

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable Kristi F. Curtis, Circuit Court Judge

CARLOS A. RUIZ,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001776

APPENDIX

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NANCY LORENZO - CROSS-EXAMINATION

1 Q. And that he can act crazy?

2 A. Excuse me. You said --

3 Q. That he can act crazy?

4 A. Who acts crazy?

5 Q. You told them that Carlos could act crazy?

6 A. I don't understand that question about crazy.

7 Q. You told Sonya Diaz, Ms. Cahill, and Tiffany
8 Crider on 2/13 of 2015 in the conference room that Carlos
9 can act crazy.

10 A. I don't remember that, honestly.

11 Q. That he takes your phone and deletes your
12 contacts.

13 A. No, he doesn't -- that's not right. It was the
14 other way around. At some point, he did erase all the
15 information in my phone.

16 Q. And that you had considered leaving him? Yes or
17 no.

18 A. Yes.

19 Q. But his help and his disability income --

20 A. Not because he was disabled.

21 Q. Not -- you felt sorry for him for his health, and
22 he got disability money coming into the house.

23 A. I wasn't -- I didn't pity him. One thing is pity,
24 and one thing is caring.

25 Q. Did he have disability income coming into the

1 house that helped you?

2 A. Yes, he did have an income.

3 Q. And he yelled at your children and called them
4 names?

5 A. I never heard him speak in a vulgar way in my
6 presence.

7 Q. You never said he spoke strongly to the children
8 and called them names?

9 A. No. He didn't use bad words, language. For
10 example, he would say, Kids, you need to pay attention,
11 or, Don't throw trash on the floor. You left this plate
12 here or you didn't put this away.

13 Q. So he never got angry or upset with **Minor** or
14 **SL** or **LL**

15 A. Yes, he would get angry, for example, if he was in
16 his room and they were in the living room and I wasn't
17 there and they would turn the television to full volume,
18 and he said he felt they weren't taking into account his
19 physical ailments and they were not considering.

20 THE COURT: Hold on. Time for another swap.
21 BY MS. HERRING-LASH:

22 Q. So, Ms. Lorenzo, is it your testimony that you
23 never told anyone that Carlos could be verbally abusive
24 to your children?

25 A. That about verbally, things like that? No.

NANCY LORENZO - CROSS-EXAMINATION

1 Q. What do you mean, things like that?

2 THE INTERPRETER: The interpreter would like
3 to ask her a question.

4 I would have liked for my children to accept
5 Carlos.

6 Q. And they never --

7 A. But they never accepted him. They never loved
8 him.

9 Q. They never loved him.

10 A. No. That started before their relationship began.
11 They never wanted him. It was like, you know, when
12 children are jealous and they just want the mom for
13 themselves.

14 Q. Okay. Let's talk about **Minor's** counselling. You
15 first took her to counselling with Ms. Chisolm in North
16 Charleston school.

17 THE INTERPRETER: What school for the
18 interpreter?

19 Q. You said it was in North Charleston. I'm not
20 sure.

21 A. North Charleston, yes.

22 Q. And that's the first day -- and you may not
23 remember this, but 8/20/2012, when **Minor** was nine, does
24 that sound about right?

25 A. I didn't really go there, but I don't remember

1 dates. I don't remember dates.

2 Q. Well, I'm going to have to give you dates to put
3 you on notice for this question I'm going to ask. On
4 February the 19th, 2013, you went to the counselling with
5 Minor and reported that this kind of disruptive, angry
6 temper behavior began three years earlier when the
7 babies' father moved in.

8 A. I don't remember having said that.

9 Q. We talked once again in early February 2015 when
10 you still had your children with you. You were going to
11 seek counselling again for the family.

12 A. I went to counselling, yes.

13 Q. And that was -- I think you said you wanted help
14 with the family. Part of it was after the disclosure
15 Minor had made that he had raped her.

16 A. Yes. I was hoping that -- well, the reason that I
17 wanted to get her treatment, that while getting her the
18 treatment that the truth would come out, that -- her
19 supposed truth. I wanted her to get treatment because --
20 well, for a person to say something serious like that,
21 it's serious.

22 Q. But when you went to a medical person and told
23 them why you wanted treatment for Minor you told them it
24 was because she had been a witness to domestic violence
25 in 2005 and never mentioned the allegation of rape, did

NANCY LORENZO - CROSS-EXAMINATION

1 you?

2 A. I didn't mention rape.

3 Q. You did not.

4 A. I did not.

5 Q. But that's what you wanted the treatment for.

6 A. I wanted to know what exactly was happening with
7 **Minor** -- interpreter correction -- what was going on with
8 **Minor**

9 Q. And, Ms. Lorenzo, you knew if you mentioned the
10 rape, they would call the authorities, didn't you?

11 A. Yeah. They told me, yeah, that he'd go to jail,
12 that he go to jail. Yes, they said that.

13 Q. Who said that?

14 A. Everyone did, everyone.

15 Q. I'm talking about the therapy that you went to in
16 early February before **Minor** told the authorities herself.

17 A. Before **Minor** said anything.

18 Q. To the authorities.

19 A. I don't really understand your question.

20 Q. Do you remember calling medical university because
21 you wanted -- and you testified to this earlier, you
22 wanted help for your family because of the situation?

23 A. It wasn't exactly to -- it wasn't exactly to get
24 help, but it was -- I tried to talk to the person that
25 was there, Martha --

NANCY LORENZO - REDIRECT EXAMINATION

1 Q. Martha Gomez?

2 A. Yes, Martha Gomez. I wanted to tell her honestly,
3 but I wasn't able to. I was trying to, but he was coming
4 out of what was -- leaving the hospital, the accident
5 that had happened. We were talking about -- like, for
6 example, like, in her way of saying things, she said, You
7 know, what you have gone through, it's tough. Honey,
8 it's a lot, what you've gone through.

9 Q. And what you told her you had gone through is
10 criminal domestic violence from **Minor's** father?

11 A. It's not that I told her. She already knew. She
12 had it in, like, records, not that I was telling her
13 that, she just realized it.

14 Q. And you didn't tell her about the rape allegation?
15 Yes or no.

16 A. No, no. We didn't get that -- we didn't get
17 there, no, we didn't.

18 MS. HERRING-LASH: That's all the questions I
19 have, Ms. Lorenzo.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MS. FORD:

23 Q. Ms. Lorenzo, Ms. Herring-Lash asked you about not
24 stopping **Minor** from being bossy and bossing **LL** around.

25 A. Yeah. I always tried to correct that.

NANCY LORENZO - REDIRECT EXAMINATION

1 Q. Okay. So you did try to correct that.

2 A. Yes. I would say, Please, please. We always say
3 please. Please, we would say sorry, that she didn't have
4 to be like that with her sister.

5 Q. And the solicitor asked you about after Carlos's
6 accident, you weren't able to have sex between 2012 and
7 2013, correct?

8 A. Yes, uh-huh.

9 Q. But --

10 MS. HERRING-LASH: I'll object to leading the
11 witness.

12 BY MS. FORD:

13 Q. Did that continue after that?

14 A. Could you repeat the question? I didn't --

15 Q. The solicitor, when she was questioning you --

16 MS. HERRING-LASH: Your Honor, that's what I
17 would object to, the leading.

18 THE COURT: Well, she has to refer her to
19 what you were talking about. That's not leading.

20 BY MS. FORD:

21 Q. The solicitor indicated asked you if -- you were
22 not able -- she pointed out you could not have sex with
23 Carlos from the time of his accident in 2012 going on
24 into 2013.

25 A. Well, at the hospital -- there weren't, like,

NANCY LORENZO - REDIRECT EXAMINATION

1 indications, but it was obvious because of his situation.

2 Q. Well, after 2013, did the problems continue?

3 A. Uh-huh, yes, yes.

4 Q. You explained in your direct testimony there was a
5 pump.

6 A. Who did I explain it to?

7 Q. Well, to the Court. Didn't you explain to the
8 Court some kind of penis --

9 A. The pump, the tube? The tube, yes.

10 Q. You explained in your direct there was an implant?

11 A. Yes. There were some tissues. They had restored
12 some tissues.

13 Q. And that -- and you've already testified to this
14 in your direct, but that was -- is it true that that was
15 after the children were taken away?

16 A. Yes, because when he was put in jail, before he
17 was put in jail, he had just received a machine, a
18 machine to do his treatments.

19 Q. So before that, could the two of you be intimate
20 with his penis?

21 A. No. With his penis, no. You couldn't. Actually,
22 he couldn't, but we also -- we didn't have that -- we
23 didn't feel like doing things like that.

24 Q. Ms. Lorenzo, before the accident, the two of you
25 had two children together.

NANCY LORENZO - REDIRECT EXAMINATION

1 A. Before the accident, yes.

2 Q. Now, the solicitor asked you about LL SL
3 and Minor talking to you about calling the police that
4 night of the disclosure.

5 A. That same night, they were, like, Call the police
6 and take him to jail, they were saying.

7 Q. And didn't you testify in your direct that they
8 were saying they wanted him out of there?

9 A. They didn't let me talk.

10 Q. Okay. The solicitor asked you about a disability
11 check. Is Carlos's check -- how much is it?

12 A. \$700, \$750? \$750, I think.

13 Q. Is that for the whole month or part of the month?

14 A. Whole month.

15 Q. And when you sought counselling after the
16 disclosure, that was for everyone, correct?

17 A. Yes, for everyone.

18 Q. So your intent was for Minor to go too?

19 A. Yes.

20 Q. And at that point, the solicitor had already
21 mentioned, you told them, or they knew about the domestic
22 abuse?

23 A. Well, I don't remember exactly. They didn't know,
24 but Ms. Martha, she has witnessed a lot of things that I
25 have gone through.

MARTHA GOMEZ - DIRECT EXAMINATION

1 MS. FORD: No further questions.

2 THE COURT: Recross?

3 MS. HERRING-LASH: No recross.

4 THE COURT: Okay. All right. You can step
5 down.

6 THE WITNESS: May I drink water before?

7 THE COURT: Sure.

8 All right, folks. This is where we will
9 break for today --

10 MS. FORD: Your Honor, I apologize. May we
11 approach?

12 THE COURT: Yes.

13 (Discussion held at sidebar.)

14 All right. We got one short witness we'll
15 take before we break.

16 MS. FORD: The defense calls Martha Gomez,
17 please.

18 MARTHA GOMEZ,
19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. FORD:

23 Q. Ms. Gomez, what is your occupation?

24 A. I work as a social worker.

25 Q. And where is that?

MARTHA GOMEZ - DIRECT EXAMINATION

1 A. I work over at MUSC, the department of psychiatry
2 at the present time.

3 Q. And were you doing that in February of 2015?

4 A. No, I was not.

5 Q. What were you doing then?

6 A. I was working over at the pediatric clinic for the
7 medical university, over on North Charleston, which is
8 called MUSC Children's Care Clinic.

9 Q. And in that work, did you come into contact with
10 Nancy Lorenzo and her family at all?

11 A. Yes, ma'am.

12 Q. And did Nancy ever seek counselling where you
13 assisted her?

14 A. For counselling, no.

15 Q. Well, what did she go to MUSC for? What was your
16 involvement with her?

17 A. They started doing some parenting classes, not for
18 counselling.

19 Q. So as part of these parenting classes, what did
20 y'all do?

21 A. I was teaching her an evidence based program that
22 is called triple P, which is Positive Parenting Program.
23 I tried to deal with the problems and issues she had with
24 the discipline of her children.

25 Q. And did she seem involved in that process?

MARTHA GOMEZ - DIRECT EXAMINATION

1 A. Yes, she was.

2 Q. And, again, do you know the date of that? Was
3 that February of 2015?

4 A. Yes. We had two different sessions, one in
5 January and one in February.

6 Q. And as part of her work with you, she was asking
7 for help in dealing with her daughter?

8 A. Correct.

9 Q. And was a referral ever made?

10 A. For what?

11 Q. Was a referral made for -- the CDV, due to
12 exposure to domestic violence?

13 A. Yes.

14 Q. Who was that for?

15 A. Who was the referral for, you said?

16 Q. Yes.

17 A. For **Minor**

18 Q. And so the plan was -- was the plan for her to get
19 assistance?

20 A. Correct.

21 MS. FORD: Those are all the questions I
22 have. Please answer any Ms. Herring-Lash may have.

23 MS. HERRING-LASH: I just have a few
24 questions.

25 CROSS-EXAMINATION

MARTHA GOMEZ - CROSS-EXAMINATION

1 BY MS. HERRING-LASH:

2 Q. I just have a few questions. This was January and
3 February of 2015?

4 A. Yes, ma'am.

5 Q. And her problem was asking for help for dealing
6 with her daughter with behavior problems?

7 A. Correct.

8 Q. And she also wanted a referral for witnessing
9 domestic violence?

10 A. Yes.

11 Q. And were you aware that that domestic violence
12 would have had to have happened before the child -- when
13 the child was around two or three?

14 A. When the patient was two or three years old?

15 Q. **Minor**

16 A. **Minor** yeah. Well, I knew there was something
17 because she shared with me --

18 Q. Nancy?

19 A. Yes, but I really didn't know the exact age when
20 this happened to them.

21 Q. Okay. And did Nancy mention any need for
22 counselling for an allegation of rape?

23 A. Not to me, no.

24 MS. HERRING-LASH: That's all the questions I
25 have.

1 THE COURT: Redirect?

2 MS. FORD: I have no further questions, Your
3 Honor.

4 THE COURT: All right. You can step down.

5 Okay, folks. This is where we'll break now.
6 Again, I'm going to send you home with the instructions
7 not to talk about the case with anyone, including other
8 members of the jury panel. Don't try to find out
9 anything about the case. Don't go on social media, and
10 if anybody does try to talk to you about the case or
11 approach you about the case, please report that tomorrow
12 morning.

13 If you would, be back in the jury room by
14 9:30, and we hopefully will get started at 9:30. I
15 anticipate we will get this case finished tomorrow. So I
16 don't want you thinking next week, but absent something
17 really strange and unanticipated, I think everybody is on
18 the same page. We'll have this finished tomorrow. Have
19 a nice day.

20 (In open court, jury not present.)

21 THE COURT: Okay. Ms. Ford, have you made a
22 decision about where you're going with your defense for
23 tomorrow?

24 MS. FORD: Your Honor, the only person I
25 would possibly call, my client, so he would be the last

1 witness, and I don't think he's 100 percent sure yet if
2 he will testify or not, but he would be the only witness.

3 THE COURT: All right. Well, let's meet
4 tomorrow morning, 9:00, make a decision, and be ready to
5 testify or not. We've given you jury instructions. Take
6 those home with you, and we will have a charge conference
7 at 9:00, so if he doesn't testify, we'll move on into
8 closing. If he does, then we'll do that and -- I don't
9 know.

10 Is the State calling rebuttal witnesses?

11 MS. HERRING-LASH: At this time, no, Your
12 Honor, and I can't imagine he would say anything that
13 would prompt me to call one.

14 THE COURT: Okay. Well, I'll see y'all in
15 the morning then at 9:00.

16 (Recess taken.)

17 (January 13, 2017.)

18 (In open court, jury not present.)

19 THE COURT: Okay. Let's see where we're at.
20 Ms. Ford, what is your client's desire as far as
21 testifying?

22 MS. FORD: Your Honor, Mr. Ruiz has indicated
23 to me that he does not wish to testify.

24 THE COURT: All right. Mr. Ruiz, would you
25 stand. Okay.

1 We talked a couple of times this week, and
2 I'm not trying to advise you one way or another about
3 what you should do. I'm just advising you as to your
4 rights. I'm not trying to talk you into or out of
5 testifying. I just want to make sure that you are
6 completely aware of your rights and the consequences that
7 flow from them.

8 Your lawyer says that you do not wish to
9 testify, to tell your side of the story to the jury; is
10 that correct?

11 THE DEFENDANT: I agree.

12 THE COURT: Okay. Now, again, in this
13 country, the State has the burden of proving you are
14 guilty. You do not have to prove that you are innocent.

15 I have made a preliminary decision that the
16 State has met its burden of proof insofar as there's
17 enough evidence to allow the jury to decide the question
18 of whether you are guilty or not guilty. All right?

19 THE DEFENDANT: Okay.

20 THE COURT: Now, because I have made that
21 decision, you have decided, you and your lawyer, that you
22 wanted to call some witnesses, and you did yesterday, but
23 included in that right is the right to testify and to not
24 testify.

25 Again, if you want to testify, you are put

1 under oath. Your lawyer asks you questions first, but
2 then the State would have the right to ask you questions
3 as well. You have to answer those questions truthfully.
4 If you do not want to testify, I will tell the jury that
5 they are not to hold that against you while they are
6 deliberating or considering the verdict.

7 Do you understand that?

8 THE DEFENDANT: Okay.

9 THE COURT: All right. What is your desire,
10 to testify or not testify?

11 THE DEFENDANT: Not to testify.

12 THE COURT: All right. Very well.

13 Well, I find that you have freely and
14 voluntarily and intelligently made that decision, and I
15 will instruct the jury in my charge to them that they are
16 not to consider your lack of testifying in any way while
17 they are deliberating on the verdict of whether or not
18 you're guilty or not guilty. All right? Now, you may
19 sit down.

20 Ms. Ford, do you have any other witnesses
21 that you intend to call?

22 MS. FORD: No, Your Honor.

23 THE COURT: All right. Is the State calling
24 any reply?

25 MS. HERRING-LASH: No, Your Honor.

1 THE COURT: All right. Well, then let's go
2 over the jury charges. I sent them home with you last
3 night. Is there anything from the State?

4 MS. HERRING-LASH: Yes, Your Honor. I would
5 object to the child testimony charge being that it's a
6 comment on the facts, and it's just as much a comment on
7 the facts as the noncooperation charge is too. The
8 biggest problem also it singles out children witnesses
9 for an issue that is not specific for children. Any
10 witness is influenced by questioning, and the other
11 problem I have with that is it singles out questioning
12 the credibility and believability of the victim in that
13 she's a child.

14 It suggests that they are less likely to
15 understand and be credible, and there's never been a case
16 that has commented that it's an appropriate charge. I
17 e-mailed the Attorney General and asked their opinion if
18 the State had talked about this charge in relation --
19 that's why have my phone here, Your Honor -- and then
20 they had been thinking that it is closer to just reversed
21 and that it is just a charge that had been put in a
22 charge book but never commented upon by any appellate
23 Court. There is a date before the appellate Court right
24 now, and so I would object to that charge being a comment
25 on the facts.

1 THE COURT: Ms. Ford?

2 MS. FORD: Your Honor, I don't object to that
3 either. That actually caused me some concern as well
4 just because I think -- it could be interpreted in
5 different ways. It could be interpreted to say that the
6 fact that they don't seem credible, to an extent you can
7 disregard it.

8 THE COURT: Both of you want it out? I'm not
9 married to it. I'll take it out.

10 MS. HERRING-LASH: I just discussed it with
11 them before and got advice last night.

12 THE COURT: Anything else from the State?

13 MS. HERRING-LASH: No, Your Honor. That's
14 all.

15 THE COURT: How about the defense?

16 MS. FORD: No, Your Honor.

17 THE COURT: All right. Now, what's your
18 desire as to requiring the State to open and close in
19 full?

20 MS. FORD: Your Honor, I spoke to Ms.
21 Herring-Lash last night. I believe there's a new, very
22 recent case, Beaty, and I think she's agreed not to do
23 the opening on the law.

24 MS. HERRING-LASH: I'd do it in full and just
25 comment in rebuttal.

1 THE COURT: All right. So we'll have the
2 State opening in full, both on the law and the facts.
3 The defense, make your full argument, and then the State
4 has the right to respond in full, but you may not bring
5 up any new matter.

6 MS. HERRING-LASH: And just to be clear,
7 because it's so new, I can just respond to issues that
8 she has either brought up new or responded to?

9 THE COURT: Yes. You can't come up with
10 anything new. Okay?

11 MS. HERRING-LASH: I get it.

12 THE COURT: But if she brings up something
13 new, you would be able to reply to it, but you can't just
14 sandbag her and come up with something --

15 MS. HERRING-LASH: Right, but if she
16 responded to something I said, I can respond to her
17 response.

18 THE COURT: Correct. How long do you think
19 you'll need?

20 MS. HERRING-LASH: Thirty minutes, when I
21 said it to myself last night.

22 THE COURT: I won't hold you to it.
23 Ms. Ford, how long do you think you'll need?

24 MS. FORD: Probably 30 to 45 minutes, Your
25 Honor.

1 THE COURT: All right. Well, then, Dan take
2 that charge out. Does anybody have an objection to me
3 giving a written copy of the charges to the jury when
4 they are back deliberating?

5 MS. HERRING-LASH: I don't, Your Honor.

6 MS. FORD: No, Your Honor.

7 THE COURT: Okay. Do you want to rest in
8 front of the jury, or would you be okay to say you're not
9 calling any witnesses and you're resting and we're moving
10 into closings?

11 MS. FORD: I suppose I may as well say it,
12 Your Honor. Defense rests.

13 THE COURT: All right. Well, let's go ahead
14 and renew any motions that you want to make now as
15 opposed to you just saying I rest, send them back out, so
16 do you have any motions you want to renew at this point?

17 MS. FORD: Your Honor, at this time I would
18 just move to renew all prior motions, including my
19 directed verdict, and including the one part of my
20 directed verdict motion on the CSC second charges, Your
21 Honor.

22 THE COURT: The CSC second charge?

23 MS. FORD: In the directed verdict, I had
24 argued that with a CSC, they never established the time
25 frame because they lived in that house before and after

1 she turned 11. And she just gave general statements
2 about it happening, and she never testified what act.

3 THE COURT: I got you. You said charges,
4 plural, and I thought you were referring to charge, as in
5 the jury charge.

6 MS. FORD: No, Your Honor.

7 THE COURT: Okay. All right. Well, then you
8 want to respond?

9 MS. HERRING-LASH: Your Honor, I think -- as
10 I responded before, I think that the victim testified
11 that it went on repeatedly in that home, and there
12 certainly was not a year or six months or eight months
13 that it didn't happen. And she turned 11 in that August
14 and then didn't tell until the next February and that
15 there was enough evidence in the record to show that
16 there was each kind of assault that occurred within that
17 period.

18 THE COURT: All right. Well, I agree.
19 There's sufficient circumstantial evidence to support the
20 indictments. The motions are denied.

21 MS. FORD: Just with the procedure with the
22 Beaty case, Your Honor --

23 THE COURT: The what?

24 MS. FORD: The Beaty case. When I read it,
25 it doesn't specifically say always that the State goes

1 first and then the defense and the State rebuts. It just
2 uses the words that, basically, the party who had the
3 middle argument would be the last and the party that went
4 first could rebut.

5 THE COURT: Well, I've been struggling with
6 this myself because it's a very oddly worded part of a
7 decision, and they resuscitated what they said was the
8 old common law rule. As I understand it, even though
9 it's -- and it says when this case becomes final. When
10 you go on Westlaw, it says the case is not final yet, but
11 here's the way I read it and the way we're going to do
12 it, all right?

13 Under the old common law, the State had the
14 right to open and close. Beaty says, well, we're going
15 back to the old rule that said open and close means
16 exactly what it is now. The State has to open in full on
17 the law and the facts. Then the defense has the right to
18 argue in full, and the State goes back to having the
19 right to respond to whatever the defense came up with,
20 and they call them the middle party. So there was
21 always, according to the State, the common law, was State
22 goes first, defense goes second, State has a right to
23 reply, and they said we're going back to that rule.

24 So the only question I have after this is
25 what about the case, which doesn't apply here, where the

1 defense puts up no evidence? What happens then? Because
2 it can be argued that, I suppose, and I've seen one
3 commentator I think already get this wrong and say, oh,
4 well, that means in that case, the defense goes first,
5 then the State, and then the defense would have the right
6 to come back and reply.

7 And I said, well, that really doesn't make
8 any sense. I think, absent somebody convincing me that
9 I'm wrong -- because I went back and I looked at those
10 cases that said this is what the common law rule is. If
11 you put up no evidence, according to our Supreme Court as
12 of 1802, you don't put up any evidence, you have the
13 right to final closing, or concluding arguments.

14 So the State would have to open in full, and
15 the defense would have the right to closing arguments,
16 and the State would have no right of reply. That's the
17 way I'm going forward, but in a case like this where the
18 defense puts up something, State opens in full on the law
19 and the facts, in other words, complete argument, the
20 defense makes their complete argument second, and then
21 the State has the right to come back and reply and
22 respond to everything that the defense argued, but they
23 cannot bring up any new matter, or come up with a new
24 theory or anything like that. They're limited to
25 responding to the argument that you made.

1 MS. FORD: Well, I would just, I guess, put
2 on the record that just since the law -- just since the
3 language is kind of confusing, I would argue that I'm the
4 one who goes first and then gets the right to rebuttal.

5 THE COURT: Why do you get that from that
6 case?

7 MS. FORD: Well, just because the language --
8 and I could be reading it --

9 THE COURT: I admit it's not the best worded
10 part of that opinion.

11 MS. FORD: I would think that the Court would
12 have specified that the State is always -- the State is
13 always going to go first and then the defense, and then
14 the State will be able to rebut, but it uses the
15 language -- it makes it sound like it's the same as it
16 was before, it's just the person who went in the middle,
17 normally, would --

18 THE COURT: I think they say the person that
19 went in the middle normally, which would be the defense,
20 has the right, if requested, to say, State, you have to
21 go first, in full, but then that gives the State the
22 right to reply to you, all right? Because if you don't
23 request it, then presumably that leaves us with the State
24 being able to get up and make that minimum opening
25 argument on the law, but then they can set down, listen

1 to you make your whole argument, and then they can come
2 back in and make their full argument and, in that case,
3 sandbag you.

4 Presumably the judge had the right to say,
5 You know what? You're right. They did sandbag you. You
6 came up with a new theory. There is no way to respond to
7 it and could have given the defense a right to reply, but
8 as I read that, if you request that they open completely
9 on the law and the facts, they have to do that. In a
10 case in which the defense puts up testimony, or evidence,
11 you still -- you don't go first and last, you simply have
12 the right to make them completely open. They still have
13 the right to reply last.

14 The only thing that is kind of, to me,
15 ambiguous about that is that instance where they -- you
16 don't put up any evidence and the Court indicates, look,
17 we're not creating a new rule here. We've just going
18 back to the old common law rule, and the old common law
19 rule, according to this 1802 case, was if you don't put
20 up evidence, you close -- you, the defendant, get to make
21 them open completely, and then you have the right to
22 close and the State does not have the right to reply.

23 That doesn't apply to this case, but that's
24 the way I'm reading it.

25 MS. FORD: Okay.

1 MS. HERRING-LASH: And, Your Honor, I know
2 all solicitors got an e-mail from the Attorney General's
3 office to say that if we still got to open on the law and
4 then respond after their argument would expose our cases
5 to, you know, being overturned, so not to try to do it
6 the way we had been doing it, and --

7 THE COURT: I think that's a safer practice,
8 because while they say this case doesn't take effect
9 until it becomes final, it's kind of like, well, you guys
10 put it out the last week of the year. Here it is the new
11 year, I'm going with it. I don't know how they can say
12 it's unconstitutional to go back to the old way, because
13 to go back the old way prejudices them, and if I said
14 we're not going to do that, well, how are you going to
15 appeal, you know? The State can't appeal that. So I'm
16 comfortable with that today.

17 Well, everybody is here. So what I'm going
18 to do is bring the jury in, ask you if you have any other
19 witnesses, you rest, ask the State if they have anything
20 in reply, no, we're not going to require you to renew
21 your directed verdict because we've already done it.

22 (In open court, jury present.)

23 THE COURT: Welcome back, folks. We're now
24 going to proceed with the resumption of the case. Does
25 the defense have any further witnesses?

1 MS. FORD: No, Your Honor. At this point the
2 defense rests.

3 THE COURT: Does the State have anything in
4 reply?

5 MS. HERRING-LASH: No, Your Honor, the State
6 does not.

7 THE COURT: You've heard all the evidence
8 you're going to hear in this trial, and we'll move to the
9 final phase, which you'll remember consists of closing
10 arguments, and then I'll charge you on the law and then
11 you'll retire to consider your verdict.

12 Closing arguments are -- again, the lawyers
13 will now get up and review the evidence that you heard,
14 and they will make argument in an attempt to convince you
15 to render a verdict on their client's behalf.

16 These are arguments. Remember that what the
17 lawyers say is not evidence. You have heard all of the
18 evidence in this trial. These are simply arguments about
19 the evidence and the law.

20 Once you have heard all of that, then I will
21 charge you on what the law is. The lawyers certainly
22 have an idea of what I am going to charge you, so you
23 will hear arguments from them on the law and the facts,
24 but I will charge you on the law after these arguments.

25 Now, our rules provide that because the State

1 has the burden of proof, the State makes their opening
2 and closing arguments to you in full. The defense has
3 the right to then make their closing arguments, and then
4 the State will have the right to reply to any matters
5 that the defense brought up in their closing argument.

