THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Kieth Kelly, Circuit Court Judge

Appellate Case No. 2024-000439

The State, ...Respondent

v.

Cody Hudson, ...Appellant.

RECORD ON APPEAL – VOLUME II of II

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conviction come out?" And so the criminal history was rerun under -- that's the different spelling of the name, and that came back as a -- you know, a -- a conviction that had not been disclosed.

Now, nobody was accusing the State of any misconduct in that. But what Justice Hearn -- she ultimately found that there was no prejudice in that particular case in Durant. But what she did hold was -- is that that's a Brady violation and had interpreted, you know, our rule -- our way we follow Brady in South Carolina, but she was also looking at what is in -- what is in the possession of the State. And that the criminal history, because that's something that they routinely run, that is something -- the knowledge of that is imputed on them. Good faith or bad faith, they're responsible for this.

And so if she's talking about -- the prosecutor in this case, if she's talking about using a call from the detention center, that's the sheriff's office. That's the same agency that's prosecuting -- - arrested Mr. Hudson, is prosecuting Mr. Hudson. And so there is -- there is no argument that can be made that that is not something that's within the possession of the State. And it doesn't matter

whether it was said to a law enforcement officer or not. That was something that they were obligated to turn over, and they didn't. And so, therefore, this line of questioning should be excluded, Your Honor.

THE COURT: Solicitor, you wanna be heard? I'm gonna take a look at this.

MS. HALLFORD: I believe our Rule 5 says that jail calls are available. That that is a call that happened yesterday, and I heard it I think this morning. And I didn't know that someone was gonna get on the stand and lie about whether he had a phone or not. So -- but could I run upstairs and pull my Rule 5 for this case because I left that notebook upstairs?

MR. GROSE: Okay. And let me just respond to that. The question was, was whether or not he knew that Cody had a cell phone while he was living with Sarah. Not what he learned yesterday. And -- and he's -- he's -- she's implying through the question -- the way she set it up, she's implying, "Oh, you don't know anything about Cody's cell phone now or something that you've learned since then," is very misleading and -- and confusing to the jury.

I mean, it's still a true statement that he didn't know whether or not Cody had a cell phone at

the time when Cody was living with Sarah.
THE COURT: (To the State) You want to go get something?
MS. HALLFORD: Yes, sir, Your Honor.
(Off the record from 1:54 p.m. until 1:58 p.m.)
MS. HALLFORD: Yes. Our request -- our response to the request for discovery that was filed in this case says that, "All Defendant's jail phone calls and visitations are available at the Spartanburg County Detention Center." And we have that phone call right here. We can -- it's four minutes or so. He can listen to it.
MR. GROSE: I needed it in order to prepare for a defense. It's too late now. It -- they should have -- they should have disclosed this to me yesterday afternoon or this morning.
MS. HALLFORD: How -- how can I anticipate what he would need? If -- that's the argument, then I would have to disclose every single jail call, 667 jail calls that Cody Hudson has made. That's why we put that in our rule -- our response, so the defense counsel knows, "Hey, this stuff is available. You can get it."
MR. GROSE: That -- that may be one thing if this

was a call from four years ago. This is a call from yesterday. And this is trial by ambush that our Supreme Court does not like.

THE COURT: I think the question is – the relevant question is, did you know he had a -- if he had a cell phone or not when he and Sarah were together?

MS. HALLFORD: Is that what was asked? Because I heard, "Did you know if he hasn't had a cell phone or not?" I -- I did not catch if he and Sarah were together.

THE COURT: Well, I -- I think that's -- that's the relevant question, if you want to ask that question, whether or not he had a cell phone at the time that they were together? Yes or no. I don't know what the man's answer would be, yes or no. All right. And -- and if you want to ask him, "Do you know he has one now, but not where it came from?" I mean, he -- he didn't know they had one together then, that's --

MS. HALLFORD: The whole gist of their conversation is Cody is admitting to him that he had this -- a Samsung S8, the same type of phone that sent those penis pictures. So that's relevant.

THE COURT: Well, we -- we need to play that because I don't know what -- I -- I don't know the context

of it. So let's see what we got.
MS. HALLFORD: Should we play -- it's four minutes. Should we play the whole thing so --
THE COURT: Yeah.
MS. HALLFORD: -- we can get the whole context of it?
THE COURT: Play it. Can you handle it? We've got speakers right here.
(WHEREUPON, a jail phone call was played at 2:01 p.m. until 2:05 p.m.)
THE COURT: (To the State) What you were trying to get is that he didn't know that he had a Galaxy 8S or S8 or whatever it is?
MS. HALLFORD: Yes, sir. What I recall him saying is he didn't know anything about Cody's phones, and he did because he had a conversation with Cody.
MR. GROSE: Well, we -- the question that I was asking him is, it was in the whole context of, "What do you -- how did you have to get in touch with -- with Cody? And if he had a phone back then, you didn't know if he had a phone back then." Not what he heard yesterday. And -- and, if so, then -- you know, the -- then the way they went into it, they're trying to be misleading. I think that all should be suppressed.

THE COURT: Well, I'm -- I'm gonna -- I -- I'm gonna allow him -- I'm gonna allow her to ask him if he knew about the phone, and -- when they lived together, and whatever his answer is, is his answer. And I'm gonna let her ask him if -- if he knew what kind of phone he had or, you know, what kind of phone Cody had, and him -- and whatever his answer is there, he can answer, like you said, "Yesterday," or he could be impeached on that. And I'll let you clean it up, but we're not gonna get into all this other stuff. Okay. I mean, about evidence missing or not done or whatever.

MS. HALLFORD: Okay. Let me make sure I'm understanding this. I can ask him, "Were you aware of what kind of phone Cody had when those pictures were sent?" Because that was the substance of their conversation.

THE COURT: All right. Ask him that question now.

CROSS-EXAMINATION OF JODY HUDSON CONTINUES.

BY MS. HALLFORD:

Q Were you aware -- did you become aware of what kind of phone --

A There you go.

Q -- Cody Hudson had at the time those pictures were sent?

A I don't know nothing about no pictures being sent.

That's -- that's why I said I don't understand how she's trying to bring it to me. I -- I don't.

MR. GROSE: I -- I mean --

A Because it's --

Q That -- that was the whole --

THE WITNESS: That's what I'm saying.

MS. HALLFORD: (Inaudible) their conversation.

THE WITNESS: She's trying to get me to say I know about pictures.

THE COURT: Hold -- hold up. Hold up. Hold up. (To the State) Ask him -- ask him a different way.

Q Are you aware that Cody Hudson had a Samsung 8S?

A Yes, ma'am. When I talked to him yesterday on the phone, I asked him, but I wasn't aware before yesterday.

Q Okay. But you're aware that after he left Sarah's, he had a Samsung Galaxy S8?

A I couldn't tell you when he had it.

MS. HALLFORD: Their conversation, Your Honor, is literally about --

THE WITNESS: But don't say what -- when he had it. I don't -- I don't know when he had the Samsung Galaxy 8 (as spoken).

Q Okay. He says -- he says, "The only thing that they said is that it showed that it was sent," talking about the pictures --

A Uh-huh.
Q -- "from the Galaxy 8S plus." And then he says, "Did you have a Galaxy 8S -- or S8?" Excuse me. And he says, "Yeah."
A But it's asking --
THE WITNESS: She's putting in, "Did you know about the picture sent from that Galaxy S8?" I don't know if they sent from that Galaxy S8. I don't -- I don't know the time and date.
MS. HALLFORD: That's not what I asked.
THE COURT: That's not what she's asking, though. (To the State) Ask it one more time.
Q Okay. Were you aware that after Cody Hudson left living with Sarah, that he had a Galaxy S8 cell phone?
A The way you're asking that is like you're trying to get me to say I knew he had a Galaxy S8 while he was gone from Sarah. I couldn't tell you when he had a Galaxy S8.
Q Then his -- he says to him in this conversation --
A Does it say when he left Sarah, though?
Q The only thing he's -- you're talking about the pictures that were exchanged. Okay. How about I ask it this way. At the time these allegations came up, did you become aware that Cody Hudson had a Galaxy S8 cell phone?
A I was aware from asking him did he even have a Galaxy S8. And that's how I was aware from him saying yes. He had

one.
Q Okay.
A There wasn't no specific time or nothing.
THE COURT: All right.
MS. HALLFORD: No. Because they're talking about the time frame of the allegations, and it's clear from the context of this conversation that he is aware that Cody is talking about the Galaxy S8 being used to provide evidence that we're using in this case.
So he is obfuscating and not wanting to say what he is aware of because that was the whole substance of their conversation because then he launches into everything else that the -- the attorney should have gotten from the cell phone. So he's being disingenuous saying, "Oh, I don't know what that was about." Because he most certainly does, and his conversation illustrated that.
THE WITNESS: (To the Court) Can I say something?
THE COURT: Ask -- I want you to answer the question, and -- and I can't tell you what the answer you give. I'm just telling you. But -- but -- but we can play -- I mean, we can play that piece stuff right there.
THE WITNESS: Because I plainly stated, though, I

did not know because I said, "Did you even have a Galaxy S8?" Exactly what I said on that phone call.

THE COURT: Okay. (To the State) Ask him that question.

MS. HALLFORD: Okay. But I have to be able to put it in the context of the time frame, Your Honor. I'm not trying to be deliberately obtuse, but it -- it seems to me from the basis of their conversation that it's very clear that Jody Hudson knows that Cody Hudson is talking about the evidence that we're gonna present in this case that came out after he left Sarah Hudson's house. And he asked him, "Did you even have" -- because he says it came from a Galaxy S8. He said, "Did you even have one?"

THE COURT: Mr. Grose?

MR. GROSE: Your Honor, I think it's -- it all should be suppressed. I mean, I -- I don't have a problem with asking him a question that -- that, you know, "Yesterday did you learn that Cody had a Galaxy Samsung whatever cell phone?" That -- that it seems to be -- what they seem to be wanting to prove is that Cody had that phone. I mean, he's not going to deny that he had a Galaxy whatever phone when he gets up and testifies.

MS. HALLFORD: That's fine. I'll ask him that

question.

Q Yesterday, did you learn that Cody had a Galaxy S8 --

A Yes.

Q -- cell phone?

A Yes, ma'am.

Q Okay.

THE COURT: (To the State) So that's the question you gonna ask?

MS. HALLFORD: I'll ask him that.

THE COURT: Okay. Ready for the jury?

MR. GROSE: Yes, sir.

THE COURT: We'll have the jury.

(WHEREUPON, the jury enters open court at 2:13 p.m.)

THE COURT: Madam Forelady, everybody good?

MADAM FORELADY: Yes, sir.

THE COURT: Solicitor?

MS. HALLFORD: Thank you, your Honor.

CROSS-EXAMINATION OF JODY HUDSON CONTINUES.

BY MS. HALLFORD:

Q Yesterday did you learn that Cody had a Galaxy S8 cell phone?

A Yes, ma'am.

Q Okay. And you're his fraternal brother?

A I'm his twin brother.

Q Yeah. Fraternal? And so any kids that you have are biologically related to him, correct?
A Yes, ma'am. Yes, ma'am.
Q Okay. And have you ever done or said anything that would let Cody Hudson think you would be okay with him having sex with Child [redacted]?
A No, ma'am.
Q So if he were doing that, that would be something that he would keep well hidden from you; isn't that correct?
A Yes, ma'am.
Q Okay.

MS. HALLFORD: (To the Court) No further questions.

THE COURT: Mr. Grose, anything?

MR. GROSE: Nothing on redirect.

THE COURT: (To the witness) Sir, you may step down. Please be careful.

(WHEREUPON, the witness was excused.)

MR. GROSE: All right. I hate to do it this quickly again, but we do need a moment to set up the --

THE COURT: Okay. We got to set up the technology right quick because my law clerk's already got the Webex pulled up for the lawyers. Is it -- do you need more than a minute or so? Or may I -- I can just leave them sitting here if it's gonna take a --

MR. GROSE: If we can get it quickly, that'd be

perfect.
THE COURT: Okay. Mattie's already got Detective --
THE CLERK: They're already in.
THE COURT: -- and you're already in.
THE CLERK: And she's on this.
THE COURT: Okay. Madam Clerk, are you on?
THE CLERK: Yes, Your Honor.
THE COURT: Okay.
MR. SMITH: Ms. Fields, can you hear us? Oh, I got my computer muted. That might have something -- Ms. Fields, can you say something? Sorry. I was muted.
MS. FIELDS: Yes, sir.
MR. SMITH: We can hear you.
MS. FIELDS: Okay.
THE COURT: Let's see if my court reporter can hear you. (To the court reporter) Can you hear her?
THE COURT REPORTER: I can hear. Uh-huh.
THE COURT: Okay.
MR. SMITH: All right. Let me close (inaudible.) We're good.
MR. GROSE: All right. At this time, I would formally call Lauren Fields as a witness.
THE COURT: Ms. Fields, I'll give your attention to Madam Clerk. Can you hear me? Okay. (To the Clerk) Ready? Ms. Fields, can you -- can you hear

us?
MS. FIELDS: I can now.
THE COURT: Please give your attention to the court clerk for you to be sworn in.
MS. FIELDS: Yes, sir.
THE CLERK: Please raise your right hand. Do you swear or affirm the testimony you give will be the truth, whole truth, and nothing but the truth so help you God?
MS. FIELDS: I can barely hear it.
THE CLERK: Is this better? Can you hear me better now? My volume is --
THE COURT: Do you want me to swear her?
THE CLERK: Yeah.
THE COURT: Do you want me to swear her?
THE CLERK: That's -- that's fine, yes, sir.
(WHEREUPON, the witness was sworn.)
THE COURT: Thank you. You may lower your hand. Tell us who you are, and spell your name.
THE WITNESS: My name -- my name is Lauren Fields. And you said spell my name?
MR. GROSE: Yes -- yes, ma'am. Because we're doing this by video, if you could spell both your first and your last name for the court reporter.
THE WITNESS: Yes, sir. My first name is Lauren.

It's L-a-u-r-e-n, and my last name is Fields, F-i-e-l-d-s.

DIRECT EXAMINATION OF LAUREN FIELDS

BY MR. GROSE:

Q Okay. Can you hear me all right?

A I can.

Q Okay. Do you know Cody Hudson?

A I do.

Q And how long have you known Cody Hudson?

A Since I was probably, it was -- I was 15 when I met him.

Q Okay. And did you and Cody have any children together?

A Yes, sir. We have three kids together.

Q And -- and who are those kids?

A CH's [redacted], CH's Child 2 [redacted], and CH's Child 3 [redacted].

Q All right. CH's Child 1 [redacted], how old is she?

A She's 15.

Q And the -- the middle one, was it CH's Child [redacted]

A CH's [redacted].

Q I'm sorry. CH's [redacted]. How old is CH's [redacted]?

A He's 13.

Q And the youngest one, how old?

A Twelve.

Q Okay. And, at some point, you and Cody were no longer in a relationship together; is that right?

A Correct.

Q And were you aware that he entered into a relationship with Sarah Hudson, who -- who eventually became Sarah Hudson, and they got married?
A Yes.
Q Okay. And did you and Cody have an arrangement where Cody would be able to visit with the children that you have together?
A Yes.
Q All right. And -- and tell us how that -- how that worked or what the --
A So --
Q -- just what the arrangement was?
A -- he was supposed to have them three weekends out of the month, and I was supposed to get one weekend with them. Just kind of depending on how the kids wanted, if they wanted to go all four weekends, I would allow it so he could -- so the kids could see their dad.
Q Okay. And I'm not looking for an exact address, but where were you living while Cody was married to Sarah?
A In Abbeville.
Q Okay. And how far is that from the Spartanburg area where Cody was living?
A I think when I drove up there, it took me almost two hours to get there.
Q And did -- did you and Cody have a location where you --

you would swap -- you would swap the children?
A I did not at first. I actually had to go back to court to get that set in place.
Q Okay. But it eventually got set in place?
A Eventually, at his dad's house.
Q At his dad's house. And where was that at?
A On -- in -- it's Hickory Tavern/Fountain Inn. I think it's a Fountain Inn address, though.
Q Okay. So before that was in place, how would the children get from your house to Cody's house?
A I would have to take them and pick them up most of the times.
Q Okay. All right. So you -- at that point, you were doing all the driving?
A Yes, sir.
Q Okay. When it switched where the children were swapped at Cody's father's house, how would that take place?
A I usually had them -- I think in the papers --because -- because it's been so long ago, but I think in the papers, they had to be dropped off by six, and so I dropped them off at their dad's (sic) house. They were supposed to be picked up there at six o'clock. Most of the time that was not the case. They did not get picked up by then.
Q Okay. And when they would come back, would you get them from Cody's father's house?

A Yes.
Q All right. And -- and who would bring him to his father's house?
A It would mostly be Cody and Sarah. I think there might have been one or two times that Sarah brought them down and just dropped them off. But for -- for the most part, it was Cody and Sarah.
Q Okay. And did you and Sarah -- what was your relationship like with Sarah?
A I tried to be civil with her. She refused.
Q And what do you mean by that?
A She just did not -- I don't know the word for it. I tried to talk to her and -- so the kids would have a good relationship with everybody. She just was not nice to me at all any of the times.
Q Did there ever come a point when she did not allow the children that you and Cody have together to come visit at her house?
A Yes. A lot of times actually.
Q Okay.

MR. GROSE: (To the witness) Thank you. Please answer any questions that the prosecutor might have.

CROSS-EXAMINATION OF LAUREN FIELDS

BY MS. HALLFORD:

Q Can you hear me?

A Yes, ma'am.
Q Okay. So making sure I understand this. When the drop off place was Cody's dad's residence, there were a couple of occasions when Sarah dropped the kids off alone? That's what you just said?
A Yes. Now, there was a couple -- yes. There was a couple of times.
Q Okay. And there would be times when the kids were dropped off at the dad's house, and you were not there yet to get them, correct?
A Only because they dropped them off early, and they did not let me know ahead of time.
Q Right. But you weren't there, okay. So you wouldn't necessarily know who brought them on that day?
A Right. Yeah. Right.
Q Okay. So you're aware of one to two times that Sarah brought them by herself, but there may be other times that that happened that you are not aware of; isn't that accurate?
A Correct.
Q Okay. You said you were 15 when you and Cody met. How old was --
A Yes.
Q -- Cody?
A Sixteen/seventeen. I can't -- I've had a lot happen over

the last couple years, so . . .

Q Okay. That's fine. Did y'all start dating right away?

A Oh, yes.

Q Okay. And you have three children. The oldest I think you said is CH's and she's 15.

A Yes, ma'am.

Q Okay. So does Cody pay child support for the children?

A He is supposed to. He hasn't. He actually didn't get behind until he got with Sarah, like a -- like a year after they got together.

Q Okay. Is he trying to catch that up, though? Does he pay you sometimes?

A Yes. If I need anything, he -- I mean, he'll do anything he can for the kids.

Q Okay. And, of course, CH's , CH's and what was the third one's name?

A CH's Child

Q CH's Child yeah. They're his biological --

A Yeah.

Q -- children, correct?

A Yeah. Yes.

Q Yes. And Child is a stepchild, correct?

A Yes.

Q Okay. Has -- have you personally ever done or said anything that would let Cody Hudson think that you would

be okay with him having sex with Child
A No.
Q And you would not be okay with that?
A No.
Q And so that if he were doing that, then that is something he would keep very, very secret from you; isn't that right?
A I mean, I'm guessing, yeah.
Q You wouldn't be okay with it, correct?
A No. Not at all.
Q If you found out that had been happening, that would enrage you, wouldn't it?
A Correct.
Q So he would keep that a secret from you, wouldn't he?
A Correct.
Q Okay.

MS. HALLFORD: (To the Court) No further questions.

THE COURT: (To Mr. Grose) Anything at all?

MR. GROSE: Very briefly.

REDIRECT EXAMINATION OF LAUREN FIELDS

BY MR. GROSE:
Q Just a couple quick questions.
A Okay.
Q You are aware of what Cody's charged with, aren't you?
A Correct.

Q Right. And even knowing what Cody had been charged with, you were still comfortable with Cody being around your children?
A Correct.
Q Thank you.
MR. GROSE: (To the Court) That's all I have.
THE COURT: (To the State) Anything?
MS. HALLFORD: Nothing, Your Honor.
THE COURT: Thank you. (To the witness) Ma'am, thank you. You're excused.
(WHEREUPON, the witness was excused.)
THE COURT: I don't know if she could hear that.
MR. SMITH: He said you were excused, Ms. Fields. Thank you.
THE WITNESS: Okay. Thank you.
MR. GROSE: At this time I would call Cody Hudson.
THE COURT: Mr. Hudson, come up here and be sworn, sir.
(WHEREUPON, the witness was sworn.)
MS. HALLFORD: (To the Court) May we approach really quickly?
THE COURT: Uh-huh.
(WHEREUPON, a bench conference was held.)
THE COURT: Let's take our afternoon break here. I wanna refresh -- refresh myself, as well. Okay. I

know you've been out a time or so, but we have not as you've seen.

