts can testify to and what
18 considerations should be given to expert testimony during a jury
19 charge, correct?

20 A That's correct.

21 Q And you felt that, even though she wasn't qualified as an
22 expert, given the fact that the judge ruled that she had some
23 sort of knowledge that would help a jury understand, that an
24 expert charge should have been requested and should have been
25 given?

1 A I think so. I mean, I really think so.

2 Q You also indicate that counsel failed to adequately
3 challenge and cross-examine [Minor] in this. What other
4 cross-examination would you have wanted [Minor] to have?

5 I know that they talked about the allegations. You had
6 mentioned to me that [Minor] was maybe angry with you at some
7 point and maybe that's why these allegations were made. Can you
8 expound on that a little bit?

9 A The reasons I was trying to come up with why this happened
10 is, well, it all started when I punished her for cursing at me.
11 And then all of a sudden our relationship turned, just nothing.

12 And she made mention after that, you know, you're not my
13 father, you know, the typical things like that, and made
14 references to me about if you weren't here, or things like that.
15 And, you know, it's kind of hard -- it was a while ago.

16 Q Sure. And you wanted Ms. Williams to challenge her more on
17 the basis of her allegations and other motives that she could
18 have had in making these allegations?

19 A Yes.

20 Q You also indicate that counsel failed to challenge the
21 testimony of Yvonnea Brown who was the DSS investigator, on her
22 testimony?

23 A Yes. I remember.

24 Q Is this, again, you felt you didn't have all the reports,
25 all the evidence?

1 A That's correct.

2 Q And you felt that counsel should have challenged her more on
3 why she didn't keep records on an ongoing case?

4 A I don't understand, and I still don't, how she was even
5 allowed to testify because the evidence wasn't there. And,
6 again, how can someone remember 20 years ago what was in a report
7 that you wrote many hundred times, you know, for different
8 things? You know, I don't see it.

9 Q So you thought that that should have been challenged more by
10 your defense counsel?

11 A I do.

12 Q You also indicate, and I think we briefly discussed it, the
13 failure to challenge Dr. Baker's testimony about a method of
14 documentation in conducting the physical exam on the victim.
15 This is where you didn't have pictures, right, the pictures had
16 been lost, everything had been lost?

17 A Yes. The State, they had a big easel and a picture of a
18 vagina, it was huge, and on the picture -- it's large, you know,
19 but it's very small in comparison. And, you know, if you're a
20 juror and you look at that, you go, Ooh.

21 But to me, that -- and I have since talked to people, and
22 women, and things, and those type of things are easily done at
23 that age, especially a small, a small like that. You know.

24 ASST. ATTORNEY GENERAL HALL: Objection.

25 THE COURT: Sustained.

1 ASST. ATTORNEY GENERAL HALL: Expert testimony.

2 THE COURT: Sustained.

3 Q In the picture you're talking about, was it -- it wasn't an
4 actual picture of the victim; it was a diagram that --

5 A It was a diagram. Yes. It was just a diagram.

6 Q And you feel that counsel was ineffective by failing to
7 challenge that diagram or put up any experts to negate that
8 testimony?

9 A Yes. The reason for that, that there should have been, I
10 think, more about the reason that it was -- it could have been.

11 Q And that would have come in through expert testimony --

12 A Yes.

13 Q -- that you wanted your defense counsel to put up?

14 A That's correct.

15 Q You indicated you were not given a preliminary hearing. Do
16 you feel that by not having a preliminary hearing, you were
17 prejudiced in your trial in making a decision as to the evidence
18 against you?

19 A I just, I don't think I was -- I could have been prepared
20 better with something like that, yes. That's why I like to put
21 it in there. I put it in there for that reason.

22 Q And then finally, in regards to your trial counsel, you
23 indicate that they failed to object to the improper bolstering of
24 the victim. Would this be during trial and during the closing
25 arguments?

1 A The bolstering was, it was very blatant. I mean, I -- you
2 know, when somebody looks at you and says you're a liar and
3 they're not, that's vouching and credidating [sic] that person
4 and discredidating [sic] you.

5 Q And your counsel, to your recollection, did not object to
6 that or did not argue against that?

7 A Right.

8 Q Moving on to your appellate case, obviously once you were
9 found guilty at trial Ms. Williams filed a notice of appeal and
10 you were appointed appellate counsel; is that correct?

11 A She did, immediately. She told me she would, and she did
12 immediately.

13 Q And were you able to meet with your appellate counsel?

14 A No.

15 Q So you never met with your appellate counsel to go over --

16 A No. Over the phone.

17 Q How many times would you say you spoke to your appellate
18 counsel?

19 A I believe it was twice. I believe.

20 Q And during those conversations did your appellate counsel go
21 over the issues that she was going to raise on appeal?