6 So, Madame Solicitor, if you are ready, you
7 may begin.

8 MS. HERRING-LASH: May it please the Court,
9 counsel: Good morning, ladies and gentlemen. I know
10 that this has been a very long week for the Court, the
11 translators, the deputies, and I know for the attorneys,
12 I know for this one, but it's been a very important week
13 for **Minor**

14 And it's been difficult for you and long for
15 you more than anyone else, perhaps, because you had to
16 hear some testimony that was, at least, unpleasant, but I
17 will tell you that we could not be here if it weren't for
18 Officer Tiffany Crider who noticed a change in **Minor** that
19 evening, the anger that she saw that was just not like
20 **Minor** And, first of all, what she does, she is bringing
21 **Minor** into her office because she wants to warn her: The
22 street is not a safe place. You don't want someone like
23 **Minor** to act like that and be late and all, so she wants
24 to warn **Minor**

25 The second thing she did was notice a change

1 in **Minor's** behavior when she said, You could get raped;
2 sinking down in the chair, looking down. Now, that
3 caused her to ask the question, Have you been assaulted?
4 Just like Dr. Swiecicki said, sometimes that's what it
5 takes.

6 Now, Officer Crider had no earthly idea what
7 that answer was going to be. For all she knew, it was
8 going to be, The night before when I didn't come home
9 right away, somebody assaulted me, and that's why the
10 clothing was different when she, you know, came from
11 wherever she had been. **Minor** went into that office with
12 no plan whatsoever to tell about this, but it had been a
13 different kind of 48 hours, 24 hours or so for her.

14 She had told two friends. She had told a
15 friend before, but these two friends, the Porter girls,
16 which you saw testify, they went home and told their
17 mama. The next day, they trick her, kind of offering her
18 some kind of chip. I didn't know the name of the chip
19 she was talking about, but some chip, to come to their
20 house, and, lo and behold, she finds out an adult knows,
21 and she has to tell this adult, the first adult, if you
22 don't count Nancy, that she has ever told.

23 Now, Ms. Porter should have called the police
24 right then and there, but what she did do was tell **Minor**
25 You need to tell. So an adult, having believed her, may

1 have contributed to her telling Officer Crider.

2 MS. FORD: Objection. Vouching; outside of
3 the evidence, Your Honor, about what Ms. Porter may have
4 believed.

5 (Discussion held at sidebar.)

6 MS. HERRING-LASH: That having been said, I
7 would like to thank you for the amount of time you've
8 taken in this case.

9 Now, the judge will explain to you that you
10 are the judges of the credibility of the witnesses, and
11 you know that may sound like a hard -- something out of
12 the ordinary, but you do it every day. When you're
13 talking to someone, you're judging whether you believe
14 them. You use a lot of things, how they speak, their
15 demeanor, if they are biassed in any way, if they have
16 any reason to be saying what they're saying, kind of any
17 motive. You also look at, like, their reason to know,
18 how they would know what they're talking about and the
19 details they're able to give you.

20 First, let's look at motive or bias. You can
21 judge for yourselves what motive or bias Nancy Lorenzo
22 may have in her testimony. She suggested to you that
23 **Minor's** motive was to get him out of the house so that her
24 father could come home. Well, if you remember, that
25 really is kind of preposterous. The father has been gone

1 since she was two or three. She's had little contact on
2 the telephone. Nancy had told you that she stopped his
3 family having contact, tried to stop having complete
4 contact, when **Minor** was about four. She wasn't able to
5 stop it all.

6 **SL** testified they haven't seen these
7 people since they've been in care. They're not here.
8 They have not been influencing **Minor** Last, they have not
9 had influence over her, but I will acknowledge fully she
10 wanted him out of the house.

11 Why not? He had been sexually assaulting her
12 for a continuous amount of time. Why wouldn't she want
13 him out of the house? I also do not think, or do not
14 suggest to you, that this was a motive prompted
15 disclosure. It was a disclosure that was surprising to
16 her, that she never intended on making. The other thing
17 that you should do when you're judging the credibility is
18 look at the details that someone has about the event that
19 they're talking about.

20 I have just made a couple of slides to go
21 over with you on the details of **Minor** 's testimony, in no
22 way everything that she said, but just some of the
23 details that, frankly, I could kind of remember. There
24 was so many. The first time she remembered -- and she
25 did not necessarily say to you, This is the first time it

1 ever happened.

2 The first time she remembered she was on the
3 couch. He brought her to the floor, told her he loved
4 her, that she was beautiful, pulled her shirt up. She
5 had on pajama shorts, I think she said. Her mother was
6 still asleep. He put his fingers inside of her, kissed
7 her cheek, her neck, her breast, and he was holding her
8 down with the hand that he was not digitally penetrating
9 her with and then said thank you.

10 The next time that she remembered was in her
11 room. He pulled her shirt up, her shorts down, this time
12 pulled her underwear to the side, laid her on the edge of
13 the bed. He began kissing her from the mouth to the
14 chest to the vagina. She remembered looking out the
15 window and seeing orange coming around sunset, probably
16 trying to take her mind off what was going on and just
17 looking out the window.

18 The next time he offered her candy. She went
19 in, and he took off her clothes. She was on the bed.
20 She asked, Where's the candy? And he said, This is your
21 candy. And she kept saying, No, chocolate is candy, and
22 he said, This is your candy.

23 He pulled her shirt up, her shorts down, put
24 his mouth on her vagina, his penis kind of on the
25 outside, toward the inside of her vagina. Her feet were

1 hanging off the bed, and he started by standing up and at
2 the end was leaning over.

3 Another memory was watching him or her
4 watching it happen in the mirror as she was laying on the
5 bed, her legs opened so that he could get his penis, and
6 that he would use one elbow to kind of hold her leg open.
7 When asked why didn't she tell anybody about this --
8 because at this point in time, he had not threatened her,
9 like, Don't you tell. She felt the threat, she said, but
10 she saw him as her father, and she did not want to betray
11 him, is what she said.

12 The next things that she remembered happened
13 on Oakridge, which is the last place they lived. The
14 door would be locked, and you saw that he did have the
15 lock on his door. It would be on the corner of the bed,
16 often on the side of the bed where the ledge was so he
17 could kind of sit and lean on that ledge. Her legs would
18 be open across the corner of the bed. He laid her on a
19 baby pad, which is just one of those details that rings
20 true because it's not just something that you make up.

21 And you saw the picture. Sure enough, those
22 baby pads are there at that house. He put his fingers in
23 her vagina, once again put his mouth on her vagina, and
24 put his penis in her, and she said, very often, what
25 happened depended on how much time that he had.

1 In that room, it happened a lot, on both
2 sides of the bed, and after, at some point, he heard, she
3 thought, someone at the door. He moved the toolbox over,
4 and she pointed out in the picture the toolbox that was
5 still sitting there that he had moved over to kind of
6 block the door. She explained that he used condoms
7 sometimes, where they were located, that he had some kind
8 of lotion that he put on her that started with an L.

9 She described to you that the tube looked
10 like the kind of tube that toothpaste comes in and that
11 he would put gloves on sometimes, and you saw the
12 pictures of the gloves that were found at the house, and
13 that he would use those gloves to put the gel or the
14 lotion around her vaginal area, and then another detail
15 that isn't just part of a sexual assault that she
16 remembered is he would take the glove, or the condom, put
17 it together inside the glove, and not put it in the trash
18 in his room, but go into the kitchen and open the trash
19 and put it in so that no one would find it, another one
20 of those details that has really nothing to do with the
21 sexual assault but her remembering exactly what he did.

22 After puberty, she said -- and this seemed to
23 be one of the hardest things for her to tell you about,
24 is that he would shave her, using a towel and a baby pad
25 to lay her on. She told you she would try to shave

1 herself so that he wouldn't have to, but that he would,
2 most often, find out and shave her himself. She
3 explained with the picture where he kept everything in
4 the room, condoms, the gel, the gloves, and she had to do
5 these things to get snacks or the TV remote for the
6 siblings.

7 When they sent her in, when **SL** and Leansy
8 sent her in there to get the snacks, they had no idea
9 what she did for them, but they did know she came out
10 with them. She even described an occasion when this
11 happened with the little ones, who were much too young to
12 know what was going on or talk, who were up at the end of
13 the bed by the pillows because these assaults were down
14 at the end of the bed.

15 First she said after the accident there was a
16 good long while when it didn't happen, and then it was a
17 little bit different, but it still happened, and it would
18 be in the mornings before school, after school, or she
19 described to you also sometimes in the middle of the
20 night; basically, whenever he got a chance.

21 At one point, she tried to tell her mom a
22 little bit, the time she described her mom noticed they
23 were getting kind of close and they were looking at the
24 watch, and she said, He said he loves me. I'm his love.
25 And the mom said, he's just acting like a father. Even

1 on Tuesday, when she testified, she is still trying to
2 protect her mom by saying, really, maybe mom didn't
3 understand what I was saying because she doesn't speak
4 English very well.

5 Some of the details she explained, but she
6 also said to you that she really thinks -- even up until
7 this day, she doesn't think she's actually told about
8 everything that happened to her. I ask you to look back
9 and think about things that you remember in her testimony
10 that I have not mentioned.

11 Now, when **Minor** first came in here to testify,
12 she became overwhelmed and had a little bit of a
13 breakdown when it came time to talk about the assaults.
14 This is the first time she had seen her stepfather in two
15 years. She saw all of us populating this very formal
16 place, but, thankfully, due to the bailiff taking her
17 out, getting her calmed down, she was able to come back
18 and really go over the details with you.

19 As Dr. Swiecicki explained, there are
20 different reactions and presentations, some of them
21 difficult to understand if you haven't been through it.
22 Sometimes the affect is flat. It's just: This happened
23 and this happened and this happened, and that the telling
24 of the facts is a lot different than explaining the
25 feelings. What you have to do up here is just tell the

1 facts.

2 This had become routine for **Minor** It was
3 just do it, get it over with, and let me go on about my
4 life because I have absolutely no way to stop it. She
5 had learned to cope with it. You saw when she was
6 testifying she was able to just tell you what happened,
7 but if you remember, there was nervousness, kind of a
8 stuttering until she got into the details, and then she
9 lost herself in those details, and she has learned to
10 cope all these years. In the tape, if you just heard the
11 tape and didn't see it, you would think she was calm,
12 blah, blah, blah, but if you look, she was rocking. She
13 was trying to cover her breasts when she was sitting
14 there.

15 One of the most telling parts is when
16 Dr. Elsey walks out, and she slips down in the chair and
17 says, Why did this happen to me? And then she kind of,
18 if you remember, stands up and visibly, physically, just
19 kind of shakes herself, goes back to the board, and then
20 goes on writing about comments, should I drop him, should
21 I not drop him, like she has learned to cope.

22 Now, she told you much more details in these
23 than she did Dr. Elsey on the tape. If you listen to his
24 questions and my questions, I asked a lot more detailed
25 questions, and that tape was the first time she had ever

1 given a true, long explanation of what happened. And she
2 was up there, and I asked more questions, like, Where
3 were you? Where on the bed were you? Those kind of
4 things.

5 She talked a lot more in here, and on the
6 tape, about the mouth, the kissing her cheeks, the
7 kissing her breasts, kissing her vagina, and perhaps it's
8 understandable: The most disgusting thing seemed to be
9 when he wanted to put his tongue in her mouth. That may
10 sound strange, but often that is a more intimate act, and
11 keep in mind in judging her credibility that this went on
12 for a long time.

13 If she were able to come in here and give you
14 sequence and dates and times, that would be hard to
15 believe because it went on so long. She can just mainly,
16 it seemed, remember by location.

17 You can also, in judging her credibility,
18 look at anything that corroborates what she said; as an
19 example, when she talked about how difficult it was to
20 lay on the bed and see this happening above her in the
21 mirror. Now, she would have had no idea that we would go
22 and knock on a complete stranger's door and say, Can we
23 come in and take a picture of your bedroom? But there it
24 was, the mirror in a home she hasn't lived in since 2013.

25 SL [REDACTED] also says yes, she went in the room,

1 and she would stay in there. His judgment of time was
2 about 30 minutes. When she came out, she would have
3 snacks. That's how we would get snacks. They would ask
4 her to go in there, or the TV remote. For a couple of
5 kids sitting around with nothing to do, having that
6 TV remote and the ability to watch TV, that's pretty
7 important, so he cooperated. He was kind of a sad little
8 guy, but never did he describe to you a vicious, angry
9 **Minor** He did see her laying on the floor and crying.

10 **LL** she also said that **Minor** would go into
11 the room. Now, her timing was two hours. I don't know
12 if that is based on her age more than anything else, but
13 she knows the door was locked because, unlike **SL** she
14 tried to get in, probably based on her age, and she was
15 told to get away. She wasn't positive exactly because it
16 was in Spanish, what she was told, and she also
17 corroborates that when **Minor** came out, she would have
18 snacks or the TV remote.

19 Now, she also told you that she looked under
20 the door, and she told you what she saw. The gentleman
21 that went and took the picture explained he had his
22 camera, and he showed you what he saw. I would suggest
23 to you that the eye has more range, and we don't know --
24 we know how the position of her body was based and her
25 feet. We don't know where in that door she was laying.

1 We don't know how her head was angled, but she swore this
2 is what she saw.

3 The human eye has more range. You'll have to
4 judge for yourself. She did use the word vibrate, which
5 is kind of strange, but that may be what it looks like to
6 a young child. The other thing about that is LL had
7 already told Minor that she had seen this before the day
8 at the school, when no one knew that it was going to be
9 anything important, and you know that because DSS asked
10 LL about it because Minor told her, and LL told
11 you, she said no. She was upset. She was scared, and
12 she said, No, no. I didn't see anything. I didn't know
13 anything.

14 Ms. Ford asked her about that: You did tell,
15 like, later when you had your forensic interview. You
16 all got to see the forensic interview of Minor The law
17 does not allow you to see witness interviews, so you
18 won't see the other interviews.

19 The other witnesses I will just go over
20 briefly. Brooke Nitterhouse, the nurse that examined
21 Minor got a history from Minor that you've heard. The
22 only thing that Minor tells her had happened within the
23 last however, more than 72 hours, or within 72 hours, was
24 the kissing of one of her breasts. I think she said that
25 she had told him she was on her period, and she got away

1 that morning.

2 But because she was there, they did do the
3 entire kit, but the main thing was the swabbing of the
4 breast because that is what she had said they swabbed
5 even though they didn't see anything illuminated. If we
6 hadn't have done that, you all would be wondering why
7 didn't they do this and why didn't SLED look for it? The
8 most surprising testimony may have been the SLED agent,
9 because he didn't even find **Minor's** DNA on the swab when
10 they swabbed.

11 It's not surprising that they didn't find any
12 of Mr. Ruiz. She had showered, changed clothes, done all
13 the activities that would have washed away any saliva,
14 but her own DNA wasn't there, and he explained that
15 sometimes people don't shed their skin, and it would have
16 to be a live cell that illuminates. It just shows what
17 DNA shows on TV isn't what it's cracked up to be.

18 Now, Dr. Abel was here not to tell you, well,
19 this was a normal exam, but lay people, like all of us,
20 may very well believe if there is penetration that there
21 is physical damage. Well, that's just not true, through
22 that doctor's experience or your experience. It would be
23 unfair to you, as jurors, to ask you to seek the truth
24 without that information, and it would be unfair to **Minor**
25 without that information.

1 Now, there's several reasons that she gave
2 you: The elasticity of the vaginal area, when the child
3 is estrogenized in puberty, it's much more thick and less
4 likely to be damaged, and, most importantly, the healing
5 process. If it's damaged within 24 or 48 hours, you
6 won't expect to find something. She gave examples of her
7 own practice of seeing a small tear and in follow-up,
8 less than a week later, nothing, could not see a mark,
9 and she said that her clinical experience, borne out by
10 the literature, 95 percent of the cases do not have
11 physical damage.

12 Now, **Minor** has never disputed that Mr. Ruiz
13 was in a very serious accident. It sounded like a lot of
14 head trauma and that the assaults stopped for a while,
15 but they did begin back. It was a little different, but
16 they did begin back.

17 To look at this, they moved -- let's go back.
18 The accident was when they were living in lot 12. Then
19 they moved to Oakridge, she didn't know exactly when, but
20 she knows that she went back to work in August of 2013.
21 So by August of 2013, he was able to stay home and take
22 care of two very young toddlers.

23 Nancy, consider her bias, seems to have
24 assumed he could not work his penis. When she spoke to
25 Ms. Ford, she said it was obvious. When asked if they're

1 able to have intercourse now, or sexual relations or be
2 intimate, they don't have that kind of relationship --
3 they don't have that kind of relationship. She may not
4 have tried. He may not have tried to have a sexual
5 relationship since that time. She certainly said that
6 they don't now.

7 But **Minor** told you that it did happen in that
8 room, and by the time -- look at the pictures that were
9 taken as Investigator Meyer told you on the 13th of
10 October 2016. It still looks like they have separate
11 bedrooms. You can look at those pictures and decide, and
12 by the time this report was made -- remember, it was
13 February of 2015, and he had been capable of being home
14 and taking care of children since August of 2013 and was
15 even going to classes for English.

16 And you may wonder why **LL** and **SL**
17 never mentioned his long period of immobilization and
18 all. They had probably forgotten because it was back in
19 the trailer, and they -- what they remembered about him
20 was hoarding the food, hoarding the snacks, the screaming
21 and the yelling.

22 You heard DS explain to you that the children
23 are in care, and they haven't been returned because
24 they're still steps that need to be taken by Ms. Lorenzo,
25 not just clarification, but some idea that there will be

1 protection because they cannot return a child to a home,
2 not thinking that they will be protected from assault,
3 and Ms. Lorenzo has never once, for a second, considered
4 that her daughter may have told the truth. She said she
5 knew, but **Minor** also told her about it years ago, and she
6 knew there was no accident for years. Some parents don't
7 believe, but they do something.

8 Now, she did call the medical university and
9 make that appointment. You heard from Ms. Gomez. I
10 think that it was January of 2016 when she went, and she
11 was getting help, but the complaint was **Minor's** bad
12 behavior. She needed a referral for having witnessed
13 criminal domestic violence. Ms. Gomez was shocked to
14 find out that domestic violence would have been when she
15 was two or three, and nowhere in that referral was there
16 any mention of this child allegedly having been
17 assaulted.

18 Even if you don't believe her, even if the
19 child is not telling the truth, you need to take them --
20 there's something wrong. There was no mention because
21 she knew the authorities would be called. She took her
22 also to counselling in 2012 for anger control, and at
23 that point she told Ms. Chisolm it began three years
24 earlier when the babies' father moved in.

25 MS. FORD: Objection. That is not in

1 evidence, Your Honor.

2 (Discussion held at sidebar.)

3 THE COURT: The jury will disregard that last
4 statement.

5 MS. HERRING-LASH: MM you also heard
6 from. He corroborated what Minor told Dr. Elsey in that
7 before she ever told her mother, had told a friend, and
8 she said that friend was MM Now, he wasn't able to
9 give you a lot of details. He's limited by hearsay, but
10 he acknowledged that Minor had told him.

11 You also heard from the Porters. I've
12 already discussed them. They, thankfully, did, unlike
13 MM did not keep the secret that she wanted them to
14 keep and told their mother and perhaps kicked the ball a
15 little bit down the road.

16 You heard from Dr. Swiecicki, not knowing
17 anything about this family, or this case, some
18 characteristics common in these kind of cases about why
19 children do not tell right away. A lot of those apply to
20 Minor how they often first tell a friend, which applies
21 to Minor After a little, they may tell a little more and
22 a little more and a little more, as with Minor She
23 explained it as a process of disclosure and that some
24 children, after being assaulted, have anger and temper
25 tantrums, that that is one of the things. Now, because

1 **Minor** has temper tantrums is not diagnostic. I'm not
2 trying to say that, but it is something the literature
3 has noted, especially if it happens after toddler stage,
4 and you heard from Ms. Lorenzo a lot of about temper
5 tantrums. She also explained how some victims become
6 unemotional when they're talking about it.

7 Now, the State must prove to you the elements
8 of these crimes beyond a reasonable doubt. The first
9 crime, criminal sexual conduct with a minor, the elements
10 are those things the State must prove, that a person, in
11 this case it would be Mr. Ruiz, committed a sexual
12 battery, and the victim was less than 11.

13 Criminal sexual conduct in the second degree:
14 That a person, in this case Mr. Ruiz, committed a sexual
15 battery upon a victim who is 14 but at least 11 years of
16 age. This was the time period after her birthday in --
17 when she turned 11.

18 A sexual battery is sexual intercourse,
19 cunnilingus, which is the mouth on the vagina, fellatio,
20 anal intercourse, or any intrusion, however slight, into
21 any part of a person's body of any object into the
22 genital or anal opening of a person's body, except if
23 it's for medical purposes.

24 The burden that the State has to meet these
25 elements is beyond a reasonable doubt, and the Court --

1 Judge Young will explain to you what that burden means,
2 but it is not every doubt or any doubt or all doubt. It
3 is a reasonable doubt that leaves -- evidence that leaves
4 you firmly convinced.

5 There is nothing in this world that we know
6 with absolute certainty. If you knew with absolute
7 certainty that this happened, you would have been a
8 witness and not on the jury, but you came in here on
9 Monday, not knowing any of these people. If you now
10 think that **Minor** and **LL** and **SL** are lying, then you
11 must find him not guilty. If you think they are telling
12 the truth and this happened, you find him guilty.

13 I submit to you that there is no other
14 reasonable explanation for this child to have these
15 details and this information except for the fact that it
16 happened to her, and therefore he is guilty.

17 THE COURT: Thank you. All right. Ms. Ford?

18 MS. FORD: Thank you, Your Honor.

19 If you were here today to determine if **Minor**
20 **LL** and **SL** hate Carlos Ruiz, then beyond a
21 reasonable doubt, the answer would be yes. All three
22 hate him with a passion, and that is a powerful
23 motivator. That is the reason we're all here, not
24 because he molested **Minor**

25 Carlos came into the lives of the children in

1 about 2009. Nancy got pregnant very quickly. You heard
2 her testify pretty much -- she got pregnant, so that's
3 basically why he ends up moving in as a family, and they
4 had another child shortly afterwards. Before that, she
5 had been a single mom in life, but the kids never took to
6 him at all. Nancy told you that, and the kids pretty
7 much always indicated that they never really liked him.
8 He had tried. He would take them places, like the
9 circus, take them out to eat, but they just weren't
10 interested. He wasn't their real dad, so they never
11 really gave him a chance.

12 Who was their real dad? He had been deported
13 years earlier, and **Minor** was really young, so perhaps she
14 doesn't remember a lot, but he still was in their lives.
15 They indicated they would talk to him and they would
16 spend time with his family. They've admitted that they
17 would want him to spend time in their lives. Nancy told
18 you how often **Minor** in particular would bring it up. **Minor**
19 outright denies there was any animosity from his family
20 against Nancy; however, **SL** told you, Yeah, they sure
21 seemed to hate her. So **Minor** wasn't telling the truth
22 when she told you that. They hated Nancy, and they let
23 the children know that.

24 Nancy told you that his family blamed her for
25 him being deported. She had called the police for

1 domestic abuse. He was convicted. He wasn't deported
2 right away, but later when he was picked up for a driving
3 offense, that's when they looked into his past, and they
4 deported him and so they blamed her. She wasn't trying
5 to get him deported. She was reaching out for help.

6 Well, **Minor** has indicated she doesn't remember
7 the abuse. It's very possible because of her age she
8 didn't remember particular instances. **SL** remembered.
9 He told you how his dad would be violent with his mom,
10 how he would be violent with him, and even if a child
11 doesn't remember particular instances, they could very
12 easily remember and still be affected by a violent
13 household where there's screaming and tension and crying.
14 They would be affected by it.

15 The solicitor has seemed to have suggested
16 that Nancy's making this up or it's ridiculous to
17 suggest, but this isn't something that came about after
18 Carlos was arrested. Nancy raised it numerous times over
19 the years. She went to MUSC to seek help before the
20 allegations were made to the police in January and
21 February of 2015. At that point, she raised the domestic
22 issues. **Minor** was given a referral for treatment, and
23 Ms. Gomez, she was not shocked by that. She didn't know,
24 but she didn't say that would have changed her opinion or
25 it would have changed the referral.

1 Nancy always sincerely believed that. **Minor**
2 acted like she was completely surprised by the presence
3 of domestic abuse in the house, but **SL** told you he
4 actually would discuss it with **Minor** but **Minor** later
5 admitted in her testimony that **SL** would talk to her
6 about that.

7 **Minor** had a lot of issues. She had a lot of
8 issues with lying. Nancy told you that, and she herself
9 told you that. She herself told you a lot of people,
10 we're not just talking about Nancy, would accuse her of
11 lying. She had issues with anger and aggression, and
12 **SL** mentioned that, that she would be aggressive with
13 him. **Minor** admitted herself. That's one of the reasons
14 she went to counselling with Ms. Chisolm several years
15 back, and Nancy was very clear that these issues began
16 well before Carlos was ever in the picture, so it's not
17 something that came about after he came into the house.

18 Dr. Swiecicki testified that behavior such
19 that **Minor** had could be behavior demonstrated by someone
20 who has been abused, but it could be behavior
21 demonstrated by someone who is abused sexually or
22 physically or possibly both, or it could be for other
23 reasons, like losing a loved one, like your father. It
24 could be for a lot of reasons, and there's also a lot of
25 reactions that children have. They could be defiant.

1 They could be withdrawn.

2 There are so many possible reactions and so
3 many causes there is no way to determine anything from
4 that. So the fact she testified, it wasn't to say, Yes,
5 it happened, it was just to say, Yes, it could be a
6 cause, but not necessarily that it was. There was some
7 talk about post-traumatic stress disorder, but it was
8 never revealed that **Minor** was actually diagnosed with
9 that.

10 You heard at length from Nancy yesterday.
11 She was, by far, the longest witness, and this woman is
12 credible because she has absolutely nothing to gain and
13 everything to lose. Nancy loves her children. She is
14 not in love with Carlos. She told you that. The way she
15 described from the very beginning when they met, they're
16 not two people in love. She got pregnant and they got
17 together, so she's not some woman standing by her man.
18 Her first husband, the children's father, she had the
19 courage to call the police on him. She is not choosing
20 Carlos over her children. She's choosing the truth.

21 Money was tight, and the solicitor raised in
22 the testimony that Carlos gets a disability check, but do
23 you really think Nancy would toss her children aside
24 because he was getting a \$750 disability check a month?
25 That is ridiculous. It doesn't make sense.

1 You heard a lot from Nancy and from
2 Ms. Smalls, the DSS worker, about Nancy not being able to
3 have the kids back, and that's why she's such a credible
4 witness, because all she has to do is say the magic
5 words: I believe. It doesn't have anything to do with
6 the fact that Carlos is currently staying with her
7 because he wasn't there for months and months and months,
8 and they never would give her the kids back. They
9 wouldn't give her kids back now if Carlos wasn't there.
10 She has to say, I believe.

11 Many people may think, just as a parent, you
12 should say -- even if you don't believe, you should say
13 it to get your kids back, and so maybe you believe that's
14 the right thing to do as a parent. Maybe that's what
15 Nancy should have done, but Nancy can't do that because
16 she can't lie. She can't lie, especially when it comes
17 to having to sacrifice someone.

18 Nancy tried the best to be a good mom to
19 those kids. You heard about how in Mexico, which isn't
20 really known for its great education, she went to
21 college. She got a degree in teaching children. She
22 cares about children. She has five children. Sometimes
23 I'm sure there were language barriers, even though they
24 understood each other for the most part, but the kids --
25 and she told us and **Minor** would tell us how the kids would

1 bring books home from school, including books about
2 touching, and Nancy would go over those books with them.

3 When the kids were being mean to LL and
4 trying to get her to be their slave, she said she did try
5 to correct that. She did stand up for her, the younger
6 child. Nancy took Minor to counselling, not only to
7 Ms. Chisolm, but years later she took her to -- or she
8 started the process of going to MUSC. They just wanted
9 her to go first, and she took classes, you heard that
10 from Ms. Gomez, parenting-type classes, and she was
11 invested. Even though she didn't mention the allegation
12 at that point, it's because she didn't believe it,
13 because clearly, if she was trying to cover this up, she
14 wouldn't have put the girl in counselling. That isn't
15 the sign of a person covering it up. That's the sign of
16 a woman who knows her daughter is troubled and is trying
17 to help her. That's all Nancy ever wanted.

18 Minor acted like the counselling with
19 Ms. Chisolm, she didn't even really remember it. She
20 went there for almost a year, but she didn't really
21 remember it, and that wasn't when she was a small girl.
22 The solicitor had mentioned the end of 2012 into 2013, so
23 only a couple of years before the allegation was being
24 made, and a lot of questions I asked you to remember that
25 she agrees, yeah, probably, probably, Ms. Chisolm went

1 over things with her, like communicating and expressing
2 any concerns, not only to her parent, but to school
3 officials --

4 MS. HERRING-LASH: Your Honor, I would object
5 to that.

6 THE COURT: Overruled.

7 MS. FORD: So those things were specifically
8 discussed with her, and perhaps there was no indication
9 that she specifically asked, Were you molested or
10 sexually touched? But certainly, as Dr. Swiecicki
11 mentioned, sometimes they just need an opportunity, a
12 type of environment to express it. Certainly she was in
13 that for a long time prior to this current allegation,
14 but **Minor** never revealed anything because nothing ever
15 happened.

16 The day Nancy first learned about the
17 allegation, that was towards the end of 2014, and that
18 day, Carlos had basically ratted **Minor** out, like he had
19 done many times before. **Minor** told you that, that he
20 would always tell on her.