So we're gonna take the afternoon break right here. So this will be a good 20-minute break or so. I told you they make good coffee, and one of the bailiffs said that it's -- that -- that you've taken him up on that, so I'm happy to know you liking the coffee there. They'll have your water, whatever you might be. But we are gonna take a good 20-minute break here.

(To the witness) Sir, we're gonna let you get off the stand, go back to the table with your lawyer before we begin because I don't like to break up testimony anyway. So we'll take our afternoon break at this time.

Madam Forelady, take the jury out, please.

MADAM FORELADY: Yes, sir.

(WHEREUPON, the jury was excused at 2:28 p.m.)

THE COURT: Okay. Okay. We're gonna stay on the record just a minute. He was sworn, wasn't he, Madam Clerk?

THE CLERK: Yes, sir.

THE COURT: (To the witness) Sir, if you'll stand, please, I'm gonna ask you -- ask you a few questions here while we're outside presence of the jury, and

then we'll take our break.

At this time, I want to make sure that you understand certain rights that you have. If you do not understand something, and if you wish to speak to your lawyer, if you'll just merely raise your hand, I'll stop, okay? It's very important that you get your questions answered.

We have reached the stage of this trial where you may present your defense and have the right to claim protections given to you by the Fifth Amendment to the United States Constitution, which says, "No person shall be compelled in any criminal case to be a witness against himself."

Additionally, you have the right to claim protections given to you by Article 1, Section 12 of our State constitution, which says, "No person shall be compelled in any criminal case to be a witness against himself."

Sir, this means that you cannot be required to testify. You have the right to testify, but no one can make you testify. And, sir, this is a personal right that no one but you can waive. If you decide to testify, you will be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on relevant issues in this case.

Additionally, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment for more than one year, and this court determines that the probative value of admitting the evidence outweighs the prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility. If you decide to testify, the decision must be freely, intelligently, and voluntarily made with the knowledge of the protections given to you by the constitutions of the United States and the State of South Carolina in the consequences of your decision.

If you decide not to testify, I will instruct jurors they cannot give that fact that you did not testify any consideration whatsoever. It is up -- entirely up to you whether or not you may testify or choose to testify. Sir, do you understand what I've explained?

THE WITNESS: Yes, sir.

THE COURT: And do you have any questions about what I've explained?

THE WITNESS: No, sir.

THE COURT: Have you discussed this with your lawyer as to whether or not you should or should not

testify?
THE WITNESS: Yes, sir.
THE COURT: And do you wish to talk to your lawyer anymore about this subject?
THE WITNESS: No, sir.
THE COURT: Okay.
THE WITNESS: Not -- not unless he needs me to.
THE COURT: No, sir. I don't. I mean, if -- if you need to talk to him, I'm gonna stop right now and let you do so. Do you need to talk to him?
THE WITNESS: No.
THE COURT: Sir, do you wish to testify?
THE WITNESS: Yes, sir.
THE COURT: Sir, don't be offended by the question I'm about to ask. Is -- do you -- have you taken any medication or any substance that would interfere with your ability to think clearly?
THE WITNESS: No, sir.
THE COURT: You are of sound mind, and you have decided to testify?
THE WITNESS: Yes, sir.
THE COURT: Thank you, sir. You may be seated. Anything further from Mr. Grose or the State?
MR. GROSE: Since we're taking a break, I would like to excuse myself for a minute.

THE COURT: Absolutely. We going to -- we going to take -- let's -- let's be back at about -- about ten 'til. That'd be good? Ten 'til.

(Off the record from 2:32 p.m. until 2:53 p.m.)

THE BAILIFF: All rise, please, and court come to order.

THE COURT: Thank you. Thank you. Please be seated. Okay. Everybody's had time to refresh themselves? Everybody good?

MR. GROSE: Yes, sir.

THE COURT: (To the bailiff) We'll have the jury.

THE CLERK: Your Honor, I've already sworn in the defendant. Do you want him back on the stand before the jury comes in?

THE COURT: Yes. (To the witness) Sir, you can come back up if want to.

(WHEREUPON, the jury enters open court at 2:54 p.m.)

THE COURT: Madam Forelady, everybody refreshed?

MADAM FORELADY: Yes, sir.

THE COURT: Give your attention to Mr. Grose.

MR. GROSE: May it please the Court?

THE COURT: Yes, sir.

DIRECT EXAMINATION OF CODY HUDSON

BY MR. GROSE:

Q All right. Cody, can you adjust that microphone so that we can all hear you?
A Yes, sir.
Q All right. And, Cody, are you the defendant in this case?
A Yes, sir.
Q All right. Did you ever sexually assault Child at the Addres (as spoken) Address 3 location?
A No, sir.
Q Did you ever sexually assault Child at the Address 1 Addre location?
A No, sir.
Q Did you ever assault Child at the Address 2 location?
A No, sir.
Q Did you ever assault -- sexually assault Child at any location?
A No, sir.
Q Okay. Cody, what I want you to do is introduce yourself to the jurors. If you could tell them where you were born.
A I was born in -- at Greenwood Memorial Hospital.
Q All right. And so have you lived in South Carolina all of your life?
A Yes, sir.
Q And has that mostly been in the upstate area of South

Carolina?
A Yes, sir.
Q All right. And the -- the last witness that we heard from was Lauren Fields.
A Uh-huh.
Q And do you know -- obviously you know Lauren?
A Yes.
Q All right. And you and Lauren have children together?
A Yes, sir.
Q And what's the name of -- your oldest child's name?
A CH's Child 1 .
Q I'm sorry?
A CH's Child 1 .
Q Okay. And how old is CH's now?
A She's 15.
Q And do you call her by a nickname?
A Yes. I call her CH's Child 1
Q All right. And who's the -- the - the next oldest child?
A CH's Child 2 .
Q All right. And -- and is he a boy or -- he's a boy, right?
A Yes, sir.
Q All right. And how old is CH's ?
A Thirteen.
Q And then you have a third child?

A CH's [redacted].
Q And how old is CH's [redacted]?
A He's 12.
Q Okay. And were you and Lauren ever married?
A Yes.
Q All right. And -- and about when did you and Lauren start dating?
A We started dating when she was 15 and I was 16.
Q Okay. And how old were you -- when did y'all get married, I guess?
A We got married -- CH's [redacted] was probably about nine months old when we got married.
Q Okay. And what area of the State were you living in with Lauren while y'all were married?
A Abbeville.
Q Okay. And at -- at some point, did -- did you and Lauren separate?
A Yes.
Q And -- and about when was that?
A CH's [redacted] was probably -- he was maybe like seven months old.
Q Okay. And did Lauren and the children continue to live in Abbeville?
A No. The kids lived with me at first, and then that's when she got them later on.

Q Okay. How long were they living with you?
A They lived with me for a few months, and then the guy she started seeing, me and him got into it and . . .
Q And the kids went back with her?
A Yeah.
Q I gotcha. All right. And -- and so at which -- after you separated, which part of the state were you living in?
A Laurens County.
Q Okay. And, at some point, did you meet Sarah?
A Yes.
Q All right. When was it that you met Sarah?
A I can't remember right off the bat.
Q Okay. You don't remember which year it was?
A No. I can't remember what year it was, no.
Q But that's -- that's been a little while ago?
A Yeah.
Q Okay. Do you remember where and how you met?
A We met on an app called "POF."
Q POF. What does that stand for?
A Plenty of Fish.
Q Okay. And did you and her start going out after that?
A Yes.
Q And, at some point, did you meet her children?
A Yes.

Q And, at some point, did she meet your children?
A Yes.
Q Okay. And, at some point, did y'all start living together?
A Yes.
Q All right. Was that before or after you got married?
A That was before.
Q And when did -- when did you start living together, approximately?
A I can't remember what year it was, but we started living together in Moore, South Carolina.
Q In -- in Moore -- here in Spartanburg County?
A Yes.
Q Okay. And when did y'all get married?
A I can't remember.
Q Okay. But y'all did get married?
A Yes.
Q Okay. Now, when you were -- when you were living with and married to Sarah, did you and Sarah ever work at the same place?
A Yes.
Q Okay. And where was that?
A It was --- I can't remember the name of the place, but it was a pallet place.
Q A pallet place. What do you mean by "a pallet place"?

A Where they buy pallets and then resells them and then rebuild pallets and stuff like that.
Q Okay. And what did you do at that job?
A I was kind of like a -- kind of like a warehouse supervisor is what it basically made me.
Q And -- and what was Sarah's job?
A She was -- she worked in the office.
Q All right. And do you know what she did in the office?
A She e-mails and stuff like that. And like she said she cut checks for clients and stuff like that. I don't -- I mean, I didn't really get in . . .
Q Well, earlier in the trial, I acknowledged that you had a conviction for breach of trust?
A Yes, sir.
Q All right. And -- and that was -- Sarah was your co-defendant; is that right?
A Yes, sir.
Q Okay. And that all came out of something that was -- that happened while you and Sarah were working at that pallet place?
A Yes, sir.
Q Okay. And it involved a check?
A Yeah.
Q All right. Did you plead guilty and promise to pay restitution?

A Yes.
Q Did you pay the restitution?
A Yes, sir.
Q Okay. All right. All right. While you and Sarah were married and living together, did you have visitation with your children?
A Yes, sir.
Q All right. And -- and in the beginning, how did that -- how did that take place?
A What -- what do you mean "in the" --
Q Well, how would you and Lauren exchange custody, or it'd be --
A We would -- we -- I mean, we would meet -- like she would come -- use to -- she used to meet me at the QT in Duncan and exchange them, and then that's when we started meeting at my dad's.
Q Okay. So, at first, she was doing more driving, and then you started meeting more closer to the middle?
A Yeah.
Q Okay. And who would usually go to pick up the kids from visitation and bring them back from your side?
A Me and Sarah would do it most of the time.
Q And did there ever come a point when Sarah was no longer doing it?
A No. She would -- she would -- there was sometimes I went

by myself, but most of the time we was together.
Q Okay. How was the relationship between Sarah and Lauren?
A It was awful.
Q And what do you mean by "awful"?
A She didn't -- she didn't like Lauren a bit. And, I mean, I don't -- I don't know why. I just never argued. I don't like to argue, so I never -- I just -- I stayed out of it. I -- that was two grown women, so . . .
Q Do you know what that -- the tension was about or anything?
A No.
Q Okay. All right. And did there ever come a point when the visitation with your children was no longer happening at where you and Sarah lived?
A Yes. That's when Sarah said that the kids couldn't come, so that's when I left.
Q Okay. Now, when -- when she said they -- they couldn't come, she didn't want -- she didn't want them at her -- at her house, but she could still visit with them.
A She told me that she didn't like my kids, that my kids were spoiled brats, that she didn't want nothing to do with them. And I said, "Okay. That's fine." So that's when I left.
Q Okay. And when you left, where did you go?
A She dropped me off at my dad's house, and then that's

when I went -- that night I went to my -- to my brother Brad's house, and that's where I started staying.

Q All right. And that was in roughly March of 2019?

A No. That -- well, that -- whenever -- whenever I left. It was -- yeah. I can't -- yeah. Somewhere around in that time, yeah.

Q Okay. All right. And when you went to work -- or when you went to live with your brother, Brad, who else was living in the home?

A His wife and his two kids.

Q All right. And did Brad help you get a -- help you get a job where he was working?

A Yes, sir.

Q All right. What was the name of that company?

A Piedmont Plumbers.

Q Okay. And what was your job at Piedmont Plumbers? What was your role?

A Service technician.

Q Okay. And what time would you have to be at work every day?

A Had to be there at 7, 7:30, but we usually got there around 6:45/6:50.

Q Okay. And did you ride to work with anybody?

A Yes. My older brother, Barry.

Q Okay. Now, he wasn't living there. Would he come pick

you up?
A Huh?
Q Would he come pick you up?
A Yes.
Q Okay. All right. And when you were working there, was there any type of clothing or uniform that you were supposed to wear?
A Yes. The gray -- the gray button-up shirt with my name on it and Piedmont Plumbers on the other side and then the blue work pants.
Q I want to hand you what's in evidence as State's Exhibit Number 10.
A Uh-huh.
Q And, Cody, I don't mean to embarrass you, but I'm gonna put a copy of that up on the -- the screen. All right. In this photograph --
A Uh-huh.
Q -- there's some -- some -- looks like green clothes?
A Yes, sir.
Q Is -- is that the clothing that you wore when you went to work with -- at the same place Brad worked?
A No, sir.
Q Okay. And if you kind of zoom in down here on the -- the bottom, --
A Uh-huh.

Q -- you see some shoes there?
A Yes, sir.
Q You see what I'm talking about?
A Yeah.
Q All right. Were those the type of shoes that you wore to work?
A No. I wore tennis shoes.
Q Okay. Is -- is that a picture of your penis?
A No, sir.
Q I am gonna show you what's in evidence as State's Exhibit Number 11.
A Okay.
Q And I'll have that up on the screen. Now, is -- is -- that your penis?
A No, sir.
Q Okay. I want to kind of focus you in on the -- the leg area over there (indicates).
A Uh-huh.
Q Do you have any distinctive markings or scars or anything on that area?
A Yes, sir. I do.
Q And can you tell the jurors about that?
A I've got five or six marks right here on my leg. Because my mom, she had real bad eczema, and so me and my daughter got it from -- from her. And so I've got five

marks -- five -- five marks on my leg right here -- right on the left leg.

Q Okay. And that's from a condition that you've had that you inherited?

A Yes. I've had it for years.

Q I'm gonna hand you what's already in evidence as State Exhibit 13.

A Uh-huh.

Q You know what that is?

A Yes, sir.

Q All right. And what is that?

A That -- that's the picture that was took of me by law enforcement.

Q Okay. And is that a copy of it that's on the screen now?

A Yes, sir.

Q Okay. All right. I have a side-by-side comparison of the -- the one -- the -- the photograph with the green clothing and the one that was taken by law enforcement.

A Yes, sir.

Q All right. Can you explain to the jurors why those are different?

A Yeah. So it's -- it's a different size, and different shape as you could tell. And then there's a mark that's been on my hand for years that you could see in that picture and not in that picture.

Q Okay. When you're talking about that mark -- let's do this -- you talking about that mark on your hand --
A Yes.
Q -- right there (indicates)?
A Yes.
Q And you don't see that on your hand in -- in that picture, --
A No.
Q -- do you?
A No. And you can tell it was like two different hands.
Q All right. Did you ever send any photographs of your penis to Child?
A No, sir.
Q Okay. All right. Now, there's been some -- some testimony about cell phones. When -- when you and Sarah were married, did you have a cell phone?
A When -- at one point, yes. And then I went a while without having one.
Q Okay. And did Sarah have a preference about how your family got in touch with you?
A Yeah. She's --
Q And what was that?
A That they had to contact her and all.
Q All right. So they had to -- to contact you, they had to go through her?

A Yes, sir.
Q Okay. Now, you said you had a cell phone, and there was a period that you didn't. Was there a period towards the end of the relationship where you did have a cell phone?
A I ended up getting one, yes.
Q And what did you end up getting?
A It was a iPhone at first, and then I -- and then I switched to Samsung Note -- Note 3, I think it was --
Q Okay.
A -- after that.
Q All right. And that's the -- the same cell phone that Sarah testified about a couple of days ago that -- that you had?
A I -- oh, I don't -- I --
Q Okay. All right. And let me ask the question this way: Did Sarah know what type of cell phone that you had?
A Yeah. She knew every cell phone that I've had.
Q Okay. And did -- when you say "she knew everything" --
A Uh-huh.
Q -- on your phone?
A Huh?
Q Did you say she knew everything on your phone?
A Yes.
Q Okay. What do you mean by that?
A She -- I mean she knew -- she -- she would like -- when I

go to bed, she would get on my phone. She -- I mean she had two or three e-mail accounts of mine that I have -- I ended up changing because of that.

Q Okay. And -- and you mentioned e-mails. There's - - what's in evidence is State's Exhibit Number 6 is some Gmail account.

A Uh-huh.

Q Or Gmail messages. And one of the addresses on there is codyhudson2014@gmail.com.

A Sir, the last time I had that e-mail was four months before I left.

Q Okay. You say the last time you had it, I'm just -- it was still there, but you -- were you using it?

A No. I deleted it because I knew she had access to it, and I created the -- the one that I have now, that's codyhudson2007.

Q Okay. And so when did you quit using the 2014 e-mail?

A Four -- about four months before I left.

Q Okay. And did Sarah have the credentials for the 2014 e-mail account?

A Yeah. She had everything to it.

Q Okay. Did you give her the credentials for the 2007 e-mail?

A No.

Q I want to go back to August of 2018. Is that when your

mother died?
A No. It was --
Q I'm sorry. Correct me because I said the wrong answer.
A It's August of 20th, 2016.
Q Okay. Thank you. My apologies for that. When she -- when your mother passed away, did -- did the family do anything to -- to mourn her passing?
A We all met at my dad's house.
Q Okay. And where is your dad's house?
A It's Fountain Inn.
Q Okay. And can you kind of tell us sort of what was -- what the -- right after she died, what were y'all doing together as a family?
A We -- well, we went on -- well, we picked the kids up Friday night, and then that's when Saturday morning I woke up to a text that Jody sent saying that she passed. And when I called him, because I thought it was a joke that -- because I didn't know that's when he called me at first, and I -- I was mad, but --
Q I guess you weren't expecting it?
A No. No. Because she was fine Friday, but then that's when we -- we got ready, which CH's and CH's was at the house at that time. CH's stayed Friday night, and Brad and Jody's daughters stayed with my mom Friday night.

Q Okay.
A So we got up Saturday and went down there.
Q Okay. And there was some -- some testimony about a game of hide and seek. Do you know what they're talking about?
A The -- the kids played hide and -- hide and seek. I didn't. I don't -- I -- I don't play hide and seek. I got bad knees.
Q Okay. You know the -- the time the -- the -- you know that -- that -- you recall the day that -- the evening that they were playing hide and seek?
A It was -- it was a couple -- couple days after my -- my mom passed or whatever, and me and a couple of the brothers and uncle and all that was sitting on the porch while the kid was playing hide and go seek.
Q Okay. All right. And so did you ever put your hands in an inappropriate way on Child while you were playing hide and seek?
A No, sir. Because I've never played hide and go seek.
Q All right. Were you ever alone on the porch with Child
A No, sir.
Q If you were never alone on the porch with Child, did you ever kiss her in a romantic-type kiss on the porch?
A No, sir.
Q All right. What were the sleeping arrangements at the

house that night?
A So the boys had a room, and the girls had a room.
Q Okay. When you say "the girls had a room," what -- what do you -- what are you talking -- what does that mean?
A That -- that Ally, Sister [redacted] and my daughter shared a room, and then Brother [redacted] and Tyler and Bentley shared a room.
Q Okay. And were there some other family members that were there that were also female?
A Yes.
Q All right. And where were they that evening?
A They was -- they was in the room, too.
Q They were in the room, too?
A Yes, sir.
Q So how many people were in that room?
A There was a total of four in the room, and then the boys' room, my cousin was with us that night and my -- and my nephew, so that made five boys that was in that room.
Q Okay. So did you ever go into the girl's room and give Ally a romantic-type -- or what could be considered a romantic-type kiss?
A No, sir.
Q Okay. All right. And what was the -- the layout of that house? How many bedrooms were in that house?
A Three bedrooms.

Q All right. And so there was a -- a bedroom for the adults? a bedroom for the boys? a bedroom for the girls --
A Yeah.
Q -- is that right?
A Yes, sir.
Q And how many other rooms were in that house?
A Just the -- the hallway bathroom and then the laundry room. And then the kitchen and living room was an open floor plan.
Q Okay. How big of a house was that?
A I mean, not very big. It had a living room and a kitchen, and then a hallway that went to the bedrooms.
Q All right. And the -- the next place that you -- you live was the Address 1 [redacted] address?
A Uh-huh.
Q Is that a yes?
A That's -- I'm guessing that's what it was. I --
Q Okay. And can you describe that house? For instance, how many bedrooms did it have?
A It was -- it started out to be a three-bedroom, two-bath house, but the owners built onto the back of it, so they built a extra room with two-car garage, and then the upstairs master bedroom.
Q Okay. And where was the master bedroom in relation to

the rest of the house? How would you get to and from the master bedroom, I guess, is what I'm asking?