22 A Some. But I don't remember the whole conversation, to be
23 honest with you.

24 Q Sure. It looks like on your application you indicate that,
25 you know, she failed to argue and raise the issue of the motion

1 to dismiss that Ms. Williams had presented prior to trial. And I
2 believe that motion to dismiss was based on not having evidence
3 in this case, --

4 A That's correct.

5 Q -- records not being properly maintained --

6 A Yes.

7 Q -- so you didn't have a shot at a fair defense because you
8 couldn't challenge all the evidence against you?

9 A All the other. Right.

10 Q And Ms. Williams presented that as a motion to dismiss
11 pretrial. That motion was denied. But your appellate counsel
12 failed to raise that as part of your appeal?

13 A I believe so. I don't --

14 Q And so based on that you felt your appellate counsel was
15 ineffective --

16 A Ineffective, right.

17 Q -- for not raising all the appellate issues that could have
18 been considered by the appellate court?

19 A Yeah. I don't believe she -- I think we could have gone
20 over a few more things.

21 Q You had also indicated that one of the other meritorious
22 issues that you felt were not/was not raised on appeal was the
23 fact that the indictment was insufficient, that it was vague, it
24 was overly broad, it didn't give specifics as to date and time?

25 A The time, and since I was afforded some time locked up, I

1 examined a lot of the cases and things like that, and it comes to
2 my knowledge, it comes to me, that you're supposed to specify a
3 certain time, place, that, you know, not that vague. And, I
4 mean, I might be wrong, but ...

5 Q And Ms. Williams brought that issue up pretrial, correct?
6 She made a motion --

7 A Yes.

8 Q -- to have this indictment quashed?

9 A Yes.

10 Q To the best of your recollection, that issue was not raised
11 on appeal?

12 A It was not.

13 Q And it looks like, lastly, you indicate that you thought
14 there was a subject-matter jurisdiction because the seal was not
15 properly affixed --

16 A That's correct.

17 Q -- to the Act? Can you tell the Judge about your research
18 of that where you found a newspaper article?

19 A Yes. I submitted those papers. I found an article and I
20 talked to someone on the outside, and they sent me some pictures
21 and some comments and things that were about the seal. And I
22 sent off for a letter to see if mine was sealed, and it wasn't.

23 Q And based on it not being sealed you feel that the charge
24 against you was not proper because it was not a proper charge in
25 the State, and you should not have been tried on that charge; is

1 that correct?

2 A Correct.

3 Q And that issue was not brought up by your, any of your,
4 attorneys?

5 A No.

6 Q Other than those issues, mainly regarding lack of an expert
7 witness, bolstering, and meritorious issues not being appealed,
8 and everything that you've told this Court today, are there any
9 other issues that you feel made counsel ineffective to the point
10 that had you had other counsel and had other matters been
11 presented a different outcome would have been reached at trial or
12 during your appeal?

13 A No.

14 Q Is there anything else that you would like to let the Court
15 know today regarding your post-conviction relief? Are there any
16 other issues that you would like the Court to know today
17 regarding your application?

18 A No.

19 ATTORNEY CORNWELL: That would be all the questions I have,
20 Your Honor.

21 THE COURT: All right, ma'am. Thank you. Yes, sir.

22 **CROSS-EXAMINATION**

23 BY ASST. ATTORNEY GENERAL HALL:

24 Q Good afternoon, Mr. Jolly.

25 A How are you?

1 Q I'm great; how are you?

2 A Well, you know, we could be better.

3 Q Mr. Jolly, this incident happened in 1996 - 1997, between
4 that time period; is that right?

5 A That's when it's alleged to have happened.

6 Q So back in 1997 - 1996ish --

7 A Ninety-seven.

8 Q -- correct? And back in 1997 you spoke to a DSS
9 investigator; is that correct?

10 A I did.

11 Q What did the DSS investigator tell you when you spoke to
12 them?

13 A She told me until this matter is resolved she would like for
14 me to leave the house.

15 Q What matter?

16 A That I had been accused by Minor

17 Q Okay. So back in 1997 the DSS investigator told you that
18 your stepdaughter brought an allegation against you alleging that
19 you had touched her; is that correct?

20 A That's correct.

21 Q Okay. So back in 1997 you stopped speaking with your wife
22 for some time; is that correct?

23 A I did.

24 Q You did?

25 A Yeah. We thought it was best for a short time.