21 She came out of the woods with some boys.
22 That's what Carlos told Nancy, and Nancy talked to **Minor**
23 about it because it was important. Just like Officer
24 Crider talked to her about those types of things, her mom
25 talked to her about those types of things, and **Minor** had a

1 tantrum. She went to the ground, but that was not
2 unusual. You heard from her siblings that she would put
3 holes in the walls at times she was so upset, so this
4 wasn't unusual for her to be upset to this extent, and
5 she said, in the heat of it, Carlos was raping her.

6 Nancy took that very seriously. She didn't
7 laugh like LL did. Instead she separated everybody;
8 she talked to everybody; she tried to comfort her
9 children, saying, I'm going to take care of this, and she
10 talked to Minor and Nancy told you about that.

11 She was deeply affected by this, Nancy, but
12 Minor was telling her all these things that didn't make
13 sense, and Nancy was very clear. This woman, who was
14 intimate with Carlos, who had two children with him, Minor
15 was telling her all of these things, and so Nancy
16 questioned her because that is something that a mother
17 would do to try to find out details, and the other kids
18 were present and Minor kept raising -- Nancy was saying,
19 What do you want to happen?

20 And Minor would say, I just want him out. And
21 the kids are, like, Yeah, we want him out. We want him
22 out, yeah.

23 They did all want him out. Ultimately, that
24 day, not long afterwards when Nancy is still upset, Minor
25 is playing her games, acting like nothing happened, and

1 Nancy goes to her, **Minor** how can you be this way? You
2 just made these allegations against Carlos. It's very
3 serious. What's wrong with you? What's going on?

4 And **Minor** just brushed it off and said, Oh, I
5 was just acting. I was just acting, and that had deeply
6 affected Nancy too. But, again, Nancy didn't just say,
7 well, okay. She didn't just shrug and say okay. She
8 offered to take her to the police and to the doctor, and
9 she admits that she should have. She should have taken
10 her to the doctor right then and corrected this, but **Minor**
11 didn't want to go, and Nancy admits as the adult, yes, I
12 should have taken her. But Nancy was deeply confused at
13 this point and deeply upset by this, but she did seek
14 help for **Minor** She didn't just shrug it off.

15 You got to see **Minor** testify in court, and you
16 got to see her original statement given at the Lowcountry
17 Children's Center. She had two very different demeanors.
18 In court, as the solicitor explained, it's understandable
19 that, you know, it's very traumatic for a lot of people,
20 but especially a young woman, to be in court, talking
21 about sexual matters, so of course she was going to be
22 very upset. In the LCC video, she was more annoyed. She
23 didn't want to be there. It was frustrating, two very
24 different demeanors.

25 The thing with demeanor, sometimes there are

1 multiple explanations. Someone can cry and be upset and
2 be reluctant to say things, and that may be because
3 something happened and because it's hard for them to deal
4 with, but it also could be because something didn't
5 happen and they're being put on the spot, and they really
6 don't want to and they really didn't want things to go
7 this far but they have.

8 And, also, if you look at the demeanor from
9 the LCC video, someone could be annoyed because they've
10 been traumatized and they feel like they're being
11 unfairly put throughout something, or they could be that
12 way because they're just pissed that they have to be
13 there. They said something that should be enough,
14 because that is enough to get someone arrested. That's
15 all it takes. It's that simple to get kids taken away.
16 It's that simple to have someone arrested, and **Minor** was
17 upset she had to be there that day. They had been taken
18 away about a month prior, so she had already talked to
19 numerous people.

20 That wasn't her first interview. She talked
21 a good bit with Officer Crider. She talked to the
22 DSS caseworkers, so she had already talked to multiple
23 people about these allegations. When **Minor** made the
24 allegation, her point, her purpose, was having Carlos out
25 of the house, to have him go away, but she didn't

1 necessarily understand that other things would happen,
2 that they would be taken away from their mom, but at that
3 point, it's too late to go back.

4 [Minor] wanted to get rid of Carlos any way she
5 could. Dr. Elsey asked her, in the video, So why did
6 you -- why did you come forward? Why did you tell?

7 Because I wanted Carlos out. That was her
8 response, and he said, Oh, so it wouldn't happen again?
9 And she was, like, Oh, yeah, but ultimately she wanted
10 Carlos out.

11 She told us that her mom had indicated that
12 she wanted to maybe leave Carlos. Nancy indicated that
13 and told that to the DSS worker, but [Minor] didn't think
14 her mom had the strength to do it, so [Minor] was going to
15 do it. She was going to step out and get rid of him for
16 her and for the family.

17 The kids have all added things over the years
18 to try to make Nancy look bad, or a little worse.

19 They've all said, you know, she was a good mom, she was a
20 good person, Christian, but they've added some things.

21 [Minor] or Nancy, said she was laughing when the allegation
22 came out. [Minor] specifically mentioned being hit with a
23 broom, but she'd never mentioned it before, and [SL]
24 and [LL] who were both there, never mentioned her
25 being hit with a broom.

1 And then also, within the past few months,
2 **Minor** has added details about her mom being partially
3 present during some of these incidents. Before, she
4 never indicated that, but as of October of just last
5 year, she told us that she met with her guardian and
6 revealed an incident in which her mom saw something, and
7 she brought that up because she was trying to make her
8 mom look back bad. She thought maybe her mom knew
9 something and didn't say anything.

10 And I want to talk a little bit about that
11 story because it really doesn't make sense. Initially
12 she had indicated to the guardian that the mom came in
13 and he was kind of touching her, but he was kissing her
14 neck, and the mom looked shocked and then, you know,
15 later was talking to her and the daughter was telling her
16 about being called mi amore and things like that, and the
17 mom was just like, Oh, well, that's normal. That's
18 normal for the father to say that.

19 But the story, even though the first time she
20 had given that was last October, has now changed, and now
21 she tells a story where Carlos came in and was cuddling
22 with her, and she actually -- her story is inconsistent
23 within this one story she told. She said that the mom
24 was actually -- her eyes got wide and the mom was, like,
25 What's going on? And **Minor** assured her, Oh, I was just

1 showing him a watch. And she told us that her mom said,
2 Are you sure? You know, you can talk to me about
3 anything, and **Minor** said, No, no, I was just showing him
4 the watch.

5 This supposedly happened when she was six. Well, a
6 six-year-old wouldn't really think that way, if that
7 happened. Maybe a 13-year-old girl would think that way
8 if something was happening to her and she was trying to
9 cover something up.

10 If someone came in, she could say, Oh, no, I
11 was just doing this. Don't worry about it, but a
12 six-year-old wouldn't have been able to say, Oh, no, Mom.
13 Don't worry. I was just showing him a watch.

14 And another reason it doesn't have
15 credibility is because she says that same day, after the
16 mom was suspicious and asking her if anything had
17 happened and assuring her she could talk to her, that
18 very same day, **Minor** decided to tell her things about him
19 saying things that she felt were inappropriate about
20 loving her and things like that. And then at that point,
21 the mom decides, even though she's concerned earlier, to
22 brush it off and just say, Oh, that's just normal. Don't
23 worry about it. That makes no sense.

24 **Minor's** just trying to think of details to
25 give people because she's just talked to so many people:

1 Tell me this. Anything more? Are you sure?

2 And, again, you heard from Nancy, and there
3 is no possible way that woman thought anything was going
4 on. You might say she was not an actual witness so maybe
5 she wouldn't know for sure what happened because no one
6 was saying that except for that one incident that she was
7 a direct witness, but I think it's clear that 100 percent
8 that woman does not believe it even happened. So if she
9 had seen something, that would have given her pause, and
10 she probably wouldn't have been here the way she was
11 yesterday.

12 You've heard about several other incidents.
13 It's understandable that if someone is molested
14 long-term, numerous times, of course they wouldn't
15 remember every time. Of course they would get details
16 mixed up. That would be very understandable, but the
17 thing is, there are certain things that would stand out,
18 perhaps the first time. That's why Dr. Elsey would say,
19 Well, tell me about the first time it began, especially
20 the last time should especially be memorable, yet **Minor**
21 couldn't give those details.

22 For the first time, she kind of explained the
23 situation. You know, I'm not sure if she was saying it
24 was the first time, but the situation when she was saying
25 that his penis was the candy, but she doesn't remember

1 the location. Even the solicitor raised, in her closing,
2 that they -- that's the type of things they would
3 remember, location and places.

4 She indicated that the first house, nothing
5 happened. She said that. She was asked several times,
6 that it started in the second house; however, she had
7 indicated that she did reveal to the solicitor that the
8 candy incident happened in that first house and that
9 things happened there multiple times, so she can't seem
10 to remember that time.

11 And then what about the last time? Because
12 even if the first is blurry because of age, that would be
13 understandable, but the last time would be memorable,
14 especially to a girl of her age. She was 11 at the time.
15 So what do we know about this last time? She told
16 Officer Crider that the last time -- and it wasn't
17 anything too extensive, but she said as she was getting
18 out of the shower he kind of grabbed her, put his mouth
19 on her breast, and tried to suck it, and she was like,
20 Oh, I'm on my period, and he left her alone.

21 That's why the medical people swabbed her
22 breast, because they were looking to see if anything was
23 there, so that was very clear. It happened the day
24 before. She indicated to the first DSS worker,
25 Ms. Cahill, it happened the day before after school. By

1 the time she got to the nurse, which was the same exact
2 day, she couldn't actually remember if it happened the
3 day before or two days before. And then, if it had
4 happened the day before, which, again, she told Officer
5 Crider and Cahill, she told her it happened after school.

6 That's what she told Ms. Cahill, but you
7 heard from multiple witnesses she didn't go home after
8 school that day. She went to the Porters', and that's
9 why she was late from school. So by the time she left
10 the Porters', that's when she went to the school and met
11 up with her mom, and Nancy told you she took all the kids
12 to a PTA meeting that night. So she was with **Minor**
13 basically the rest of the time after school. So we know
14 that's false, that he did this when she was getting out
15 of the shower after school the day before.

16 Now, when I questioned her a little about the
17 last time, she kind of changed her story and said, oh,
18 something actually happened that morning, the morning of
19 the disclosure to Officer Crider. She had kind of -- but
20 she only said that in response to me questioning her
21 about being late.

22 But you heard from Nancy. **Minor** was late that
23 day, and they -- Officer Crider remembers that, but it
24 wasn't because Carlos was keeping her home. Carlos
25 actually called Nancy and said, Nancy, you need to talk

1 to this girl. She won't leave for school.

2 So Nancy told you she had a conversation with
3 **Minor** about that, and Nancy had to say, You need to go to
4 school, and just a comment about it mostly happened in
5 the mornings and sometimes after school.

6 Well, that makes no sense because this is not
7 a small household. **Minor's** not an only child. She has,
8 you know, two younger brothers, a sister, and an older
9 teenager brother. She and **SL** went to the same
10 school. They would go to school together. The solicitor
11 asked **SL** that, thinking he'd say or probably thinking
12 he'd say, Oh, sometimes, but he said, Yeah, we would go
13 to school together. And so this was her first year in
14 middle school, but in elementary school, she would have
15 gone with **LL** **LL** had to take the bus, so
16 presumably **Minor** did too, so there wouldn't have been an
17 opportunity for things to happen before school.

18 **Minor's** stories, another reason they don't
19 make sense, is because of how often she says they
20 happened: They happen all the time. It was very clear
21 when it first came out that it happened like every day,
22 but once she told her mom, then it went down to every
23 other day. It slowed down, but it happened every day.

24 But what we know is that Carlos was not a
25 stay-at-home dad for years and years. It was actually

1 Nancy who was the stay-at-home parent for three years.
2 She first stayed home when her son Carlos was born in
3 2010, and then -- and that was August of 2010, and she
4 didn't go back to work until August of 2013, so that's
5 three years. So it's just highly unlikely that when she
6 was a stay-at-home mom, Carlos was molesting her daughter
7 before and after school when she was there at the house,
8 and even **Minor** says her mom wasn't really there.

9 So what about those three years? **Minor** didn't
10 indicate it stopped for three years, or it happened less
11 during that time, she -- and she makes it sound like it
12 always happened, continuously, since she was six years
13 old and **Minor** -- **LL** and **SL** would be outside.

14 Now, **SL** was a 13-year-old boy. Does it
15 make sense -- the way **Minor** explains it, it's almost like
16 she's the oldest and she takes care of the younger ones
17 and give them things and does things for them, but she
18 wasn't the oldest, **SL** was, and it makes no sense that
19 for years and years and years this older boy, especially
20 once he was at a certain age where kids are very aware of
21 sex, that he just didn't figure it out or notice anything
22 really other than she would be in the room, and I don't
23 think he even said half an hour. I think he had said for
24 a while, so that make no sense that all this was
25 happening with all of these kids outside.

1 And then even **Minor** she's talking about the
2 little boys, probably because she told them, hey, so she
3 told us about the other two, where they were, but what
4 about the little boys? She said they were in the room.
5 Well, they were toddlers. Does it make sense -- they're
6 not sleeping babies. Does it make sense that there are
7 two toddlers that are very rambunctious, that they would
8 be in the room, quietly sitting, or that they would be
9 running around while Carlos is doing these things to
10 **Minor** That makes absolutely no sense.

11 You've heard about the accident a good bit
12 from various people, especially Nancy. Nancy was very
13 aware of his situation because she was his caregiver.
14 She had to take care of him for over a year, and just
15 because he was able to take care of the two youngest boys
16 when she went back to work, it doesn't mean that
17 everything was fully functional. He is still on
18 disability. It doesn't mean his penis was okay by that
19 point, it's just that he was capable of getting around to
20 watching the boys.

21 Now, **Minor** told us that everything stopped
22 during the time of the accident, but she actually never
23 said that until recently. It never came up, and while,
24 again, kids might not think to mention anything unless
25 they're asked, if it stopped for over a year, wouldn't

1 that be a big thing to say, or to add, instead of just
2 saying -- acting like it happened every day all the time?

3 She didn't mention that at least for that
4 year after he was in the accident that Nancy was with
5 them, and what else she didn't mention is that Carlos was
6 wearing a bag for his waste on his person. Surely she
7 would have noticed that if he was taking his penis out.
8 If she saw this bag, surely she would have mentioned
9 that.

10 Nancy told you that after the accident they
11 were not able to be intimate because they were not
12 physically able, and, again, she was his nurse, so she
13 was taking care of his waste and everything, but they
14 were intimate before the accident. They had two
15 children. They actually had two children back to back,
16 so clearly they were intimate.

17 The State -- they might try to say, if they
18 talk about that, maybe because he was just into little
19 girls, but that doesn't make sense if he was with Nancy
20 before the accident with no issues, and his penis issues
21 did continue for years. It didn't just stop in 2013.

22 She told you that after the kids were taken
23 away, actually when he started some procedures to assist
24 him, that he actually had to get some type of implant.
25 Again, this is after the kids were taken away. Why would

1 a man have to get an implant if his penis was in full
2 working condition?

3 Minor never raised the accident until it was
4 raised to her multiple times, starting with her mom. Her
5 mom, that was a big concern of hers, but at the time Minor
6 didn't get it. Minor didn't really know what she was
7 saying. While she's indicated that things were different
8 and the penis was different, she never said that before.

9 Again, she was asked several times before
10 about this accident, but she told you one time when she
11 met with Dr. Elsey, not the one time with the video but
12 later, and she specifically was asked was his penis
13 different, she said I don't know. She told us that yes,
14 she probably said that. So when she got on the stand and
15 said, oh, yeah, his penis was different, she is saying
16 that because she knows that's an issue.

17 And then what else doesn't make sense with
18 regard to his penis issues is that originally when she
19 was telling people about the whole abuse, she said that
20 he never really put his penis inside of her until she was
21 ten, until. So that would have been after 2013, but now
22 she's saying, Oh, no. He would put his penis inside of
23 me before, starting when, you know, she was young, about
24 six, and then once his accident came about, then it was
25 less.

1 So she's completely reversing it. And,
2 again, she was doing that because she knows there's an
3 issue, and she's a smart girl. It doesn't make sense.
4 And she even says -- one thing she described from the
5 beginning, Oh, he would try to put it in, but it would
6 stop because it hurt me.

7 And he said, Can I go in? And she said, No,
8 it hurts. So he would be like, Okay. That doesn't make
9 any sense, that a man would be molesting someone for
10 years and years and years and wouldn't at some point just
11 say, Okay. This is enough. I'm going to put my penis
12 in.

13 That makes no sense. What that sounds like
14 is an experience that a young person would have because
15 when they're first experimenting with sex, they don't
16 necessarily go all the way at first. It takes a little
17 while, and the guy may be trying to get it in. The girl
18 is, like, No, no, I'm not ready. That sounds like an
19 experience a girl her age might have.

20 Now, she was young. She was 11. That is
21 young, but these days, 11-year-olds, some of them can be
22 sexually active. That's not unheard of, by any means.
23 She told you she didn't consider her school to be a good
24 school. It wasn't in a great area, so there were
25 probably some people that didn't have the best

1 situations, including herself.

2 She was very poor. She hung out with boys
3 all the time, more so than girls, and what do middle
4 school boys talk about? They talk about sex. She had
5 boyfriends. She was talking about the guy on the
6 LCC video. There's, of course, the Internet these days,
7 Snapchat, all of those things. It is very likely that a
8 girl of her age in middle school would have some sexual
9 knowledge.

10 And she did give some specific details about,
11 you know, what happened, but a lot of these things she
12 would have known just by being in the room. The
13 solicitor would mention she knew where things were.

14 **SL** knew where things were too because he would go
15 into that room. This isn't a situation where she's
16 accusing a stranger, and there is no way she would know
17 what a stranger's room looked like and what he had in his
18 room unless she had been there.

19 This was her house, so of course she had been
20 there. Of course she saw the mirror in the one house,
21 and that is something -- she wasn't, again, a little
22 child. That is something that a kid may remember because
23 that's something unusual, to have a mirror on the
24 ceiling. She mentioned a pad. Clearly, there are pads
25 in the house, so of course she would have seen these

1 pads. She mentioned that he had condoms in his room, and
2 Nancy said yeah, there were condoms in there.

3 Well, she also knew the food was in the
4 closet, and she knew -- well, it's very likely -- they're
5 like, Hey, this man locks his door sometimes. It's not
6 locked now. Let's check it out, and let's look at what's
7 in there.

8 She mentioned the lube, what we know would be
9 lube. She said it was a little tube, and it started with
10 an L. Well, to me, that's one thing that stands out why
11 this story doesn't make sense because back then, if she
12 had just said that there was this tube that started with
13 an L, but the fact that she's still saying two years
14 later that she doesn't know the word by now, a bright
15 young lady like herself, in two years she likely would
16 have figured it out that it's lube. She's had since
17 then.

18 Again, she's a 13-year-old girl. To me, I
19 think that's indicative that some of this is for show.
20 She even used some language, foreshadowing, things of
21 that nature, and there's been some talk of the food
22 situation too. The whole dynamic -- what stands out to
23 me, the whole dynamic of the relationship doesn't really
24 make sense.

25 From all parties, Nancy and the kids, they

1 never really liked this man. It's not like they were
2 close and weren't close anymore, and yet she says that he
3 would call her mi amore: You're the love of my life.
4 That doesn't really make sense, that he would say those
5 things to her, and the reasons that she would just have
6 sex with him because she wanted to get candy for her
7 siblings, the siblings she often didn't even get along
8 with, including her older brother, and she said that they
9 would ask her to go get it, but SL was asked, Did you
10 ever ask her to go get it, and he said no.

11 So she makes it sound like she's a suffering
12 wife who just hates her husband, who just feels like
13 she's stuck with him, so she just gives in sometimes for
14 the peace. It makes no sense she would do these things
15 just to get her siblings candy. There was food in the
16 house. They didn't like it, but there was food in the
17 house. Her reasoning -- her reasons just don't make
18 sense.

19 And there is the issue about her pubic hair
20 was shaven. The doctors noticed that. She said Carlos
21 did it; however, this was a young lady. Nancy told you
22 how, when she got to middle school, she was interested in
23 boys and things of that nature, and she told you after
24 the allegations, after he was arrested, she would go to
25 the doctor. And she was very concerned about her body,

1 body image, reading books, so it's certainly not unheard
2 of that in middle school a middle school aged girl would
3 shave her pubic area.

4 One reason we know that a lot of this has
5 been planned and reversed is LL started her
6 testimony, basically the same way Minor did. She named
7 the people in her household, and she doesn't mention
8 Carlos. And the solicitor asked, Oh, why didn't you
9 mention Carlos? Because I don't consider him part of my
10 family.

11 They both started out their testimony the
12 same way, but most especially with LL the door.
13 From the very beginning, Minor's the one who mentioned the
14 door, not LL Minor told the DSS caseworker, Oh,
15 LL knows. She looked under a door. Ms. Cahill
16 specifically asked LL that question, and she said,
17 No, I never looked under the door. But when LL was
18 interviewed a month later, that's about when she did say,
19 yes, I looked under the door, but it would have been
20 impossible, impossible for her to see what she did, so
21 even though she got up there and the solicitor pointed
22 out that she swore, it's impossible.

23 Mr. Davis testified, he showed you the
24 picture, and that -- the lens was actually on the ground,
25 so pretty much as far down as you can get it. He told

1 you that what he could see, the human eye, which is
2 different than a camera lens, we do have more range, he
3 could see less than that. It doesn't matter that
4 LL head was smaller. She couldn't fit it through
5 under the door. It's only one inch.

6 There's no way that she would have been able
7 to see what she says she saw. She's not even just
8 saying, I saw feet. You know, she's saying that she saw
9 full emotion, that she could see Minor's face and her
10 reaction, that she could see Carlos's full body on top of
11 her. That is impossible. There is zero possibility that
12 that is true, and because of that, because of things that
13 Minor told her to say about the door, that is how we know
14 that the kids are not being truthful. They just aren't.
15 That's impossible.

16 Minor had a lot of influence over the kids.
17 SL even agreed that she was kind of a bully. Nancy
18 told you that she had a lot of influence over the kids.
19 It's not unbelievable that Minor talked to SL and
20 LL and tried to convince them to say just certain
21 things, just little things. They didn't have to go all
22 out, just little things to help, because, after all, all
23 three of them have the same goal: They wanted Carlos out
24 of the house. It's been very clear. They said that to
25 Nancy originally. They said that to everybody, and they

1 did want their dad back in their life.

2 LL agreed that just last year when
3 someone talked to her, when she was asked, What do you
4 want most? If you could have anything, what would you
5 want? And she said, If my mom could be girlfriends with
6 my dad. LL doesn't remember her dad at all. She may
7 have had some interaction with him over the phone and
8 with the family, but she has been told about her dad by
9 her older siblings. That's what LL wanted more than
10 anything, and that's what Minor wanted more than anything.

11 So what about the other evidence the State
12 has presented? Well, there isn't any. Minor said she
13 told someone before Nancy, but that was never actually
14 established because MM for example, had no clue
15 when it was, and we know the Porters was just before the
16 revelation to the police. So just because somebody tells
17 somebody something, that doesn't mean it's true. She
18 could have been trying to get attention, sort of feeling
19 it out, seeing if people would agree, or, you know, what
20 they would say if she told them to see their reaction.
21 She didn't want to tell another adult, but her friends
22 were, like, Hey, this is pretty serious.

23 They took her to their mom, and their mom's
24 reaction? Well, tell somebody. That doesn't mean she
25 believed her. If anything, it might indicate she didn't

1 believe her because she didn't do anything. She didn't
2 call the police. She didn't try to talk to Nancy. She
3 didn't do anything. She just gave her some clothes
4 because she felt sorry for them and said, Well, really,
5 you should tell somebody, and that was it.

6 Then Dr. Abel testified. Essentially her
7 testimony is just because nothing's there doesn't mean it
8 didn't happen. So she did say, and the solicitor brought
9 this up, if something had happened within 24 hours, maybe
10 something would have been there. And while initially
11 **Minor** claims that nothing really happened within 24 hours,
12 there was just the breast incident, now she's saying that
13 something did happen. She didn't go into a lot of
14 details, but something did happen the morning she saw the
15 nurse.

16 So if that was true, then maybe there should
17 have been something. So they didn't think about -- they
18 didn't think anything of it before, but now her
19 allegations have changed completely. And then the DNA,
20 again, just because it's there doesn't mean it didn't
21 happen.

22 So it really can't say anything either way.
23 Just like Dr. Abel's testimony, Dr. Swiecicki talked
24 about delayed disclosure, that essentially some kids tell
25 right away. That doesn't mean it happened or it didn't.

1 Some kids tell right away, and that doesn't mean it
2 didn't happen. She said three-fourths of kids don't
3 tell. There's some studies. Some studies say more than
4 half of kids do tell.

5 LL [REDACTED] said she didn't tell because she
6 didn't want to betray her step-dad. She didn't like her
7 step-dad. She never did. She never had a connection
8 with him. That doesn't make sense, but that's the
9 reason, and then she mentioned threats. Actually,
10 originally, she said he did threaten to hurt her rabbit
11 and her siblings, but she said, Well, he didn't actually
12 threaten. He just gave me looks, and I could tell that
13 was threatening.

14 But if was changing, actually making Carlos
15 sound a little better, it didn't change because she's
16 trying to make him sound better, it changed because she
17 can't remember that nothing happened.

18 The State has to prove to you beyond a
19 reasonable doubt that these things happened. To have
20 someone arrested, again, it just takes somebody saying
21 something, but it takes much more. Judge Young explained
22 to you at the beginning of this trial, and he'll tell you
23 again, what a serious burden that is. Would a serious
24 person hesitate: That's essentially what it is. Would a
25 serious person hesitate?

1 They have to prove criminal sexual contact in
2 the first degree before she turned 11 and then criminal
3 sexual conduct in the second degree. That's after she
4 turned 11, even though they haven't really given any
5 details about what may have happened after she turned 11
6 because that was just about six months before the
7 allegation to the police. In general, she just said it
8 happened in the house where she was living at between the
9 ages of 10 and 11. She said it happened all the time.
10 She never specified digital penetration or sex or
11 cunnilingus. She never even clarified the CSC second.

12 This case is a very difficult case. I can
13 tell a lot of you have been very uncomfortable throughout
14 this trial. That's very understandable. It's difficult
15 for everybody. Their family has been destroyed by this,
16 and it has deeply affected all of them, not just the
17 kids, not just Carlos who was arrested, but Nancy as
18 well. It's destroyed them.

19 And even if Carlos weren't in the picture, it
20 doesn't even mean they go back to Nancy. The kids are
21 probably hoping for that. That's why they have
22 maintained that they want to go back, but they only want
23 to go back if Carlos is not there. It's not the case of,
24 Okay. We'll go back, and this happened, because they
25 don't want Carlos there. Ultimately, the kids want their

1 mom.

2 Even though things weren't the greatest in
3 the house -- **Minor** said it was boring; they didn't have a
4 lot of money -- in some ways, things are better at the
5 house where they are, but, ultimately, a mom can't be
6 without her kids, so they want her back. The kids are
7 obviously upset, but the kids are upset for a variety of
8 reasons, not necessarily because anything happened
9 sexually to **Minor**. They're upset because of everything,
10 all of the circumstances, and in this case, you have to
11 look at all of the circumstances to determine
12 credibility, determine motive, because motive is very
13 important.

14 What reason does somebody have? The kids
15 have much motive. Nancy has none. She has risked
16 everything. Nancy knows her children. She knows **Minor**
17 better than everybody else here. You saw a few hours of
18 **Minor's** testimony, but other than that, you don't know
19 **Minor**. I don't know **Minor**. Her mom knows **Minor** and her
20 mom was there during that initial disclosure because
21 that's the first -- that's the disclosure we have on
22 record as being -- she said she told some friends, but,
23 again, no one corroborated that.

24 So her mom was there. Her mom saw her
25 reactions, her behavior, heard her words. Her mom talked

1 to her. Nancy has put everything out there for the truth
2 because the solicitor mentioned throughout the testimony
3 unconditional love. Unconditional love doesn't mean
4 blindly accepting everything everybody says. There are a
5 lot of parents who have kids who are really messed up.
6 I'm a public defender. I see that all the time.

7 They could be addicts; they could be thieves;
8 they could murder someone. Parents sometimes are in very
9 difficult situations, even simpler things like school.
10 The teacher is saying something. Do you just blindly
11 support your kid and not believe the teacher? Sometimes
12 you have to do what's right, and even though, again, as a
13 parent, you might think, Okay, I'm just going to say I
14 believe her, even though I have my doubts, there is a
15 point when you can't stand for someone destroying someone
16 else. You can't just blindly stand by them. You can
17 blindly love them, as she said. She started out, Do you
18 love **Minor** She felt it was important to tell the Court
19 she did. She told you and she wanted **Minor** to hear that
20 because she loves her daughter. Nancy has nothing,
21 nothing to gain. That's why she is the most credible.

22 I understand this is a very difficult case.
23 Like I just mentioned, your job is to look at the
24 evidence to determine if there's proof, if there's proof
25 beyond a reasonable doubt, and even though it's

1 difficult, it's not about thinking about how the children
2 are going to be affected. That's irrelevant in your
3 decision. You're here to determine if the witnesses are
4 credible, essentially, because this, again, is
5 essentially he said/she said.

6 There's no physical evidence. All the other
7 witnesses basically say, Well, we can't really say
8 anything. Are the witnesses credible? Nancy is credible
9 because she has nothing to gain. Those kids are not
10 credible, and they're hurt, understandably, but you can't
11 take their word to convict a man beyond a reasonable
12 doubt, and so Carlos Ruiz is innocent of these charges.
13 He did not molest **Minor** and we would ask you to find him
14 not guilty on all charges.