A The -- through -- well, you go through the kitchen, and that's when you get to the other -- the room that goes down the ramp to the -- it's kind of like a big living room, and then the stairs was right beside it.

Q Okay. And did the stairs go straight up to the --

A Yes.

Q All right. You said there was a -- a two-car garage?

A Yes, sir.

Q Did y'all use that garage?

A Yes.

Q Okay. And how big of a house would you say that house was? How would you describe it size-wise?

A It -- I mean, it was just a regular three-bedroom, two-bath house, but with that addition built on then --

Q Uh-huh.

A -- it -- it made it look like it was a two-story from -- from the one back part of it.

Q But it was only that one room?

A Yes. It was just a one -- one bedroom upstairs.

Q All right. And the next place was the -- the Address 2 location?

A Uh-huh.

Q How many bedrooms did that house have?

A It was three bedrooms, two baths.
Q All right. And would you describe that as big or small or medium size?
A It was -- it was a smaller house. It wasn't a very big one.
Q So all the houses were fairly small?
A Yeah. There wasn't -- yeah. There wasn't no two-story houses.
Q I asked you about these e-mails that's State's Exhibit Number 6.
A Uh-huh.
Q And -- and you've seen these before today?
A Yes.
Q All right. Did -- did you send those e-mails to Child?
A No.
Q Did you ever see those e-mails that supposedly are from Child?
A No.
Q Okay. And I'm just going to ask you again, did you ever have sex with Child?
A No, sir.
Q Did you ever perform oral sex on Child?
A No, sir.
Q Did you ever cause Child to perform oral sex on you?
A No, sir.

Q Did you insert any of your body parts into her body parts?
A No, sir.
Q Did you try to have anal sex with her?
A No, sir.
Q All right.

MR. GROSE: Thank you, Cody. Please answer any questions the prosecutor may ask.

THE WITNESS: Okay.

CROSS-EXAMINATION OF CODY HUDSON

BY MS. HALLFORD:

Q So I got a little bit confused when you were saying where you have marks on your leg. So show me where?
A (Indicates) So in this picture, y'all never got my leg. He never -- he never got the picture of my leg.
Q Did you ask him to get a picture of your leg?
A Yes, ma'am.
Q You did?
A Yes -- yes, ma'am.
Q Okay. What did you tell him?
A Well, he come in, and he -- and I -- and I said, "Did you get my leg?" And he said, "Yes," and run out.
Q So where -- show me where on your leg that --
A Right (indicates) -- there's one right here, and there's right here, and there's --

Q Okay.
A -- upper right here.
Q Okay. So that wouldn't show up in this picture, would it?
A No. But that would.
Q Okay. We -- we'll get to that in a minute. And that wouldn't show up in this picture, either, would it?
A Yes. It would. Because --
Q Would it?
A Yeah. Because y'all blew that picture up because the last picture I seen like that, that my attorney showed me, you could see this leg.
Q That's exactly -- that's printed exactly as it was taken.
A That's spot right there on my leg, ma'am.
Q But it's not -- not on there?
A It's not on that -- not on that picture.
Q Okay. So that would be something super important to make sure that we had, right? You would want us to definitely see that?
A Yes, ma'am.
Q So when the attorney brought the pictures back to you that were taken of your penis at your request, correct?
A Yes, ma'am.
Q Did you say to your attorney, "Dude, they didn't get the spot" --

A Yes, ma'am.
Q -- "on my leg; we need to have it done again"?
A Yes, ma'am.
Q Really?
A Yes, ma'am.
Q So was your attorney gonna contact me about that?
A I --
Q Would it surprise you to know that he did not?
A No. I mean, he's -- he's been a good attorney to me, so I'm --
Q But that's something you should be raising cane about, isn't it?
A Yes, ma'am. And I --
Q And if you do have a spot on your leg, we have to take your word for it, that it has been there for a long time; isn't that right?
A Well, I mean, it's -- I mean, eczema just don't go away.
Q Oh, but it does. It comes and goes, doesn't it?
A I -- I haven't had it because it's been on my legs --
Q I -- I've got it on my elbows, and --
A Yeah. My daughter's got it, and she wears glasses and -- and her ears are like mine, and you can see that hers are real bad behind her ears.
Q But it comes, and it goes, doesn't it?
A Mine don't. Mine hasn't.

Q Oh, okay. So you -- you have special eczema?
A I put -- no. I mean, I'm just saying. And I put cream on mine, and it hasn't went away.
Q Okay. But the bottom line is, your attorney brought you the pictures that were taken of your penis at your request.
A Yes, ma'am.
Q You allege that you have a spot on your leg that we should be able to see in this picture?
A Yes, ma'am.
Q And if that is in fact true, that's something that would be incredibly important for us, isn't it?
A Yes, ma'am.
Q And yet no other pictures were requested?
A I guess not.
Q Okay. So do you remember when the officer came in to take the pictures at your request, and you said to him, "Hurry up, I'm losing it"?
A I've never said that.
Q Oh, so he was not telling the truth about that?
A Apparently not. Because I --
Q Okay.
A That's -- that's something --
Q So it wasn't difficult for you to maintain an erection with a large man taking a picture of your penis?

A I mean, yes -- yes, ma'am. It really was. And I --
Q Yeah. It was going down?
A -- and -- and I -- well, no. It wasn't going down. But I've explained to my attorney and him, because I had to come out of the room and tell them, I said, "I don't -- I mean, this -- this is just something I can't -- like you can't just" --
Q Correct. Well, I mean, like you know a dude's gonna come in and take a picture of your penis, that's gonna kind of affect your ability to get it fully erect, right?
A But I --
Q Because you're --
A I finally did, though.
Q You're not attracted to men?
A No.
Q Okay. So -- and you actually knocked on the door twice, and your attorney didn't hear, correct?
A Yes. And then --
Q So you got erect twice, no one knew; so then you had to do it a third time?
A No. It was -- no. It was when I knocked twice is when I got it erected the first time.
Q Okay.
A And then that's when I hollered for Charles, and I said, "Hey," I said, "I just knocked because y'all said knock."

And he said, "Oh," he said, "we didn't hear you."
Q Okay.
A And I said, "Well, open the door a little more so that" --
Q Okay.
A -- "way y'all can hear."
Q So you deny that you said to the attorney, "Hurry up, I'm losing it"?
A Yeah. I never once said that.
Q Okay. And you will agree that these are not taken from the exact same angle, these two pictures?
A No.
Q They're not. Right. Okay. So that can affect perspective, right?
A It could.
Q So this one can look like a different size than this one because of the angle that the camera was or how close the camera was, how far away the camera was. You'll agree, right?
A I mean, it could happen, but that's --
Q Uh-huh. Yeah. Okay. So -- and you -- you admit that this is a picture of your penis?
A Yes, ma'am.
Q Okay. And you deny that this and this (indicates) are pictures of your penis?

A Yes. And another reason is, if you look right here, I have a spot right there, too. That's not anywhere on this picture.

MR. SMITH: Do the exhibit numbers when you're --

Q Okay. I'm sorry. So Exhibit Number 13 --

A Uh-huh.

Q -- State's -- State's Exhibit 13 is the picture that was taken of your penis?

A Uh-huh.

Q You denied that State's Exhibit 10 and State's Exhibit 11 are pictures of your penis?

A Yes.

Q Okay.

MS. HALLFORD: Your Honor, may I have the -- we -- we -- this won't work on the -- the ELMO. Can I have the witness step down and come here where we can --

THE COURT: Yes. Step down. Please be careful.

Q Okay. So you have agreed that perspective can affect the size of these two penises, correct?

A I mean, yeah.

Q Okay. So --

THE COURT REPORTER: I can't hear. (To Ms. Hallford) Can he speak up just a little bit? I didn't hear his --

MS. HALLFORD: Me or him?
THE COURT REPORTER: Him. I can -- I didn't --
THE COURT: She has to be able to --
THE WITNESS: Oh, okay.
Q What was your response?
A To what?
Q When I asked you, you -- you agreed that perspective can affect the size?
A It could, yes.
Q Okay.
MS. HALLFORD: (To the court reporter) Can you hear him now?
THE COURT REPORTER: Uh-huh.
Q Okay. So let's look at this penis.
A Uh-huh.
Q Let's look at that vein right there (indicates).
A Uh-huh.
Q And that's your penis, correct?
A Yes, ma'am.
Q All right. Now, let's look at that vein right there. That does the same jag, doesn't it?
A Yeah. But there's no --
Q No, no, no. I ask you one question.
MR. GROSE: Your Honor, he -- I don't know if you heard, he answered the question, and then he's

entitled to explain his answer.

MS. HALLFORD: Okay.

THE COURT: Okay.

A So you can see that there's another vein that's right there that's not right there, that's on the side.

Q But they're at different angles, agreed?

A Yeah. So you'd be able to see the -- that vein that's right there better on this picture because of how that picture was taken instead of that one.

Q You agree that those veins look exactly alike, don't they?

A No. Because that vein right there is fatter than what that vein is.

Q Okay. In perspective, closer up on this one, further away on that one, correct?

A (No response.)

Q Okay. So let's look at this vein in here. You've got the veins that go through here and branch up, and look, there they are again. This is your penis, correct?

A That's my penis, but them veins are different than --

Q And the --

A -- what them veins are.

Q Really?

A Yes, ma'am.

Q Jag right there and go up, jag right there and go up.

A Okay. Well, you see that spot that's right on that vein, that's not on over here.
Q Okay. And you agree that spots on your skin will come and go? Could be a scab?
A That's not a scab.
Q No?
A No, ma'am.
Q Okay. So let's look here. Goes little lump right there, little lump right there. Straight, straight, lump right there, lump right there. Do you agree with that?
A (Shakes head from side to side.)
Q No?
A No.
Q How about this? There's darkening through here; there's darkening through here. Do you agree with that?
A No. I don't see no darkening.
Q No? You don't?
A No, ma'am.
Q You don't see that darkening right through there and that darkening right through there?
A I see darkening right through here, but I don't see no darkening right --
Q No?
A -- through there.
Q And -- and these are different perspective again, you

agree with that, correct?
A Yes, ma'am.
Q Okay. And you see that there's a width here and a width here, exactly where that bump starts and goes down, and that appears to be a vein. This, of course, is at a different angle, but it's wider there, wider there; isn't that right?
A A whip whatever --
Q I'm sorry.
A Whatever you're saying, a "whip," I don't --
Q Width.
A Width?
Q Width. You know, width?
A No. That one's -- this one right here is a different shape and different length and all, and it's -- it's better than what that one is.
Q Well, this is closer up, and you -- well, you don't admit it, but the officer says that you said that you were not fully erect, so that would also account for some of the fact that the skin is a little looser here. But you will agree that the veining on these two penises is the same --
A But one thing --
Q -- in multiple places; isn't that right?
A Not that I've seen, ma'am.

Q And that is because this is the same penis; isn't that right?
A No, ma'am.
Q This is the penis that was -- the picture that was taken of your penis --
A Uh-huh.
Q -- State's Exhibit 13, and this is the one that was sent to Child's phone on -- on April 14th. You heard that testimony, right?
A Yes, ma'am.
Q And if you do this one at the same angle, and this is State's Exhibit 11, has the same veining, doesn't it? The same jagged vein there?
A The --
Q The same veins up through here?
A The vein -- the smaller --
Q Uh-huh.
A -- veins, yes. That's the --
Q Yeah.
A -- vein that's the same -- that vein -- them two veins are the same. That one's different.
Q Okay. Picture of your penis.
A Uh-huh.
Q Picture of your penis?
A No. That's not a picture of my penis, and that's not the

same penis.
Q Picture of your penis?
A No, ma'am.
Q Okay. You had a Galaxy S8, didn't you?
A Yes, ma'am.
Q Okay. And those pictures came from a Galaxy S8; isn't that right?
A I -- I guess, but I'm not the only one with the --
Q That -- that was what the testimony was?
A That's what the testimony said, but I --
Q Okay. When you and Child first met, how did you guys get along?
A She didn't like me.
Q And what did you think about her?
A I -- I mean, I thought of her as a -- I mean, as the woman that I was dating, her child.
Q Okay. But did y'all argue a lot?
A Yes.
Q No love lost between the two of you, you will agree?
A Well, I tried. I mean, but she -- she smarted off every time and would say that, "You're not my dad," and this and that. "I don't have to listen to you," and -- and I just wouldn't argue.
Q So did there come -- and there did come a time though where you guys became close, didn't you?

A I wouldn't say close, but she started talking to me and wanting to hang out, stuff like that. Wanted to go places. Whenever I went somewhere, me and Brother would go, then she would want to go. And --

Q The fact is you and she were having a sexual relationship; isn't that right?

A No, ma'am.

Q And you and she exchanged sexual pictures?

A No, ma'am.

Q And you and she had sex multiple times at the Address 2 house?

A No, ma'am.

Q And you and she had sex multiple times at the Address 1 Addr house?

A No, ma'am.

Q And you performed oral sex on her at the Foster Grove Road house?

A No, ma'am.

Q And you put your penis inside her at the Address 3 Addr house?

A No, ma'am.

Q And she told you that it hurt?

A No, ma'am.

Q And then you performed oral sex on her?

A No, ma'am.

Q And then you forced her to perform oral sex on you at the Address 1 [redacted] house?
A No, ma'am.
Q And you forced her to perform oral sex on you at the Address 2 [redacted] house. Isn't that all true?
A No, ma'am.
Q And you sent her pictures of your penis?
A No, ma'am.
Q And we have this picture of your penis, which the jury's gonna get to inspect, and those are all the same penis, aren't they?
A No, ma'am.
Q It's very painful to admit, I'm sure, but you sexually abused her --
A No, ma'am.
Q -- over the course of two years and seven months, didn't you?
A No, ma'am.

MS. HALLFORD: (To the Court) I have no further questions.

THE COURT: (To Mr. Grose) Anything?

MR. GROSE: I beg the Court's indulgence --

THE COURT: Yes.

MR. GROSE: -- one moment.

THE COURT: Yes, sir.

REDIRECT EXAMINATION OF CODY HUDSON

BY MR. GROSE:

Q Cody, I'm going show you what's been marked as Court's Exhibit Number 5 for identification.

A Uh-huh.

Q And if you would, do you -- do you know what that is?

A What?

Q Well, this document? Not -- not the exhibit, but the document.

A The -- I -- when -- the one I had to sign.

Q Yeah. And that -- is that your signature there?

A Yes, sir.

Q All right. And is that my signature there?

A Yes, sir.

Q Is -- is that the prosecutor's signature there?

A Yes, sir.

Q All right. And I'm gonna read this along. Says, "I, Cody Hudson, have been informed by Investigator Brewster J. of the Spartanburg County Sheriff's Office of my constitutional right to not have a search made of my person without a search warrant. Knowing of my lawful right to refuse to consent to such search, I willingly give my permission to the above-named officers -- or officer to take a photograph of my penis to compare the two pictures of male genitalia recovered from my cell

phone." Have I read that right so far?
A Recover from my cell phone?
Q From -- from a cell phone.
A Yes.
Q A cell phone. "I understand that it will be necessary for me to have an erect penis, that I will need to hold the penis with my right hand, and that individual taking these pictures will take them from the same angle as the recovered pictures were taken."
A Yes, sir.
Q All right. So the fact that they didn't take them from the same angle is not your fault?
A Yes, sir.

MR. GROSE: Thank you, Your Honor. That's all I have.

THE COURT: (To the State) Anything?

MS. HALLFORD: Nothing, Your Honor.

THE COURT: Thank you. (To the witness) Sir, you may step down. Please be careful.

(WHEREUPON, the witness was excused.)

MR. GROSE: (To the Court) Can I just have a moment. At -- at this time, the defense rests, Your Honor.

THE COURT: Defense rests. Madam Forelady and ladies and gentlemen, what that means is the defense

does not intend to call another witness or introduce any other exhibits at this time. (To the State) There's gonna be any rebuttal reply?

MS. HALLFORD: No, sir.

THE COURT: No rebuttal, no reply. Okay. Very good. All right. Let's see the lawyers up here. Let's talk time.

(WHEREUPON, a bench conference was held.)

THE COURT: Okay. Ladies and gentlemen of the jury, let me tell you where we are. There's not gonna be another witness; there's not gonna be another picture; there's not gonna be another anything. We -- I'm getting ready to send you home for the evening with instructions to not talk about the case. Don't try to learn anything about the case whatsoever. Be back here and ready to work in the morning at 9 a.m. At 9 a.m.

Now, when you get back tomorrow, I'm gonna -- because I -- I'll be here by eight, and they'll be here shortly thereafter, but when you get back tomorrow, the lawyers are gonna make their closing statements to you. And I will then charge you on the law of this case, at which time you will then retire to begin your deliberations, okay? That's what you can expect in the morning.

Again, no more witnesses, no more exhibits whatsoever. Tomorrow this case comes to you 12. And -- and I'll explain more about that for my alternates, but when they go to deliberate, you'll stay with me.

All right. Madam Forelady, I'm gonna let you take the jury out, and I will see everyone back here in the morning.

(WHEREUPON, the jury was excused at 3:39 p.m.)

THE COURT: Okay. We're still on the record. The defense has now rested, and does the State have any matters?

MS. HALLFORD: No, sir, Your Honor.

THE COURT: Okay. Defense have any matters?

MR. GROSE: No. I -- but I've -- I'm just looking at the charge that was resent.

THE COURT: Okay. But let's -- I don't mean to interrupt you, Mr. Grose. I'm gonna get to that, but --

MR. GROSE: Okay.

THE COURT: -- do you want to renew a motion?

MR. GROSE: Oh, I'm sorry. I'm sorry. Yes. I would review -- or renew the directed verdict motion and the motion to quash the indictments.

THE COURT: (To the State) Anything?

MS. HALLFORD: Same argument.

THE COURT: And -- and for the reasons heretofore enunciated in this matter, the Court denies those motions as previously put on record. There is a scintilla of evidence. There is some evidence for which the jury can answer a question of fact. Okay. Let's talk about -- and we can get off the record on this unless you want it on the record about jury. I don't usually do it on the record.

MR. GROSE: However you want to do it is fine.

THE COURT: Yeah. We're fine. Amber, thank you.

(Off the record at 3:41 p.m.)

END OF DAY 4

DAY 5 OF TRIAL – JULY 21, 2023

THE COURT: Good morning, sir.

MR. KIMBRELL: Morning.

THE COURT: Sir, tell me your name, please. I'm sorry.

MR. KIMBRELL: Donnie Kimbrell.

THE COURT: Donnie Kimbrell.

THE BAILIFF: Eighty-one, Judge. I'm sorry.

THE COURT: Number 81?

MR. KIMBRELL: Yes, sir.

THE COURT: Sir, I understand that you know Sarah

Jumper; is that correct?
MR. KIMBRELL: She worked at a convenience store when I worked at Coca-Cola probably 13 years ago.
THE COURT: Okay. Would that interfere with your ability to be fair and impartial in this trial?
MR. KIMBRELL: No, sir.
THE COURT: Okay. And did you have a conversation with any other juror about that?
MR. KIMBRELL: Well, I spoke with them earlier in the week that I knew her. Well, I knew her when she got up on the stand. I recognized her.
THE COURT: Right. Right.
MR. KIMBRELL: And I told them at the first of the week, and, undoubtedly, one of the jurors didn't hear me or something, so --
THE COURT: Okay. All right. But it would not interfere with your ability to be fair and impartial?
MR. KIMBRELL: No, sir.
THE COURT: Anything from the State?
MS. HALLFORD: Nothing of concern.
THE COURT: From Defense?
MR. GROSE: (To Mr. Kimbrell) Did I understand that you -- you told this to the other jurors?
MR. KIMBRELL: At the beginning of the week, soon as

I seen her get on the stand.

MR. GROSE: Okay. What exactly did you tell the other jurors?

MR. KIMBRELL: That I knew her; that she had worked at a convenience store when I worked at Spartanburg Coca-Cola. And, undoubtedly, the woman never heard me, and whenever I mentioned it again yesterday, she -- she got pretty mad about it, but --

MR. GROSE: Okay.

MR. KIMBRELL: -- I had told them at the beginning of the week.

MR. GROSE: All right. Did you tell the other jurors anything else?

MR. KIMBRELL: No, sir.

MR. GROSE: Thank you.

MR. KIMBRELL: Yes, sir.

MS. HALLFORD: (To Mr. Kimbrell) I think she said that they're friends on Facebook?