15 Thank you.

16 THE COURT: All right. Before we have reply
17 and then closing arguments, I think we need to take a
18 ten-minute break to use the rest room. We've been here
19 for almost two hours, so, again, don't begin
20 deliberations or discussions about the case. We'll have
21 you back in about ten minutes.

22 (In open court, jury present.)

23 MR. SMIT: Just to explain what was going on,
24 Nancy Lorenzo had an asthma attack, or some kind of
25 attack, so she's out in the lobby. EMS is being called,

1 so Ms. Ford and our client, they're currently out there
2 with her.

3 THE COURT: Is somebody attending her now
4 medically?

5 MR. SMIT: I believe EMS has been called and
6 is attending.

7 (Recess taken.)

8 THE COURT: What's up with Ms. Lorenzo now?

9 MS. FORD: She had some type of panic attack
10 so they called EMS.

11 THE COURT: Okay. So let's go ahead now and
12 resume and finish with the reply. How long do you
13 anticipate?

14 MS. HERRING-LASH: Your Honor, it's five
15 pages, double-spaced. So maybe five, ten minutes, at the
16 most.

17 THE COURT: Okay. All right. Bring the jury
18 in.

19 (In open court, jury present.)

20 All right, folks. We are now going to resume
21 with the State having the right to reply to the defense's
22 argument, so, Madame Solicitor, if you're ready, you may
23 begin.

24 MS. HERRING-LASH: Thank you, Your Honor.
25 I'll just leave that there for now.

1 Y'all can just decide and assess for
2 yourselves what motive Nancy Lorenzo has or doesn't have,
3 and you can determine how much she loves her daughter by
4 the quotes from the defense from her about her daughter,
5 or what she said about her daughter on the stand.

6 Unfortunately, all mothers don't love and
7 protect their children, even when they have every reason
8 in the world to. Some mothers lie for their kids to
9 protect their man. Ms. Smalls told you there's much more
10 than clarification needed. There was still counselling
11 that had not been completed. As far as the MUSC referral
12 being held, there was no mention of this child talking
13 about being sexually assaulted. All Nancy wants to tell
14 you is she was getting help.

15 Once again -- and I almost hate to mention
16 this again, is a CDV that happened when this child was
17 two that was the cause of all these problems. That is
18 preposterous. **Minor** doesn't remember her father or that.
19 Dr. Swiecicki also explained to you that children can be
20 even in counselling and not disclose.

21 **Minor** explained to you what happened. What
22 you heard about her saying, Oh, this is an act, that was
23 just for Nancy, only for Nancy, and you have to judge why
24 she may or may not say that. She assured **Minor** at that
25 one point in time that Ms. Ford talked about, well, the

1 story changed so much from they were on the couch and
2 close together, and she added the details of the watch,
3 and her mom says to her, You can always tell me, and
4 Ms. Ford said, well, that would be not sensible, that she
5 could tell her that and then Minor could tell her
6 anything. Well, Minor told her and she didn't pay
7 attention.

8 MS. FORD: That's misstating my close, Your
9 Honor. Objection.

10 THE COURT: Pardon?

11 MS. FORD: In her rebuttal, she's misstating
12 what I stated.

13 THE COURT: Overruled.

14 MS. HERRING-LASH: She wants -- and I agree
15 that it is unfortunate that Nancy treated it that way,
16 but she did. DSS and Officer Crider both said they
17 didn't do full interviews, and the question is really not
18 the first time you remember. The candy incident, she did
19 give you details. She was sitting in the living room,
20 and he called her to the bedroom and said, That really
21 isn't candy, so she did give you details about that.

22 As far as others being in the house and it
23 just couldn't happen before school because other people
24 were there or after of school because other people were
25 there or it couldn't have happened when Nancy was there,

1 well, we know that it happened when SL and LL
2 were there. They told you. They were waiting on the
3 candy. They were there.

4 Unfortunately, things like this happen when
5 other people are in the home, and Minor didn't always say
6 it was before or after school. She gave you instances of
7 in the night when her mom would be asleep or in the early
8 morning when her mom would be asleep. SL never told
9 you he knew where these condoms were. He never told you
10 he knew where any lubricant was.

11 There's evidence -- no, excuse me, no
12 evidence that you have heard that Minor was asked
13 repeatedly and repeatedly about the acts. There's
14 nothing in the record that she's been asked about that
15 repeatedly, and look at the tape. She does talk about
16 his penis during the tape, and as far as the nurse goes,
17 she absolutely told the nurse about the last event, and
18 it was the kissing on the breast. She didn't remember
19 the day or the day before, but that was the last event,
20 and that is what the nurse told you. The nurse told you
21 the other things occurred, but the last event was the
22 kissing of the breast. You need to depend on your
23 memory, not what Ms. Ford said and not what I say, but on
24 your memory of what people say.

25 This home was dysfunctional, and these

1 children did not like Carlos, but maybe that's because of
2 Carlos. **Minor** wanted him out of the house. That's
3 because of Carlos and what he did, and just to remind
4 you, even though you didn't hear his name much during the
5 closing argument of Ms. Ford, he's the defendant, not
6 **Minor** You absolutely can convict on what evidence you
7 have, on what **Minor** told you happened. You can convict
8 and you can reach --

9 MS. FORD: Your Honor --

10 THE COURT: Is there an interpreter problem?

11 THE INTERPRETER: An equipment problem.

12 Thank you, Your Honor.

13 MS. HERRING-LASH: We haven't had a lot of
14 technology this week, but, as I was saying, you have
15 enough evidence from Irza's mouth and all the things that
16 corroborate. There's no doubt that she was locked in
17 that room and that her sister and brother knew, and she
18 came out with candy and a lot of other stuff.

19 I've already had my moment. I'm not going to
20 take up any more of your time but to tell you look at the
21 evidence and do judge the credibility and what people
22 have to gain or lose. This child 's lost more than
23 enough.

24 Thank you.

25 THE COURT: All right. Now, folks, the final

1 phase of the trial before you begin your deliberations is
2 for me to charge you on the law. That is my job as the
3 role of the trial judge. Yours is to decide the facts
4 and render a verdict. I have no opinion as to what the
5 facts should be. The law does not permit me to have an
6 opinion on the facts, and if I have done or said anything
7 this week that gives you the impression that I have some
8 sort of impression about this case, then you are to
9 disabuse yourself of that and you misread whatever you
10 were thinking. All right?

11 I will tell you again that my job is to
12 preside over the trial and rule on such things as the
13 admissibility of evidence and to follow the procedures
14 that we have during the trial. You are to consider, as
15 the triers of the facts, only the evidence that is before
16 you presented in this courtroom. You are to consider
17 only the testimony that was elicited from the witness
18 stand, any exhibits that were made part of the record,
19 and any stipulations that were admitted into the record.

20 Now, I also have the additional duty to
21 charge you on the law that applies to this type of case,
22 and it is your duty as jurors to accept the law as I now
23 state it to you. If you think you have some idea of what
24 the law is or what it ought to be and it does not agree
25 with what I now tell you the law is, you must forget that

1 idea because you are sworn to apply and accept the law as
2 I now charge you.

3 Again, you are the sole judges of the facts,
4 and, again, I do not comment on facts or make any
5 statements throughout the trial about the facts in a
6 case. Since you, the jury, are the sole judges of the
7 facts, you may not infer from what I said during the
8 progress of the trial in ruling on admissibility and the
9 evidence or anything that I said or that anything that I
10 now say in instructing you on the law that I have an
11 opinion about the facts in this case.

12 Again, the law does not permit me to have an
13 opinion about the facts in the case. This is solely a
14 matter for you to determine. You, the jury, have the
15 duty to determine the effect, the value, the weight, and
16 the truth of the evidence that was presented during the
17 trial. Now, I want to remind you that the fact that the
18 defendant was arrested, charged, and indicted in this
19 case is not evidence in the case, and it cannot be
20 considered by you as evidence of guilt in this case, nor
21 does it create any presumption or inference of guilt.

22 The indictments are simply the formal written
23 notice by which the charges are made against the
24 defendant. It is the formal document that gives this
25 Court jurisdiction to hear this kind of case. There were

1 six different indictments in this case. There were three
2 indictments for criminal sexual conduct with a minor in
3 the first degree. Those are indictments 2017-GS-10-875,
4 876, and 877, and then there were three separate
5 indictments for criminal sexual conduct with a minor in
6 the second degree. Those were indictments
7 2017-GS-10-878, 879, and 880, and I will go over the
8 elements of the substance of what those charges are in
9 just a couple of minutes.

10 Again, those indictments are not evidence.
11 They are not to be considered by you as evidence, and
12 they are the only pieces of paper that will go back into
13 the jury room with you that are not evidence. They are
14 simply going back there for the purpose of the foreman
15 writing what the verdict is, which would be either guilty
16 or not guilty.

17 Now, the defendant pled not guilty to each of
18 those indictments, and that plea put the burden on the
19 State to prove that defendant is guilty beyond a
20 reasonable doubt. A person that is charged with
21 committing a criminal offense in South Carolina is never
22 required to prove himself innocent. This is an important
23 rule of law in this country. The defendant in a criminal
24 trial is always presumed to be innocent for the crime for
25 which he is indicted unless and until his guilt has been

1 proven by evidence satisfying you of that guilt beyond a
2 reasonable doubt.

3 This presumption of innocence is not just
4 some mere legal theory that we have. It's not just a
5 legal phrase. This is a substantial constitutional right
6 to which every defendant is entitled. This presumption
7 of innocence accompanies the defendant from the time he
8 is charged throughout the trial and unless and until you
9 reach a verdict of guilt based upon evidence satisfying
10 you of that guilt beyond a reasonable doubt.

11 Now, you've heard me say a number of times
12 the State has the burden of proving guilt beyond a
13 reasonable doubt, and I told you at the beginning of
14 trial that there may be some of you that have served on a
15 jury in a civil case where you were told that it is only
16 necessary to prove that a fact is more likely true than
17 not true, such as by the greater weight or preponderance
18 of the evidence.

19 Well, in criminal cases, the State's proof
20 must be more powerful than that. It must be beyond a
21 reasonable doubt. Proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the defendant's
23 guilt. Reasonable doubt has been defined as the kind of
24 doubt that would cause a reasonable person to hesitate to
25 act.

1 There are few things in this world that we
2 know with absolute certainty, and in criminal cases, the
3 law does not require proof that overcomes every possible
4 doubt. If, based on your consideration of the evidence
5 you are firmly convinced that the defendant is guilty of
6 the crimes charged, then you must find the defendant
7 guilty. If, on the other hand, you think there is a real
8 possibility the defendant is not guilty, then you must
9 give the defendant the benefit of the doubt and find him
10 not guilty.

11 Now, I want to instruct you again and
12 emphasize that the fact that the defendant did not
13 testify is not a factor to be considered by you in any
14 way during your deliberations in your consideration on
15 the question of the guilt or innocence of the defendant.
16 It must not be considered by you in any manner
17 whatsoever. A defendant has a constitutional right to
18 remain silent, and the assertion of this right must not
19 be considered by you in your deliberations.

20 I repeat, under the oath that you just took,
21 you are to draw no conclusion whatsoever to the fact that
22 the defendant in this case did not testify. The fact
23 that the defendant did not testify should not even be
24 discussed in the jury room. The burden of proof, as I
25 stated, is on the State. The defendant is not required

1 to prove his innocence, and this burden of proof, again,
2 remains on the State to prove guilt beyond a reasonable
3 doubt.

4 Now, in a trial, we usually have two types of
5 evidence: There's direct evidence, and there's
6 circumstantial evidence. Direct evidence directly proves
7 the existence of a fact, and it does not require
8 deduction. Circumstantial evidence is proof of a chain
9 of facts and circumstances that indicate the existence of
10 a fact. Crimes can be proven by circumstantial evidence,
11 and the law doesn't make any distinction between the
12 weight or value that is to be given to either direct or
13 circumstantial evidence; however, to the extent the State
14 relies on circumstantial evidence, all of the
15 circumstances must be consistent with each other, and,
16 when taken together, point conclusively to the guilt of
17 the accused beyond a reasonable doubt.

18 If all of the circumstances merely portray
19 the defendant's behavior as suspicious, the proof has
20 failed. The State has the burden of proving the
21 defendant guilty beyond a reasonable doubt, and this
22 burden rests with the State regardless of whether the
23 State relies on direct evidence, circumstantial evidence,
24 or some combination of the two.

25 Now, it's also necessary for you to determine

1 the credibility of witnesses who testified in this case.
2 Credibility simply means believes believability, and it's
3 your duty as jurors to analyze and evaluate the evidence
4 and determine what evidence convinces you of its truth.
5 In determining the believability of witnesses who
6 testified in this case, you can believe one witness over
7 several witnesses or several witnesses over one witness.
8 You can believe the testimony of a witness in its
9 entirety, or you can reject the testimony of a witness in
10 its entirety.

11 You may believe part of the testimony of a
12 witness and reject the remaining part of the testimony of
13 that same witness. If you reject part of it, you can
14 still accept the remainder of a witness's testimony. You
15 can consider whether any witness has exhibited to you any
16 interest, bias, prejudice, or other motive in the case.
17 You can consider things like appearance and demeanor of a
18 witness on the witness stand. You are not bound to
19 decide this case based on the number of witnesses that a
20 side produces.

21 We also talked about expert witnesses, and I
22 told you that people aren't ordinarily allowed to come in
23 and give you their opinions about the facts, but we do
24 make an exception for expert witnesses, and these are
25 people, as I told you, because of experience or training

1 or education in some area they are allowed to give their
2 opinion and state the reasons for their opinion.

3 You can give an expert's testimony as much or
4 as little weight as you think it deserves. If you don't
5 believe it's based on specific education or experience or
6 you conclude the expert's opinions are not sound or it's
7 outweighed by other evidence, you can disregard the
8 opinion entirely. You are not compelled to blindly
9 accept an expert's opinion, and you have the right to
10 consider testimony in light of all of the circumstances
11 and give it such weight, if any, that you think it's
12 entitled to.

13 Now, criminal intent is a necessary element
14 of every crime, and it must be proven by the State beyond
15 a reasonable doubt. Criminal intent is always a matter
16 that must be determined by the jury from circumstances
17 surrounding the situation. There's no way to prove
18 intent to a mathematical certainty. There's no way
19 medical science can dissect a person's brain and
20 determine what a person had in mind, so the law says that
21 criminal intent can be inferred from circumstances shown
22 to have existed both before and after the fact. This is
23 how you make a determination of whether or not the
24 element requiring intent was present.

25 Criminal intent is a state of mind that

1 operates jointly with an act or omission in the
2 commission of a crime. Criminal intent is a mental state
3 of conscious wrongdoing, so it is up to you, the jury, to
4 determine what the defendant intended to do based on the
5 circumstances shown to have existed.

6 Now, the defendant is charged, as I said,
7 with three counts of criminal sexual conduct with a minor
8 in the first degree, three counts of criminal sexual
9 conduct with a minor in the second degree. When two or
10 more acts of criminal sexual conduct occur at the same
11 time, each act is a separate crime rather than one
12 continuing crime.

13 So let's go over, first, criminal sexual
14 conduct with a minor in the first degree. Again, the
15 defendant's charged with three counts of that. In order
16 to prove criminal sexual conduct with a minor in the
17 first degree, the State must first prove beyond a
18 reasonable doubt that the defendant engaged in a sexual
19 battery with the victim. Now, victim means the person
20 alleging to have been subjected to criminal sexual
21 conduct. Sexual battery means sexual intercourse,
22 cunnilingus, fellatio, anal intercourse, or any
23 intrusion, however slight, of any part of a person's body
24 or of any object into the genital or anal openings of
25 another person's body except when the intrusion is

1 accomplished for medically recognized treatment or
2 diagnostic purposes.

3 The State must then prove beyond a reasonable
4 doubt that the victim was under the age of 11 years old
5 at the time of the sexual battery. Now, I charge you
6 that consent, willingness, indifference, or ignorance on
7 the part of the minor, if any, as to what was taking
8 place does not in any way affect the charge of criminal
9 sexual conduct with a minor because a minor under the age
10 of 14 cannot legally consent to sexual intercourse.

11 The second set of indictments charged the
12 defendant with criminal sexual conduct of a minor in the
13 second degree. In order to prove that charge, the State
14 must first prove beyond a reasonable doubt that the
15 defendant engaged in sexual battery with the victim, and,
16 again, victim means a person alleging to have been
17 subjected to criminal sexual conduct, and, again, a
18 sexual battery is sexual intercourse, cunnilingus,
19 fellatio, anal intercourse, or any intrusion, however
20 slight, of any part of a person's body or any object into
21 the genital or anal openings of another person's body
22 except when the intrusion is accomplished for medically
23 recognized treatment or diagnostic purposes.

24 Then the State must prove beyond a reasonable
25 doubt that the victim was at least 11 years old but not

1 more than 14 years old at the time of the sexual battery,
2 and, again, I charge you that consent, willingness,
3 indifference, or ignorance on the part of the minor, if
4 any, as to what is taking place does not in any way
5 affect the charge of criminal sexual conduct with a minor
6 because a minor under the age of 14 cannot legally
7 consent to sexual intercourse.

8 Now, in determining your verdict of guilty or
9 not guilty, you cannot consider any possible penalty or
10 any particular crime. Punishment for the crime is for me
11 to determine and should never be considered by you in any
12 way whatsoever in arriving at a verdict of guilty or not
13 guilty. Your verdict must be unanimous. In other words,
14 all 12 of you must agree.

15 Now, Madame Foreman, when the jury reaches a
16 verdict, I want you to write on the verdict -- or the
17 indictment, you'll see this is the back here, and you'll
18 see there's a red stamp where the grand jury foreman
19 marked it true billed? Right underneath it is a place
20 where it says verdict, and that's where you write what
21 the verdict is, and the choices are guilty or not guilty.

22 After you reach a verdict, you write that
23 down and sign it and date it. Once you have reached a
24 unanimous verdict as to all six indictments, then you let
25 the bailiff know you have reached a verdict.

1 Now, I'm going to send you back to the jury
2 room. Don't begin your deliberations just yet because I
3 have to give the lawyers the opportunity to tell me if I
4 misspoke in any way, and then we'll get this evidence
5 together here and send it back to you along with word
6 from the bailiffs that I have told you it's okay to begin
7 your deliberations. Don't begin deliberations until I
8 send word back.

9 You also will have available the ability to
10 watch the video, but you'll just need to let us know so
11 we can set that up for you if you want to watch it. We
12 won't send anything back with you unless you ask for it.
13 I'll also send back a copy of my written jury
14 instructions.

15 So, again, your lunch may be here. If not,
16 it will be here very shortly. You can eat during your
17 deliberations, or, if you would prefer to eat and then
18 begin your deliberations, that's fine; however, don't do
19 any deliberations first until I send word back, and all
20 12 must be in the jury room whenever any deliberations
21 take place.

22 Okay? So, if you would, go back with the
23 bailiffs just now, and I'll send the word back to you.

24 (In open court, jury not present.)

25 All right. Is there anything from the State?

1 MS. HERRING-LASH: No, Your Honor.

2 THE COURT: From the defense?

3 MS. FORD: No, Your Honor.

4 THE COURT: All right. Will y'all please
5 check and make sure we have the evidence there together.
6 Tell them they can begin their deliberations, and let the
7 record reflect I have discharged the alternates.

8 (Whereupon, at 12:21 p.m., the jury begins
9 deliberations.)

10 (In open court, jury not present.)

11 THE COURT: All right. Got a question from
12 the jury, or a note from the jury: They want three
13 pieces of information. Confirm **Minor's** birthday and date
14 of defendant's accident, and the date Nancy Lorenzo,
15 mother, in parentheses, went back to work.

16 I remember **Minor's** birthday was **[REDACTED]**
17 2003, correct?

18 MS. HERRING-LASH: Yes, Your Honor. It was
19 the second question I asked.

20 THE COURT: As to question two, was that in
21 evidence, the date of the defendant's accident?

22 MS. FORD: I believe Nancy testified it was
23 in the summer of 2012.

24 MS. HERRING-LASH: I thought she said July.
25 I could be wrong, though.

1 THE COURT: July of what year?

2 MS. FORD: 2013.

3 THE COURT: Nancy Lorenzo, the mother, went
4 back to work?

5 MS. FORD: August of 2013.

6 MS. HERRING-LASH: She may have said the
7 date.

8 MS. FORD: I think she gave a specific date.
9 I doubt the actual date would make a difference.

10 MS. HERRING-LASH: Ms. Savas thought it was
11 the 15th.

12 MS. FORD: We're not sure of the exact date,
13 but I know she testified to August 2013.

14 THE COURT: August 2013. Is that okay with
15 everybody, answer it that way?

16 MS. HERRING-LASH: Yes, Your Honor.

17 THE COURT: Date of birth, [REDACTED];
18 defendant's accident, July 2012; mother went back to work
19 August 2013.

20 All right. You want to put a sticker on
21 that. I will give back to the bailiff to take back to
22 the jury.

23 (Court's Exhibit No. 1 was marked for
24 identification and admitted into evidence.)

25 (At 2:10 p.m., the jury continues

1 deliberations.)

2 (In open court, jury not present.)

3 THE COURT: Let the record reflect the
4 defendant's in the courtroom. Bring the jury in.

5 (At 3:24 p.m., in open court, jury present.)

6 THE COURT: All right. Madame Foreman, I
7 understand the jury has reached a verdict.

8 THE FOREMAN: Yes, sir.

9 THE COURT: Is it unanimous?

10 THE FOREMAN: Yes, sir.

11 THE COURT: Is it for all six indictments?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Defendant will rise.

14 All right. As to indictment 2017-GS-10-877,
15 criminal sexual conduct with a minor in the first degree,
16 the verdict is guilty. Indictment 2017-GS-10-877 -- or,
17 excuse me, 876, criminal sexual conduct with a minor,
18 first degree, verdict is guilty; indictment
19 2017-GS-10-875, criminal sexual conduct of a minor, first
20 degree, guilty; as to indictment 2017-GS-10-878, that's
21 criminal sexual conduct with a minor, second degree,
22 verdict is guilty; as to indictment 2017-GS-10-879,
23 CSC with a minor second, guilty; indictment
24 2017-GS-10-880, criminal sexual conduct with a minor
25 second degree, verdict is guilty. You may be seated.

1 All right.

2 MS. FORD: Mr. Clerk, will you poll the jury,
3 please.

4 THE CLERK: What we'll do now is called
5 polling the jury. When I call your juror number, please
6 raise your hand. I'll acknowledge you. You then put
7 your hand down. I'll then ask you two questions. One
8 will be were those your verdicts, and the second question
9 will be are they still your verdicts.

10 Please answer each question verbally.

11 (Whereupon, the jury was polled.)

12 Was there any juror whose number I did not
13 call? Please raise your hand. Your Honor, the jury was
14 polled, and the verdicts stand.

15 THE COURT: All right. Well, ladies and
16 gentlemen: I want to thank you for your service for the
17 State of South Carolina this week. These are extremely
18 difficult cases, and this was certainly not easy. No
19 cases are really easy and some are harder than others,
20 but it's my experience these types of cases rank among
21 the most difficult.

22 This certainly was a difficult case on these
23 facts, and you are to be commended for your service this
24 week. It is a lot to ask of people, to come in, first of
25 all, and serve on a jury and be out of work all week long

1 and be with us, but to set and listen to a lot of facts
2 that you had to listen to, it's extremely difficult.
3 This isn't what people do in their normal lives, and I
4 know it will probably stay with you for a while, and
5 people have always -- it's not unusual to have doubts
6 about your verdict. That's usually what people ask me if
7 I run into them later on: Did we do the right thing?

8 And I always tell them, look, 12 people all
9 came to the same conclusion, you know. That's all we can
10 ask of people, is to go through the process, and, you
11 know, I hope that you feel some comfort about your
12 decision when you come back and review the process. We
13 presented evidence to you in the best format that our
14 rules provide, which are time tested, really, over
15 hundreds of years, and there's a method to getting
16 evidence here, the form that we use, the process that we
17 use.

18 It's not like TV, and there's some
19 similarities, but it's a much more thorough and
20 time-consuming process, and we don't finish it up in 52
21 minutes with commercials every 12 minutes. It's a
22 serious business that we do, and it is clear that y'all
23 took the time and effort to pay attention this week and
24 to seriously deliberate the evidence and your verdict.

25 Part of my job, as I told you, is to watch

1 what's going on, make sure the process, our rules are
2 followed, but from time to time, I also check and make
3 sure that people are awake, and sometimes you have people
4 fall asleep, but I've never in one instance caught
5 anybody staring out in the distance this week. It was a
6 stressful week, and the evidence was compelling that
7 y'all had to hear, and if you ever have jury service
8 again, I hope it's a lot less stressful of a case.
9 That's my hope for you.

10 So I want to thank you for your service. You
11 are free, of course, for the rest of the week. You'll
12 remember from Monday's qualifications you are now
13 disqualified for the rest of the year, so if you get
14 called for jury service, you can't; however, you remember
15 the second part of the equation was exemptions, and
16 you're excused for three years, but I also told you you
17 don't have to exercise those exemptions. So if you do
18 happen to get picked in the next few years, I hope it was
19 an enjoyable enough experience that you want to do it
20 again. It's very, very common in my experience to have
21 jurors tell me, I didn't want to do it when I first got
22 the notice, but I'm glad I did it, and I learned about
23 the system, and they usually indicate to me they feel
24 better about the system.

25 You know, we take a lot of hits in the press

1 over the country with some of the isolated cases that
2 come out, but, you know, it's a process, and it works and
3 it's time tested. It doesn't mean things can't be
4 tweaked every now and then, but it's a process. It's a
5 good process, and I hope that your experience this week
6 leads you to believe in the process and feel better about
7 your government. I also hope that you enjoyed the
8 experience.

9 You know, sometimes people might contact you
10 afterwards and say, you know, what was the best part of
11 the experience? What did you enjoy? Invariably they
12 say, We like the bailiffs the best, because it is their
13 job to make sure you got what you needed, and we do have
14 a wonderful staff here. Everybody is -- you know,
15 they're focussed on making your job here pleasurable. We
16 understand we disrupted your life this week, and so you
17 can go back to your normal world, but I hope you will
18 tell people about it.

19 You can now talk to anybody you want to.
20 I've been telling you all week long: Don't talk to
21 anybody. You can talk to whomever you want to, post on
22 social media, do whatever you want, and I hope it's all
23 favorable. If it's not, well, then, let me know, and we
24 will try to do better, but I hope that you learned
25 something from the process. We certainly do appreciate

1 it.

2 Now, occasionally, somebody, usually from the
3 lawyers' office, either the prosecution or the
4 defendant's, might contact you, either they or one of
5 their investigators, to say Would you mind talking with
6 us about the case so that they can then -- it helps them
7 to do a better job in the future, and so if they contact
8 you, feel free to talk to them, if you desire.

9 If you do not wish to, just tell them you
10 would rather not and they'll go away, but you're not
11 doing anything wrong to talk to anybody about the case,
12 including the lawyers or someone from their offices. If
13 anybody does continue to call you or talk to you about
14 the case or anything like that and you don't want to, you
15 let me know. We will take care of it, okay?

16 Well, you're free to go. I want to thank you
17 again for your service. If you need something from work
18 or anything, the clerk's office will be able to get that
19 for you. So thank you again for your service.

20 (Jury dismissed.)

21 THE COURT: All right. We'll hear from
22 Ms. Ford, if you have any motions you want to make before
23 we have move into sentencing.

24 MS. FORD: I just move for a new trial based
25 on my objections and motions.

1 THE COURT: Well, for the same reasons I
2 stated during the trial, I will deny the motions.

3 So is the State ready to move to sentencing?

4 MS. HERRING-LASH: Yes, Your Honor. May I
5 confer for one second?

6 THE COURT: All right.

7 MS. HERRING-LASH: I was just conferring with
8 the victim, and I think she would like to say something,
9 if that is what you would rather hear first.

10 THE COURT: That's fine.

11 MS. HERRING-LASH: Minor

12 THE WITNESS: Thank you so much. I finally
13 got the justice I wanted. I hope he's punished. I
14 really am thankful right now. Thank you so much. Thank
15 you. It's justice already. Thank you. I hope he's
16 punished for what he did to me and my family.

17 THE COURT: All right. Thank you. I know it
18 was a difficult week for you. Would you like to say
19 something else, or is there anyone else?

20 MS. HERRING-LASH: I don't think anyone else
21 wants to speak. As far as his record, I really don't
22 think -- the only arrest he has, for very minor
23 misdemeanors, from Florida, and they don't show
24 dispositions, so I would say he has no prior convictions,
25 but the State would like to ask for a very, very high

1 sentence because this was egregious assaults that went on
2 from the time that this child was, you know, a tiny,
3 tiny, little girl.

4 There was never any compassion or leniency
5 shown to her, and I don't think he deserves any leniency
6 or compassion and that he showed none to her or to the
7 other members of the family. Thank you.

8 THE COURT: All right. Ms. Ford?

9 MS. FORD: Thank you, Your Honor.

10 Carlos is 61 years old. As you heard, he has
11 no history. He has no prior allegations of this sort at
12 all. With the CSC first charges, obviously it's a charge
13 that carries 25 years to life, so a 25-year sentence,
14 quite frankly, in itself is a death sentence, or a life
15 sentence, usually.

16 You heard about his accident, of course,
17 about the medical difficulties he has. He still suffers
18 from that, and that's why he receives disability. In
19 addition, he's diabetic, so I just say that, quite
20 frankly, I don't think he'll last that long. Normally,
21 older gentleman don't. Carlos is from Nicaragua, as he
22 mentioned at the beginning of this trial. He's been in
23 the United States for a while, and his family is here,
24 Your Honor, and supportive of him.

25 I know this is very difficult for him. After

1 his arrest, he was in jail for 145 days, Your Honor.
2 When he got out, he was always very responsible, took
3 these charges very seriously, and he always stated, you
4 know, if I was guilty, I would have left. And I think a
5 lot of people would have left, and he stayed around, Your
6 Honor, to face these charges.

7 And, as everyone has said, this has been
8 extremely distressing for all parties. It's been quite
9 heartbreaking what has been done with the family, as far
10 as Nancy in particular, but she and Carlos, they have
11 tried in the past few years. They've gone to Bible
12 classes. They go to classes to try to learn the Bible.
13 So he does believe in God, Your Honor, and that is a
14 source of comfort.

15 We would ask if you would just impose the
16 25-year sentence concurrent together, that with the fact
17 it would be a miracle, I think, if he made it past that,
18 but, in addition, if he would ever be released, he would
19 be deported since he's not a citizen and this charge
20 would require deportation, so we would just ask you to
21 consider that.

22 MS. HERRING-LASH: Your Honor, I have this --

23 THE COURT: It looks like Mrs. Lorenzo would
24 like to say something.

25 THE WITNESS: Am I going to say something to

1 you?

2 THE COURT: Go ahead.

3 THE WITNESS: Respectfully, and I am a mom,
4 and I want to state one more time that I love my
5 children, but how sad that this moment has come and they
6 are not regretful. I have a lot of proof that can be
7 useful to open the case. Maybe when I was over there
8 there were a lot of things that I was not able to answer
9 because of my health condition and also because I have a
10 lot of doubts with regards to the police.

11 Years ago, I met her and I had a close
12 relationship with her, with one of their family members.
13 That's why I have a lot of doubts regarding this, when
14 all of this happened and I came up with some conclusions
15 and I realized that something was not right. And I took
16 notes about everything with this police officer, the one
17 who received **Minor** So I remember her very well. That's
18 why I was confused with all of this.

19 THE COURT: Let me stop you because I
20 would -- this is to address me about the sentencing. The
21 trial is over with, and the jury has spoken, so it is up
22 to me to impose sentence. If you have any information
23 that you think might be helpful, then please give it to
24 Mr. Ruiz's lawyers, and they can perhaps use that in the
25 appellate process, but I am bound by the jury's verdict.

1 All right?

2 THE WITNESS: Okay.

3 THE COURT: Does Mr. Ruiz want to say
4 anything?

5 MS. FORD: Just one minute, Your Honor.

6 THE DEFENDANT: Your Honor, I think an unjust
7 decision has been made. I have done nothing to this
8 young lady. I have done nothing to this girl because
9 even with the DNA analysis that was shown. I would
10 accept if they had anything to prove that the DNA was
11 present. I have not even at any time struck her. If I
12 ever struck her, then her mother would have heard about
13 this, or somebody would have.

14 And she said that SL [REDACTED] would have to tell
15 her to go get food from me. That is a lie. They could
16 ask the young -- the boy, they could have asked the boy.
17 There was a whole set of lies that were constructed
18 against me.

19 THE COURT: All right.

20 THE DEFENDANT: My family is poor, but we are
21 religious. None of us have records. The only problem I
22 ever had was related to alcohol. That's why I ask Your
23 Honor to please be fair, and I repeat I am not guilty of
24 what I'm accused of. Since the very first time this girl
25 began this, if I had been guilty of this, I would have

1 disappeared.

2 After a month of this when it started, I was
3 going to all the appointments. I was keeping up with it.
4 They arrested me one month afterward. A guilty criminal
5 would have been arrested the next day, not a month later,
6 and then I came out after five months, and the first
7 thing that I did when I got out was go back and visit
8 another inmate that I met there, and I've been continuing
9 with that. It's in the record at the jail.

10 I go visit sick people in the hospital, and
11 I've never considered trying to leave the country because
12 I believe in the laws of this country. I feel very sad
13 and a lot of despair. After I left prison, five months,
14 and I had, like, a year-and-a-half or a year and five
15 months to decide if I was going to disappear, and I came
16 to court, and the government was asking for 25 years or
17 life. It never occurred to me to try and leave because I
18 believe in the laws of this country. And I've been
19 coming here all this time, all these days, and if I were
20 afraid of being locked up, most people would just leave,
21 and I have come and cooperated, and then I get this
22 sentence, this judgment.

23 But, Your Honor, I'm innocent of all of this.
24 And my wife, the mother of the children, will always be
25 there to protect her children, as any mother would not be

1 with me, would be there to protect her children. I would
2 be satisfied if they found me guilty if they even sent me
3 to the -- to capital punishment if these were -- if the
4 semen or any of the other tests were positive, but they
5 haven't demonstrated any of that. I think it's an unfair
6 decision.

7 THE COURT: Okay. Ms. Ford, do you want to
8 say anything else?

9 MS. FORD: Just, Your Honor, I think there
10 was some confusion between what he was saying between the
11 interpreters. I think he was saying Nancy would not be
12 with me. She would choose to be with her children if she
13 could.

14 THE COURT: I understood.

15 MS. FORD: It has been difficult for Mr. Ruiz
16 to understand that in this country, the physical evidence
17 is not needed. We went over that, but it's just a
18 difficult thing to understand. I understand that.

19 Again, we would ask you to impose the 25-year
20 sentence, which essentially would be a life sentence,
21 Your Honor.

22 THE COURT: Did you want to say anything
23 else?

24 MS. HERRING-LASH: Yes, we do. We would just
25 like to ask the Court to please take into consideration

1 his complete lack of remorse. He certainly does not
2 speak as a religious man as he professes to be.

3 THE COURT: All right. Well, Mr. Ruiz, we
4 have a process in this country where when you plead not
5 guilty, you get a trial with 12 jurors who decide what
6 the outcome was.

7 I was not involved in that decision. They
8 heard the evidence. They believed **Minor** over you. What I
9 heard testimony of this week leads me to believe that
10 someone who is guilty of the things that she says
11 happened to her, there is no punishment that is too
12 severe for those kinds of crimes.

13 On the criminal sexual conduct with a minor
14 first degree charges, the sentence is life on each of
15 those three. On the sentences for the criminal sexual
16 conduct with a minor second degree, it's 20 years on each
17 of those. All of these will run concurrent. Good luck.

18 MS. HERRING-LASH: Thank you, Your Honor.

19 - - -

20 (Whereupon, the proceedings were concluded.)

21 - - -

22

23

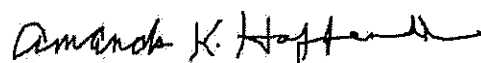
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I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 13th of January 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 14, 2017



Circuit Court Reporter

DHL/0303544
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-005219

ARREST WARRANT NUMBER
2017-GS-10-00875

DATE OF ARREST

03/18/2015

ACTION OF GRAND JURY

TRUE BILL

Francis Sosa JAN 10 2017
Foreperson of Grand Jury Date:

VERDICT

GUILTY

Robert 13 Jan 17
Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-00875

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JANUARY TERM 2017

THE STATE

VS.

CARLOS A RUIZ

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHARLESTON

At a Court of General Sessions, convened January 2017, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Charleston County, South Carolina, between Aug. 3, 2009 and Aug. 3, 2014, the Defendant, Carlos A Ruiz, did commit, or assaulted with the intent to commit, a sexual battery to wit: sexual intercourse upon the victim, **Minor** a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) and 16-3-656 of the South Carolina Code of Laws, (1976), as amended.

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


DEBORAH HERRING-LASH
ASSISTANT SOLICITOR

DHL/0303544
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-005219

ARREST WARRANT NUMBER
2017-GS-10-00876

DATE OF ARREST

03/18/2015

ACTION OF GRAND JURY

TRUE BILL

Frederick S. ... JAN 10 2017
Foreperson of Grand Jury Date:

VERDICT

GUILTY

Arline J. ... 13 Jan 17
Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-00876

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JANUARY TERM 2017

THE STATE

VS.

CARLOS A RUIZ
~~XXXXXXXXXXXXXXXXXXXX~~

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

STATE OF SOUTH CAROLINA

INDICTMENT

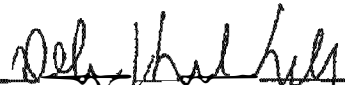
COUNTY OF CHARLESTON

At a Court of General Sessions, convened January 2017, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Charleston County, South Carolina, between Aug. 3, 2009 and Aug. 3, 2014, the Defendant, Carlos A Ruiz, did commit, or assaulted with the intent to commit, a sexual battery to wit: digital penetration upon the victim, **Minor** a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) and 16-3-656 of the South Carolina Code of Laws, (1976), as amended.

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



DEBORAH HERRING-LASH
ASSISTANT SOLICITOR

DHL/0303544
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-005219

ARREST WARRANT NUMBER
2017-GS-10-00877

DATE OF ARREST

03/18/2015

ACTION OF GRAND JURY

TRUE BILL

Wheeler **JAN 10 2017**
Foreperson of Grand Jury Date:

VERDICT

GUILTY

Wheeler **13 Jan 17**
Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-00877

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JANUARY TERM 2017

THE STATE

VS.

CARLOS A RUIZ

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE**

SC Code: § 16-03-0655(A)(1)
CDR Code: 0385

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHARLESTON

At a Court of General Sessions, convened January 2017, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Charleston County, South Carolina, between Aug. 3, 2009 and Aug. 3, 2014, the Defendant, Carlos A Ruiz, did commit, or assaulted with the intent to commit, a sexual battery to wit: cunnilingus upon the victim, **Minor** a minor who was less than eleven years of age in violation of Sections 16-3-655(A)(1) and 16-3-656 of the South Carolina Code of Laws, (1976), as amended.

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


DEBORAH HERRING-LASH

ASSISTANT SOLICITOR

DHL/0303544
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-005219

ARREST WARRANT NUMBER

2017-GS-10-00878

DATE OF ARREST

03/18/2015

ACTION OF GRAND JURY

TRUE BILL

Francis S. **JAN 10 2017**
Foreperson of Grand Jury Date:

VERDICT

Guilty

Carleen J. **13 Jan 17**
Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-00878

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JANUARY TERM 2017

THE STATE

VS.

CARLOS A RUIZ
~~XXXXXXXXXXXXXXXXXXXX~~

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, SECOND DEGREE**

SC Code: § 16-03-0655(B)(1)
CDR Code: 0396

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened January 2017, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That in Charleston County, South Carolina, between Aug. 3, 2014 and Aug. 13, 2015, the Defendant, Carlos A Ruiz, did commit, or assaulted with the intent to commit, a sexual battery to wit: cunnilingus upon a minor, Minor [REDACTED] who was fourteen years of age or less but who was at least eleven years of age in violation of Sections 16-3-655(B)(1) and 16-3-656 of the South Carolina Code of Laws, (1976), as amended.

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



DEBORAH HERRING-LASH
ASSISTANT SOLICITOR

DHL/0303544
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-005219

ARREST WARRANT NUMBER

2017-GS-10-00879

DATE OF ARREST

03/18/2015

ACTION OF GRAND JURY

TRUE BILL JAN 10 2017

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petty Jury

Date:

DOCKET NO. 2017-GS-10-00879

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JANUARY TERM 2017

THE STATE

VS.

CARLOS A RUIZ

WITNESS MY HAND AND SEAL

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR, SECOND DEGREE**

SC Code: § 16-03-0655(B)(1)
CDR Code: 0396

STATE OF SOUTH CAROLINA

INDICTMENT

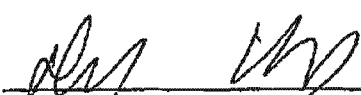
COUNTY OF CHARLESTON

At a Court of General Sessions, convened January 2017, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That in Charleston County, South Carolina, between Aug. 3, 2014 and Aug. 13, 2015, the Defendant, Carlos A Ruiz, did commit, or assaulted with the intent to commit, a sexual battery to wit: digital penetration upon a minor, **Minor**, who was fourteen years of age or less but who was at least eleven years of age in violation of Sections 16-3-655(B)(1) and 16-3-656 of the South Carolina Code of Laws, (1976), as amended.

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


DEBORAH HERRING-LASH
ASSISTANT SOLICITOR

DHL/0303544
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-005219

ARREST WARRANT NUMBER

2017-GS-10-00880

DATE OF ARREST

03/18/2015

ACTION OF GRAND JURY

TRUE BILL

Francis S. ... JAN 10 2017
Foreperson of Grand Jury Date:

VERDICT

Guilty

Michael J. ... 13 Jan 17
Foreperson of Petit Jury Date:

DOCKET NO. 2017-GS-10-00880

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

JANUARY TERM 2017

THE STATE

VS.

CARLOS A RUIZ

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR, SECOND DEGREE

SC Code: § 16-03-0655(B)(1)
CDR Code: 0396

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

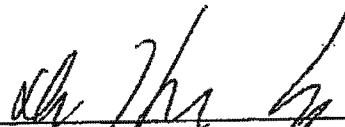
INDICTMENT

At a Court of General Sessions, convened January 2017, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That in Charleston County, South Carolina, between Aug. 3, 2014 and Aug. 13, 2015, the Defendant, Carlos A Ruiz, did commit, or assaulted with the intent to commit, a sexual battery to wit: sexual intercourse upon a minor, [Minor] who was fourteen years of age or less but who was at least eleven years of age in violation of Sections 16-3-655(B)(1) and 16-3-656 of the South Carolina Code of Laws, (1976), as amended.

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


DEBORAH HERRING-LASH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

CARLOS A RUIZAKA: Carlos A. RuizRace: [REDACTED]Sex: [REDACTED]DOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# 102107777SID# SC01937299*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct With A Minor, First DegreeIn violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Deborah Herring Lash 15083
Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

73776
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of life ~~days/months/years~~ or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

\$100

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

§14-1-211 (A)(2)(DUI Surcharge)

\$12

§56-5-2995 (DUI Assessment)

\$25

§56-1-286 (DUI Breath Test)

\$500

Proviso 61,6 (Public Def/Prob)

\$25

§14-1-212 (Law Enforce. Funding)

\$150

§14-1-213 (Drug Court Surcharge)

\$50

§50-21-114 (BUI Breath Test Fee)

\$40/ea

§56-5-2942(J) (Vehicle Assessment)

\$

3% to County (if paid in installments)

\$

TOTAL

\$128.75

Clerk of Court/Deputy Clerk: CallieCourt Reporter: Amanda HaffenderPresiding Judge: [Signature]Judge Code: 2134Sentence Date: 11/13/17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

CARLOS A RUIZAKA: Carlos A. RuizRace: [REDACTED] Sex: [REDACTED]DOB: [REDACTED] SS#: 595- [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct With A Minor, First DegreeIn violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Deborah Herring-Lash 15083
Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

73776
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 128.75Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

☐ Appointed or appointed other counsel,
§47-15 requires \$500 be paid to Clerk
during probation.

Presiding Judge: [Signature]Judge Code: 213Sentence Date: 1/13/17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

CARLOS A RUIZAKA: Carlos A. RuizRace: [REDACTED]Sex: [REDACTED]DOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# 102107777SID# SC01937299*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct With A Minor, First DegreeIn violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTES:

Deborah Herring-Lash 15083
Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

73776
SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

\$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforc. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 108.75Clerk of Court/Deputy Clerk: CallahanCourt Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2134Sentence Date: 1/13/17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON
STATE VS.CARLOS A RUIZAKA: Carlos A. RuizRace: [REDACTED]Sex: [REDACTED]DOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# 102107777SID# SC01937299*CDL: Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct With A Minor, Second DegreeIn violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

[Signature]

15083

Deborah Herring-Lash, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

73776

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

\$ _____

§14-1-206 (Assessments 107.5%)

\$ _____

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$ _____

§56-5-2995 (DUI Assessment)

\$12

\$ _____

§56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def/Prob)

\$500

\$ _____

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§50-21-114 (BUI Breath Test Fee)

\$50

\$ _____

§56-5-2942(J) (Vehicle Assessment)

\$40/ca

\$ _____

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 188.75Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2130Sentence Date: 11/13/17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

CARLOS A RUIZAKA: Carlos A. RuizRace: W Sex: MDOB: 03/18/2015 SS#: 15083Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Criminal Sexual Conduct With A Minor, Second Degree

In violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Deborah Herring-Lash 15083
Deborah Herring-Lash, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

73776
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]Presiding Judge: [Signature]Judge Code: 2131Sentence Date: 11/13/17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

CARLOS A RUIZAKA: Carlos A. RuizRace: [REDACTED] Sex: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL# [REDACTED] SID# SC [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Sexual Conduct With A Minor, Second DegreeIn violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTORNEY:

Deborah Herring-Lash 15083
Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

73776
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARLOS A. RUIZ,

APPELLANT

APPELLATE CASE NO. 2017- 000214

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by allowing the testimony of DSS worker Letrice Smalls that the agency determined that the child's mother was a "non-supportive" mother, and erroneously "non-believing" of her accusing daughter's allegations where appellant continued to live in the household since this testimony was irrelevant, and it improperly bolstered the state's contention that the minor was telling the truth, and that appellant was guilty?

STATEMENT OF THE CASE

Appellant was indicted by the Charleston County Grand Jury for three counts of criminal sexual conduct with a minor in the first degree, and three counts of criminal sexual conduct in the second degree. R. 480 – 491. His case was called to trial on January 9, 2017, before the Honorable Roger M. Young, and a jury. R. 1.

Mary Ford and Nicholas Smit represented appellant. Deborah Herring-Lash and Nina Savas were the assistant solicitors. Court interpreters worked the trial. R. 1.

On January 13, 2017, the jury found appellant guilty on all counts. R. 470, ll. 14-25. Judge Young sentenced the then sixty-one year old appellant to life imprisonment on each count of criminal sexual conduct with a minor in the first degree, and twenty years imprisonment on each count of criminal sexual conduct in the second degree. R. 473, ll. 10-15; R. 479, ll. 13-17.

This appeal follows.

ARGUMENT

The court erred by allowing the testimony of DSS worker Letrice Smalls that the agency determined that the child's mother was a "non-supportive" mother, and erroneously "non-believing" of her accusing daughter's allegations where appellant continued to live in the household since this testimony was irrelevant, and it improperly bolstered the state's contention that the minor was telling the truth, and that appellant was guilty.

The minor girl in this case was born in 2003. R. 19, ll. 10-16. She was living in a foster home at the time of the trial. She was in the eighth grade. R. 20, ll. 7-21.

The minor alleged at the time of the sexual abuse she lived with her mother, appellant (the stepfather), her sister and brother, and her two "baby brothers," who were her stepbrothers. R. 20, ll. 3-13. The minor's allegations were that appellant began sexually abusing her when she was six years old. He would, according to the minor, offer her candy in exchange for oral sexual acts. R. 32, l. 11 – 34, l. 4. The minor said that she did not tell anyone because she thought appellant would be mad at her, and that her mother would also get mad "and think I was lying or something." R. 36, ll. 7-18.

The minor testified that around the sixth grade, the oral sex became sexual intercourse. R. 44, l. 4 – 50, l. 21. The minor also alleged that appellant would hoard food in his bedroom, and that he would give her food in exchange for sex. R. 93, ll. 18-25.

The evidence was undisputed that appellant at one point was in an extremely damaging accident -- he was hit by a car -- and the minor said "he completely stopped [the alleged sexual activity] because he was immobile." R. 56, l. 21 – 58, l. 6. However, the minor claimed after some time appellant again engaged in oral sex with her. R. 58, ll. 7-14.

On cross-examination, the minor admitted that she sometimes heard voices that no one else could hear. The voices called her name, among other things. At trial, the minor said “that doesn’t [happen] anymore.” R. 78, l. 24 – 79, l. 14.

The minor denied that she was “acting” the entire time in an attempt to get appellant removed from the home. However, one thing was clear, her brother and sister also admitted, as will be seen infra, that they did not like appellant, who was an older man, and indeed they hated him. The minor said she did not like being accused of being a chronic liar as her mother often did. The minor also said that she enjoyed writing “narratives,” and she added: “Well, that’s my career when I grow up, a writer and an activist, but it was just using different words instead of using baby words.” R. 107, ll. 2-22. The minor admitted she would rather -- at least in the past if not still -- be with boys, and that girls “were too much drama, and “they start too much stuff.” R. 109, ll. 2-8.

As for lying, the minor said “maybe when I was younger I lied a lot to my mom. I didn’t ever have a good bond with her. I didn’t really like her that much . . . I don’t like people to say I’m a liar. That doesn’t -- That doesn’t go right with me.” R. 74, l. 24 – 75, l. 7.

An incident occurred in February, 2015 when the minor was again arguing with her mother. The minor said her mother told her appellant was “just trying to protect you,” from harm where she was caught coming out of the woods with a boy. The minor told her mother that appellant was not trying to protect her, and she said her mother “started hitting me with a belt and grabbed a broom.” The following occurred on direct-examination of the minor about these explosive allegations:

So my mom was -- like, started hitting me with a belt, I think, or -- I don't know. And then when she pulled out the broom, that's what triggered it, because I was really upset already, and just the fact

that she wasn't listening to me and I was trying to convince her to, like, listen to me -- she wasn't listening.

So she grabbed the broom and she was about to hit me, and when she did that, I was upset, and I said, You don't have to worry about me. Why are you so worried about me? Why do you hate me?

I was yelling at her, saying, You hate me. You don't care about me, trust me. You don't like me. You don't want me, saying things -- I was just yelling.

Q. What did you end up saying?

A. I ended up yelling at her and saying, You should be worried about him. He's raping me.

Q. What did she do when you told her he was raping you?

A. She didn't understand me because I said it in English, obviously, so I'm guessing she didn't understand what that word meant, so she just continued on hitting me. So that's what told me -- I felt like she didn't care at all.

I told her one of the biggest secrets, and she didn't care. I yelled at her and said, You don't care at all. I understand that. I was yelling at her. She yelled at me, saying, What do you mean, raping? What does that mean?

So my older brother came out of his room, and he started -- he looked scared, but he started explaining to her, and she was, like, Are you sure? Are you for real? She's telling me, am I being serious?

And so --

Q. Did anything happen after that? Did y'all go to the police or anything?

A. No.

Q. Why not?

A. She asked me, and I was scared, but she told me that I can't call the police because then our family would be separated and be all messed up and that everybody's going to go. The whole place is going to go.

R. 65, l. 7 – 66, l. 22.

The minor claimed on redirect-examination that appellant was rude and violent to everyone in the family. R. 132, ll. 11-20. The allegations were quickly repeated to a friend, then at the minor's school, to DSS, and the police. R. 274, l. 12 – 302, l. 18.

DSS involvement

When the state went to call Department of Social Services worker Letrice Smalls as a witness, defense counsel Ford objected that her testimony would only be vouching for the alleged victim and bolstering. However, Ford did not challenge the qualifications of the witness, so the Smalls testimony **immediately** proceeded before the jury over appellant's objection. R. 239, l. 10 – 240, l. 6.

Smalls testified that she was a foster care worker with the Charleston County Department of Social Services. R. 240, ll. 1-25. She was assigned to the minor's case in March of 2015. R. 241, ll. 11-17. The minor and her siblings all resided in foster care at the time of the trial. R. 241, ll. 18-25.

Smalls testified that the mother had visitation with all of the children and visited with them regularly as urged. However, as to the minor in question, Smalls said there was an "incident" in January of 2016 where the mother was reading Bible verses. Defense counsel's objection to this testimony was sustained. However, Smalls said the mother's visits with the minor in question ceased after that "incident." R. 242, l. 4 – 243, l. 7.

The following then occurred on direct examination of Smalls:

- Q. How long -- I think you've already said it. You've been a foster care worker how long?
- A. Nine years.

Q. And have you worked with lots of families where the supportive parent of -- the non-abusive parent is non-supportive and non-believing?

MS. FORD: Objection. I'm not quite sure where she's going.

MS. HERRING-LASH: That's it about.

MS. FORD: Well, relevance to this case, Your Honor.

THE COURT: Is she offering some sort of opinion? What is she testifying about?

MS. HERRING-LASH: That it's not unusual at this point the children remain in foster care.

THE WITNESS: They remain in foster care?
Yes, ma'am.

BY MS. HERRING-LASH:

Q. What would have to happen for the Department of Social Services to return them - --

A. There would have to be a change of circumstances. **Currently Mr. Ruiz resides in the home with Ms. Lorenzo**, and the other issue is that Ms. Lorenzo doesn't believe [Minor], and because of this, the agency would feel that she's unable to protect.

R. 243, l. 12 - 244, l. 11. (emphasis added).

On cross-examination, Smalls was evasive of direct questions but she managed to add that there had been "a finding against Mr. Ruiz" by DSS, and apparently the family court. Smalls admitted that for "clarification needs" -- to get her children returned from the agency -- that the mother had to admit she believed the minor. When asked to admit that the family court was a very different court than criminal court, Smalls attempted to turn the tables, and said that the plan was to terminate the parental rights of the mother and put the children up for adoption. When asked to admit that the mother could get her children back if appellant was not in the house, Smalls claimed that she was not an expert on that subject. However, Smalls continued

with the theme that DSS strongly believed appellant was guilty and that the mother was a bad mother for continuing to allow appellant to live in the family home, and for not stating that she believed the minor was telling the truth. R. 245, l. 16 – 248, l. 18.

Other testimony

The minor's fifteen-year-old brother, Sergio, testified and admitted he did not like appellant. R. 204, l. 5 – 205, l. 22. Sergio admitted his sister, the minor in question, could become real violent, aggressive, and she could be a bully in their household. R. 208, ll. 11-19.

The minor's ten-year-old sister, Leansy, claimed she looked underneath appellant's bedroom door one time, and essentially said she saw appellant and her minor sister having sex, even though they both had their clothes on. R. 218, l. 10 – 231, l. 6. Leansy admitted she later told a DSS worker that she never, in fact, looked under the door. R. 231, ll. 3-6.

Leansy remembered the day that her sister accused appellant of raping her. Leansy claimed her mother was "kind of laughing but she was like -- her face was, like, nervous, but she was laughing, like, she didn't want to believe what was happening." R. 223, l. 7 – 224, l. 2. Leansy said she wanted appellant out of their home, and she said she hated him "because of what he did to my sister and because he ruined my life." R. 235, l. 23 – 237, l. 15.

The mother testifies

The children's mother testified in appellant's defense. She testified the minor accuser was always aggressive, and "confronted" her even as a young child. She said the minor did not understand consequences that flowed from her lying. R. 336, l. 8 – 337, l. 4.

The mother also testified that after appellant was hit by a car he could no longer have sex, which was another reason she asserted proved that her minor daughter was not telling the truth about sex between them. R. 329, l. 10 – 337, l. 4.

The mother noted that on the day the minor accused appellant of rape, she was earlier scolded that day because appellant revealed the minor was seen coming out of the woods with a boy, and “she was doing it [the accusation] out of revenge.” R. 349, l. 13 – 350, l. 19. The mother explained that the minor was upset and angry. The minor said that appellant was lying about her coming out of the woods with a boy. The mother said when minor accused appellant of rape she told her “what you’re telling me is really serious . . . And so from that point everything changed. It was Carlos that was accusing her, but then it was her accusing him.” R. 350, l. 20 – 351, l. 24.

The mother also said she told the minor that her allegations were impossible, and that appellant could not perform sexually. R. 353, l. 1 – 355, l. 25. The following occurred on direct examination of the mother:

THE WITNESS: And I said, [minor], you seem to be acting and playing like nothing was going on, and look at the situation we're in.

And, again, she said, What?

I said, [minor], look at the situation we're in.

It's serious, and there was a word that she used that left me in shock. She said, I'm acting.

And I said, How can you be playing with this serious situation?

She just said, I'm acting.

And so I said, What are you trying to achieve with all this, that Carlos leaves? And then what?

MS. HERRING-LASH: Your Honor, I think we just had hearsay over and over, and I would object to this.

THE COURT: No, not her saying what [the minor] said. Go ahead.

THE WITNESS: And so she said, I'm acting.

So I said, What are you trying to do here?

And she said, We want Carlos to leave, and then the others started joining in: We want Carlos to leave. They were yelling: He should leave, he should leave. They said, Let's call the police and get him to leave.

And I told her, [minor], I know you're lying. I wish I could believe you, but this situation is what it is, and these are lies. So I said, What do you want? What are you trying to make happen?

I want Carlos out.

And I said, Then what?

My father will come back.

And I said, [minor], that's behind us.

R. 356, l. 3 – 357, l. 9.

The natural father of the children the minor was referring to had been deported, apparently for among other things, criminal domestic violence.

The essence of the mother's testimony was that the minor accuser hated appellant, she and her siblings wanted him out of the house, and they had idealistic and unrealistic ideas that their deported father had changed, and that he could return to the household when appellant was gone.