MR. KIMBRELL: We are friends on Facebook, yes.

MS. HALLFORD: Has she posted anything about the case?

MR. KIMBRELL: I hadn't seen anything, but I haven't looked, either. I've not -- normally, we use my Facebook for like Marketplace. I don't even . . .

MS. HALLFORD: Do you recall if you've ever seen

anything that she's posted about that?
MR. KIMBRELL: I've never seen anything.
MS. HALLFORD: Okay.
THE COURT: (To Mr. Kimbrell) Thank you, sir. You may stay.
MR. KIMBRELL: Thank you.
THE COURT: Thank you.
THE COURT REPORTER: (To Mr. Kimbrell) I'm sorry. May I have your number one more time?
MR. KIMBRELL: Eighty-one.
THE COURT REPORTER: Eighty-one. Okay. Thank you.
THE COURT: Thank you, sir.
MR. KIMBRELL: Thank you.
THE BAILIFF: And we'll open the courtroom?
THE COURT: Yes. We can open the courtroom, unless Mr. Grose has something.
MR. GROSE: Well, I -- I mean, I -- I mean, I wanna be heard about whether or not he should remain on the jury.
THE COURT: Okay. Yes, sir?
MR. GROSE: I -- I think that he should be removed from the jury. You know, the -- I think the question in voir dire that you asked, -- you know, covered if they would've known each other through work or something like that. And I take him on, you

know, his face value, that he didn't recognize her until she got on the witness stand.

Regardless, I think it was his responsibility to let us know that -- at that point. And this could cut both ways, or it could -- it could cut one way. I mean, it could cut for the State; it could cut for us; it could be entirely neutral. The -- the point is -- is -- is we don't -- we don't really know, but, you know, that's information that if we had known of, you know, in -- in voir dire, we would've -- not knowing which way it might cut, we would've struck him.

And -- and, certainly, we would've had this conversation with him earlier in the week if -- if he had, you know, done more to make certain that -- that Your Honor was aware of it.

THE COURT: Solicitor, you wanna be heard?

MS. HALLFORD: I didn't use the name Sarah Jumper on the witness list. So, I mean, if he knew her as Sarah Jumper, then that would not have triggered a response. So I don't have any reason to doubt that he did not recognize her until she got on the stand. He said he could be fair and impartial, then that it -- he might not like her. It might work against me, as well. But the standard is can you be fair and

impartial, so . . .

MR. GROSE: Well, I -- I think that the standard is -- is not just whether or not the juror can say they can be fair and impartial because there's times, you know, when we remove jurors when bias is disclosed. And there's some case law that I cited in my voir dire from the United States Supreme Court on that point, and I cite it just particularly for a reason like this, is that, you need to know the information because sometimes the jurors may not recognize it's their own bias. I've had judges in the past remove jurors for cause even when they said they could be fair and unbiased.

And I've also been able to use that information in -- in jury strikes. And just for the record, I had two strikes left when we set the -- the original jury, and I didn't use any strikes on the alternates. So that's -- you know, that's our position.

THE COURT: Okay. (To the State) Anything?

MS. HALLFORD: And I just wanna clarify that I did ask Sarah after I found out about this, and I saw her out in the -- I saw her in the bathroom if she recognized anybody on the jury because she had not said anything to me. If she had, I would've brought

that to the court's attention, and she didn't know who -- who it was, so . . .

THE COURT: Right. I'm gonna let him stay over the defense's objection. He said he could be fair and impartial. He knew her from convenience store when he worked for Coca-Cola making deliveries 13 years ago. And -- and, in fact, even if he knew her by Sarah Jumper, which apparently he did not, we didn't know her last name was Jumper, and it was on -- Hudson on the witness list, so he can be fair and impartial, and I don't see any bias, so I'm doing to let him stay.

But you're protected, Mr. Grose.

MR. GROSE: Thank you.

MS. HALLFORD: Your Honor, I know you're bringing in the jury now. I'm going to the restroom real quick --

THE COURT: Yes.

MS. HALLFORD: -- in case --

THE COURT: Yeah. I've got to get my robe -- I have to get my robe, and we'll stop.

(Off the record from 9:04 a.m.
until 9:10 a.m.)

THE BAILIFF: All rise, please. Court come to order.

THE COURT: Thank you. Thank you. Please be seated.

MR. GROSE: (To the Court) A couple quick things before we --

THE COURT: Sure.

MR. GROSE: -- start. Yesterday when we went off the record, we were going to chambers for a charge conference. And I think that we each had a couple of minor things to change. I've not seen a subsequent draft. I might have missed that. I just wanted to make sure that the changes had been made.

Secondly, the verdict forms were sent. I did see those, and there was -- the wrong name was on a couple of them, and I -- I take it that's been corrected.

THE COURT: Yes. Take a look at that right there, and here's my charge.

(WHEREUPON, a bench conference was held.)

MR. GROSE: I -- I would just want to put on the record that we had requested the Logan jury instruction, verbatim from Logan, and that in the charge that is gonna be given, it's close, but there is a sentence that, "The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence." And we believe

that that is -- is repetitive, and we request it be removed --

THE COURT: Okay.

MR. GROSE: -- or one of them removed.

THE COURT: All right. You're protected, but I'm gonna charge what -- what's -- what this is.

MR. GROSE: Thank you, Your Honor.

THE COURT: Anything else?

MR. GROSE: And just one final question. I don't remember from our last trial, do you give the jurors a copy of the instructions?

THE COURT: No.

MR. GROSE: Okay.

THE COURT: No. I did when -- and I thought that was a good idea when I went to the judge's school as a brand-new judge.

MR. GROSE: Uh-huh.

THE COURT: And so I did that, and then I had a lawyer that requested -- that said that if I did that, I had to give 12 copies, --

MR. GROSE: Uh-huh.

THE COURT: -- and I'm not doing do that, so I just don't do it anymore.

MR. GROSE: I got you.

THE COURT: (To the State) Anything further?

MS. HALLFORD: Nothing -- nothing from the State, Your Honor.

THE COURT: Okay. The State doesn't give us a lot of money for paper. Okay. We'll have our jury. It's quite different from being --

MR. GROSE: Well, what I'm getting at, I -- I would request a brief recess between their closing and mine so I can organize the exhibits and switch out the technology.

THE COURT: Let me see how long they go. I don't want to send them out in 30 minutes.

MR. GROSE: Okay.

THE COURT: So let me see.

(WHEREUPON, the jury enters open court at 9:14 a.m.)

THE COURT: Good morning, ladies and gentlemen. Madam Forelady, everybody ready?

MADAM FORELADY: Yes, sir.

THE COURT: Please give your attention to the lawyers.

CLOSING ARGUMENTS

MS. HALLFORD: As you learned earlier this week, Cody Hudson has been charged with multiple counts of criminal sexual conduct with a minor in the second degree and criminal sexual conduct with a minor in the third degree. The judge is going to charge you

on the elements of those crimes, but I'm gonna talk to you about them for just a minute as well. If anything I say contradicts what he says, he controls.

CSC with a minor, second degree, is when an actor, the defendant, engages in a sexual battery with the victim. And the victim has to be 14 years of age or less, but at least 11 years of age. So 11 to 14, before she turns 15, and there has to be a sexual battery. Sexual battery is defined as sexual intercourse; cunnilingus, which is oral sex performed upon the female; fellatio, oral sex performed upon the male; anal intercourse or any intrusion, however slight, of any part of a person's body or any object into the genital or anal openings of another person's body unless it's accomplished for medical purposes.

So in this case, we have the penetration, however slight, the penis going into her vagina, not full sexual intercourse. We have sexual intercourse; we have cunnilingus; and we have fellatio. Criminal sexual conduct with a minor in the third degree is where the actor is over 14 years of age, and the actor willfully and lewdly commits or attempts to commit a lewd or lascivious act upon

or with the body or its parts of a child under the age of 16. So zero to fifteen. And it has to be done with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child.

So lewd, the judge will tell you, is defined as obscene, lustful, indecent, or morally impure. Lascivious: Intending to excite lust, indecency, obscenity, tending to deprave the morals in respect to sexual relations. Now as I said, we have to prove that was done with the intent to gratify sexual desires either of the defendant or of the victim. Now, we had -- we can infer someone's intent from the circumstances that are surrounding an action.

So in this case there's lots of sexual activity, and we can infer that he's touching the breasts, and he's touching the vaginal area for lewd and lascivious reasons because he's used her body for sexual purposes many, many times. So it's not an accidental touching. And, also, he says to her, "It will make you feel good." So you can infer that it was done to arouse sexual passions in her and/or him.

He is also charged with incest. And that is a

person's -- those are persons having carnal knowledge within the -- the following relationships, and then the statute lists the whole bunch of them. But the one that applies in this case, is a man with his wife's daughter. And if you have carnal intercourse with your wife's daughter or your stepdaughter, then that is incest.

So you heard a lot of indictment numbers, and you heard CSC with a minor second, CSC with a minor third, and then you heard through testimony that these events took place at three different locations. And there'll be time frames on the indictment. And the first set is August 21st, 2016 to August 31st, 2016.

And nobody knows the exact day that these happened, but the victim testified roughly within a couple of days of when the defendant's mother died, which was August 20th. So the day after to the end of the month because we know they're still in the Address 3 house and also going to the Address 1 Addr house.

And there are three indictments related to that. One is CSC with a minor third, touching of the breast on the porch at the Address 3 house. Then there is CSC with a minor second when

he performed oral sex on her in the living room, and CSC with a minor second penile vaginal penetration, not sexual intercourse, because he was only able to penetrate, and she said it hurt, and so he stopped. So that's the three indictments for that time frame.

Then you heard her mom testify that they lived at the Address 1 [redacted] house from roughly August 31st, 2016 to January 31st, 2017. And Child [redacted] testified to some of the dates, as well, but some of them she doesn't remember. But she was a kid and, you know, it's hard to remember specific times that she moved from one location to the other, but the mom testified to the time frames.

And for the Address 1 [redacted] house, there's CSC with a minor third, rubbing his genitals against her genitals. Remember she said that he would hump her, and he did that multiple times at that location. Then there's CSC with a minor third, and that's forcing her to rub his genitals. And remember the CSC with a minor third statute says "on or with the body or its parts." So her body has been used to satisfy his sexual -- his sexual desires by making her masturbate him and rub his penis.

CSC with a minor second for the sexual intercourse, and CSC with a minor second for being

forced to perform oral sex on him. And as she testified, all those events happened multiple times, most of them in multiple locations during the time frame that they lived at the Address 1 house. And she said that it would happen many times over the course of -- of them living there.

Then they moved briefly to Scruggs Road per the mom's testimony, and she doesn't remember anything happening here; she doesn't even remember living there. And it was a very short time that they lived there. Then they moved to the Address 2 location. And so those indictments are February 1st, 2017 to March 31st, 2019.

So we know that he moved out either in late February or early March. So in order to make sure that we cover as much time as is possible, that's why those dates were selected. CSC with a minor second at the Address 2 house for sexual intercourse, CSC with a minor second for fellatio, being forced to perform oral sex on him. And, again, she testified that that occurred multiple times at those -- at that location and in multiple rooms.

So those are the indictments, and that's the case law, the elements of the crime. So you're

gonna have the judge charge you about reasonable doubt. And we hear that a lot. If you guys like to watch crime shows, you've probably heard it a lot. Reasonable doubt is not all doubt. It's not removing every possibility. It's focusing on reasonableness.

The judge is going to charge you that it (as spoken) proof that leaves you firmly convinced of the defendant's guilt. If you're firmly convinced, then the State has proven the case beyond a reasonable doubt, and you should find the defendant guilty. He will also charge you that reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

Now, sometimes defense attorneys will get up, and they'll say, "If you can't go back there and immediately find my client guilty, then you have hesitated to act, and the State has not proven the case beyond a reasonable doubt."

There's a reason why we call it jury deliberations, because you are supposed to deliberate. Some of you are gonna pick up on something that someone else might not have. And so you bring that to everyone else's attention, and you discuss everything.

So you should hesitate when you first go back there and make sure that everyone is able to make their views known and discuss anything that someone might have missed, or someone else might have picked up on, consider the evidence from all the angles, look at the physical evidence, discuss the testimony. But after you deliberate, which is what you're supposed to do, if you are firmly convinced that he is guilty, then you must find him guilty.

So it's not all doubt at all. It's not a burden that is impossible to meet. It's a burden that the State welcomes, but it's a burden -- it is the -- it is evidence that leaves you firmly convinced, and the State believes that we have done that. So we will be asking you to find him guilty.

The judge is also gonna tell you that y'all are the sole determiners of the credibility of the witnesses. In other words, you decide who you think is telling the truth; and he will charge you that you can believe nothing someone said; you can believe everything someone said; or you can believe some of what they said and disbelieve some of what they said.

But some of the factors that you need to consider when you're trying to determine whether

someone was telling you the truth or if you should believe them, is their demeanor when they're testifying. Are there emotions appropriate and congruent with what they're testifying about?

You should also use your common sense. You guys are all adults. That's why we select you. You have common sense, and you can bring that to the table when considering, "Hey, should I believe this person or not?" You bring your life experiences, what you know about people. And you can consider, "Okay. Does someone have bias or motive to lie? Is there a relationship with the victim? Is there a relationship with the defendant?" You consider all of that, and then you decide who you are going to believe.

So people typically lie for two reasons. We lie to get out of trouble, and we lie to get some kind of a benefit. So, in this case, Child was in trouble because she had continued to communicate with Cody Hudson. So if that is true, and if she lied by saying, "Oh, he sexually abused me; I've been having a relationship with him," she made things worse for herself. So it makes no sense to say, "Oh, she made this up to get herself out of trouble because what she did was got herself into

more trouble and ended up fracturing her family relationship."

So let's talk about what kind of benefit she got out of this. She had to have a gynecological exam; she had to talk to multiple people about this; she testified to that. She had to talk about sex to multiple people.

When you guys were being qualified, and the Court -- the clerk of court said, "You're gonna have to stand up, give your name, where you work, your spouse's employment, and how far you are from the courthouse," some of you guys got a knot in the pit of your stomach, and as they were getting closer and closer to your number, that knot in the pit of your stomach got worse because you knew you were gonna have to stand up and talk about those little pieces of information in front of strangers.

Now, imagine if the clerk of court had said, "I want you to stand up and tell me about the worst sexual experience you've ever had." Well, that raises it to a whole new level. And, yet, that's what Child did. She had to sit in front of y'all and talk about the horrible, horrible things that happened to her. And she had to talk about that to multiple other people over the course of this

investigation.

The defendant had his relatives come and talk to you. And some of the things that they were saying was that, "We don't believe he would do this." And I believe that they don't believe that he would do this. And they all admitted that they had never said or done anything that would make him think that they would be okay with him having sex with Child.

So, of course, that's gonna be a secret that he is going to keep. He's not gonna let anyone know about that. So I don't think they're lying when they say, "I don't think he would do this." But I do think that they're covering for him when they say, "He always wore a uniform shirt, and that he always wore tennis shoes to work in."

First of all, those pictures were taken in 2019, so it's very unlikely that the brothers remember what he was wearing on his feet. And I -- most of the construction, plumbing, electrician people I know wear work boots. And said that, "He always has a uniform shirt on." And he may have always worn a uniform shirt, but most of the people I know who work in the trades usually wear a T-shirt under the uniform shirt.

So the picture that was taken in the Porta John where Child says, "Hey, I remember we were having a conversation; he was at work." He may have had a uniform shirt over it; be on break; I'm hot; take that thing off and have the T-shirt underneath it. And I don't believe for a minute that he always wore --

MR. GROSE: Objection. That's improper for the solicitor to say what she believes and doesn't believe.

MS. HALLFORD: True. True.

MR. GROSE: Move to strike.

THE COURT: It's stricken.

MS. HALLFORD: Okay. I apologize. The testimony that he always wore the same shoes doesn't make a lot of sense given that it was from 2019, and it's now 2023. But they love him, and they don't believe that he did this, and they wanna help him. And I don't blame them, but they have motive, and they're biased, and you need to consider that.

Now, you may be wondering why we had you listen to the medical testimony when there wasn't any finding. And the reason for that is that most people genuinely believe that there's a hymen, and if there is penetration of the hymen, that it is

ruptured, and that then a doctor can look and see that there's been penetration because the hymen is ruptured, and that is actually not true. But if we don't bring that evidence before you and explain, "Yes. This child was looked at, and in this case, there's no physical evidence," then sometimes that can create a lot of confusion for a jury.

So that's why we had you listen to that, so that the expert could educate you about the reality of sexual abuse and how it's very uncommon to find any physical evidence. But the judge is gonna instruct you again, I believe, and he did when the -- before the experts testified that you don't need to give any more weight to their testimony than you do to anyone else. You decide what kind of weight to give to it. But we brought her in here to educate you, to let you know that Child did have an exam, and that it was normal, but that can be consistent with having been sexually abused.

We, also, had the woman that's called the "blind expert" come in and testify. And the reason she doesn't know anything about the case is so that she's not tailoring her testimony to emphasize this case. So she just basically describes everything about child sex abuse, child abuse dynamics, how

children who've been sexually abused behave.

And one of the things that defense attorneys would like to say a lot is, "If this had happened to that kid, the first time that kid was touched, they would've run to Mom and told her." And the reality, as she told you, is completely the opposite.

And you also heard from Child about the reasons why she didn't tell her mother. She wanted to keep that from her mom because she didn't believe her mom would believe her, because her mom has made it clear -- had made it clear at that time that she was always going to choose Cody Hudson over her children. She was afraid of what would happen because he told her, "If this comes out, I'm gonna tell -- I'm gonna tell people that it's your fault."

And she's a kid, and so she believed that. She was afraid people would think that it was her fault. And then as he manipulated her into believing that she was in a relationship with him, then he said, "I'll kill myself." And she didn't want that on her conscience since she cared about him.

And so a really difficult thing for a child to come forward, particularly when there's familial relationships there, and the -- the expert explained that to you. They fear the consequences, "What will

happen when my family gets split up." I'm afraid -- in this case, she's afraid that he's gonna do harm to himself.

She also said that, "I felt shame and embarrassment, guilt thinking it's my fault." You know, as it goes on, and you begin -- she said, at the beginning, she didn't really understand what was going on because she was 11. But as it goes on, and -- and you become more compliant to it, and you have allowed it to go on and on, then you start thinking, "Wow, people are going to think this is my fault." And the kids internalize that.

She also talked about the nonoffending caregiver's response. If a caregiver doesn't support the child, it may affect the child's ability to disclose if they've just been doing tentative disclosure or accidental disclosure. And in the case of Child not wanting to disclose at all and Mom finding stuff and then confronting her.

Child told you that her mother has treated her abominably and continues to do so. She has told Child, "This was all your fault." She kicked her out of the house because she told her, "I can't stand to look at you. I hate you." She has continued to do things like that up until I believe the testimony

was last week.

Child's emotions were incredibly real when she was talking about that. You could see the pain that this has caused her. And, yet, even though she could have said, "Okay. I made this up," she never did. She has not recanted because this happened to her. And not only did she have to suffer sexual abuse, she had to suffer being rejected by her mother, knowing that her mother continues to treat her that way and have those feelings for her.

So she has suffered sexual abuse, and then she suffered the rejection of a mother who treated her the way a woman might treat another adult woman who has an affair with your husband. Except this wasn't an affair that Child wanted to engage in. This was sexual abuse beginning when she was 11 years old, continual abuse and manipulation until she began to believe that she was in a relationship with him. And that is not her fault. And yet she has been forced by her family to believe that it is.

You might wonder why you did -- there was some talk about there being a forensic interview, and it being videoed, and you might wonder why you didn't get to see that. So a couple of times you heard in my question --

MR. GROSE: Objection: outside of evidence.
THE COURT: Well, we talked -- what are we saying?
(WHEREUPON, a bench conference was held.)
THE COURT: (To the State) Ready?
MS. HALLFORD: Yeah.
(To the jury) You heard me talk a couple of times about hearsay when I would say, "Hey, you can't say what the child -- what Child said because that's hearsay." So what Child tells other people, except under very limited circumstances, time, and place is hearsay.
And so someone else cannot come in and say, "This is what Child told me. These are all the specifics of what Child told me." So that's why when outcry witnesses, which is what we call people to whom the child has said, "Hey, this happened to me," before I asked them a question, I was like, "Can't get into the specifics."
The defense is likely to tell you that there's not enough evidence in this case. And, you know, we watch a lot of TV. I love to watch those even though this is my job. That's pretty much all I ever watch is Dateline, 48 Hours, that kind of stuff.
And from watching those shows, and then from

shows that aren't documentary kind of based, but the -- the shows for entertainment where they take a lot of liberties with reality, we kind of get the idea that every single case is gonna have tons of evidence -- tons of physical evidence. And in the case of child sexual abuse in particular, it's very uncommon to have physical evidence because ordinarily the kids do not disclose.

Now, in this case, we do have some DNA, and I will get into that in a little bit, but we don't have a rape kit because it wasn't reported during a time frame where that could be done. So we don't have DNA from her body, but we do have the DNA from the washcloth. But when you listen to the judge's instructions, what you're not going to hear him say is that you have to have DNA evidence to convict. You're not going to hear him say that you have to have medical evidence to convict. You're not gonna hear him say that you need anything.

And witness testimony, ladies and gentlemen, is evidence, and you have her testimony. So let's talk about her testimony for a few minutes. Either she is an amazing actress who needs to pack up immediately and move to Hollywood, or she is a young lady who suffered severe sexual abuse and then

suffered again at her mother's rejection.

Her testimony was raw and real and compelling. You saw her pain. You saw her genuine tears. You saw how she reacted when she had to start talking about the sexual abuse, and her emotions when she talked about her mom blaming her, kicking her out, telling her that she hated her because she'd slept with her husband. Those are things that you consider when you decide whether you believe Child's testimony.

Specific to this case, we have the e-mails. So let's talk about those first. So it appears from questioning, that the defense theory is that Sarah and Child have colluded together to cook this whole thing up. So it got started when Sarah got into Cody Hudson's e-mails and found that chain of e-mail that has been entered into evidence. And she read them; she said she read them multiple times; they upset her very much. Do we know where they are? Aww, I found them.

So it starts out with him saying, "Good morning, baby girl." The only sexual reference in this entire chain of e-mail is, "God -- God, that thing has gotten hairy, LOL." So you can infer what she might be talking about, but if she fabricated all of this to set Cody Hudson up, she really stinks

at it. Because if you're trying to accuse someone of sexually assaulting your child, and you're trying to manufacture proof of that, then you're not gonna just make -- make up a sentence that could be kind of construed as sexual innuendo.

She's going to say, if she's putting words in Cody Hudson's mouth, "Hey, baby girl, I loved it when we had sex together. Hey, baby girl, I love it when you give me oral sex." None of that is in here, but it would be if she were manufacturing it because you're not gonna leave something like that to chance. If you wanna get him in trouble, and you're making up a story that he has sexually assaulted your daughter, you're gonna make that very, very clear.

But what is in here? Arguments about Easter pictures between Cody Hudson and Child, and unkind words about Sarah Hudson. Is she gonna waste her time talking -- manufacturing a conversation about Easter pictures if she's trying to set him up? No. She's gonna make very blatant statements that sex happened between the two of them, and not just leave something to chance.

She also said, "I did not see an attachment." And when you look at this, you'll see that it's a

chain of e-mails that she printed out. So one will come in, and then someone replies, and they come into your phone or whatever you're looking at them on individually.

And if she's making this up, then she would've said, "Oh, yeah. I saw a penis picture attached to that." And she would've provided that penis picture when she provided these e-mails. But she didn't see the attachment. And I don't know if that's because Cody Hudson deleted it when he sent it. I know that men sometimes take pictures of their genitalia and send them, but I don't think they typically keep them on their phones because why would you want to have a phone -- a picture of your own private?

But she says, "There wasn't an attachment." If she was -- she didn't see an attachment. If she was making this up, then she would've made sure that she had printed out a penis picture and provided it when she provided that e-mail. We know that that picture that -- that seems to have gone with this e-mail because of the time frame, and we'll get more into that in a minute, was captured at 6:30:53, and the first communication that morning was at 6:31. So you have a picture captured on a Samsung S8 plus phone, and then within -- at less than a minute,

that e-mail gets sent. And then they have that exchange.

And, apparently, the theory of the case is that Sarah made this up. She's not very good if she did because she missed multiple opportunities to accuse him of blatant sexual acts by having him say something really graphic and sexual, and she didn't do that.

Also, if this was collusion between Child and Sarah, why did Child keep deleting things? If the two of you are making this up, Mom has somehow managed to send penis pictures to your phone, y'all are going to use sending those penis pictures to your phone as evidence to help prove that he's been sexually abusing you, then why would you delete them?

And we know that they were deleted because they did the first cell phone extraction, and he testified that you couldn't get deleted items. And then there was some more software that was developed, and in January of 2023, ran that phone again, and this time they came up with the deleted pictures, which just happened to coincide, one of them, with this e-mail chain and then another one that was sent in April -- on April 12th of 2019.

So if Child and Sarah are trying to set him up, and this didn't happen, they're really, really bad at it because Child deleted evidence that Mom had supposedly sent her. And if that were the case, when Mom turned that phone over, then Child wouldn't have deleted it, and Mom would've said, "Look, there are penis pictures on here, but they were deleted." And that makes zero sense if this was the two of them colluding together to cook up something to get him in trouble.

So you have the picture from the Porta-John, and Child testified that she -- they were FaceTiming or video chatting, that he was at work and that he then sent her this, and she recognized it. She remembered this picture. She said that she recognized that as a shirt that he had that was a work shirt, and it was in fact taken in a Porta-John.

And -- and if you're working in construction or plumbing or something like that, then a lot of times you have Porta-Johns out front, and so that's consistent with what his job was. Very coincidental that that's where the picture was taken. And that's clearly not something that came from a video because -- or -- or was a screenshot from the internet

because Brandon Letterman was able to tell you that it was actually created on that date, April 12th of 2019.

So how would Sarah, -- if that is his penis -- and we'll get into talking about the actual picture that we have of his penis -- how would Sarah, if she's made this up, she doesn't have access to being able to take a picture of his actual penis. So she has to have gotten a man who has a penis that looks identical to Cody Hudson's, same veining, same dark mark across the -- darker area across the middle, same wider portion at one point. She had to have found a man who had a penis that looked like that. She had to have found a man who had a Samsung Galaxy S8. She had to have found a man who had access to a Porta-John consistent with somebody working in construction. She had to get that person to take a picture and send it to Child's phone. And then, Child who's supposed to be helping with this apparently, deleted it.

And, also, when you're looking at these pictures, you will notice that the hands are amazingly similar. Look very close at the thumbs and the hand. And she also had to find someone who had a hand that looked like his, as well. I submit

that that would be an incredibly difficult thing to manage. Same type of phone, penis looks the same, construction worker, access to a Porta-John, and a hand that looks very much the same. And even if you did manage to do all of that, why did Child delete them from the phone? That makes no sense with the conspiracy theory. They would've made sure that the photos were found.

So then we have the April 22nd, 2019, picture, and how that works with --

MS. HALLFORD: (To Mr. Smith) Can you --

MR. SMITH: Yeah.

MS. HALLFORD: Okay. Here we go. So 6:30:53 a.m., the bathroom picture is captured on a Samsung S8. 6:31 a.m., Cody Hudson e-mails Child, "Good morning, baby girl." 7:09 a.m., the bathroom picture is downloaded to Child s phone per Brandon Letterman's testimony. 7:13 a.m., Child e-mails Cody Hudson and says, "God, that thing has gotten hairy." And at 7:30 a.m., he e-mails her back and says, "Oh, well, LOL."

So we've got the second picture, and in this case, she says, "I remember getting a penis picture with that -- this e-mail, but I don't know for sure if it's this one or not, the one that was taken in

the bathroom." Again, if they are trying to set him up, then she's going to say, "Oh, yeah. I absolutely remember that that was the one that came with that e-mail."

But she's telling you the truth, and telling you the truth kind of makes the case look weaker, but she's doing it because it's the truth. If this is all a lie and a fabrication, you are going -- they are going to make sure that their stories absolutely line up, lockstep, and they're going to make sure that every single shred of evidence that they can manufacture to prove that Cody Hudson did this is going to be handed on a silver platter to law enforcement. But the opposite happened in this case.

Why would Child delete the pictures if they're trying to set him up? They would've made sure that those pictures were found, and they would've made sure that they were found on the very first day that she made the report. When she turned those e-mails over, she would've also had printed out the penis picture and turned that over, too. But she said, "I didn't see an attachment." She's telling you the truth.

So -- and I'm sorry. I have to do this. I

know this is very uncomfortable. I was driving over to work today, and I was thinking, man, I was raised by a mom who didn't even let me say someone was pregnant. I had to say in a family way.

We -- we didn't -- we didn't talk about this kind of stuff, and I know it rolls off my tongue quite easily, but that's because this is my job. And so I am not insensitive to the fact that this is uncomfortable for y'all who don't do this every day. But as I said in my opening, it's uncomfortable for us. It was way more uncomfortable for her to live it.

But this is incredibly important evidence. So we're gonna look at these pictures again, and you're gonna have them in the back, and you can each examine them closely. And I know you won't like to do this. But the defendant deserves a fair trial, and Child deserves a fair trial, and that requires that we look very closely at all the evidence.

So to that end -- and, again, I'm not doing this because it is fun for me because it's not. This is the penis picture that was sent on April 14th, and we tried to get it so both of them would be on the ELMO so that you could see both of them, but it doesn't work. So this is the picture of the

penis that was taken by law enforcement. And --
MR. GROSE: No. Objection. That is not true. That's misrepresentation of the fact.
MS. HALLFORD: This one?
MR. GROSE: Oh, I thought you were talking about the one on the screen.
MS. HALLFORD: No.
MR. GROSE: My apologies.
MS. HALLFORD: Sorry. I lost my train of thought. But that happens to me a lot. My train of thought leaves the station without me. Okay. So this is the picture that was taken by law enforcement. And you remember the officer testified, and he said that when he walked in the room that the defendant said, "Hurry up, I'm losing it."

Now, Mr. Hudson denies having said that, but I will submit to you that that would be consistent with the circumstances of how that was happening because he said, "I -- I'm not attracted to men." And he's aware that a man is going to come in and try to get to -- at the same angle as best he can and take a picture of his penis. And I'm not a man, but I can imagine that that would be a genuine buzzkill. So I have no doubt whatsoever that his penis was not fully erect.

So this is the picture of the penis that was taken by law enforcement. And I want to show you here this vein, when you look at it, jags exactly the same way as that picture from the Porta-John. You'll also be able to see that the veinage (as spoken) is the same here as there (indicates). Now, admittedly, they're not as visible, but, again, he's not fully erect.

And if you'll notice from my hand, I've got a lot of veinage (as spoken) in my hand, and my hand is kind of relaxed here. And so it'd be kind of the equivalent of a -- a penis that's not fully erect. But if I tighten it up, it makes my vein stand out better. So you can see them better.

So they're not as pronounced in this picture, but you can definitely see that they go the same direction. You can see here there's a vein that goes up here and creates a lump, and kind of looks like a little -- little hill on the penis. And that one has the same one. And then we go kind of down a little bit, and then there's another vein, and you see the second lump. Then also there's some darkening through here that is also on his penis there.

Now, remember this one is taken from a

different angle. They were supposed to take it from as close an angle as they could. But that's a selfie. It's being held in the right hand, and then, you know, click like that.

So the officer would've had to come over his shoulder in order to be able to get it at the exact same angle, which really would've affected his ability to maintain an erection, I'm sure of that. But y'all will have this picture. You all have this picture and that picture. And you'll also have this one, as well. And, again, it's a different angle, but you can see the same veinage, particularly if you hold it as if it were in the same direction.

Ladies and gentlemen, those pictures that were recovered from Child's cell phone that Child had deleted are his penis. Either that, or there's a doppelganger penis on some man that Sarah Hudson happens to know who happens to have a Galaxy S8 cell phone, who happens to work in construction, and who happens to have a hand that looks like the hand that we know is Cody Hudson's. Now, he says, "I've got a mark on my hand so that can't possibly be my hand."

Those pictures are from four years ago, and we are all grownups, and we're all getting older, and so probably every one of you have it. Well, some of

y'all aren't as old as me, but y'all are probably all experience that things will come up on your skin, and things will go away.

So my hand has a lot of old age spots on it now because I'm old. If you had taken a picture of my hand four years ago, and I was holding it like this, there might have been one or two small spots, but nothing like I have now.

So if you compared a picture from four years ago to my hand now, and you focused on the spots, then you would go, "Oh, that's a different hand." But if you focus on my veinage, then you would say, "Oh, no. That's the same hand. She's just gotten older." So he may have a spot on his thigh like he said. Again, we don't have any pictures of that. We have to take his word for it. But that was four years ago, and he said it's eczema, I believe.

And I -- I -- unfortunately, I have some experience with eczema, and it comes, it waxes, and it wanes. Sometimes it's flared up, and sometimes it's like you don't have it at all. So even if we had seen a picture of some markings on his thigh, that tells us nothing. What you need to focus on is all the similarities from that penis to the penis that we know is Cody Hudson’s and the hand.

So we've got those pictures. We've got the e-mails. Defense theory is that Sarah Hudson is a genius to manufacture all of this, but then she's also really bad at it because there were a lot of things she could have done to make it -- to make it stronger. And then Child is also really bad at it because she deleted everything. But we also have the washcloth and the panties that were found.

So if Mom did not find them in the bedroom, then that means Mom has to have kept a washcloth from the last time she had sex with Cody Hudson so that she would know that it would have his semen on it. So he moved out in late February/early March. And so if that's what happened, she is playing three-dimensional chess like a grand master, while everybody else is playing checkers.

She had to have gone, "Okay. I remember that we were having sex together, and he cleaned up with this washcloth. I'm gonna hold onto this. And then in a couple of months, I'm going to get Child to join with me to accuse him of sexually abusing Child. And I will have this washcloth that he used to clean up after he and I had sex, and it will be evidence."

Well, she reported this on April 22nd, but she did not turn the washcloth and the panties in until

May 9th. If she had them, then she would've brought them to law enforcement when she first reported this. It makes no sense for her to kind of bring evidence piecemeal. You're gonna have -- wanna have as big an impact as you can if you're trying to set somebody up, and you want it as quickly as you can. But she didn't find them until she had kicked Child out and then started going through a room, and she told you why, because she wanted to find more evidence.

Because she was acting like a woman who caught her husband having an affair with another grown woman, and not acting like a mom who says, "Oh, my goodness, my child has been sexually abused." So she's in there spying, and she admitted it. So she finds the -- the panties and the washcloth in the journal.

Now, when Child testified, she said, "I don't know how they got in there." She was in here when her mom testified. If they're trying to convince you that he did something he did not do, then she would've said, "Oh, yeah. I put those panties and that washcloth in that journal." But that's not what she said. She told you the truth.

Now, I have two kids, and my two sons and

myself lose stuff constantly. Y'all saw the other day, I lost a sheet of -- stack of papers going from there to here. So the joke in my family is I can't find my hand. My sons, when they clean up their rooms -- when I go up there and say, "These places are a pigsty; clean this up," just throw stuff wherever. As an example, I bought my son a new pair of baseball cleats. We had a game on Saturday afternoon. I walked upstairs, I saw his room, and I said, "We're not going to baseball till you clean this room up. It is a hot mess."

So then I tell him a couple hours later, "Hey, let's load up. Let's go. Get your equipment."

"I can't find one of my cleats."

"What do you mean you can't find one of your cleats? They were in your bedroom."

"I can't find them." So he says I must have done something with them.

I'm like, "Dude, I didn't go in your bedroom." So I said, "Find them." Ten, fifteen minutes go by, he still can't find them. I said, "We're gonna be late."

"I can't find my cleats."

So, finally, I go stomping up there, and I'm looking around, and he had these cubbies where we

kept his underwear, socks, and everything. I pulled out his underwear cubby, and there was one of his cleats. I was like, you put your cleat in the underwear cubby.

"No. I didn't."

"I didn't do it."

"Well, I didn't do it."

"Okay. You were just here. I was downstairs. Your brother's not here. You clearly did it."

He argued and argued with me, "No. I didn't." And I believe that he didn't realize that he did it. I think he was like shoving stuff and just shoved it there.

And I think that's what happened here with Child. Because her mom said closet was a hot mess. But, again, if they were trying to set him up, then she's going to say, "Absolutely, I put those underwear and that washcloth in that journal." Here's the other problem with that. If this was a washcloth from where he and Sarah had sex, Sarah's DNA is not on it. She is excluded.

Remember the testimony is that there's two DNA profiles on there. It's only two times more likely if it's Child [redacted] and an unknown individual, because they tested hers first. So they didn't know

it was Cody Hudson's at the time. And they described that as weak support, but it's still support for her DNA being on there.

And that can be consistent with Child having had to masturbate him, and then him cleaning his penis up and getting some of her skin cells on that washcloth. Or as the DNA expert testified, it could be consistent with Child having used that washcloth before and it getting washed in the laundry, and then he used it to clean up after one of their sex acts. And it got in her closet, and somehow it got into her journal with her panties. But what it's not consistent with is him using that washcloth to clean up after he had sex with Sarah Jumper.

And it is semen. The serologist did three tests. It's semen, the non-sperm fraction, 11 septillion times more likely if Cody Hudson and an unidentified unrelated individual, and on the sperm fraction, 25 septillion times more likely if Cody Hudson was the contributor than if an unidentified unrelated individual contributed to that profile.

I know that this has been a hard case for y'all; and as I've said a couple of times, it's harder for Child, she had to live through it. If Sarah Hudson and Child colluded together to set Cody

Hudson up, they did a really bad job of it. Because Child frantically deleted stuff which made it -- so that we almost didn't get that evidence at all if we had not -- if they had not gotten new software. The reality is -- let me back up.

Also, Sarah and Child had -- had to have agreed that they're going to pretend that Sarah blames Child, and Child's going to have to agree that she's going to pretend to be upset that Sarah is blaming Child.

If this is all made up, the idea of going, "Hey, let's make this even stronger by me pretending to be upset with you, being even more upset with you than I am with the defendant." That makes zero sense. If they're making this up, her focus is gonna be completely on the defendant. But instead this happened, and, irrationally, she blames Child for something Child could not control and did not do on purpose. And Child has had to suffer with that.

And, again, if they made this up, then both of them need to go to Hollywood because they'll get an Oscar for their ability to act. But it wasn't an act. Child testified, and it was painful to listen to and painful to watch her pain. And her mom testified, and she got upset because she got called

out for how she has treated Child.

Ladies and gentlemen, Cody Hudson committed these crimes. I am asking you to return a verdict of guilty for the CSC with a minor second, for the CSC with a minor third, and for the incest because he is guilty.

THE COURT: (To Mr. Grose) Just keep going. Do you -- you need a minute?

MR. GROSE: It's been almost an hour. I don't know if the jurors want a break.

THE COURT: Do you -- do you need a minute?

MR. GROSE: I need -- I need a minute to set up, and I could use a break. And like I say --

THE COURT: Okay.

MR. GROSE: -- it's been almost an hour.

THE COURT: Madam Forelady and ladies and gentlemen, we'll -- we'll take a short break. I think he needs to set up some technology, and -- and we'll refresh ourselves. Madam Forelady, if you'll take the jury out.

(WHEREUPON, the jury was excused at 10:10 a.m.)

THE COURT: Okay. We'll take a short break here.

MR. GROSE: Thank you, Judge.

THE COURT: Yes, sir.

THE BAILIFF: Remain seated.

(Off the record from 10:10 a.m. until 10:23 a.m.)

THE BAILIFF: All rise, please. Court come to order.

THE COURT: Thank you. Please be seated. Thank you. Everybody ready, Mr. Grose?

MR. GROSE: Yes, sir.

THE COURT: Okay. The State ready?

MS. HALLFORD: Yes, sir. I'm sorry.

THE COURT: (To the bailiff) We'll have the jury.

(WHEREUPON, the jury enters open court at 10:23 a.m.)

THE COURT: Madam Forelady, everything ready?

MADAM FORELADY: Yes, sir.

THE COURT: Mr. Grose?

MR. GROSE: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CLOSING ARGUMENTS

MR. GROSE: When we started this trial on Tuesday, -- I know y'all were picked on Monday, but in opening statements on Tuesday morning, I told you that this case was about control, about motive, about manipulation, about the fact that Sarah Jumper/Sarah Hudson is a controlling person. And

that certainly was borne out by all the testimony, including some of her own.

I told you that she had a motive to get back against Cody, and it certainly came out that she didn't like Cody's children. And, obviously, she wanted Cody to stay, but not to bring his children around. And I talked to you about manipulation, that she was in control of the evidence and had an opportunity to manipulate the evidence and how it came out to law enforcement -- or how it was presented to law enforcement.