Discussion

Defense counsel Ford correctly objected that the testimony of DSS worker Smalls would only vouch for the credibility of the victim and bolster the testimony she had already given. There was no delay between this objection and the immediate testimony of Smalls. Nonetheless, defense counsel Ford correctly objected to the relevance of the Smalls testimony regarding the

non-abusive parent (here, the mother) also being “non-supportive” and “non-believing.” Further, the minor here and the other children could not be returned to the mother because she did not believe the minor, and therefore her agency, DSS, thought the mother would be unable to protect the minor from appellant, who she made no doubt DSS believed was a guilty child rapist. R. 242, l. 21 – 244, l. 11.

As stated, Smalls would continue to stress that there had already been a finding by DSS and/or the family court that appellant was guilty, and that the mother could not have her children returned from foster care unless she said she believed, as did DSS, that the minor was telling the truth.

It is clear at this point in the jurisprudence of our state on child sex abuse cases that it is improper for a witness to state or imply that they believe the alleged victim is telling the truth in their allegations of sexual abuse.

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the Supreme Court held that testimony by a forensic interviewer that the victim had given a “compelling finding” of child abuse was inadmissible. In Kromah, our Supreme Court noted that while experts are permitted to give an opinion, they cannot offer an opinion regarding the credibility of others.

The Court further stated that it was undeniable that the primary purpose of calling a “forensic interviewer” as a witness was to lend credibility to the victim’s allegations. Nonetheless, the Court stressed that the assessment of the credibility of witnesses is within the exclusive province of the jury, and that witnesses generally were not allowed to testify another witness was telling the truth. State v. Kromah, 401 S.C. at 358, 737 S.E.2d at 499-500. See, also, State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012).

In Smith v. State, 386 S.C. 562, 564-65, 689 S.E.2d 629-631 (2010), the Court found a forensic interviewer improperly bolstered the alleged victim's testimony, where the forensic interviewer testified the alleged victim told her the defendant had sexually assaulted her, and the interviewer found the allegation "believable."

Here, Smalls was testifying as an employee of the Department of Social Services that the children, including the minor accuser, could not be returned to live with their mother because appellant was still living there, that the mother [improperly] did not believe the minor, and therefore DSS did not think the mother could protect the minor from the guilty appellant. There is no other credible reading of this testimony, or the purpose of the DSS employee's reason for being called as a witness.

Prior to the testimony of Smalls, defense counsel Ford correctly argued that the testimony was only meant to bolster the allegations of the accusing minor, and to vouch for her credibility. Counsel further and correctly objected on the grounds of relevance when Smalls did precisely what defense counsel Ford objected to prior to her testimony.

Appellant submits it is extraordinarily difficult for a defendant to obtain a fair trial when he is accused of sexually abusing a child. Our Supreme Court, and this Court, have warned against explicit and more subtle testimony which indicates that the witness believes the child, and thus believes that the defendant was guilty.

In State v. Chavis, 412 S.C. 101, 771 S.E.2d 336 (2015), the Supreme Court held it was error to allow a witness to testify that her recommendation was that the victim was not supposed to be around the defendant for any reason. This improperly bolstered the credibility of the victim.

The precise thing happened in this case, as shown above. This testimony can only be interpreted as the witness, here Smalls, representing the Department of Social Services, believed the alleged victim's claim that the defendant, -- here appellant -- had sexually abused her. The children could not be returned because the mother did not believe the minor, and she had appellant, whom she believed, living with her. This testimony was improper. See, also, State v. Anderson, 412 S.C. 212, 776 S.E.2d 76 (2105).

In State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), the Court held that the lower court incorrectly allowed a witness to testify the child provided a compelling disclosure of abuse by the defendant. This was the functional equivalent of testimony that the witness believed the child was telling the truth.

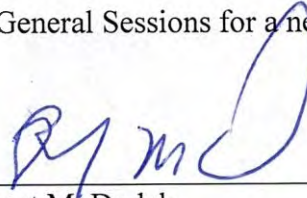
The testimony here of DSS foster care worker Smalls was totally improper because it bolstered and vouched for the alleged victim's testimony, and it was irrelevant because the opinion of a DSS witness (a lay one at that) that the alleged victim was telling the truth did not legally make it more or less probable that the jury should believe appellant was guilty. See Rule 401, SCRE; State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986); State v. Alexander, 303 S.C. 377, 401 S.E.2d. 146 (1991).

The error here was not harmless because the objectionable testimony signaled to the jury that a state agency vested with protecting children, the Department of Social Services, believed the child was telling the truth, that appellant therefore was guilty, and he should not continue to be living in the household. Further, the minor's mother was a bad mother because she supported appellant, and she did not believe the minor's allegations. For those reasons she could not get her children back from foster care. The termination of her parental rights, and he children being adopted, would be her just deserts from DSS.

The defense contended from the beginning of the trial to the end of the trial that the minor orchestrated the allegations to get appellant out of the household because she hated appellant, as did the other children, for different reasons. They wanted him gone. The mother of the children said that the minor admitted she "was acting," she testified that the minor was a perpetual liar and rebellious from the time she was a young child forward. She also said that the allegations against appellant were in part, physically and factually, impossible. This respectfully is not a case where the errors in bolstering, vouching and offering irrelevant evidence should be found harmless.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed, and this case remanded to the Charleston County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

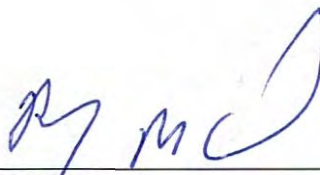
ATTORNEY FOR APPELLANT

This 22nd day of March, 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, 20014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 22, 2018



Robert M. Dudek
Chief Appellate Defender

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Division of Appellate Defense
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

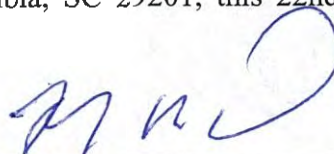
V.

CARLOS A. RUIZ,

APPELLANT

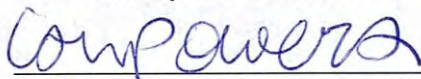
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Scott Matthews, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of March, 2018.



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of March, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2017-000214

THE STATE,

Respondent,

v.

CARLOS A. RUIZ,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

In January 2017, the Charleston County Grand Jury indicted Appellant for three counts of criminal sexual conduct with a minor in the first degree and three counts of criminal sexual conduct with a minor in the second degree. On January 9-13, 2017, a jury trial was held in the Charleston County Court of General Sessions with the Honorable Roger M. Young, Sr., presiding. Appellant was represented by Mary Ford, Esquire, and Nicholas Smit, Esquire of the Charleston County Public Defender's Office. The Respondent (the State) was represented by Assistant Solicitors Deborah Herring-Lash and Nina Savas of the Ninth Circuit Solicitor's Office. Court interpreters were utilized at trial, because Appellant did not speak English. At the conclusion of trial, the jury convicted Appellant of all six counts. Following the verdict, the trial judge sentenced Appellant to three concurrent life terms for each count of criminal sexual conduct with a minor in the first degree, and three concurrent terms of twenty years' imprisonment for each count of criminal sexual conduct with a minor in the second degree. Appellant then timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

The victim (Victim) in this case, who was born in 2003, lived with her mother (Mother) and Appellant from 2010 to 2015. (R. 19, 297, 326). Mother began dating Appellant in 2009. (R. 370). Shortly thereafter, Appellant began spending the night occasionally in Victim and Mother's home. (R. 371). In 2010, Appellant moved in with Victim and her Mother. (R. 326). On February 13, 2015, when Victim was eleven years old, she reported to school resource officer Tiffany Crider that she had been sexually assaulted by Appellant. (R. 288, 294). Upon hearing Victim's disclosure, Crowder contacted the Charleston County Department of Social Services (DSS). Crider and DSS then spoke with the Victim's family, including Mother and Appellant. (R. 296). As a result of Victim's disclosure, Victim and her brothers and sister were placed into emergency protective custody. (R. 297).

On March 16, 2015, a forensic interview was conducted of Victim by Dr. Donald Elsey. (R. 308, State's Exhibit #42). During Victim's interview and at trial, Victim detailed multiple instances of sexual abuse by Appellant. Victim testified that she was six years old when Appellant moved in with her family and began to sexually abuse her. (R. 23, 32). Victim could not remember specific dates, but did testify to specific occasions of abuse. On one such occasion Appellant inserted his fingers into Victim's vagina and kissed her breasts. (R. 26-27). On another occasion Appellant performed cunnilingus on Victim in her bedroom. (R. 30-31). On yet another occasion, Victim testified Appellant lured her into his bedroom with the promise of giving her candy and performed cunnilingus on her and inserted his penis into her vagina. (R. 32-34). On occasions when Appellant stuck his penis into Victim's vagina, Victim alleged that Appellant would "eventually pull it out, and then it would come out" or he "would have me use my hands", until "finally that white stuff came out." (R. 56, lines 9-16).

Victim testified about details of Appellant's room, including a mirror on the ceiling and a diaper changing pad that would be placed on the bed underneath Victim when Appellant abused her. (R. 34-35, 42-43). Victim testified that Appellant would use both male and female condoms after she started having her period. (R. 44-45, 47). Additionally, Appellant would use a cream out of a tooth paste-like tube and place it on the Victim's vagina. (R. 48-49). Occasionally Appellant would use gloves during sexual encounters and afterward he would put his condom inside the glove and put it deep into the kitchen trash. (R. 60). Appellant also stored food in his room that he would withhold from Victim and her siblings in exchange for sexual acts with Victim. (R. 51-52). Victim also accused Appellant of shaving her pubic hair. (R. 54-55).

In 2012, Appellant was involved in a severe car accident. (R. 329-30). Victim testified that the assaults completely stopped during his recovery. (R. 57). Once the assaults resumed, Appellant would no longer use his penis on a regular basis, but would usually perform oral sex on Victim. (R. 58). When Appellant did try to use his penis after the accident "he never used it as he used to" and Victim did not "think he was successful" when he did try. (R. 58, lines 18-22). Mother testified that Appellant's penis no longer worked, but he did utilize a number of devices to get his penis to work again. (R. 335-36). Victim's brother and sister both confirmed that Victim would occasionally be alone with Appellant in his room and then emerge with food. (R. 197-98, 218-19). Victim's sister stated that once she looked underneath Appellant's door frame and witnessed Appellant on top of Victim "kind of vibrating" (R. 221-22, line 10).

At trial, the State called Letrice Smalls, a DSS foster care worker, to testify regarding her experience in abuse cases where one parent is non-abusive and non-believing of the abused child, and DSS requirements for returning an abused child to a non-abusive parent. Appellant objected to Smalls' testimony on the grounds of relevance. (R. 243). Upon hearing Appellant's

objection, the trial court inquired: “Is she offering some sort of opinion? What is she testifying about?” (R. 243, lines 23-24). The State responded: “That it’s not unusual at this point the children remain in foster care.” (R. 243-44, lines 25-1). The trial court did not rule on the objection and Smalls proceeded to answer the State’s remaining question. (R. 244). Appellant did not object to the final question by the State or Smalls’ answer to that question. (R. 244). On cross examination of Smalls, Appellant asked at least four separate questions about what Mother would have to do to meet DSS requirements to have her children returned. (R. 245-48). Specifically, Appellant’s questions were tailored to inquire whether Mother believed Victim, and how that belief or non-belief affected her status with DSS. (R. 245-48).

Appellant presented evidence in his own defense. Appellant’s primary witness was Mother. In Mother’s direct testimony she testified on multiple occasions that she did not believe that Victim had been sexually abused by Appellant. (R. 355-57). Mother also said it was her understanding that she “had to say that I believed [Victim] and I had to say things happened that way.” (R. 368, lines 17-19). Mother went on to say that DSS “tried to pressure me many different ways, a lot of times” to say that she believed Victim. (R. 369, lines 12-13). Appellant continued to emphasize this theme in closing argument. Appellant argued:

You heard a lot from [Mother] and from Ms. Smalls, the DSS worker, about [Mother] not being able to have the kids back, and that’s why she’s such a credible witness, because all she has to do is say the magic words: I believe. It doesn’t have anything to do with the fact that [Appellant] is currently staying with her because he wasn’t there for months and months and months, and they never would give her the kids back. They wouldn’t give her kids back now if [Appellant] wasn’t there. She has to say, I believe.

Many people may think, just as a parent, you should say – even if you don’t believe, you should say it to get your kids back, and so maybe you believe that’s the right thing to do as a parent. Maybe that’s what [Mother] should have done, but [Mother] can’t do that because she can’t lie. She can’t lie, especially when it comes to having to sacrifice someone.

(R. 421, lines 1-17). Appellant's argument was essentially that Mother did not believe Victim and neither should the jury. Appellant argued that Mother wanted her children back and all she had to do to satisfy DSS was to say she believed her daughter, but she could not and would not do that, because she thought Victim was lying. At the conclusion of trial, the jury found Appellant guilty on all six counts. Appellant then filed his appeal.

ARGUMENT

I.

The issue of whether the testimony of Letrice Smalls was improper bolstering or irrelevant was not preserved for appeal, because Appellant did not make a specific, contemporaneous objection on bolstering and he did not receive a ruling to his objection for relevance. Even if Appellant successfully preserved the issue for appeal, Appellant did not suffer any prejudice from the contested testimony and any potential error was harmless, because Appellant elicited the same testimony from Letrice Smalls on cross examination, and from Appellant's own witness, Victim's Mother.

Appellant contends the trial judge erred in admitting the testimony of Letrice Smalls regarding Victim's status in foster care, because her testimony was irrelevant and it improperly bolstered the testimony of Victim. However, Appellant did not properly preserve this issue for appeal because Appellant did not make a specific, contemporaneous objection on the grounds of improper bolstering. Appellant did object to the State's initial question regarding Victim's foster care status based on relevance, but did not receive a ruling from the trial judge. Appellant then failed to object to the State's second question on the same subject or Smalls' answer. Even if we assume that Appellant properly preserved this issue for appeal, Appellant did not suffer any prejudice from the testimony, because as part of his trial strategy, he elicited the same testimony on his cross examination of Smalls and again through Mother in Appellant's case in chief. Any possible error caused by admission of this testimony is therefore harmless. Appellant's convictions and sentences should be affirmed.

A. Improper Bolstering and Relevance were not Appropriately Preserved for Appeal

Appellant contends the trial court erred in admitting the testimony of Letrice Smalls regarding Victim's status in foster care and the standards utilized by DSS in returning children to a non-abusive parent. Appellant did not properly preserve this issue for appeal. In analyzing

whether Appellant properly preserved this issue, it is instructive to review the relevant portion of the record. The following exchange occurred during the State's direct examination of Smalls:

Assistant Solicitor Herring-Lash: And have you worked with lots of families where the supportive parent of – the non-abusive parent is non-supportive and non-believing?

Deputy Public Defender Ford: Objection. I'm not quite sure where she's going.

Assistant Solicitor Herring-Lash: That's it about.

Deputy Public Defender Ford: Well, relevance to this case, Your Honor.

The Court: Is she offering some sort of opinion? What is she testifying about?

Assistant Solicitor Herring-Lash: That it's not unusual at this point the children remain in foster care.

Letrice Smalls: They remain in foster care? Yes, ma'am.

Assistant Solicitor Herring-Lash: What would have to happen for the Department of Social Services to return them?

Letrice Smalls: There would have to be a change of circumstances. Currently [Appellant] resides in the home with [Mother], and the other issue is that [Mother] doesn't believe [Victim], and because of this, the agency would feel that she's unable to protect.

Assistant Solicitor Herring-Lash: Those are all the questions I have, Ms. Smalls. Thanks. Please answer any questions Ms. Ford may have.

(R. 243-44, lines 15-14). The aforementioned questions and answers are the testimony that Appellant contends was admitted in error by the trial judge. In the aforementioned exchange, Appellant does not object to Smalls' testimony based on improper bolstering. However, Appellant contends in his brief that trial counsel did in fact object to Smalls' testimony based on improper bolstering or vouching for Victim. This is a mischaracterization of the record by Appellant. A thorough review of the record clearly shows that Appellant raised these objections

to the testimony of Dr. Carol Swieciki, the expert witness called immediately after Smalls, but not to Smalls' testimony. The relevant portion of the record reads as follows:

The Court: Folks, we've got two more witnesses that we want to get in today. One of them's real short. One may take in the neighborhood of half hour, 30 minutes. What I want to do right now is take a break to use the restroom, if you need to make a phone call, but rather than 5:00, it might be somewhere 5:30, maybe 6:00, but – I hope not that late, but we want to get these **two witnesses** in today, okay?

....

The Court: Are you challenging the qualifications **of the expert**?

Deputy Public Defender Ford: No, in general, I'm not challenging qualifications. I would object to the testimony as essentially vouching or bolstering, but—

The Court: Assuming that she's correct and testifies, he or she, it won't be, but I guess what I'm getting at is are you going to challenge this person's expertise? Do you want to have a hearing?

Deputy Public Defender Ford: No, I don't challenge her qualifications.

(R. 238-39, lines 25-24) (emphasis added). The two remaining witnesses for the day were Smalls and Dr. Swieciki. Considering that the State only offered Dr. Swieciki as an expert, it is clear that Appellant's objection applied to Dr. Swieciki's testimony and not Smalls' testimony. Appellant even acknowledges this fact in his brief when he declares Smalls' testimony "was irrelevant because the opinion of a DSS witness (**a lay one at that**) that the alleged victim was telling the truth did not make it more or less probable that the jury should believe appellant was guilty." (Brief of Appellant p. 13) (emphasis added).

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003). A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the

argument has been presented on that ground. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). A party may not argue one ground at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). “The rule is well established that if asserted errors are not presented to the lower Court, the question cannot be raised for the first time on appeal.” State v. Freiburger, 366 S.C. 125, 135, 620 S.E. 2d 737, 742 (2005). “Our law is clear that a party must make a contemporaneous objection that is ruled upon by the trial judge to preserve an issue for appellate review.” State v. Sheppard, 391 S.C. 415, 420-21, 706 S.E.2d 16, 19 (2011).

Here, Appellant failed to properly preserve any issues for appeal. Appellant failed to preserve the issue of Smalls’ testimony being improper bolstering because he did not make an objection on those grounds during Smalls’ testimony. The record clearly shows that the trial judge anticipated the jury only hearing two additional witnesses that particular day. (R. 238-39). The trial judge then asked Appellant if he had any objection to the State’s expert. (R. 239). The Appellant objected to the expert’s testimony on the basis of improper bolstering. (R. 239). The State only offered or even attempted to offer one of the remaining witnesses as an expert. (R. 239-73). The State offered Dr. Swieciki as an expert in the field of child abuse dynamics (R. 251-52). Appellant renewed his objection to Dr. Swieciki’s testimony when she testified and the objection was overruled. (R. 251). Appellant acknowledges in his brief that Smalls was merely a lay witness, not an expert. (Brief of Appellant p. 13). Appellant never objected to Smalls’ testimony based on improper bolstering. (R. 240-48). Appellant’s only objection to Smalls’ testimony was on grounds of relevance. (R. 243). The issue of improper bolstering was never raised to the trial judge regarding Smalls’ testimony and it was not ruled upon. Therefore, Appellant’s alleged error of improper bolstering is not preserved for appeal.

Appellant also failed to preserve the issue of Smalls' testimony being relevant. Appellant first objected on the vague grounds "I'm not quite sure where she's going", then Appellant clarified that he was objecting based on relevance. (R. 243, lines 18-22). However, Appellant did not receive a ruling from the trial judge, nor did he object to the solicitor's follow up question or Smalls' answer¹. The trial judge asked the State about their purpose in asking the question, but he did not provide a ruling. The State then asked one final question of Smalls, which Smalls answered. Neither the State's follow up question, nor Smalls' answer were objected to by Appellant. Because the Appellant did not properly raise the issue to the trial judge and did not receive a ruling, the issue of relevance is not properly preserved for appeal.

Even if we assume for the sake of argument that Appellant was referring to the testimony of Smalls when he made his earlier objection to bolstering, Appellant's objection was not contemporaneous. Appellant cannot make an anticipatory objection to all future potential issues. An Appellant can make a motion *in limine*, but any ruling by the trial judge on that motion is not final and a contemporaneous objection must still be made at trial. See State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001). Here, Appellant didn't make a contemporaneous objection to the issue of bolstering and he didn't receive a ruling on the issue of relevance. Therefore, Appellant's issues are not preserved for appeal. Appellant's convictions and sentences should be affirmed.

B. Lack of Prejudice to Appellant and Harmless Error

Even if this Court determines that Appellant properly preserved his argument for appeal, Appellant did not suffer any prejudice from the contested testimony because he elicited the same testimony from Smalls on cross examination and through Mother on direct examination. It is

¹ Even if Appellant had received a ruling on his objection, Smalls' testimony was clearly relevant evidence, because Appellant made the DSS requirements imposed upon Mother to get her children back a central theme of his defense. (R. 245-46, 368-69, 421).

instructive to review the questions that were asked of Smalls by Appellant and the questions asked of Mother. The following questions were asked of Smalls by Appellant on cross examination:

Deputy Public Defender Ford: In this particular case, DSS won't even allow [Mother] the opportunity to do the other conditions until she admits that she believes [Victim]?

Smalls: I wouldn't say that DSS wouldn't, but the experts with the LCC made a recommendation that clarification needs to be completed before parenting.

Deputy Public Defender Ford: So assuming [Appellant] could be out of the house, all [Mother] has to do is say, I believe [Victim]?

Smalls: And then there's also the issue that there's been a finding against [Appellant].

....

Deputy Public Defender Ford: Because [Mother] doesn't believe. We're talking about [Mother's] parental rights?

Smalls: That is part of the issue, yes.

Deputy Public Defender Ford: She would have been able to get her kids back, more than likely, a long time ago if she had just said, I believe [Victim], and [Appellant] is not in the house?

Smalls: Because I'm not an expert in that, I'm not exactly sure. I can't say yes or no. I'm not sure.

(R. 245-46). Appellant clearly elicits more detailed responses regarding how DSS determines whether an abused child should be returned to a non-abusive parent than he contends were improperly allowed by the trial judge when the State asked similar questions. Appellant elicited similar testimony again when he called Mother as a witness in his defense. During Mother's direct examination, she was asked the following questions:

Deputy Public Defender Ford: Do you want your children back?

Mother: Of course I do.

Deputy Public Defender Ford: And why won't they give you your kid's back? What was indicated to you?

Mother: Well, because they're saying that I haven't done the clarification.

Deputy Public Defender Ford: What do you need to do to complete the clarification?

Mother: When I began to understand what they wanted, what the clarification was, it was that I had to say that I believed [Victim] and I had to say that things had happened that way.

....

Deputy Public Defender Ford: Do they want you to say that you believe [Victim]?

Mother: They have always pressured me.

Deputy Public Defender Ford: Have you been able to do that for them?

Mother: They have tried to pressure me many different ways, a lot of times.

(R. 368-69). Appellant clearly elicits testimony from Mother about why DSS will not return her children to her. Appellant then emphasized the fact that Mother did not believe Victim in closing. (R. 421). Appellant repeatedly emphasized that Mother should be considered a credible witness, because DSS told her she merely had to say she believed her child, but even with this incentive Mother could not do that because she could not believe her daughter's lie.

In ruling on the admissibility of evidence, the trial judge has considerable latitude and his ruling will not be disturbed absent a showing of probable prejudice. State v. Kelly, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995). An "error without prejudice does not warrant reversal." State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). "A court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error which results in prejudice to the defendant." Id. "Whether an error is harmless depends on the circumstances of the particular case." State v. Thompson, 352 S.C. 552,

562, 575 S.E.2d 77, 83 (Ct. App. 2003). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985). “Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed.” Thompson, 352 S.C. at 562, 575 S.E.2d at 83. “Error is harmless when it could not reasonably have affected the result of the trial.” Mitchell, 286 S.C. at 573, 336 S.E.2d at 151 (quoting State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971)). “The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence.” State v. Kirton, 381 S.C. 7, 37, 671 S.E.2d 107, 122 (Ct. App. 2008).

As an initial matter, Appellant waived his objection on relevance by not only failing to reserve his previous objection, but also by eliciting the same allegedly offensive testimony in his case in chief. See State v. McKinney, 258 S.C. 570, 190 S.E.2d 30 (1972), State v. Smith, 245 S.C. 59, 138 S.E.2d 705 (1964). However, even if this Court were to find that Appellant properly preserved the alleged error for appeal and did not waive his prior objection, any error did not prejudice Appellant and is therefore harmless. Appellant made the relationship of Mother and DSS a central theme of his defense. After initially objecting to Smalls’ testimony on the basis of relevance, Appellant then proceeded to ask Smalls at least four times about Mother not believing Victim and how that affected Mother getting her kids back. Subsequently, Appellant asked Mother at least four times why DSS had not given her kids back. Appellant completed his strategy by then arguing in closing that Mother simply had to tell DSS she believed Victim to get all of her kids back. However, Appellant argued, Mother could not and would not do this, because “she can’t lie. She can’t lie, especially when it comes to having to sacrifice someone.”

(R. 421). The obvious implication from this argument is that Mother did not believe Victim, therefore the jury should not either.

It is therefore disingenuous for Appellant to argue that he was prejudiced in some way by Smalls' testimony. Smalls merely testified that it is DSS procedure not to return a child to a home where the non-abusive parent does not believe the child has been abused². Rather than minimizing this point, Appellant expanded upon Smalls' answers and emphasized them in his defense. Appellant not only expanded on this testimony when he cross-examined Smalls, but he called Mother to directly ask her whether DSS would return her children if she believed Victim. Appellant then used DSS' reasons for not returning Victim and Mother's refusal to comply with DSS requirements as a central pillar of his closing argument. Because Appellant used DSS' standards and Mother's failure to comply with them to his advantage, Appellant was not prejudiced by the admission of Smalls' testimony on direct. Because Appellant actively elicited the allegedly improper testimony in his own defense, any potential error was harmless. Appellant's convictions and sentences should be affirmed.

² This is a far cry from Smalls testifying about the credibility of the Victim and her disclosure as prohibited by State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013) and its progeny.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Roger M. Young Sr., Circuit Court Judge

Appellate Case No. 2017-000214

THE STATE,

Respondent,

v.

CARLOS A. RUIZ,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

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SCARLETT A. WILSON
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ATTORNEYS FOR RESPONDENT

March 9, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Roger M Young, Sr., Circuit Court Judge

Appellate Case No. 2017-000214

THE STATE,

Respondent,

v.

CARLOS A. RUIZ,

Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Dudek, 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 ninth day of March, 2018.


SALLY ELLISON
Legal Assistant

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(803) 734-3727

**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.

Carlos A. Ruiz, Appellant.

Appellate Case No. 2017-000214

Appeal From Charleston County
Roger M. Young, Sr., Circuit Court Judge

Unpublished Opinion No. 2019-UP-044
Submitted November 1, 2018 – Filed January 30, 2019

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jonathan Scott Matthews, both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, all for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) ("To
preserve an issue for review there must be a contemporaneous objection that is

ruled upon by the trial court. The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error." (citation omitted)); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal.").

AFFIRMED.¹

KONDUROS, MCDONALD, and HILL, JJ., concur.

RECEIVED
JAN 30 2019
APPELLATE DEFENSE

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Carlos A. Ruiz, 371060,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2020-CP-10-422
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFFILED
2020 JAN 23 PM 3:20
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions, 100 Broad Street, Charleston, SC 29401
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-10-0875, 0876, 0877: Criminal Sexual Conduct with Minor, 1st Degree
 - (b) 2017-GS-10-0878, 0879, 0880: Criminal Sexual Conduct with Minor, 2nd Degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 13, 2017: Life

- (b) January 13, 2017: 20 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
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. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 30, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel for failure to prepare and investigate.
 - (b) Ineffective assistance of trial counsel for failure to make contemporaneous objections.
 - (c) Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to adequately prepare with Applicant and investigate prior to trial.
 - (b) Counsel failed to make legal objections to testimony and charges.
 - (c) Counsel failed to raise all preserved meritorious issues.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
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. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum for each ground.

(b) _____

- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes.
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Mary Ford, 101 Meeting Street, Charleston, SC 29401
 - ii. Nicholas Smit, 101 Meeting Street, Charleston, SC 29401
 - iii. Robert M. Dudek, 1330 Lady Street, Suite 401, Columbia, SC 29201
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Trial
 - iii. Direct Appeal
19. State clearly the relief you seek in filing this application:
A new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA

)

VERIFICATION

)

County of Anderson

)

I, Carlos A. Ruiz, 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.

Carlos Ruiz

SWORN to and subscribed before me this 21st
day of January, 2020.

Jamaine Conwell (L.S.)
Notary Public

My Commission Expires: My Commission Expires
September 25, 2023

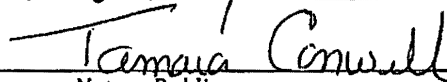
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Carlos A. Ruiz, 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.


Applicant

SWORN or affirmed to and subscribed before me this
21 day of January, 2020.