Now, in their closing argument, they said that we were trying to say that Sarah and Child were conspiring and going along and acting like they didn't get along. Well, the reality is is that they didn't get along. That came out through Child when she testified. And that was something that even went back before Cody was involved, because she said to one of those counselors that she has problems with her mom because her mom gets irritated when you have an opinion that disagrees with her.

Another way of looking at this evidence is, is that Sarah is the one who was wanting this to happen, and that she was wanting Child to go along with it, even though Child didn't want to go along

with it. But Child ultimately did because she said the one thing that she wants is for her mother to think that she's important. And so she ultimately went along.

Now, there's a piece of evidence sitting right over here that's not been -- it's in evidence, but there's a portion of it that has not been talked about yet in this trial. And I'm getting ready to talk about it. And I'm talking about it because this shows the control that Sarah had of the evidence. This shows the manipulation of the evidence. This shows that she put words into her daughter Child's mouth.

I agree with one thing the prosecutor says, that's that Sarah speaks at this conspiracy because it's fairly transparent, and it -- and if she was doing it in a way to keep from getting detected, we wouldn't have this piece of paper that I'm getting ready to talk about. But before I do that, there's the cell phone. Child's cell phone is the only cell phone that's in evidence.

And there's certain -- there's three things that are beyond dispute. The first thing that's beyond dispute is -- is that Sarah said that she instructed her mother, Child's grandmother, to take

this phone from Child on November [sic] 22nd, 2019. And Sarah testified that she thought the cell phone was taken away from Child within about 20 minutes of Child getting out of school. I asked Child at least three times, probably more, giving her every chance to correct or to be -- if she was making a mistake to let us know. Child said, absolutely, her grandmother took this cell phone from her after she got out of school that day.

Now, there were some questions as to whether it was 20 minutes, 30 minutes, or an hour. I asked her again, "But you're certain, Child, you've never had this cell phone after November" -- I mean, sorry -- "April 22nd." And she said, "My final answer is I didn't have the cell phone."

State's Exhibit Number 12, the stickers right here on the -- the front page, it's got the second extraction. This is the "Spartanburg County Sheriff's Office Digital Evidence Forensic Examination Report." And they certainly -- and this is a copy of Pages 3 and 4 on the screen. And they spent their time talking about the images that turned out to be the -- the images of a penis that were recovered on the phone.

But this whole report came into evidence, and

what it says, highlighted right there at the top, "What I did find on the extraction was a note that was stored on the device's notes app." This note was created on May 1st, 2019, and it gives a time, and then it repeats that note going on to the second page. And that note is supposedly signed by Child.

Now, what's important about this is, this is -- this is their digital examiner. This is their evidence. This is what -- because they got this new computer programming -- updating program that they got in January of this year, and this is what calls Sarah out. Because Child was absolutely certain, "My final answer did not touch that phone after April 22nd." This note purporting to be from Child on May 1st.

I've highlighted down here in the text about "Evading my privacy. I can't even keep a journal anymore." It was the journal --multiple journals with the washcloth and the panties that went to the sheriff's office. What day did they go to the sheriff's office? You're gonna have this: 5/1/2019.

What we know for a fact that is not disputed is that Child didn't have the phone. Child's mother testified she didn't have the phone. Child didn't

testify she had the phone. And what is beyond dispute is that this note was written on Child's phone on May 1st, the very same day that the journals, the underwear, and the washcloth were taken to the sheriff's office.

Did the phone go to the sheriff's office then? May 7th is the envelope. Samsung Galaxy S8 phone goes to the sheriff's office. We told you in our opening statement that everything in this case was served up by Sarah. And that is exactly how that evidence came out in this courtroom this week. We told you that Sarah had access to Cody's e-mails, and that you were going to hear about e-mails.

And what did Sarah tell you? Sarah told you that, "I had Cody's login credentials. I had his username. I had his phone password. I had an app on my phone where I could get his e-mail. But on this particular day, I log into his e-mail on a computer at lunchtime" -- and some of those e-mails are after what normal people take at lunch -- "I log in on his computer, and I printed those e-mails out."

The journals. Child testified she didn't know how that underwear and how that washcloth got inside her journals. She tried to clean that up a little

bit on cross-examination, but she said she didn't know. Coincidentally, this note on May 1st was written -- had to have been written by Sarah because she's the only one who had the phone, is talking about the journals the same day that the journals go to the sheriff's office.

And what did the -- the officer who said that took those into -- that took the journals and the other evidence into custody? That -- that Sarah came in and gave items that she thought would help the case -- would help the case. But she didn't take the phone in that day because she wanted there to be a note from Child on that telephone. That sounds like it's coming from Child, but couldn't be coming from Child because Child was absolutely positively certain she did not have that phone on May 1st.

Yeah. This is hard, I think, for the family to hear. And, yes, this is an uncomfortable case. And, yes, this is uncomfortable things to talk about. It's uncomfortable when a mother manipulates a child in this kind of way to bring false evidence to the courtroom.

What we do in these courtrooms is extraordinarily important. Part of the reason for

the courts is to protect the rights of citizens. I talked about that the other day. And, sadly, our courts sometimes get politicized and sometimes get used to take revenge on people. And that's what's happened here today. We've had a mother who has manipulated the investigation.

And think about Child. She's had a difficult life. There's no doubt about it. Whether she has cystic fibrosis or just the symptoms of it. She's had to go through treatments all of her life, and probably got a lot of attention from doing that. And that was probably the only good thing that came out of some of that, having to go have these breathing treatments.

She told you, and she said it on direct examination, she told you that all she wanted was to be important to her mother. She told them it seemed like Cody was more important to her mother than she, Child, herself was. And I'm sure she didn't want to go along with this, but going along with this was the price that she had to pay to be important to her mother. And sometimes -- sometimes when you meet with a lot of people, and you go over the evidence, you just are in too far; you're in too deep; you're in too long to be able to stop it.

And while they had one view -- the prosecutor had one view of Child's testimony and her demeanor on the witness stand, all the emotion was in the direct examination. There was no crying, there was no tears when I was asking her hard questions, questions that I didn't want to have to be asking her about her mental health history, about her medical history, about the relationship with her mother, the relationship with her brother. But there was no -- no tears then.

What we do know from Child is she's met with at least seven people over the last four years to talk about this case. She met with the person who did the -- the interview at the Child Advocacy Center. She had a counselor and a backup counselor at the Child Advocacy Center. She talked with the doctor, Dr. Henderson. She talked to the solicitor. Those were the five people that she could name. She couldn't remember who the sixth and the seventh person were, but she said, "Yeah. I talked to my family about this." It's obvious that one of those people was Sarah. We don't know, and we'll never know what they talked about. But what we do know is -- is that they talked.

And we know that Child met with the prosecutor

more times than she can count. Now, I'm not criticizing the prosecutor for doing her job, but what I do want to bring to your attention is -- is that that direct examination was rehearsed; it was rehearsed.

Child said that they met twice last week. Child said the same set of documents that the prosecutor had that she was flipping through when she was asking questions, that they went through those same questions at least one day last week.

They also talked about meeting in January and in 2022, 2021, probably 2020, maybe even 2019, more times than she can remember. She talked about how they went down, and they went through this evidence.

And the -- the picture that comes out of that is -- is that they were meeting to try to piece this evidence together to make the puzzle fit, but not all the pieces fit like they were supposed to. The inconsistencies. So they had to come up with a way to try to explain those inconsistencies. Why she didn't tell about this. Why she said this. Why this contraindicated later. They put it all together. But sometimes when a puzzle, if you don't have all the right pieces, it doesn't go together.

And this, the Spartanburg Sheriff's Digital

Forensic Examination Report, they put that in evidence. That's the piece that shows what we were saying this week is what happened. Now, I want to talk about -- I wanna respond to some of the things that they talked about.

The evidence, one of the things that they talked about is the -- the washcloth and the -- the underwear. It's almost like -- and I -- I acknowledge a lot of these officers have pretty impressive careers, impressive backgrounds, military service. But it was almost like they were going through the motions in some aspects of this case because this is the evidence that -- remember, we're looking at it now separate, and everybody's been all this week trying to, you know, make sure that we keep it all separate.

But this is the evidence that was mixed up by the sheriff's office. This is the evidence that wasn't properly sealed when they went and took it to SLED. But the washcloth and the panties didn't come into the sheriff's office this way: packaged in their own particular paper wrappings in their own envelopes. They came in together. The testimony was --is that they were in the same journal together.

And there's several things about this. One is, it's cross-contamination. The first lady from SLED who testified, talked about how she opened the first envelope, and what was written on the outside didn't match what was on the inside of the envelope. So she put it on one table and spread it out, and changed her gloves and went over to the other table and opened the other envelope to see that they had been mixed up.

What she was doing is is she didn't want these two objects to come in contact with each other and her to be the source of cross-contamination. She didn't want to handle one of these objects with her gloves and then go over and handle the other object with her gloves and be the one who did the cross-contamination.

The reason that Ally's DNA might be -- it was weak support -- but might be on that washcloth, is because Sarah took a washcloth where Cody had wiped himself off -- and it could have been washed; you heard him say that DNA could stay on there after it's washed, -- and put it up next to Sarah's underwear -- I mean, to Ally's underwear, and the DNA from the underwear got onto the washcloth.

The pictures. They say Sarah would've had to

have another man who had a penis that was similar to Cody's in order to get those pictures. Come on. The internet. Sarah could go out on the internet and get pictures and download them and save them on her phone or on her computer or wherever.

But then there comes a question as when that photo was taken. Takes a phone, takes a screenshot, prints it out, takes a closeup, takes a photo of a photo, and sends it. That's all it would take. It's not that sophisticated. People do all kinds of crazy stuff on the Internet or get stuff from the internet and do it.

Cody told you that he doesn't -- that's not his penis. And they've certainly pointed out some similarities, but even their questions acknowledged that there was differences. Even their statements up to you today acknowledged that there was differences.

The understanding was -- is that the pictures would be taken from the same angle as the pictures that were in the evidence. Then they want to -- they want to come in here and play a game of, "Got you," because they didn't take the pictures from the right angle. And then they want to tell you that that doesn't matter.

And if you think about it, what they've done this week is they have tried to explain the weaknesses in their case. And you even heard the prosecutor say that she had some weaknesses in her case. They have tried to explain. But at the end of the day, they can't get around the fact that Sarah wrote that note to put words in Ally's mouth.

I want to talk a little bit about the law. And I want to start by talking about direct and circumstantial evidence. And this relates to what we were just talking about a minute ago with regards to that note that Sarah wrote on Ally's phone.

Direct evidence is existence of a fact that does not require deduction. Circumstantial evidence is a proof of a chain of fact and circumstances indicating the existence of a fact. And so the -- the chain of facts is obviously Child didn't have the phone after April 22nd. That note is on there May 1st. Sarah therefore had to write that note.

The law also says, "To the extent that the State relies on circumstantial evidence, all the circumstances must be consistent with each other. And when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's

behavior is suspicious, the proof has failed."

So consistent with each other and when taken together point conclusively to the guilt of the accused. What they're wanting to do is they're wanting to take the evidence that was on Ally's phone and use that as circumstantial evidence to say that Cody must have done these other things that he's alleged to have done. But the circumstances must be consistent with each other. And when taken together point conclusively. They're not consistent with each other in this case, because what we know from the sheriff's office, from that phone, is that note that Sarah wrote to put words in Ally's mouth.

The presumption of innocence. Judge Kelly has already talked several times this week about the presumption of innocence. That's one of the rights. Every one of us, every person who's charged with a crime is presumed innocent. And that's -- also goes with the burden of proof. The fact that the state has the burden of proof beyond a reasonable doubt.

This is a right that's meant to protect people, protect from when courts become politicized or from when people try to use courts to their advantage to get revenge on people. The government is the one who bears the burden of proof. It is not your job

to fill in the holes in the investigation.

I agree with the fact that y'all should go back there and deliberate, and everybody should discuss their views and be heard. I agree with that. But it is not your job to try to fill in the holes in their case or to try to explain the inconsistencies.

The job is is that the person is presumed innocent. And I don't want to -- I don't wanna make this trial sound like it's just a football game or a baseball game or some sporting event where they have instant replay. But if you think about it, when they -- they do instant replay, the presumption is is that the call on the field was right. And there's a burden that has to be overcome; either the play stands, or it gets reversed, or it gets confirmed.

But there's a burden; there's a process. And that's the same that we have in the court, but on a much more serious level, that there's a process where the call on the field or the call by the constitution is -- is that a preserved person is presumed innocent, and the burden of proof is on the State, not the jury to come forward with the evidence that's necessary to prove a case.

Beyond a reasonable doubt. And I talked about

this a little bit in my opening statement. Beyond a reasonable doubt is evidence that leaves you firmly convinced of guilt. It's the kind of doubt that could cause a reasonable person to hesitate to act.

And I say I kind of add to that the hesitate to act in your important affairs. If -- if it's something that if you have doubts; for instance, you're going to rent a house or buy a house, and you go in there, and you see mold all over the ceiling, that's the kind of doubt that's gonna make you hesitate to act. It's -- it's something -- a concept that we know well in our ordinary daily decisions. If you have a doubt, then the law requires a verdict of not guilty.

I think this paragraph is also important. Based on your consideration of the evidence, if you're firmly convinced that the defendant is guilty of a crime, you must find him guilty. On the other hand, if you think there's a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

One of the ways that I talk about reasonable doubt and what that means and what kind of standard it is, is to compare it to the other burdens of

proof that we have in the court system. If we were in a civil trial where somebody ran a red light, and there was an accident in the middle of an intersection, the burden would be by preponderance of the evidence. If the scales of justice tips just so slightly in favor of one side -- or in favor of the plaintiff, then the plaintiff wins. But if they remain even or tip towards the defendant, then the -- the burden of proof has not been met.

There's times in civil cases where things like fraud are alleged, and the burden is clear and convincing evidence. That's a much higher proof because of the type of the allegation that's being made. But that still is not the same level of proof that we require in criminal trials, which is beyond a reasonable doubt.

I also think -- I don't know for sure, but that phrase "benefit of the doubt" -- giving somebody the benefit of the doubt is something that we hear a lot in common communications kinda talking to people. I don't know for sure, but I imagine that that came from criminal trials and has been a part of the process for decades or even centuries. The ideal that if somebody's on trial for something serious like this, when the government controls the

investigation and how the investigation unfolds, if there's a real possibility that that person is not guilty, they're entitled to the benefit of the doubt.

The judge has already told you, and you already know from the process, that you're selected as fair and impartial jurors. That means you have no friends to reward, no enemies to punish. This case is not supposed to be decided on the base -- basis of emotions or sympathy or the feelings that you might have towards one side of the party, or even the fact that they brought forward so many serious sounding allegations in the case. It's the process that we follow.

And if, in following that process, you determine that there's a real possibility that Sarah was a controlling person who had a motive to get back against Cody. If you think that there's a real possibility that Sarah found a washcloth or kept a washcloth that had Cody's semen on it. If you think there's a real possibility that she put that with the underwear. If you think that there's a real possibility that she was manipulating how the evidence came to the sheriff's department. If you think that there is a real possibility that on May

1st, 2019, Sarah had Ally's cell phone, and Sarah wrote that note on the same day that Sarah took the journals to the sheriff's office. And you'll have these bags where you can look at the dates.

If you think there's a real possibility she wrote that note and waited one more week before she took that phone to the sheriff's office. If you think there's a real possibility that this forensic examination and report caught her in that deception, that manipulation, her putting words in Ally's mouth.

If you think that there's a real possibility that Child wanted her mother to think that she was important, that Child wanted to be the center of her mother's attention, that if Child reluctantly went along with this. If there's a real possibility that over the last four plus years Ally's met with a lot of people; that real possibility that she's met with seven -- as many as seven people or more, there's a real possibility that she and the prosecutor sat down and looked at the evidence and tried to put it together in a puzzle.

If you think that there's a real possibility that part of why she testified the way she did yesterday is because this has been rehearsed once or

twice last week and back in January. If there is a real possibility that Cody is not guilty, then those are reasonable doubts. And a reasonable doubt is a not guilty verdict.

And I submit to you that this is something that they cannot explain away. If they try to say this doesn't matter, that's not a good answer. If they try to say this is wrong -- remember when the officer testified that everything was fair and accurate and hadn't been altered before they put it into evidence.

This is where it all falls apart for them. If this isn't -- if -- if this shows that Sarah was manipulating the evidence, it calls into question everything else that she was in control of and had the opportunity to manipulate within no other way how it came to the sheriff's office. You know, from some of the testimony that -- that's come out, that -- that I've been Cody's lawyer for a long time, and Cody and I have been on this journey for four years now that has led us here to this courtroom this week. And this is my final opportunity to speak to you, and I'm about to sit down.

They're going to have another chance to get up and speak after I do and respond to what I say.

And, at this point, I always wonder if I've said everything that I need to say or should say or could say that might help you make a decision.

But as I hand Cody over to you as I'm about to sit down, all that I can ask that you do is that you do your duty as fair and impartial jurors, and that you review the evidence, including, but not limited to, the second cell phone extraction report.

And then when you're talking about it, that you take into account some of the things that we talked about -- that I talked about here with you in closing. And because the State has not met their burden of proof, and because there is a very real possibility that Cody is innocent, and because there is every reason to believe that Sarah wrote that note and put words into Ally's mouth, I ask that you find Cody Hudson not guilty on each and every one of these indictments.

REBUTTAL ARGUMENT

MS. HALLFORD: Child was testifying about something that happened in 2019, and she told you that she deliberately tried not to remember any of this. I believe that when she testified that she gave that phone up on April 22nd and didn't have access to it again, that that's genuinely what she believes.

But compare that note with the note that she wrote from her journal, and you will find that the voices sound the same. She's a little more sophisticated because she's a little older. She says that she -- she testified that she loves to write, so she does that a lot. So, of course, that's gonna improve her ability to communicate.

But there's no reason to believe that Sarah Hudson created that note. Why is that? Because that note was deleted from that phone. Sarah Hudson is many things, but she's not an idiot to that extent. Why would you manufacture a note trying to pretend to be Child and then delete it from the phone and then turn the phone over to law enforcement? Why would you do that? That makes zero sense. If that's something that you've created, and you want law enforcement to find, you're not gonna delete it.

Child told you that she does not think about this. She tries not to. And remember when you were a teenager, four years was a long time, and it's very difficult for teenagers to remember what happened four months ago, much less four years ago. But if Sarah Hudson created that note pretending to be Child she's a flaming moron because she deleted it before she turned the phone in. And that makes

zero sense.

Now, Defense counsel says that Child wants her mom to love her and wants -- I can't remember the specific language. But he got arrested. If this was their goal, they accomplished it. Why is Mom, as of last week, physically assaulting her and blaming her for her husband having sex with Child. Why would they continue that charade?

She got what she wanted if they made this all up. That doesn't make any sense. What makes sense is that she's still mad because she still looks at Child as someone who slept with her husband because she's irrational about this. Not because she and Child colluded to make something up because if they did, they accomplished their goal. There's no reason to continue with the charade.

Now, Defense counsel talked about me meeting with Child. I can tell you that it would be malpractice for any attorney to put someone on the stand and not have talked to them. When Child testified, I asked her, "Did I tell you what happened, or did you tell me what happened?"

And she said, "I told you what happened." Mr. Hudson and his attorney, according to his own attorney's statement, have met together many

times. Nothing wrong with that at all. That is as it should be.

Talked about the washcloth. Yes. Ally's DNA in the minor amount, two times more likely to be Ally's is on that washcloth than it could have come from her panties. I don't dispute that, but do you know whose DNA is not on that washcloth? Sarah Hudson's. Yet, supposedly, Sarah Hudson got that washcloth after he cleaned up from them having sex.

So if Ally's DNA got on the washcloth because Ally's DNA was on the panties and touched the washcloth, then most certainly Sarah Hudson's DNA would be on the washcloth if she and the defendant had sex together and he cleaned hisself up with the washcloth. But her DNA is not on there.

The pictures we know were created by a Samsung S8. Sarah testified that she has an iPhone. She never testified that she's had a Samsung. She had an iPhone. They were created on April 12th and April 22nd by a Samsung S8. And if you remember when Defense counsel asked Cody Hudson what kind of phone he said (as spoken), he said, "I had an iPhone, and I had a Note something." But he did not say, "I had a Samsung S8." It was only when I got up on cross-examination and asked him that question

that he admitted to y'all that he had one. He was trying to keep that information from you even though his brother had already testified that he had one.

When you look at those pictures, you will see that Cody Hudson in the picture that we know is of his penis, holds his hand in the exact same way as the pictures that were recovered from Ally's phone that had been deleted.