Notary Public

My Commission Expires: September 25, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Carlos A. Ruiz #371060,

Case No.: 2020-CP-10-422

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

FILED
2020 AUG 14 PM 12:03
JULIE J. ARMSTRONG
CLERK OF COURT

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on January 23, 2020, would respectfully show this Court:

I. PROCEDURAL HISTORY

Carlos Ruiz (Applicant) is presently confined pursuant to orders of the Charleston County Clerk of Court. In January 2017, the Charleston County Grand Jury indicted Applicant for three counts of criminal sexual conduct with a minor in the first degree and three counts of criminal sexual conduct with a minor in the second degree. On January 9-13, 2017, a jury trial was held in the Charleston County Court of General Sessions before the Honorable Roger M. Young Sr. and a jury. Applicant was represented by Mary Ford, Esquire, and Nicholas Smit, Esquire of the Charleston County Public Defender's Office. The State was represented by Assistant Solicitors Deborah Herring-Lash and Nina Savas of the Ninth Circuit Solicitor's Office. Court interpreters were utilized at trial, because Applicant did not speak English. At the conclusion of trial, the jury convicted Applicant of all six counts. Following the verdict, the trial judge sentenced Applicant to three concurrent life term for each count of criminal sexual conduct with a minor in the first degree, and three concurrent terms of twenty years' imprisonment for each count of criminal sexual

conduct with a minor in the second degree. Applicant filed a timely notice of appeal. Applicant filed a Final Brief of Appellant and the State filed its Final Brief of Respondent. The South Carolina Court of Appeals affirmed Applicant's convictions by Unpublished Opinion No. 2019-UP-044, filed on January 30, 2019. The Remittitur was issued to the lower court on February 15, 2019.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel for failure to prepare and investigate
2. Ineffective assistance of trial counsel for failure to make contemporaneous objections
3. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal

In relief sought, Applicant is seeking: "A new trial."

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials. Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

III. INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where

ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced 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. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265,

305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. FAILURE TO INVESTIGATE

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[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). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent **634 investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014). Respondent submits that Applicant cannot meet his burden in regards to any claims that counsel was ineffective for failure to investigate.

V. DUE PROCESS VIOLATIONS

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights as afforded to him under the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "...specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Because Applicant has failed to make a prima facie showing that his constitutional right to due process was violated, Respondent submits this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based and relief is sought.

VI. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

The Applicant alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required 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) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess reasonable professional judgments and impose on ... 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, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. *See Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

VII. MOTION FOR A MORE DEFINITE STATEMENT

In his application for relief, Applicant fails to set forth with specificity the facts and circumstances upon which his allegations of ineffective assistance of appellate counsel are based. The Uniform Post- Conviction Procedure Act requires that the Applicant must ". . . specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDoueall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant fails to provide any supporting information for his claims.

Accordingly, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss his application.

VIII. ANY FUTURE AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCP; *Mangal v. State*, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). 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. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCP.

IX. 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.

X. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: s/ Benjamin H. Limbaugh
ATTORNEY FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

August 12, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

Carlos A. Ruiz, #371060)

Applicant,)

v.)

State of South Carolina)

Respondent,)
_____)

Case No.: 2020-CP-10-422

Certificate of Service by Mail

FILED
2020 AUG 14 PM 12:04
JULIE J. ARMSTRONG
CLERK OF COURT

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
234 Seven Farms Drive, Suite 128
Charleston, SC 29492

DATED this 12th day of August, 2020.



Jennifer Jennison, Administrative Coordinator
For Respondent

State of South Carolina	)	Court of Common Pleas
County of Charleston	)	Ninth Judicial Circuit
	)	
CARLOS A. RUIZ,	)	Case Number:
	)	2020-CP-10-00422
Applicant,	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA,	)	POSTCONVICTION RELIEF
	)	
Respondent.	)	TRANSCRIPT OF RECORD
	)	

June 30, 2023
Charleston, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis

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

MR. CHRISTOPHER L. MURPHY,
Attorney at Law,
for the Applicant;

MS. DANIELLE DIXON,
Assistant Attorney General,
for the Respondent.

Jamie Bickett
Official Court Reporter

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WITNESSES

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1 (The following proceedings were had in open court with
2 the aid of a Spanish language interpreter.)

3 THE COURT: So Madam Interpreter, tell me your name,
4 please.

5 COURT INTERPRETER: Maria Torres.

6 THE COURT: Torres?

7 COURT INTERPRETER: Yes.

8 THE COURT: T-O-R-R-E-S?

9 COURT INTERPRETER: Yes.

10 THE COURT: And you are interpreting Spanish?

11 COURT INTERPRETER: Correct.

12 THE COURT: Okay. If you would raise your right hand
13 for me, please.

14 (Interpreter sworn.)

15 THE COURT: Thank you.

16 MS. DIXON: May it please the Court. Danielle Dixon,
17 assistant attorney general for the State of South Carolina.

18 This is the case of --

19 THE COURT: Okay. Hang on just one moment.

20 MR. MURPHY: So if you could slow down just a little.

21 MS. DIXON: Sorry.

22 THE COURT: So I'm going to ask if everyone will please
23 -- you can speak in your normal tone. Don't speak too
24 quickly, and then pause and allow translation along the way.

25 MS. DIXON: Gotcha. Okay.

1 This is the case of Carlos Ruiz v. State, Docket Number
2 2020-CP-10-422. Mr. Ruiz is currently serving a life
3 sentence. In January of 2017, he was indicted by the
4 Charleston County Grand Jury of first-degree CSC with a
5 minor, three counts of that; second-degree CSC with a minor,
6 three counts of that. These charges involve his
7 stepdaughter, who was under the age of 11 when three of the
8 charges arose and was 11 or older when the remaining charges
9 arose.

10 Mr. Ruiz proceeded to a jury trial before the Honorable
11 Roger M. Young January 9 through 13, 2017. He was
12 represented by Mary Ford and Nicholas Smith. Assistant
13 solicitors Deborah Herring-Lash and Nina Savas represented
14 the State. The jury found him guilty, and he was sentenced
15 to concurrent terms of life for each degree -- for each
16 first-degree CSC and then 20 years for each second-degree
17 CSC.

18 He filed a direct appeal, which was perfected by
19 Appellate Defender Robert Dudek, who argued the Court erred
20 in allowing testimony of a DSS caseworker that was irrelevant
21 and improperly bolstered the minor's credibility. The Court
22 of Appeals affirmed in a 220(b) unpublished opinion
23 ultimately finding that issue unpreserved. The remittitur
24 was sent February 15, 2019.

25 He timely filed this PCR application January 23, 2020,

1 alleging counsel was ineffective for failing to adequately
2 prep him and investigate prior to trial, failing to make
3 legal objections to testimony and charges, and failing to
4 raise all preserved meritorious issues. He has more recently
5 amended that.

6 I've spoken with counsel, and I believe what they're
7 going forward to today -- and Mr. Murphy may have some to add
8 as well -- but not objecting to the DSS worker testifying
9 that the child's mother was not supported and thus bolstering
10 the child's testimony, error by convincing the defendant not
11 to take the stand, and failing to ask for the lesser-included
12 offense of CSC third.

13 Is that correct?

14 MR. MURPHY: That's correct.

15 MS. DIXON: And this has previously been continued
16 November of 2022, February of 2023, and April of 2023. And
17 just for the record, your Honor, we have handed up to you the
18 records from the clerk of court for this conviction -- er,
19 these convictions, the records from the department of
20 corrections regarding his detention, the trial transcript,
21 the appellate records, and then the records from this PCR.

22 THE COURT: Okay. Mr. Murphy?

23 MR. MURPHY: Yes. Thank you, your Honor. May it please
24 the Court.

25 Just to clarify our grounds for this PCR, the first

1 ground as Ms. Dixon stated is correct: that there was no
2 objection while the DSS worker was testifying, and thus
3 bolstering the victim's testimony. That is on the record at
4 page 243, line 25, and goes to page 244, line 16. That issue
5 was the subject of a direct appeal. As Ms. Dixon stated, the
6 issue -- the Court ruled the issue was not preserved.
7 However, the Court also did rule that it was harmless error.
8 Nevertheless, this is a subject issue for this PCR
9 application. For that issue, we will be resting on the
10 record and will not be providing any testimony about it.

11 The second issue is failure to talk to the defendant or
12 convince the defendant to take the stand based on the
13 evidence. We will have testimony about that issue.

14 The third issue is the failure to ask for the
15 lesser-included offense of CSC third. That will require some
16 testimony as well.

17 And finally, Judge, I was looking at the case this
18 morning, going over issues, and I see that Judge Young
19 sentenced Mr. Ruiz to three life sentences for the CSC first.
20 When I looked at the statute, the sentence range is zero to
21 30 years. So we are going to add that issue to this PCR
22 application. I realize that I'm catching Ms. Dixon by
23 surprise and giving her short notice, and we would ask that
24 if she needs any time to research it, that is absolutely
25 fine.

1 MS. DIXON: And your Honor, we have no objection. I
2 would just ask if we could have maybe ten days to just kind
3 of see -- pull the statute that was in effect at the time of
4 these crimes to see what the sentencing range was at that
5 time.

6 THE COURT: Sure.

7 MR. MURPHY: And we would rest on the record on that
8 issue as well.

9 THE COURT: Okay.

10 MR. MURPHY: Therefore, Judge, our first witness would
11 be Mr. Ruiz.

12 THE COURT: Okay.

13 MR. MURPHY: And Mr. Ruiz, we're going to call you. If
14 you could just walk up to the stand.

15 And I'm not sure how you want the interpreter maybe to
16 stand next to Mr. Ruiz up on the stand or --

17 THE COURT: We can also bring a chair over if you need a
18 chair.

19 (Witness sworn.)

20 CLERK OF THE COURT: And then just have him state his
21 name, spelling his last name for the record.

22 THE DEFENDANT VIA THE COURT INTERPRETER: Carlos Ruiz,
23 R-U-I-Z.

24 MR. MURPHY: All right. Thank you, your Honor.

25 May it please the Court.

1 CARLOS RUIZ,
2 called as a witness on his own behalf, being first duly
3 sworn, was examined and testified via a Spanish language
4 interpreter as follows:

5 DIRECT EXAMINATION

6 BY MR. MURPHY:

7 Q. Mr. Ruiz, can you please tell us how old you are?

8 A. Sixty-eight.

9 Q. And do you speak any English, sir?

10 A. Very little.

11 Q. Do you understand what I'm saying before the translator
12 talks?

13 A. No.

14 Q. Now, you understand that this is a postconviction relief
15 hearing?

16 A. Okay.

17 Q. And this hearing we're limited to talking about errors
18 by your attorney Mary Ford.

19 A. But I would like to clarify more things.

20 Q. Okay. We can ask about that. And I'll be asking you
21 some questions, and hopefully that will answer your
22 questions.

23 A. I need the opportunity to be able to speak. With what
24 happened, there was no chance for me to talk, to say what
25 happened.

1 The tests that were done, none of the tests show
2 anything of me. The forensic medics, they didn't find
3 anything of me. With all the excess that they did, there was
4 nothing of me.

5 Q. Yes, sir. And we will get into that.

6 A. Yeah. All of that is on the record, everything: the
7 medical records, the exams, what the victim said, and the
8 check that they did on her. And actually, they determined
9 that she was very healthy.

10 Q. Yes, sir. And that is part of the record. And if you
11 could let me ask you some questions --

12 A. Okay.

13 Q. -- we will get into all this. Okay?

14 A. Yes.

15 Q. Now, Mr. Ruiz, you were represented by Mary Ford in
16 these charges?

17 A. Yes.

18 Q. Okay. And how many times did you meet Ms. Ford to talk
19 about your case?

20 A. Like three times. Or less than that.

21 Q. Did you understand the case against you?

22 A. Some of them. Some things I did, but the language
23 really messed me up.

24 Q. When you say the language messed you up, was an
25 interpreter present with Ms. Ford when she talked to you?

1 A. Only when we were in court -- when we were present in
2 court.

3 Q. When she met you the three or four times before going to
4 court, where were you?

5 A. Sometimes I would meet at her office. So she would call
6 me when she would tell me, "Hey, there's some urgency.
7 There's something that's come up. I have a need for you to
8 come in." So I would go into her office and she would talk
9 to me, saying, like, the opposing judge, the physical judge,
10 would have a deal for me, but I always told her, "I don't
11 want that deal. A deal like that is probably good for
12 someone that's guilty, but I'm not guilty. I'm innocent."

13 Q. And when you spoke with Ms. Ford, did she speak to you
14 in Spanish or in English?

15 A. She spoke in English, but she had an interpreter there
16 sometimes. Sometimes he was there to help.

17 Q. And did you understand everything that Ms. Ford was
18 saying when you met with her?

19 A. To be honest, very little. And whenever I got letters
20 from her or from here, they were all in English. How could I
21 read that?

22 Q. All right. So did you understand the evidence that the
23 State was going to have against you or was going to present
24 against you?

25 A. Well, let me see. First they said there was abuse and

1 also abuse with violence, and there was no way that happened.
2 The forensic medics examined the victim, and she had no
3 scratch on her. She had nothing on her. There was nothing.
4 Nothing.

5 Q. All right. So if I understand what you're saying, there
6 was no physical evidence that you committed these charges; is
7 that correct?

8 A. Yes.

9 Q. And the evidence was the testimony of the children
10 versus your word; is that correct?

11 A. That's the thing. All of this comes down to a
12 vengeance. You see, what happened is that the children's
13 father was accused of domestic violence by the mother, and
14 because of that he was deported. So they lost their father.
15 And their paternal grandmother would come pick them up to
16 take them on the weekend, and when she took them on the
17 weekend, he would speak with them.

18 Q. Okay.

19 A. And you see, he would talk to them and he would train
20 them on what they needed to do, because he would tell them
21 that he wasn't able to be with them, he wasn't able to come
22 back because I was there; I needed to be gone in order for
23 him to be able to come back. So all of them were in cahoots.
24 All of them were saying these things for that reason.

25 Q. And were you the only witness that could testify about

1 this, or were there other witnesses?

2 A. The mother of the children.

3 Q. Okay. And the mother of the children, she did testify
4 at trial; is that true?

5 A. I don't remember if she was allowed to, but I remember
6 that they wouldn't let her speak very much.

7 Q. Now, you mentioned that the State made some offers, some
8 -- offered you some settlements or some deals; is that true?

9 A. Yes. The opposing attorney talked to my lawyer, and she
10 said that she needed to talk to me because they had a deal
11 for me.

12 Q. And what was that deal that was offered?

13 A. Well, that they were going to take some charges away,
14 but that I had to accept guiltiness. And I said no because
15 that would condemn me and I'm not guilty.

16 Q. Okay. And was there any jail time along with those
17 offers by the State?

18 A. Well, it's just that I -- when she said that I had to be
19 guilty, I said no, that I wouldn't do it. And I don't know;
20 maybe there would be some time. It's just she didn't explain
21 what that would be.

22 Q. Okay. So with these offers that you discussed with your
23 attorney, because they were talking about -- or she was
24 talking about pleading guilty, did you listen to anything
25 else or did she explain any other consequences?

1 A. No. Just that there was a deal for me on behalf of the
2 opposing judge -- er, the attorney.

3 Q. And other -- and sir, what I'm trying to understand is
4 did you have any understanding of what that deal was?

5 A. Just that they were going to take some charges away,
6 some charges that would be removed. But that would mean that
7 I'm guilty, and I'm not guilty. So that kind of deal would
8 be good for somebody that is guilty and they have proof
9 against them, but that's not for me. That's not what I have.

10 Q. Did you understand before going to trial that if you
11 were convicted you could be looking at in excess of a hundred
12 years' jail time?

13 A. Yes, but I was always holding onto my truth -- my truth
14 that I wasn't guilty of this.

15 And also, they didn't take into account the accident
16 that I had. I had a tremendous accident where a car ran over
17 me top to bottom and it broke my leg, my foot, and it crossed
18 over my pelvis. It broke my pelvis in two. It crushed my
19 bladder, part of my prostate. This included tendons and
20 muscles and veins. Some of these are the ones are
21 responsible for strengthening the penis -- the muscles and
22 tendons. And that all got affected, but they didn't take any
23 of that into account.

24 Q. So if I understand, you're saying the car wreck made it
25 more difficult to get sexually aroused?

1 A. Yes, because the doctors tried. They experimented
2 with -- after I had a series of surgeries, with Viagra, with
3 three other types of pills, with injections, different
4 things, and none of that worked.

5 Q. And did Ms. Ford know about this car accident?

6 A. Of course. Yes.

7 Q. Now, if I hear what you're saying, you did not believe
8 there was any possibility that a jury would convict you when
9 you decided to go to trial; is that fair?

10 A. Yes, because in court, even when the judge said -- when
11 there was nothing else to be done and he talked to the jury,
12 he told them, "If he doesn't testify, that doesn't mean that
13 he's accepting guiltiness. And Attorney Ford said he does
14 not testify, but that does not mean that he's guilty."

15 Q. Okay.

16 A. So then the Judge said, "Well, this is up to what I can
17 -- what I'm involved in. Now it's your decision. I wash my
18 hands of this. I can't do anything else. Now you make the
19 decision."

20 Q. And that is true, Mr. Ruiz; it's your decision whether
21 or not to testify.

22 (Court Interpreter translated.)

23 BY MR. MURPHY:

24 Q. But what I'm trying to get to is -- I'm trying to go and
25 set a timeline here. Okay?

1 (Court Interpreter translated.)

2 BY MR. MURPHY:

3 Q. And right now, we're about to start trial in terms of
4 your testimony. Okay?

5 (Court Interpreter translated.)

6 BY MR. MURPHY:

7 Q. Now, prior to going to trial, did you and Ms. Ford talk
8 about whether or not it would be good for you to testify?

9 A. No.

10 Q. Now, during trial -- and I understand the State had no
11 physical evidence against you -- did you talk to Ms. Ford
12 about whether or not you should take the stand and testify?

13 A. I'm sorry. How do you mean? Like, that I'd be -- would
14 just to myself? Or how?

15 Q. No. That you would testify on your own behalf and
16 explain to the jury that you were innocent.

17 A. No.

18 Q. Now, at some point the judge asked you if you wanted to
19 testify. Do you remember that?

20 A. What he said to the jury is what I told you already.

21 Q. That's correct.

22 A. That he said, "If he doesn't testify, it doesn't mean
23 that he's guilty." That's what he said.

24 Q. And that would have been at the end of the trial when
25 the judge was giving jury charges?

1 A. Yes, that was at the end.

2 Q. But when the State finished its case, the judge would
3 have asked you -- and he did -- whether or not you wish to
4 testify. Do you remember that conversation?

5 A. No. What I remember is the ending from what he said.
6 He said, "If he doesn't give his testimony, that doesn't mean
7 that he's guilty."

8 Q. Okay. At any time during the trial, did you talk with
9 Ms. Ford about whether it would be in your best interest to
10 testify on your behalf?

11 A. No. Since she told me that everything was going well,
12 that we were in good standing, that they had no witnesses,
13 they had no proof, so that gave me relief.

14 But she told me, "If you want to give your testimony,
15 you can give your testimony. But if not, then I will speak
16 for you."

17 Q. And in terms of when you said the State had no witnesses
18 or no proof, the State had the testimony of the children as
19 proof and as witnesses. Did you understand that?

20 A. It's just that there was evidence. The only thing that
21 they had, which is on the record from what their testimony
22 what they said, that I'm not part of their family, I don't
23 belong with them, that their father isn't with them because
24 I'm in their father's place, things that their father would
25 have told them over the phone, things like that.

1 Q. I cannot remember the trial testimony or the transcript,
2 but did somebody testify about the car accident that you had?

3 A. I would tell them about that, but during the trial, they
4 didn't take that into consideration.

5 Q. Well, they didn't take it into consideration because you
6 did not testify about that?

7 MS. DIXON: Object. Leading.

8 THE COURT: I'm going to allow that.

9 Go ahead.

10 BY MR. MURPHY:

11 A. But if they themselves -- my lawyer and the other guy,
12 they asked me to sign that document so that they could get
13 the medical transcripts.

14 Q. Do you mean the medical records?

15 A. She had it. She had it with her because I signed the
16 paper that I authorized her to get the medical records.

17 Q. But did you have a discussion with Ms. Ford about
18 presenting those medical records at trial?

19 A. Well, it's just that they didn't present anything. You
20 understand?

21 Q. And other than yourself, what witness could have
22 testified about the impacts of this car accident?

23 A. Also, they didn't take her into consideration, the
24 mother of the children. She knew all that. She could
25 testify to that. But they didn't take her into

1 consideration.

2 Q. And what I want to make sure is that we're talking about
3 the same thing. Okay, sir?

4 A. (Witness answered in Spanish, and the Court Interpreter
5 did not translate it.)

6 Q. The mother testified at trial about her opinion that the
7 children were not being truthful.

8 (Court Interpreter translated.)

9 BY MR. MURPHY:

10 Q. And that would have been evidence that the jury
11 considered?

12 A. They didn't take into account, nothing.

13 Q. Now, do you understand there's a difference that they
14 did not believe the mother versus they did not take that into
15 account?

16 A. The best witness would have been the mother of the
17 children, and they didn't let her give her full statement.

18 Q. Okay. And in addition, you decided -- or did you decide
19 that you did not want to take the stand to testify about the
20 impacts of this car accident?

21 A. In part, yes, because as a man and the machismo, it's
22 hard to get on the stand and say that all of this is dead.

23 Q. All right. Now, in terms of at the end of the trial
24 jury charges --

25 (Court Interpreter translated.)

1 BY MR. MURPHY:

2 Q. -- did you talk to Ms. Ford about asking for a
3 lesser-included jury charge or a lower crime?

4 A. No.

5 Q. Do you understand what I'm asking about the jury charges
6 and asking for a lesser-included crime?

7 A. Well, first of all, that's what they always said. They
8 said 30 years this, life.

9 But so first of all, I'm not guilty. If I would have
10 been guilty, as soon as this minor, this little girl,
11 reported it at school -- actually, no. Before that, she
12 would hang out with these boys, that they would go in the
13 woods and be with hanging around all the time. At the moment
14 that she started this, I could have left. If I was guilty, I
15 would have left. But I said, "No. I'm not guilty." So I
16 stayed and I was holding up to clear my name.

17 But I have a lot of papers that you can use as evidence.

18 Q. Now, this evidence that you're talking about, would that
19 be you that was able to testify about it? Or somebody else?

20 A. No, nobody.

21 You know, like I tell you, like, all these papers are
22 always English, English. And how can I read them? And I get
23 even more confused.

24 Q. So can you answer the question why didn't you take the
25 stand to testify about the car accident and about these other

1 issues with the children?

2 A. Well, I would just tell her, "Remember my medical
3 condition." But they never dug into it and tried to use it
4 and figure it out more.

5 Q. All right. Now, Mr. Ruiz, at the beginning of this
6 hearing, you indicated that there was a lot of stuff you
7 wanted to say.

8 A. Yes.

9 Q. Have we gone over all of the issues that you wanted to
10 tell this judge?

11 A. No. No. Because when there are issues with this minor,
12 they said that there was abuse. And not just abuse; it was
13 an aggravated abuse. But all the tests they did, all the
14 examinations, there wasn't even a scratch on her.

15 Q. We have talked about that, and that is in the record.

16 A. (Witness answered in Spanish and the Court Interpreter
17 did not translate it.)

18 Q. Right. Was that what you wanted to let the Court know
19 about?

20 A. Okay. When this girl started this -- this -- filed for
21 this motion, she had all the exams done: vaginal, anal,
22 breast. On the date that she filed, she said that that date
23 I had been with her, that we had had relations. So they
24 checks her breasts. They checked her neck because she said
25 that I would kiss her neck. They did all the tests they

1 could do: the age, pregnancy. Nothing. There was nothing.
2 There was no proof that -- nothing as far as from me. Not
3 even a fingerprint or anything of me on her.

4 Q. And sir, that is part of the record.

5 A. So when somebody for this kind of crime is guilty, they
6 have evidence. They find prints, something. And they go
7 ahead and they arrest them immediately. They didn't do that
8 to me because there was nothing. It was some time -- it was
9 like a month and a half had passed before they got in touch
10 with me and they said they had some questions for me. They
11 wanted me to come down to the police department, and I said,
12 "Yes. That's fine. What time? When do you want me there?"
13 So they told me.

14 And I reached out to my lawyer and I tried to have her
15 to see if she could come with me, if I should go, what was it
16 that I should do, what was best for me. But I couldn't get
17 ahold of her. I tried and I tried and I couldn't get through
18 to her. So then I called the police department again, and I
19 said, "Listen, I can't get ahold of my lawyer, so I'm not
20 going to be able to go today, but I'll go tomorrow. I'll go
21 tomorrow with or without her. If I can't get ahold of her,
22 I'll still go."

23 But that night, there were about 20 undercover cops that
24 showed up to my house. They showed up to the house with dogs
25 and everything, knocking hard on the door. We opened the

1 door, and they said, "Hey, Carlos Ruiz." I said, "Yes,
2 that's me." They immediately went ahead and jumped on me and
3 they arrested me. And they went in the house, searching the
4 rooms. Some of them were looking. The others were talking
5 to the mother without an order -- without an order of arrest,
6 without an order from a judge.

7 Q. All right, sir. Thank you very much.

8 (Court Interpreter translated.)

9 BY MR. MURPHY:

10 Q. That is all the questions I have for you.

11 A. No, but this is my opportunity so that I can clarify
12 everything.

13 Q. Sir, we do not retry the case in this hearing.

14 (Court Interpreter translated.)

15 BY MR. MURPHY:

16 Q. We are limited to errors by your attorney only.

17 A. (Witness answered in Spanish and the Court Interpreter
18 did not translate it.)

19 Q. The jury has already decided on these facts.

20 (Court Interpreter translated.)

21 BY MR. MURPHY:

22 Q. I understand you disagree with the jury, but we're not
23 at that stage. We're past that stage.

24 A. Okay. But listen, this is why -- after they arrested
25 me, I was detained for about six months. After that I was

1 released under bond, so I had a conditional release. If I
2 was guilty, I would have left during that time.

3 Q. And we understand you are maintaining your innocence.

4 (Court Interpreter translated.)

5 BY MR. MURPHY:

6 Q. Nobody is questioning that.

7 (Court Interpreter translated.)

8 BY MR. MURPHY:

9 Q. And that is all the questions I have for you. The
10 attorney general's office might have some.

11 A. Okay.

12 CROSS-EXAMINATION

13 BY MS. DIXON:

14 Q. How are you today, Mr. Ruiz?

15 A. Not doing too well per se, but I'm here, trying to
16 clarify some things.

17 Q. Gotcha. Okay. And just a few quick questions.

18 (Court Interpreter translated.)

19 BY MS. DIXON:

20 Q. Did you want to testify at trial?

21 A. Truthfully, I had a little bit -- it would help a little
22 bit, because I didn't want to talk about all the things that
23 the accident had caused in me and having to expose myself
24 like that. Another part, I trusted in the lawyer and what
25 she was telling me. She told me that everything was going

1 fine, that everything was okay, and I believed her.

2 Q. And you said today that you had trouble understanding
3 English. Did you ever have trouble understanding the
4 interpreter?

5 A. Sometimes. But usually they try to clarify things for
6 me because the interpreters are also Latinos.

7 Q. And they were present at your trial, correct?

8 A. Yes.

9 Q. And you understood you could testify if you wanted to,
10 correct?

11 A. No. Honestly, no. Just what they told me. They said,
12 "No. Everything's fine. And if it's not, we'll talk for
13 you. If you want to give your testimony, you can give it.
14 If not, it's also fine."

15 Q. Okay. But you agree you had a Latino interpreter
16 telling you everything the judge said in Spanish, correct?

17 A. Yes. There was some issues with the thing that you --
18 the headset. It wasn't always working well. Sometimes the
19 battery died on it. It was difficult.

20 Q. And if you had testified, in addition to testifying
21 about your accident and in addition to testifying that the
22 victim did not have any evidence of any type of injury on her
23 body, is there anything else you would have testified about?

24 A. Well, honestly, the truth here is that the father and
25 his family have it out against me, and they used the children

1 to execute this plan. It was all planned on their behalf.
2 The mother of the children accused the father of domestic
3 violence. And because of that, he was deported. He wasn't
4 happy, and his family, they had it out against me. So they
5 were also against me, and they talked the children into it.

6 MS. DIXON: Nothing further.

7 THE COURT: You can step down, sir.

8 THE WITNESS: I can't talk. I can't talk. You won't
9 let me give my testimony as it is.

10 THE COURT: You only get to give your testimony,
11 Mr. Ruiz, if I grant a new trial.

12 (Court Interpreter translated.)

13 THE COURT: We don't take new testimony in this hearing.

14 (Court Interpreter translated.)

15 THE COURT: This is only to determine if you would get a
16 new trial.

17 THE WITNESS: That's fine.

18 THE COURT: Thank you.

19 THE WITNESS: But you can -- the best witness I have is
20 the mother of the children.

21 THE COURT: Thank you.

22 (Witness excused.)

23 MR. MURPHY: And your Honor, we would call Ms. Mary
24 Ford.

25 (Witness sworn.)

1 CLERK OF THE COURT: Please be seated.

2 And please state your full name, spelling your last
3 name.

4 THE WITNESS: Mary Ford, F-O-R-D.

5 MARY FORD,

6 called as a witness on behalf of the Applicant, being first
7 duly sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MURPHY:

10 Q. Now, Ms. Ford, I know you've been practicing criminal
11 law for a long time; is that true?

12 A. Correct. From '05.

13 Q. Since '05?

14 A. Yes.

15 Q. All right. So almost close to 20 years?

16 A. As of now, yes. Not at the time of the trial.

17 Q. No. I understand that.

18 And this -- when I read the transcript and look at this,
19 this seems like a very tough case; would you agree?

20 A. Yes. Very emotional with the mother. I actually had
21 numerous conversations with his wife, and there were a lot of
22 issues with the children being taken away from her as well.
23 So it was very emotional in that regard.

24 Q. And the wife stuck by Mr. Ruiz throughout the course of
25 this trial; is that fair to say?

1 A. Very much so. And that was brought out in trial very
2 clear that she was on his side.

3 Q. And you don't speak Spanish, do you?

4 A. I do not.

5 Q. Okay. And you heard Mr. Ruiz talk about conversations
6 and meetings you had with him?

7 A. Yes.

8 Q. Do you recall those meetings?

9 A. I do.

10 Q. Okay. Could you tell us about them, please.

11 A. Yes. So my office is fortunate to have a full-time
12 interpreter. So whenever I would meet with Mr. Ruiz, that
13 interpreter would be with us. I know there were a couple of
14 times that he just showed up without notice. I think one
15 time he had received the indictment. When we would send him
16 mail, it was generally just form letters that my paralegal
17 would send.

18 So one time he showed up with the indictment.
19 Mr. Alameda may not have been available -- that's the
20 interpreter -- when he just showed up. I think the time he
21 showed up with the indictments, he had a family member. So
22 we sort of communicated, but it wasn't very clear.

23 But whenever I met with him, Mr. Alameda was with us.
24 When he was in jail, my notes reflect I saw him four times.
25 And then I have notes that I saw him on nine different

1 occasions. I think two of those were when he just showed up,
2 so other than those two times, it was seven occasions.
3 Before the trial we actually even went to his house, my
4 investigator and Mr. -- the interpreter and I. And so
5 Mr. Alameda, who is -- who was originally born in Ecuador, he
6 was with us whenever we met.

7 Q. All right. And since you had an interpreter there, did
8 you have any trouble explaining the case to Mr. Ruiz?

9 A. No, I did not. It was evident there were things that he
10 had a difficult time accepting, but not because he -- there
11 was an intellectual issue or anything like that. He had a --
12 he did have a difficult time accepting that he could be
13 prosecuted without physical evidence.

14 Q. Okay.

15 A. So we talked about that many times. I believed he
16 understood it on its face but just had a difficult time
17 accepting it. That is actually not unusual for my clients
18 with these type of charges, especially when they are
19 originally not from the United States, where the law may be
20 different. They just have a difficult time accepting that as
21 a premise, that we can proceed to trial.

22 Q. And so during the course of your representation, you did
23 not have any questions about his competency to stand trial;
24 it was just he refused or would not accept what testimony --
25 that testimony alone constituted evidence?

1 A. Correct. Mr. Alameda, he -- you know, there are -- of
2 course, Mr. Ruiz and I haven't -- you know, didn't speak the
3 same language, but Mr. Alameda typically also will bring it
4 to my attention if one of my clients isn't quite getting --
5 you know, if it seems like there's something a little more.
6 But I did not get the impression that Mr. Ruiz had any
7 competency or intellectual issues.

8 Q. And during the course of Mr. Ruiz's testimony, is it --
9 what he was focused on is that there was actually no physical
10 evidence of any type of touching or rape or forced sexual
11 behavior; is that what you understand?

12 A. Yes.

13 Q. Okay. So basically it came down to the word of the
14 victims versus Mr. Ruiz?

15 A. That is correct. There -- the siblings, they offered
16 some corroboration of what she said as well. I mean, not in
17 too much detail. One did say she saw him on top of her at
18 one point. But basically, yes, it was his word against
19 theirs.

20 Q. And there was also -- when I spoke with you a year ago
21 or two years ago about this case, you indicated that you had
22 a private investigator go to his house?

23 A. Yes. He actually testified at the trial. That's
24 actually the time I was referring to when we all went to the
25 house, because he and his wife were still living there up to

1 the trial. And he looked under -- the sister said she looked
2 under the door and could see him on top of the victim. So my
3 investigator, we just took a picture of that, and he looked
4 under the door and testified that it didn't seem possible
5 that she could have seen what she said.

6 Q. And so before we get to trial, I want to ask about
7 offers by the State.

8 Do you recall any offers the State made?

9 A. Yes.

10 Q. What were they?

11 A. The State made an offer to allow him to plead to one
12 count of criminal sexual conduct in the second degree. And
13 they were going to ask for prison time, but the sentence
14 would ultimately be up to the judge. I did explain to
15 Mr. Ruiz if he was interested -- which he was not -- I could
16 seek out a number from the solicitor to limit his exposure.
17 But that was the offer.

18 Q. Okay. And he indicated that because he was involved, a
19 guilty plea he was not interested in; is that what you
20 recall?

21 A. Yes. He was adamant he wasn't interested in pleading
22 guilty.

23 Q. And did you talk to him about pleading under Alford to
24 try and get around this issue of actually pleading guilty or
25 admitting guilt?

1 A. I can't remember specifically if I did that. I know
2 that he also had a family court case as well for the same
3 issue, and that was discussed about him taking an *Alford* plea
4 there. But I can't remember specifically if I discussed an
5 *Alford* plea in my case. He was just adamant that he wasn't
6 interested.

7 Q. And the reason I ask, when I do these type of cases, I
8 almost always talk about *Alford* pleas as a way for the
9 defendant not to admit anything but also reduce exposure. Is
10 that your practice?

11 A. Often I do do that, but it just depends. I mean, I
12 can't remember in this case. He was pretty adamant.
13 Sometimes I have clients who say they don't want a trial but,
14 you know, they -- but they're still telling me they're not
15 guilty, and usually that's when I'll go ahead and discuss an
16 *Alford* plea. But I can't remember specifically in this case.

17 Q. And as I look at this case, pleading to one count of CSC
18 second seems like a pretty good deal. Would you agree with
19 that?

20 A. Yes. Yes.

21 Q. And did you talk to him -- and I understand there's no
22 guarantees, but did you talk to him about your thoughts or
23 ideas on what he would actually get sentenced to if he were
24 to accept that deal?

25 A. I do not believe I ever gave him an actual number of

1 what I thought. Again, I did tell him I could try to work
2 out a number way less than 20. But I don't recall us talking
3 numbers. He just seemed really uninterested.

4 Q. And Debbie Herring-Lash prosecuted this?

5 A. Yes.

6 Q. Was she aggressive? I mean, it doesn't seem like she
7 was real aggressive with this case, as opposed to some of the
8 others I've dealt with with her.

9 A. Well, she's -- you know, she's not an aggressive person
10 or attorney. You know, she has a -- you know, her way about
11 her is not aggressive. But she -- this case was being pushed
12 a little faster, I think, than many other cases. And I think
13 a lot of that had to do with the family court situation. So
14 it did seem like she was kind of pushing it to get to trial.
15 I think initially when she made the offer, she was like,
16 "This is what I can offer, but we can" -- pretty much talking
17 about a trial date when she made the offer.

18 Q. And when you say "the family court situation," DSS had
19 an investigation into these allegations -- these exact same
20 allegations; is that correct?

21 A. Yes. But I think their concern was more of the mother.
22 They were trying to figure out what to do with the mother.

23 Q. Now, in terms of he mentioned this car accident that
24 impacted -- which he testified impacted his ability to commit
25 these crimes. Did you talk to him about this car accident?

1 Do you recall that?

2 A. Yes, multiple times. We did get his records. And what
3 we decided -- or I explained this to him many times that I
4 did not want to call a doctor at the trial because we would
5 then have to give all of these records over to the State at
6 that point. There were -- there was some indication that
7 there could be a partial erection and there still could be
8 ejaculation, things of that nature. And my concern, and what
9 I explained to Mr. Ruiz numerous times, what the victim was
10 claiming, it could have been deemed, like, consistent with
11 his accident because she would say that pretty much he
12 couldn't quite get it in or things like that.

13 And we actually did bring out testimony through the
14 wife. I didn't know that this was going to be raised. I
15 didn't review her testimony before this hearing, but she
16 testified for hours. I believe it was the longest testimony
17 I've ever had in a trial. And she had an interpreter as
18 well. And she did testify to a variety of issues with her --
19 the children's father's family, issues with the kids, and
20 then with the medical issues as well.

21 Q. Now, I want to focus on his taking the stand.

22 Did you talk to him prior to trial about his -- the
23 consequences, the pros and cons of him taking the stand on
24 his behalf?

25 A. Yes. So initially when we first started discussing it,

1 it was actually way before trial, even though it wasn't in
2 depth, because he was looking at the family trial. And I
3 told him at that point that I didn't think he should testify
4 there because I was concerned it could be used against him in
5 his testimony in our general sessions trial. And he had said
6 that he was happy to follow my advice.

7 I do have notes at least on two occasions prior to the
8 trial -- you know, close in time to the trial, that I
9 specifically talked with him about his right to testify. And
10 I explained that that was his decision to make. Whereas
11 other things in the trial might be mine, that was
12 specifically his decision and that the judge would go over
13 that.

14 I do believe I told him that I thought we had gotten out
15 everything from other witnesses, primarily Nancy, about his
16 health issues, about the children's father and their family,
17 about the issues with the kids. And the kids also
18 corroborated many of the issues within the family that we
19 were arguing was a motive to lie.

20 But we did talk about that, yes.

21 Q. And let me ask you -- and defense attorneys have
22 different positions on this. I'm one in the camp where I
23 think your defendant should testify almost all the time.

24 A. Mm-hmm.

25 Q. A lot of attorneys say never testify. Where do you fall

1 as a defense attorney?

2 A. So I'm actually in the middle. I often don't take a
3 strong stance. There are obviously times when I will tell a
4 client I think, you know, it's important or not. Like,
5 obviously in a self-defense case I have to have them testify.

6 I don't remember taking a strong stance in this case. I
7 did tell him I think -- you know, I thought we had gotten
8 everything out that he would testify to. I was concerned
9 about certain questions about his medical condition and
10 things like that. But I remember being surprised he didn't
11 want to testify.

12 Q. And so that was my -- going to be my next question is
13 were you afraid -- what were you afraid of, if anything, if
14 he testified on his behalf?

15 A. Just things about -- more things about his medical
16 condition, specifics, if they had gone into that. Often it
17 is difficult with -- when there's an interpreter, you have no
18 idea what your client's saying for quite some time. I know
19 that was an issue with his wife testifying, just a lack of
20 control. But I don't think I had any strong reasons,
21 necessarily, but I don't recall taking a strong stance on it.

22 Q. And so -- and this is style and preference. But being
23 that you had no strong preference or had no real fears, would
24 you have said, "You've got to testify in order to have a
25 chance. Otherwise you're going to get convicted," or have a

1 conversations where "Here's what I see, and we need some more
2 testimony -- the jury has to hear you say it," something
3 along those lines? Do you remember any type of conversation
4 with that?

5 A. No. I wouldn't -- I don't believe I would have told him
6 that in this case. Like I said, I was kind of surprised he
7 didn't want to testify. But we did discuss it multiple times
8 before the trial.

9 Q. And did you explain to him why you were surprised he did
10 not want to testify?

11 A. No, I don't believe so. I was just like, "Oh, okay."

12 Q. Do you think that his testimony would have helped his
13 case?

14 A. No, not necessarily. I mean, you never know.

15 Q. Do you think it would have hurt his case?

16 A. There's no way to know that.

17 Q. Now, the final question I have for you is the judge
18 sentenced him to life on the three CSC first charges.

19 A. Yes.

20 Q. And I see the statute right now that says it's zero to
21 30. Do know if that statute has changed, or do you recall
22 anything about that specifically?

23 A. So criminal sexual conduct with a minor in the first
24 degree carries 25 to life. It previously carried zero to 30,
25 but that law changed. I'm not sure the exact year it

1 changed, but it was quite some time ago. I believe when I
2 looked at -- when that came up just this morning, I looked at
3 the indictments and I think in the indictments there's a wide
4 timeframe. So I don't know. Initially it may have been zero
5 to 30, but I think that first degree allegation ended in
6 2014 --

7 Q. Okay.

8 A. -- if I'm remembering. And I'm pretty positive that the
9 law definitely had changed by then to the current law of 25
10 to life. But it was zero to 30 before that.

11 Q. Got it. So I might be wrong with the timeline.

12 A. Yeah, I'm just not certain of when that changed.

13 Q. Certainly.

14 MR. MURPHY: Thank you. That's all I have, Ms. Ford.

15 CROSS-EXAMINATION

16 BY MS. DIXON:

17 Q. Ms. Ford, how are you today?

18 A. I'm good.

19 Q. And just briefly, what was kind of your strategy for
20 this case?

21 A. So and I think that was clear today; we were arguing
22 that the victim was lying because she basically -- she and
23 her siblings just hated my client. He was quite older, came
24 into their family. He did end up having two children of his
25 own with their mom. But he was somehow, they described, not

1 very nice to them. Not necessarily physically abusive, but
2 like wouldn't give them food and showed preference to his own
3 children and things like that. And there were indications --
4 you know, their biological father had been deported, and the
5 family was still around, though, and didn't like him. So we
6 did bring that out, to my recollection, through his wife.

7 So basically, our strategy was just like the kids hate
8 him and they're trying to get rid of him and this was an easy
9 way. The girl was having a lot of behavior problems. She
10 lied a lot. Which we brought all of that out. So it was
11 very clear that the mom even believed him over her own
12 daughter because of their issues. So that was our strategy
13 just to show that the victim had a lot of motive to lie
14 because she just hated him and wanted him out of her life.

15 Q. And with that strategy, did you have any strategy in
16 terms of the mother and what was going on in her life with
17 DSS, I guess is what I'm specifically asking?

18 A. So the mom believed him. And it was interesting because
19 the mom actually outright told DSS and me, like, she wasn't
20 even necessarily in love with her husband; she felt a
21 responsibility. So it wasn't a case where she just loved him
22 so much. She just genuinely didn't believe her daughter.

23 So it was my strategy -- and I think it was clear from
24 the trial that, you know, she knows her daughter best. So my
25 strategy was to share that if her own mother doesn't believe

1 her even though she doesn't even -- she's not in love with
2 this man -- you know, she feels a responsibility but she's
3 not in love, why -- you know, why should the jury believe
4 her?

5 Q. And then in terms of the victim -- I'm sorry, Mr. Ruiz's
6 accident, is that information that the jury heard about and
7 how it affected his sex?

8 A. Yes. Through the mom. Again, I didn't -- I wasn't
9 aware this stuff was going to be brought up, so I didn't go
10 over her testimony before this hearing. But I'm pretty
11 positive, yes, the mother discussed that in detail. She
12 testified for hours.

13 Q. Okay. And then do you recall the victim testifying
14 about the accident as well?

15 A. Yes. She testified to that and that things stopped for
16 a while after the accident and that things were a little
17 different afterwards. Again, some of the testimony was that
18 he would try to do things, but he still would like, you know,
19 basically use his fingers, his mouth. And there were
20 attempts to penetrate, but it sounded like partial
21 penetration.

22 Q. And then in terms of your conversations with him
23 regarding his right to testify, during those discussions, did
24 you have a translator with you?

25 A. Yes. Mr. Alameda, my office's -- he works for my

1 office.

2 Q. Did you ever have any indication that he could not
3 understand the translator?

4 A. No. The interpreter never raised any issue, which
5 usually he will. If he thinks someone's not understanding
6 him, he will raise that to me.

7 MS. DIXON: One moment, your Honor.

8 Q. [By Ms. Dixon] In terms of your -- you did not request,
9 I guess, a lesser-included offense. Did you have any kind of
10 strategy for not requesting that?

11 A. I don't recall specifically. When I reviewed the
12 transcript of the testimony of the victim, I did note that,
13 you know, she did allege -- you know, I marked off where she
14 talked about digital and oral and vaginal penetration. But I
15 don't remember if there was a specific reason. I know my
16 client, he just wasn't interested in any kind of, you know,
17 conviction. Obviously we were saying nothing happened. We
18 weren't saying "Oh, he just touched her butt" or anything
19 like that.

20 But I don't recall specifically if I thought about that
21 too deeply.

22 Q. Sure.

23 MS. DIXON: Nothing further.

24 MR. MURPHY: Nothing, your Honor.

25 THE COURT: All right. You can step down.

1 (Witness excused.)

2 MR. MURPHY: And that would be our case, your Honor.

3 I do know that my client says he needs to go to the
4 restroom. I don't know how bad that is. It sounds like it's
5 an emergency.

6 THE COURT: Well, let me ask if there are any further --
7 so you're resting now?

8 MR. MURPHY: Yes, ma'am.

9 THE COURT: Is there any further testimony being offered
10 by the State?

11 MS. DIXON: No, ma'am.

12 THE COURT: Did y'all want to make a closing statement?

13 MR. MURPHY: I don't believe that's necessary.

14 THE COURT: Okay.

15 MS. DIXON: We would just submit they didn't met their
16 burden of proof. And I think we can rest on the record.

17 I do want to note the part about the DSS -- the part
18 that he raised, which is 354 of the transcript and 243 of the
19 record on appeal. And I would just submit to your Honor that
20 that was not objected to because it was part of her trial
21 strategy of bringing out the fact that the mother did not
22 believe that the victim was telling the truth. Other than
23 that, I think we'll rest on the record.

24 THE COURT: Okay. Thank you.

25 MR. MURPHY: Thank you, your Honor.

1 THE COURT: I will certainly take a closer look at the
2 entire transcript before I give my ruling.

3 MR. MURPHY: Yes, ma'am.

4 MS. DIXON: Thank you.

5 (End of proceedings.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of Charleston

I, Jamie L. Bickett, an Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case in the Ninth Judicial Circuit, the Court of Common Pleas for Charleston County, South Carolina.


Official Court Reporter

Dated this 22nd day
of December, 2024.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Carlos A. Ruiz, #371060,

Applicant,

v.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-422

ORDER OF DISMISSAL

FILED
2024 SEP 26 PM 1:41
JULIE J. ARMSTRONG
CLERK OF COURT

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Carlos A. Ruiz (Applicant) on January 23, 2020. Respondent made its return requesting an evidentiary hearing. On June 30, 2023, an evidentiary hearing convened before the Honorable Kristi Curtis. Applicant was present and represented by Christopher Murphy, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, the Court heard testimony from Applicant and Mary Ford (trial counsel). After reviewing the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving three life sentences. In January 2017, the South Carolina State Grand Jury indicted Applicant for three counts of first-degree criminal sexual conduct (CSC) with a minor (2017-GS-10-875, -876, -877) and three counts of second-degree CSC with a minor (2017-GS-10-878, -879, -880). On January 9-13, 2017, Applicant proceeded to a jury trial before the Honorable Roger M. Young, Sr. Public Defenders Mary Ford and Nicolas Smit represented Applicant. Assistant Solicitors Deborah Herring-Lash and Nina Savas prosecuted the case. The jury convicted Applicant as indicted, and

Judge Young sentenced him to concurrent life sentences for each first-degree CSC with a minor and twenty years for each second-degree CSC with a minor.

Applicant filed a notice of appeal, which was perfected by Chief Appellate Defender Robert M. Dudek. On appeal, Applicant argued the trial court erred in allowing testimony of Letrice Smalls, a caseworker with the Department of Social Services, that was irrelevant and improperly bolstered the minor victim. The Court of Appeals affirmed, finding the issue was unpreserved. *State v. Ruiz*, 2019-UP-044 (filed January 30, 2019). The remittitur was sent February 15, 2019.

CURRENT APPLICATION

On January 23, 2020, Applicant filed this PCR application alleging trial counsel was ineffective for:

1. Failing to adequately prepare with Applicant and investigate prior to trial;
2. Failing to make legal objections to testimony and charges;

Applicant also alleged appellate counsel was ineffective for:

3. Failing to raise all preserved meritorious issues.

As relief, Applicant requested a new trial.

At the PCR hearing, Applicant proceeded only on the following allegations of ineffective assistance of counsel:

1. Counsel failed to object to the DSS caseworker's testimony;
2. Counsel failed to convince Applicant to testify;
3. Counsel failed to request third-degree CSC with a minor as a lesser-included offense; and
4. Counsel failed to object to the illegal sentence.

This Court finds that Applicant waived his claim related to appellate counsel and his claims related to trial counsel's failure to adequately prepare Applicant for trial and failure to investigate prior to trial. This Court further finds that as to the second issue in the original application, Applicant alleged only that counsel failed to object to the DSS caseworker's testimony, failed to request third-degree CSC with a minor, and failed to object to the illegal sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Charleston County Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript; the records of Applicant's direct appeal; and the records of this PCR application. This Court has also had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.¹ After a careful review based on the *Strickland* standard set forth below, this Court finds that Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668 (1984). First, an applicant must prove counsel's performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance

¹ This Court will reference PCR testimony where relevant below.

based on “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625. There is a strong presumption that counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment,” and to receive relief, an applicant must overcome this presumption. *Id.*; *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him 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.

Failed to object to testimony by DSS caseworker

Applicant first contends counsel was ineffective for not objecting to testimony by DSS caseworker Letrice Smalls. Specifically, Applicant contends counsel should have objected to the following:

Q. And have you worked with lots of families where the supportive parent of—the non-abusive parent is non-supportive and non-believing?

[Trial counsel]: Objection. I’m not quite sure where this is going.

[Solicitor]: That’s it about.

[Trial counsel]: Well, relevance to this case, Your Honor.

The Court: Is she offering some sort of opinion? What is she testifying about?

[Solicitor]: That it’s not unusual at this point the children remain in foster care.

The Witness: They remain in foster care? Yes, Ma’am.

By [the solicitor]:

Q. What would have to happen for the Department of Social Services to return them—

A. There would have to be a change of circumstances. Currently Mr. Ruiz resides in the home with Ms. Lorenzo and the other issue is that **Ms. Lorenzo doesn't believe Minor**, and because of this, the agency would feel that she's unable to protect.

[Solicitor]: Those are all the questions I have, Ms. Smalls. Thanks. Please answer any questions [trial counsel] has.

(R. 243-44; Tr. 353-54, emphasis added).²

This Court finds Applicant did not prove counsel was ineffective in this regard. Initially, Applicant did not clarify or set forth at the PCR hearing *what* legal objection he believed should have been made to this testimony and thus did not meet his burden of proving deficiency or prejudice. To the extent Applicant asserts counsel should have objected based on relevance (an argument raised on direct appeal), this Court finds counsel *did* object to the testimony based on relevance, and counsel's failure to object again on the same basis was reasonable under prevailing professional norms and not deficient. Further, this Court finds it is not reasonably probable a further objection on relevance would have excluded the testimony or changed the outcome of trial.

To the extent Applicant believes counsel should have objected based on improper bolstering (also argued in his direct appeal), this Court finds Applicant did not prove counsel was ineffective in this regard. Critically, counsel's trial strategy was to undermine the minor victim's credibility in part by highlighting the fact the minor victim's mother, Nancy Lorenzo, did not believe the sexual abuse occurred. This is evidenced by counsel's cross-examination of Smalls, where she elicited testimony that the primary reason Lorenzo did not have custody of her children was that she did not believe the sexual abuse occurred. (R. 244-48; Tr. 354-58). This is further evidenced by trial counsel's direct examination of Lorenzo, where she elicited testimony that

² This issue was raised in Applicant's direct appeal, but the Court of Appeals found it unpreserved in a Rule 220(b), SCACR-style opinion.

Lorenzo did not believe her daughter's accusations against Applicant. (R. 323-24, 346, 349, 351-57, 367-69; Tr. 440-41, 463, 466, 468-74, 484-86). Finally, this is evidenced by counsel's closing argument, where she argued:

You heard a lot from Nancy and from Ms. Smalls, the DSS worker, about Nancy not being able to have the kids back, and that's why she's such a credible witness, because all she has to do is say the magic words: I believe. It doesn't have anything to do with the fact that [Applicant] is currently staying with her because he wasn't there for months and months and months, and they never would give her the kids back. They wouldn't give her the kids back now if [Applicant] wasn't there. She has to say, I believe.

Many people may think, just as a parent, you should say—even if you don't believe, you should say it to get your kids back, and so maybe you believe that's the right thing to do as a parent. Maybe that's what Nancy should have done, but Nancy can't do that because she can't lie. She can't lie, especially when it comes to having to sacrifice someone.

(Tr. 553). This Court finds counsel's strategy here—to highlight the fact the minor victim's mother did not believe her as a way of impeaching the minor victim's testimony—was reasonable under prevailing professional norms and not deficient. Likewise, because Smalls' foregoing testimony that Lorenzo did not believe the minor victim supported this strategy, counsel was not deficient for not objecting. Finally, because this testimony supported a valid trial strategy and was ultimately cumulative to other testimony elicited as part of this valid strategy, it is not reasonable likely an objection would have changed the outcome. Thus, this claim is denied.³

³ At the evidentiary hearing, Applicant also cited to page 353 of the record on appeal (transcript pg. 470) as support for his claim that counsel should have objected. This portion of the transcript is trial counsel's direct examination of Lorenzo. Read in context, this testimony supported trial counsel's strategy of impeaching the minor victim by showing Lorenzo did not believe her. As stated, this Court finds this was a valid trial strategy, and Applicant did not prove deficiency here or resulting prejudice.

Failed to convince Applicant to testify

Applicant next contends counsel was ineffective for not convincing him to testify. At the evidentiary hearing, he testified counsel told him he could testify if he wanted to. Trial counsel testified she discussed with Applicant his right to testify and explained to him that it was his decision. She further testified she was able to get the evidence she needed for her strategy—that the minor victim had a motive to lie—through other witnesses. Counsel explained she does not typically take a strong stance when advising a defendant whether or not to testify; she did not recall taking a strong stance with Applicant.

This Court finds counsel’s foregoing testimony credible, and counsel’s advice to Applicant here was reasonable under prevailing professional norms and not deficient. This Court further finds it was ultimately *Applicant’s* decision to not testify, which he waived after being advised by the trial court of his right to testify. (Tr. 434-35, 515-17). Finally, it is not reasonably probable the testimony Applicant offered at the PCR hearing would have changed the outcome of trial. Ultimately, Applicant’s testimony centered on his contention that he could not sexually abuse the minor victim due to an accident that caused erectile dysfunction. This evidence was brought out at trial through Lorenzo, and Applicant’s testimony here was largely cumulative. This Court finds Applicant did not prove deficiency or prejudice in this regard, and this claim is denied.

Failed to request lesser-included offense

Applicant next contends counsel was ineffective for not requesting third-degree CSC with a minor as a lesser-included offense of first- and second-degree CSC with a minor. This contention lacks merit. “The test for determining whether an offense is a lesser included of that charged in the indictment is whether the greater of the two offenses includes all the elements of the lesser offense.” *State v. Green*, 343 S.C. 207, 209, 539 S.E.2d 419, 420 (Ct. App. 2000). The statute

proscribing the offense of CSC with a minor provides:

(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

(1) the actor engages in sexual battery with a victim who is less than eleven years of age; or

(2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

(C) A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child. However, a person may not be convicted of a violation of the provisions of this subsection if the person is eighteen years of age or less when the person engages in consensual lewd or lascivious conduct with another person who is at least fourteen years of age.

S.C. Code Ann. § 16-3-655.

Third-degree CSC requires the State to prove the actor committed or attempted to commit a lewd or lascivious act upon a minor “with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child.” First- and second-degree CSC with a minor do not contain this requirement. Because third-degree CSC with a minor contains an element that is not in first- or second-degree CSC with a minor, it is not a lesser-included offense of first- or second-degree CSC with a minor. Thus, counsel’s failure to request this charge was reasonable under prevailing professional norms and not deficient. Likewise, and for the same reason, Applicant cannot show prejudice from counsel’s failure to request this charge.⁴

Failed to object to illegal life sentence

Finally, Applicant contends counsel was ineffective for not objecting to the life sentences, which he contends were illegal. This argument lacks merit. § 16-3-655 of the South Carolina Code was amended in 2006 to provide that a person convicted of first-degree CSC shall be imprisoned “for a mandatory minimum of twenty-five years, no part of which may be suspended or probation granted, or must be imprisoned for life.” 2006 Act. No. 342, § 3, effective July 1, 2006. Applicant was indicted for first-degree CSC offenses that occurred between August 3, 2009, and August 3, 2014. Thus, the life sentences were not illegal, and counsel was not ineffective for not objecting.

⁴ Even if third-degree CSC with a minor was a lesser-included offense, counsel had a valid strategic reason for not requesting it here where her primary strategy was to undermine the credibility of the minor victim. Ultimately an attorney must take a calculated risk in assessing whether to request a lesser-included offense, but such decision must be assessed at the time of trial rather than in hindsight. Counsel’s strategy throughout was to attack the credibility of the minor victim, and it was reasonable to forego requesting a lesser-included offense when her strategy was ultimately to persuade the jury to not believe minor victim’s story at all. Further, it is not reasonably likely, based on the minor victim’s testimony, that the jury—upon concluding the minor victim was credible—would have determined this was not a sexual battery but rather third-degree CSC with a minor.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment per Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 19th day of September, 2024.


 KRISTI CURTIS
 Presiding Judge
 Ninth Judicial Circuit

Charleston, South Carolina



ALAN WILSON
ATTORNEY GENERAL

September 23, 2024

The Honorable Julie J. Armstrong
Clerk of Court - Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: Carlos A. Ruiz, #371060 v. State of South Carolina
Case No.: 2022-CP-10-00422

Dear Ms. Armstrong:

Enclosed please find the original Order of Dismissal signed by the Honorable Kristi Curtis, in the above-captioned case, for filing in your office. Please forward a time-stamped copy back to our office for our file.

Sincerely,

Danielle Dixon
Assistant Attorney General

DD/vh
Enclosure

cc: Christopher L. Murphy, Esquire