How long would she have to troll the internet to find a penis that matches his penis, to find somebody who's holding it in the same way as he is holding his penis when he's photographed, and who has the same hand? That is farcical. Those are pictures of Cody Hudson's penis. Those are pictures of Cody Hudson's penis that he sent to Child [redacted].

He is guilty. The State is asking that you find him guilty.

JURY CHARGE

THE COURT: Madam Forelay and ladies and gentlemen of this jury, you have seen and heard the evidence presented, as well as arguments of the lawyers. It is now my duty and my obligation to instruct you on law in the case. It will then be your duty and obligation to begin your deliberations. You will decide the facts in this case and apply the law as I

instructed and render a verdict.

It is your exclusive duty to determine what the facts are. You 12 will do that based on your own common-sense evaluation and examination of the testimony and all the evidence received. You 12 alone will decide what effect, value, and weight is to be given to any testimony or other evidence received. Your obligation as the jurors is to give both the State and this defendant a fair and impartial trial based on evidence presented and the law that I provide.

I remind you that during this trial, you and I have certain duties to perform. As a trial judge, it is my responsibility to preside over this trial, and, also, I have the duty to rule on the admissibility of evidence. You are to consider only the competent evidence before you.

If there were any testimony orders stricken from the record in this case during the trial, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, the exhibits which have been made a part of the record, and any stipulation made by the lawyers.

Additionally, I have the duty to charge you the

law in this case. I am the sole judge of the law, and it is your duty as jurors to accept and apply it as I now state it to you. Ladies and gentlemen, if you have any idea as to what the law is or what it ought to be or what it should be, and it does not agree with what I now tell you the law is, you must abandon your idea because you are sworn to accept it and apply it as I now state it to you.

In every case tried in this courtroom before a jury, you 12 become the sole and exclusive judge of the facts. A trial judge cannot make a comment or a statement to a trial jury about a fact in a case because you are the sole judge of the facts, and you are not to infer from anything that I have said or done during this trial in ruling upon admissibility of evidence that I have an opinion about a fact in this case. I now charge you or tell you that the law of our State does not allow me to have an opinion about a fact in a case. The facts are strictly a matter for you the jury to determine.

There are two types of evidence which are generally presented during a trial. Direct and -- they're known as direct and circumstantial evidence. Direct evidence directly proves the existence of a fact. It does not require deduction.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Our law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You 12 should weigh all of the evidence in this case.

Now, crimes may be proven by circumstantial evidence. The law makes no distinction between the weight of value to be given either. However, to the extent that the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.

And if these circumstances merely portray the defendant's behavior is suspicious, the proof has failed. The State has the burden of proving this defendant guilty beyond a reasonable doubt, and the burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or a combination of the two.

Now, the indictments in this case alleged ten

different offenses against this defendant. Each indictment charges a separate and distinct offense, and you must decide each indictment, ladies and gentlemen, separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment. The defendant may be convicted or acquitted on all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment.

Now, indictment ending in 2019-5213 charges Mr. Cody Hudson with criminal sexual conduct with a minor in the third degree. Specifically, it alleges that he did, in Spartanburg County, South Carolina, between the dates of August 21 up to August 31, 2016, he being over the age of 14 years, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one Child [redacted] a minor under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child by rubbing the victim's breasts in violation of State law.

The indictment ending in 2019-5214 charges Cody Hudson with criminal sexual conduct with a minor in the second degree. Specifically, it alleges that he

did, in Spartanburg County, South Carolina, between the dates of August 21 up to August 31, 2016, engage in a sexual battery, that is penile vaginal penetration with a minor, Child [redacted] who was at least 11 years of age but less than 14 years of age at the time of the incident in violation of State law.

The indictment ending in 2019-5215 charges Cody Hudson with criminal sexual conduct with a minor in the second degree. Specifically, it alleges that he did, in Spartanburg County, South Carolina, between the dates of August 21, 2016, to August 31, 2016, engage in sexual battery, that being penile vaginal penetration with a minor, Child [redacted] who was at least 11 years of age but less than 14 years of age at the time of the incident in violation of State law.

The indictment ending in 2019-5217 charges Mr. Hudson -- Coby Hudson with criminal sexual conduct with a minor in the third degree. Specifically, it alleges that he did, in Spartanburg County, South Carolina, between the dates of August 31 to January of -- August 31, 2016 to January of 31, 2017, he being over the age of 14 years, did willfully and lewdly commit or attempt to commit a lewd or

lascivious act upon or with the body of Child [redacted] Child [redacted], a minor under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child by rubbing his genitals against the victim's genitals in violation of State law.

The indictment ending in 2019-5218 charges Cody Hudson with criminal sexual conduct with a minor in the third degree. Specifically, it alleges that he did, in Spartanburg County, South Carolina, between the dates of August 31, 2016 to January 31, 2017, he being over the age of 14 years, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of Child [redacted] Child [redacted], a minor under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or the child by forcing the victim to rub his penis in violation of State law.

The indictment ending in 2019-5219 charges this defendant, Cody Hudson, with criminal sexual conduct with a minor in the second degree. Specifically, it alleges that he did, in Spartanburg County, South Carolina, between the dates of August 31, 2016 to January 31, 2017, engage in sexual battery, that is

sexual intercourse occurring at a residence on Address 1 with a minor, Child who was at least 11 years of age but less than 14 years of age at the time of the incident in violation of State law.

The indictment ending in 2019-5224 charges this defendant, Cody Hudson, with criminal sexual conduct with a minor in the second degree. Specifically, it alleges that he did at a residence on Address 2 in Spartanburg County, South Carolina, between the dates of February 1, 2017 to March 31, 2019, engage in sexual battery, that is sexual intercourse with a minor, Child who was at least 11 years of age but less than 14 years of age at the time of the incident in violation of State law.

The indictment ending in 2019-5228 charges Cody Hudson with criminal sexual conduct with a minor in the second degree. Specifically, it alleges that he did, at a residence on Address 2 in Spartanburg County, South Carolina, between the dates of February 1, 2017 to March 31, 2019, engage in sexual battery, that is fellatio with a minor, Child Child, who was at least 11 years of age but less than 14 years of age at the time of the incident in violation of State law.

The indictment ending in 2019-5229 charges Cody Hudson with criminal sexual conduct with a minor in the second degree. Specifically, it alleges that he did, at a residence on Address 1 [redacted] in Spartanburg County, South Carolina, between the dates of August 31, 2016 to January 31, 2017, engage in sexual battery, that is fellatio with a minor, Child [redacted] who was at least 11 years of age but less than 14 years of age at the time of the incident in violation of State law.

The indictment ending in 2019-5230 charges the defendant, Cody Hudson, with incest. Specifically, it alleges that he did in Spartanburg County, South Carolina, between the dates of February 1, 2017, to March 31, 2019, engage in carnal intercourse with Child [redacted] his wife's daughter, in violation of State law.

Now, our South Carolina Code Section 16-3-651 provides the following definitions. An actor is defined as a person accused of a criminal sexual conduct. A victim is defined as a person alleged to have been subjected to criminal sexual conduct. Sexual battery is defined as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any person's body or

of any object into the genital or anal openings of another person's body except when accomplished by medically recognized treatment.

Section 16-3-655(B) of our code provides a person is guilty of criminal sexual conduct with a minor in the second degree if the actor engages in sexual battery with a victim who is 14 years of age or less but who is at least 11 years of age. Code Section 16-3-651(a) defines an actor as a person accused of a criminal sexual conduct, and 651(a) provides victim means the person alleging to have been subjected to criminal sexual conduct.

The first element the State must prove beyond a reasonable doubt is that this defendant engaged in the sexual battery with the victim. Section 16-3-651(h) of our code provides that sexual battery as a sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the person's body or of any object into the genital or anal opening of another person's body except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

If you find the State has not proven beyond a reasonable doubt that sexual battery occurred, you

must stop deliberating, and find the defendant not guilty of this charge. If you find that a sexual battery did occur, you must then decide whether the State has proven beyond a reasonable doubt that the victim was at least 11 years of age but not more than 14 years of age at the time of the sexual battery; or the victim was less than 16 years of age but at least 14 years of age at the time of the sexual battery, and the defendant wasn't in a position of familial, custodial, or official authority to coerce the victim to submit, or the defendant was older than the victim.

Our Section -- Code Section 16-3-655(C) provides that a person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over 14 years of age, and the actor willfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body or its parts, of a child under 16 years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child.

An act is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids. Lewd means obscene,

lustful, indecent, or morally impure. Lascivious means tending to excite lust, indecency, obscenity, or tending to deprive the morals in respect to sexual relations.

In order to convict the defendant of committing or attempting a lewd act upon a child, the statutory provisions must be proven beyond a reasonable doubt. The State must prove beyond a reasonable doubt that the defendant is over 14 years of age, that the defendant willfully and lewdly committed or attempted a lewd or lascivious act upon or with the body or its parts of a child under 16 years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the defendant or the child. The State must prove all four elements beyond a reasonable doubt before you can convict him of his charges.

Now, Section 16-15 and 20 provides that any person who shall have carnal intercourse with each other within the following degrees of relationship, that is a man with his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's

daughter, or father's sister or mother's sister, or a woman with her father, grandfather, son, grandson, stepfather, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother shall be guilty of incest.

The State must prove beyond a reasonable doubt that this defendant had sexual intercourse with certain types of relatives. If the defendant is a man, these relatives include: the defendant's mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister.

I remind you that the fact that Defendant was arrested, charged, and indicted is not evidence in this case and cannot be considered by you as evidence of his guilt, nor does it create any presumption or inference of guilt. The indictments, ladies and gentlemen, are simply the written instrument which contain the charges made against

this defendant. They are the formal documents which bring this case before the court.

Now, criminal intent is a necessary element of each crime that must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by you the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. Medical science cannot dissect a person's brain and determine what he had in mind. So our state law says that criminal intent may be inferred from the circumstances shown to have existed.

Criminal intent, ladies and gentlemen, is a state of mind; when operated jointly with an act is the commission of a crime. It is a mental state; it is a conscious wrongdoing. So it is up to you 12 to determine what this defendant intended to do based on the circumstances shown to have existed. I tell you that the State must prove criminal intent beyond a reasonable doubt, just as it must prove every element beyond a reasonable doubt.

It is not necessary to establish intent by direct and positive evidence. It may be established by inference in the same way as any other fact taken

into consideration the acts of the parties and all the facts and circumstances.

While the State may prove motive, it is unnecessary for the State to do so, but they must prove criminal intent. The defendant has pled not guilty to all indictments, and, ladies and gentlemen, that puts the burden on the State of South Carolina to prove his guilt beyond a reasonable doubt.

A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important cardinal and vital rule of law that in a criminal trial, no matter what the seriousness of the charge may be for which he stands charged, the defendant is always presumed to be innocent of the crime for which the indictment was issued, unless guilt has been proven by evidence satisfying you of his guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations. It accompanies him throughout the trial until you reach a verdict of guilt based on the evidence satisfying you of his guilt beyond a reasonable doubt. The presumption of innocence is like a robe of innocence placed about

his shoulders, and it remains with him from the moment of his arrest and continues with him until stripped from his shoulders by evidence satisfying you of his guilt beyond a reasonable doubt.

Ladies and gentlemen, presumption of innocence is not a legal theory; it is not a legal phrase. It is a substantial right to which every defendant is entitled unless you 12 are satisfied from the evidence of his guilt beyond a reasonable doubt. The State of South Carolina has the burden of proving him guilty beyond a reasonable doubt, and that is proof beyond a doubt -- reasonable doubt is proof that leaves you firmly convinced of his guilt. I tell you and I charge you, there are very few things in this world that we know with absolute certainty, and in criminal cases, our law does not require proof that overcomes every possible doubt. A reasonable doubt may be described as the kind of doubt that would cause a reasonable person to hesitate to act. If you have such a doubt as to the guilt of this Defendant, then say so and find him -- if you have such a doubt of his guilt then you'll say so and find him not guilty.

Reasonable doubt may arise from evidence in the case or from absence or lack of evidence in the

case. Based on your consideration, if you are firmly convinced that he is guilty of the crime or crimes charged, you -- you must find him guilty. Say so and find him guilty. But if you think there's a real possibility that he is not guilty, you must resolve that in his benefit -- in his favor and find him not guilty. You 12 alone must make the determination of whether or not reasonable doubt exists as to -- of this -- the guilt of this defendant.

Now, under our State Constitution, you 12 will define us of the fact, and that means you must determine the credibility of the witnesses who have testified. Credibility simply means believability. It is your duty as jurors to analyze or evaluate the evidence and determine which evidence is convincing to you. You -- you may believe one witness over several, you may believe several over one. Ladies and gentlemen, you may believe part of the witness's testimony and reject the remaining part. You may believe all of it or none of it.

You may consider whether the witness has exhibited any interest, bias, prejudice, or motive in the case. You may also consider the appearance and manner of a witness while testifying. You may

consider how the witness came to know the facts about which he or she is testifying and whether or not the witness has an opportunity to hear, observe, or perceive a fact by means of their senses. Whatever your good judgment and common sense tells you is believable testimony is testimony you should accept and reject all other testimony.

Our Rules of Evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception exists when we have an expert witness, a witness who by education, training, and experience is an expert in some science, profession, or calling may give an opinion in which that witness claims to be an expert. You should consider any expert opinion received in this case, and like all of the evidence, give it the weight you believe it deserves.

If you decide that the opinion of the expert witness is not based on sufficient education, experience, or training, then you may disregard it. And I charge you and tell you that an expert's testimony is to be given no greater weight than that of other witnesses simply because they were qualified as an expert.

You 12 have been selected as fair and

impartial, sworn to try this case, and determine the facts. And you are to decide the case according to the testimony you have heard from the witnesses along with the evidence presented. Ladies and gentlemen, your verdict must be unanimous.

Madam Forelady, when the jury agrees on the verdict, you will indicate the verdict in the space provided on the verdict form that I'll explain momentarily. Knock on the jury room door and advise the bailiff that the jury has -- has reached its verdict, and we will return you to the courtroom to receive the verdict.

Madam Forelady, during deliberations, all 12 jurors must be together. If someone needs to refresh themselves in some way, the jury deliberations must cease because all 12 must participate in -- in the deliberations.

This is the verdict form -- and I'm just gonna pick up one of them. There's one for each indictment. It has the caption of the case here, and it has a number that means that it goes with a particular indictment. That's all that means.

And it has one question, "We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct of a minor in the

third degree, not guilty or guilty." I tell you, and I charge you, there is no significance to not guilty being first and guilty second.

My law clerk who's been with me all week, simply listed in -- them in this order for every case we try. I ask that you make -- make abundantly clear with -- what is the verdict of the jury. You can use a check mark, an X mark, an initial, it matters not to -- to the Court, to me, what it is, but please it cannot be ambiguous.

It then says, "I certify this is the -- the decision -- the unanimous decision of this jury." And, Madam Forelady, it has a place for you to sign and a place to put the date. Again, there's one for each indictment. Again, I charge you that each indictment must stand alone. You must consider each indictment in this case separately.

I'm getting ready to send you to the jury room, all 14 of you. When you go out, I'm gonna ask the lawyers to come up and review the evidence because that belongs to you. I've practiced law at this courthouse and many other courthouses in this State a long time before I came up here.

Making a closing statement, it is so easy to pick up a piece of evidence, come up and in my

closing statement make a comment to you referring to that, and then I walk back to my table, and I lay it down like that, and it's missing. I didn't mean to do it, but it happens.

I'm gonna ask the lawyers to come over to Madam Court Reporter and make sure that everything is there. And when they're satisfied that it's all there, the bailiff is going to come to the jury room door with the evidence and with these verdict forms.

At that time, my two alternates will leave and come back to my courtroom when the bailiff -- the bailiff will bring you two back to my courtroom, okay? It'll be improper for you two to be with the 12 at that point in time. And that will be your signal to begin with deliberation.

So when you receive the evidence and the two alternates leave, you may begin your deliberation. Madam Forelady, if you'll take the jury out.

(WHEREUPON, the jury was excused at 11:37 am.)

(WHEREUPON, a bench conference was held.)

THE COURT: Anything from the State?

MS. HALLFORD: Are they getting the indictments back there?

THE COURT: Yeah.

MS. HALLFORD: Does -- do -- can I look at the

verdict forms? Because when you were reading the indictments, I thought you said that 5214 was penile penetration and 5215 was penile penetration. The 214 was cunnilingus, I believe.

THE COURT: It says, "5214 is penile vaginal penetration with a minor who is at least 11 but less than 14.

MS. HALLFORD: I didn't catch 5214 is cunnilingus, and I didn't catch that. I didn't. I'm sorry.

THE COURT: It's okay.

MR. GROSE: And you -- you also charged the alternate 1416. It is taken out of one place and not the other, and I would just also renew my request for the "State vs. Logan" charge verbatim from "State vs. Logan."

THE CLERK: So just like the -- the --

MS. HALLFORD: How will they know if -- if it doesn't -- I'm sorry -- if it doesn't specify the type of battery or touching?

MR. SMITH: Or location or --

MS. HALLFORD: Since you've read these to them, can I take them back? Some judges do allow it.

THE COURT: I've not done it, but I don't --

MS. HALLFORD: Because you've charged them that this is not evidence.

THE COURT: Well, yeah. I -- I don't see any harm in that. That's -- that'd be -- because unlike a -- a housebreaking where it says two or more convictions.

MS. HALLFORD: Right.

MR. SMITH: My only thought I know is when -- when people plead to a multi-count, we go over them, and then they say, "How do you plead on 5213?" They then look at their attorney like, "What the heck is 5213?" And I know I just listened to it, but --

MR. GROSE: I -- I'm -- I wanna object. I mean, there's a -- a case that -- that there was a CSC case where the Court of Appeals said that the judge wisely didn't send the indictments to the -- to the jury. I mean, I've had them go back, and I've had not go back. I --

THE CLERK: They could ask.

MS. HALLFORD: But there are so many of them, there's no way they're gonna be able to remember which one goes with which indictment number. Let's say, they -- they think, "Okay. Well, the -- the touching of the breasts on the porch didn't happen, but -- but the other things did."

THE COURT: You want me -- what if I can make a photocopy of this, both sides?

MS. HALLFORD: That won't tell them what the number is, though.
THE COURT: Well, we could --
MS. HALLFORD: Oh, we could do that. And I'm sorry. I did not -- not catch that the batteries were not on the (inaudible.)
MR. GROSE: I -- I would -- would agree with the one side going back stapled. We can make sure we -- we get the right number with the right --
MR. SMITH: Index number is not on this side.
MS. HALLFORD: No. But that's what he's saying, they'd staple it to --
THE COURT: We'd staple --
MS. HALLFORD: -- this.
MR. SMITH: Oh, okay.
MS. HALLFORD: Okay. So we can do them one at a time to make sure we get them.
THE COURT: I need to make a copy, right?
THE CLERK: Yes, sir.
MS. HALLFORD: Right. But if she copies this . . .
THE BAILIFF: Well, we could just take out the -- the actual indictments with the verdict form and just match that.
THE BAILIFF NUMBER 2: Well, we can write it in a small --

MR. GROSE: Well, how will we describe --
THE BAILIFF NUMBER 2: -- highlighter, and it won't copy on a copy. Highlighters won't copy on that.
MS. HALLFORD: I'm not following that.
THE BAILIFF: Like if I write with the highlighter on the original and make a copy, it won't show up on the copy. That way we'll know which one it goes to.
MS. HALLFORD: But it doesn't show up on the copy?
THE CLERK: So we'll know on the back part of the original when you're putting them together, if that makes sense. I'll just make a copy.
THE COURT: He -- he --
MR. GROSE: I'll tell you what --
THE COURT: -- doesn't want a copy of the indictments.
MR. GROSE: I -- I'll just withdraw my objection. I --
THE COURT: All right.
MR. GROSE: -- there's too much for it to get mixed up. Just let them take the indictments.
THE COURT: Send them all back?
MS. HALLFORD: Okay.
MR. SMITH: Yes.
THE COURT: All right. Y'all wanna look at the evidence right quick?

MS. HALLFORD: Oh, yes.
MR. GROSE: Oh, and I just wanna make sure that -- I think we got it all, you know, when we're at the bench. I did have -- renew my request for the verbatim "State vs. Logan" charge, and -- and I also -- we thought that the Subsection 2 about 14 to 16 in certain type of relationships have been taken out, and it was in one place but not the other place.
THE COURT: Okay. You're protected, so I overrule the objection.
MR. GROSE: All right.
(WHEREUPON, the attorneys reviewed jury charge and exhibits.)
(WHEREUPON, the alternate jurors enter the courtroom at 10:45 a.m.)
THE COURT: Gentlemen, thank you so very much for your service this week. This ends your jury service. I'm gonna let you turn your badges in, and -- and then we can talk to each other and speak, and you can talk to anybody you want to about the case or not. You're gonna be free to go.
THE BAILIFF: It's up to you, Judge. You want to keep them here? We can keep them in the deliberation room till you release them, or --

THE COURT: No. The code section says I'm supposed to release them, so that's what -- what I do. So I'm gonna release you, and you can turn badges in. I'm sure your lunch got ordered.

THE BAILIFF: It did.

THE COURT: Yeah. You got a lunch coming, and it's here -- it may be here. I don't know if it's here yet, but get your lunch, and you're welcome to stay. You know, a lot of times alternates won't know what happened but you've been here all week. But all -- all I'd ask you to do is just have a seat somewhere in here, and we're gonna take a break while the jury's deliberating and eat ourselves. And so -- but you -- you're welcome to the courtroom. Thank you.

THE ALTERNATES: Thank you.

THE COURT: All right. (To the State) You want to put something on the record about that?

MS. HALLFORD: Yes, Your Honor. We're making Court's Exhibit Number 7, the document that I used to show to the jury to do the chronology of when the e-mail and the 4/22/19 picture came in on the phone.

THE COURT: (To Mr. Grose) Any --

MR. GROSE: No objection.

THE COURT: Without objection.

(WHEREUPON, the chronology, it is admitted into evidence as Court's Exhibit No. 7.)

MR. GROSE: Judge, since we know that jurors are leaving, is it all right if the lawyers be excused from the courthouse?

THE COURT: Oh, yes, sir. Yes, sir. I'll -- I would just say if you got your cell phone on you, you just -- you can give Madam Clerk a number or something.

MR. GROSE: Okay.

(Off the record from 11:47 a.m. until 12:39 p.m.)

AFTERNOON SESSION

THE COURT: Okay. We're back on the record. And I received two questions. One of the questions we're going to answer by playing some -- playing back some testimony, and the lawyers agreed on answering the other one. And these will be whatever numbers -- Amber, you tell me.

THE COURT REPORTER: It will be Court's Exhibits 8 and 9.

THE COURT: Eight and nine. And eight, the first one was the question about testimony, and I received this one. It's second. (To the court reporter) Do you need a pen?

THE COURT REPORTER: Oh, I've got the stickers all ready.

(WHEREUPON, jury questions, are marked into evidence as Court's Exhibits Nos. 8 and 9.)

THE COURT: That's the first one. I will send this one back to the jury when they go back out.

THE COURT REPORTER: Okay.

THE COURT: Okay. State, do you need to put anything on the record before I bring the jury?

MS. HALLFORD: Nothing, Your Honor.

THE COURT: Mr. Grose?

MR. GROSE: I would -- I would just state that with what I understand as Court's Exhibit Number 9, we just agreed to write the days next to the questions.

THE COURT: Yes, sir.

MR. GROSE: With what I regard to the Court's Exhibit Number 8, I understand we're playing testimony, but it's just a portion of the witness?

THE COURT: Well, she had -- she doesn't have the -- she was telling me it's -- it's -- it's a big file, so she's just starting it at the beginning of that witness's testimony. It's Clune -- Clune?

MS. HALLFORD: Kelli Clune.

THE COURT: Kelli Clune.

MR. GROSE: I would -- I would just request that the

portions that pertain to the results of the exam be what is played.

THE COURT REPORTER: Okay.

THE COURT: Can -- hold on. But -- but you have to listen to it and see?

MS. HALLFORD: Yeah.

THE COURT REPORTER: I mean, do you want me to play it right now, and then we can -- we need to decide.

THE COURT: We can do that.

THE COURT REPORTER: Would you wanna play?

THE COURT: Just start it -- just start it, and we'll see if we can agree what -- before we bring the jury in. How about that? Just --

MR. SMITH: Yeah.

THE COURT: Just don't play . . .

MR. SMITH: It's gonna start with her qualifications, and we don't really need to.

(Recorder 3 - afternoon audio playback of Kelli Clune's testimony.)

THE COURT REPORTER: (To Mr. Grose) Is this kind of where you're wanting?

THE COURT: (To Mr. Grose) Is this about where you want it?

MS. HALLFORD: That's --

THE COURT: We're on it right now.

MR. GROSE: Well, this -- this is -- this is just the general explanation. This is not the part where she talks about the exam. And I think --
THE COURT: Okay.
MR. GROSE: -- they wanted the part about the specific exam.
MS. HALLFORD: The question is about the hymen. They don't say anything about the hymen in the other portion. She just said the exam was normal.
MR. GROSE: Well, and that's -- that's what's in front of the jury and that gives them whatever answer they decide to make use of it. Okay. I interpret the question as they want to know the results of the exam.
THE COURT: Okay. Let's just listen to it a little more here. What -- where are we? What --
THE COURT REPORTER: Okay. Well, this point where it -- timestamp 00:52:36. I'm gonna play it at normal speed --
THE COURT: Okay.
THE COURT REPORTER: -- just to see what you guys think.
(Recorder 3 - afternoon audio playback of Kelli Clune's testimony.)
THE COURT: What's the number on that?

THE COURT REPORTER: Okay. 00:56:34.
THE COURT: Okay. Is that the -- (to Mr. Grose) do you wanna listen to some of your cross?
MR. GROSE: My cross, as well, yes, sir.
THE COURT: Okay.
MR. GROSE: And I think it's short.
THE COURT REPORTER: Hold on just one second.
(Recorder 3 - afternoon audio playback of Kelli Clune's testimony.)
THE CLERK: That was -- that ended it at 56:53.
MR. GROSE: How much shorter?
THE COURT: Okay.
THE COURT REPORTER: Okay. (To the Court) So what would you like for me to do?
THE COURT: All right. Wanna be heard from the State, and will the Defense be heard? What -- where you wanted to start and stop.
MS. HALLFORD: I think the question is related to the hymen, and it needs to start where we start talking about the hymen, which is 52 --00:52:36.
THE COURT: Mr. Grose?
MR. GROSE: I -- as I stated before, I think the question is is they want to know the results of the exam. And I don't have the exact timestamp, but I know we stopped it at 56:34, and then my cross ended

at 56:53, maybe. But from where there is -- the question is, "What are the results of Child [redacted]'s medical exam?" Through the end of my cross is what should be played.

THE COURT: Okay. I'm going to start at the 00:52:36 and go through 00:56:35, which ends with the cross-examination ending by Defense counsel.

MR. GROSE: So which exactly is that starting at?

THE COURT: 00:52:36 is --

MS. HALLFORD: That's what I requested.

THE COURT: -- is what? Did I go back --

THE COURT REPORTER: Yeah.

THE COURT: -- is it 36?

THE COURT REPORTER: Yes, sir.

THE COURT: Yeah. 52:36, which is when -- after the qualification is already done, we kind of zip through that and it's right after that.

MR. SMITH: Where it discusses the --

THE COURT REPORTER: Uh-huh. Where it talked about the hymen?

MR. SMITH: -- hymen.

THE COURT: Started talking about the hymen.

THE COURT REPORTER: Uh-huh. And let me --

MR. GROSE: Just -- just note our objection.

THE COURT: Yes, sir. Okay. If you'll bring them

in, please.
THE COURT REPORTER: Okay. Let me get in here.
THE COURT: Okay.
(WHEREUPON, the jury enters open court at 1:20 p.m.)
THE COURT: Okay. Thank you. Madam Forelady, as to your first question, which is Court's Exhibit 8, we will answer that through playback testimony for you, and Question 9 that you sent to us, the lawyers have written the information on here; you'll leave with both of these, okay?
MADAM FORELADY: Yes, sir.
THE COURT: All right. Ready?
MR. GROSE: Yes, sir.
(Recorder 3 - afternoon audio playback of Kelli Clune's testimony.)
MR. GROSE: Okay. Proceed.
THE COURT REPORTER: Oh, that was -- you said 56:35?
THE COURT: It goes through 53, doesn't it?
Fifty --
THE COURT REPORTER: The beginning of cross-exam is 56:35, do you want play this, too?
THE COURT: Yes.
THE COURT REPORTER: Okay.
(Recorder 3 - afternoon audio playback of Kelli Clune's testimony .)

THE COURT: That's it?
THE COURT REPORTER: Uh-huh.
THE COURT: Anything further, Madam Forelady?
MADAM FORELADY: No, sir.
THE COURT: Okay. You can take the jury back out and take these with you.
(WHEREUPON, the jury was excused at 1:26 p.m.)
THE COURT: Anything before we recess?
MS. HALLFORD: Nothing from the State?
MR. GROSE: Nothing other than my objection, which is already protected the record.
THE COURT: Yes, sir. Okay. We'll be in recess.
(Off the record from 1:26 p.m. until 2:34 p.m.)
THE BAILIFF: All rise, please. Court come to order.
THE COURT: Thank you. Thank you. Please be seated. Thank you. I was told that after I talked to some people, we're not gonna have any showing out. And you already did it?
MR. SMITH: It has been done.
THE COURT: It has been done, okay.
MR. SMITH: I said you might do it yourself, as well, but --
THE COURT: Well, I -- I'll -- I will say that. If anybody here cannot control your emotions, well,

we're not here to -- to celebrate; we're not here to whoop and holler. So if you can't control your emotions, I'm gonna ask you to please leave now. Okay.

MR. GROSE: Your Honor, before you bring in the jurors, I want to correct or flag that Cody Hudson is in full chain, his wrist, and his -- what appears to be his ankles, and the belly chain. I understand that that's customary in -- in Spartanburg. I would cite the Court to "People vs. Sanders," which is a New York case, 39 N.Y.3d 216, 207 N.E.3d 423, from earlier this year.

And they followed the rule in "Deck vs. Missouri," which is 544 U.S. 622 from 2005, said that it is a violation of due process for the -- for the Court to order an accused being in shackles. Not only during the reading of the verdict, but also calling for jurors.

So I would move that the -- the shackles be removed.

THE COURT: Solicitor?

MS. HALLFORD: No opinion.

THE COURT: Okay. (To the courtroom security) Is that customary? Okay. It's customary. So you're protected on the record. So he's gonna remain -- I

don't -- I don't do security, but he's -- please bring the jury. Okay.

(WHEREUPON, the jury enters open court at 2:37 p.m.)

VERDICT

THE COURT: Madam Forelady, has the jury reached its verdict?

MADAM FORELADY: Yes, sir.

THE COURT: Please give those to the bailiff. Madam Clerk, if you'll publish.

THE CLERK: In the State of South Carolina and the Court of General Sessions, "The State of South Carolina vs. Cody Hudson, the defendant," 2019-GS-42-5213, we the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct with a minor in the third degree, not guilty. Signed by the foreperson July 21st, 2023.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct with a minor in the second degree, Indictment 2019-GS-420-5214, not guilty. Signed by the foreperson on the 21st of July 2023.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct with a minor in the second degree, Indictment 2019-GS-420-5215, not guilty. Signed by

the foreperson July 21st, 2023.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct with a minor in the third degree, Indictment Number 2019-GS-420-5217, not guilty.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct and the -- criminal sexual conduct with a minor in the third degree, Indictment Number 2019-GS-42-5218, not guilty.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct with a minor in the second degree, Indictment 2019-GS-42-5219, not guilty.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct in -- with a minor in the second degree, Indictment 2019-GS-42-5224, guilty.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct with a minor in the second degree, Indictment 2019-GS-42-5228, guilty.

We the jury unanimously find the defendant, Cody Hudson, on the charge of criminal sexual conduct with a minor in the second degree,

Indictment Number 2019-GS-42-5229, not guilty.

We the jury unanimously find the defendant, Cody Hudson, on the charge of incest, Indictment Number 2019-GS-42-5230, guilty. Signed by the foreperson July 21st -- July 21st, 2023.

Ladies and gentlemen of the jury, is this verdict and still your verdict? If so, please raise your right hand.

THE JURY PANEL: (Complies.)

THE CLERK: So says you all.

THE COURT: Thank you. Polling of the jury by the State?

MS. HALLFORD: No, sir.

THE COURT: By the Defense?

MR. GROSE: Yes, sir.

THE CLERK: Ladies and gentlemen, at this time, I'll pose a question. My question being: Is this your verdict and still your verdict? When your jury number and name is called, please stand and respond to the question.

Juror Number 178, Joshua Wiley?

MR. WILEY: Yes.

THE CLERK: Thank you. Juror Number 89, Kevin Lee?

MR. LEE: Yes.

THE CLERK: Thank you. Juror Number 22, Myra

Chandler?

MS. CHANDLER: Yeah.

THE CLERK: Thank you. Juror Number 135, Colette Revels?

MS. REVELS: Yes.

THE CLERK: Thank you. Juror Number 71, Marshall James?

MR. JAMES: Yes.

THE CLERK: Thank you. Juror Number 19, Michelle Carrera?

MS. CARRERA: Yes.

THE CLERK: Juror Number 167, Sheila Truesdale?

MS. TRUESDALE: Yes.

THE CLERK: Juror Number 81, Donald Kimbrell?

MR. KIMBRELL: Yes.

THE CLERK: Juror Number 70, Randolph Jacobs?

MR. JACOBS: Yes.

THE CLERK: Juror Number 23, India Charles?

MS. CHARLES: Yes.

THE CLERK: Juror Number 51, Preston Goode?

MR. GOODE: Yes.

THE CLERK: Juror Number 60, William Henderson?

MR. HENDERSON: Yes.

THE CLERK: Your Honor, the jury has been polled.

THE COURT: Anything from the -- from the State

regarding the jury on their answers?
MS. HALLFORD: No, sir, Your Honor.
THE COURT: From Defense?
MR. GROSE: No, sir.
THE COURT: Okay. Ladies and gentlemen of the jury, I thank you so very much for your service this week. And we could not do what we did without you. I'm gonna release you at this point in time. You can turn your badges in. If you want to stay, and you're certainly welcome to, and proceed to some sentencing here momentarily. And if you want to be a part of that, -- I believe the alternates stayed with us because they wanted to see the end result. And if you want to do that, you're more than welcome to in the open courtroom in this state. So maybe if you do, just come back around and come back in the gallery, too.
MADAM FORELADY: Okay.
THE COURT: With that, Madam Forelady, and with our thanks, you can take your jury out.
(WHEREUPON, the jury was excused at 2:44 p.m.)
THE COURT: Yes. The forelady has to sign all (inaudible.)
MR. SMITH: (To the clerk) We just need to see the indictments for those which ones were guilty.

(WHEREUPON, Mr. Smith and Madam Clerk discussed the indictments.)

(WHEREUPON, Madam Forelady signs forms.)

SENTENCING

THE COURT: All right. Solicitor, we'll go -- go to sentencing?

MS. HALLFORD: Yes, Your Honor.

THE COURT: Do we have any matters to take up?

MR. GROSE: Your Honor, I'm going to take the ten days provided by rule to make any trial motions.

THE COURT: Yes, sir. Absolutely. All right. Solicitor?

MS. HALLFORD: The victim wishes to speak.

THE COURT: Okay.

MS. Child : Your Honor, I would request that you give him the maximum penalty because I've been waiting for my justice for almost the last seven years, and I think I finally deserve my peace of justice after all these years.

THE COURT: Yes, ma'am. Thank you. Anyone else?

MS. HALLFORD: No, sir.

THE COURT: Okay. Mr. Grose, do you have anybody?

MR. GROSE: Your Honor, you've already heard a lot about Cody's background through him and his family who testified. So, we would ask that whatever

sentence you impose to be concurrent, and we would ask for credit for the time that he served under the home incarceration program.

THE COURT: Mr. Hudson, we're here to sentence, and you have a right -- you don't to speak, but you have a right to do so. Would you like to speak?

MR. GROSE: Your Honor, on my advice, he's -- he's not gonna make a statement.

THE COURT: Do you have a number, Mr. Grose, of those days by chance?

MR. GROSE: I -- I -- I do not. I might --

THE COURT: Okay. I can just check it.

MR. GROSE: Huh?

THE COURT: I can just check with Bob.

MR. SMITH: We can probably get a breakdown of jail and home retention and e-mail it to you and Mr. Grose. I just -- we can't access Spillman unless we're at our desk now.

MR. GROSE: And -- and if there's any question on that, since we reserved the 10 days, we would have time to -- to correct that.

THE COURT: Okay. Mr. Hudson, this Court has never failed (inaudible) of people who have children or senior adults. 2019-GS-42-5224, you're confined to the Department of Corrections for a period of 20

years. I give you credit for any time you're entitled. Sex offender registry. 2019-5228, five years Department of Corrections and consecutive to 2019-5224. Credit for time. Sex offender registry. 2019-5230, maximum one year, concurrent with all the indictments, and giving you credit for any time you're entitled. Very best of luck to you, sir.

THE BAILIFF: And if --

MS. HALLFORD: Thank you, Your Honor.

THE BAILIFF: And if everybody will remain seated for me.

END OF TRIAL

(Whereupon, the within trial concluded at 2:58 p.m.)

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STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF SPARTANBURG)

I, Amber Payne, Court Reporter for the Master-In-Equity Office of Spartanburg County, South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina during the dates of July 17th – 21st, 2023.

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

Amber Payne

Amber J. Payne, CVR

Date: November 25, 2023

Notary public for South Carolina

My commission expires August 12, 2029

WITNESSES

Spartanburg County Sheriff's Office

Larry W. Powers

ARREST WARRANT NUMBER

2019A4210101635

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: SEP 20 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 19-GS-42-5224

The State of South Carolina

County of Spartanburg

Barry J. Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

SEP 30 2019

TERM

THE STATE
vs.

CODY HUDSON

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

SC Code:**16-3-0655 (B)(1)**
CDR Code: 0396
Class FEL/C

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 2 0 2019, the Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That the Defendant Cody Hudson, did in Spartanburg County, on or between the dates of February 1, 2017 to March 31, 2019, commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree in that the Defendant did engage in sexual battery, to wit: sexual intercourse occurring in the victim's bedroom in a residence on Bonner Road, with a minor, [redacted] who was fourteen (14) years of age or less but who was at least eleven (11) years of age at the time of said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-3-655(B), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Wendy Hallford
ASSISTANT SOLICITOR

DOCKET NO. - 19-GS-42- 5228

The State of South Carolina

County of Spartanburg

Barry J. Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

SEP 30 2019

TERM

THE STATE
vs.

CODY HUDSON

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

SC Code:16-3-0655 (B)(1)
CDR Code: 0396
Class FEL/C

WITNESSES

Spartanburg County Sheriff's Office

Larry W. Powers

ARREST WARRANT NUMBER

2019A4210101639

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: SEP 20 2019

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 2 0 2019

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That the Defendant Cody Hudson, did in Spartanburg County, on or between the dates of February 1, 2017 to March 31, 2019, commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree in that the Defendant did engage in sexual battery, to wit: fellatio occurring at a residence on Bonner Road, with a minor, [redacted], who was fourteen (14) years of age or less but who was at least eleven (11) years of age at the time of said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-3-655(B), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Wendy Hallford

ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Lenny G. Owens

ARREST WARRANT NUMBER

2019A4210101640

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: SEP 20 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. - 19-GS-42-5230

The State of South Carolina

County of Spartanburg

Barry J. Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

SEP 30 2019

TERM

THE STATE
vs.

CODY HUDSON

Indictment for

INCEST

SC Code:16-15-0020
CDR Code: 0090
Class FEL/EXP

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 2 0 2019, the Grand Jurors of Spartanburg County present upon their oath:

INCEST

That the Defendant Cody Hudson, did in Spartanburg County, on or between the dates of August 31, 2016 to March 31. 2019, commit the crime of incest, in that the Defendant did engage in carnal intercourse with [redacted] his wife's daughter. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-3-655(B), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Wendy Hallford
ASSISTANT SOLICITOR

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No.
THE STATE	)	2019-A42-101-01625 – 01640
	)	2019-GS-42-05213-05215
	)	2019-GS-42-05217-05219
vs.	)	2019-GS-42-05224, 05228, 052229, 05230
	)	
	)	**Motion to Quash Indictments**
Cody Hudson,	)	
Defendant.	)	
_____	)	

The State charges Cody Hudson with incest and multiple counts of criminal sexual conduct with a minor. The State informed undersigned counsel it plans to proceed to trial on the charge of incest[1] and nine indictments for criminal sexual conduct with a minor that are described more particularly below. Mr. Hudson moves to quash indictment numbers 2019-GS-42-05214, 2019-GS-42-05213-05215, 2019-GS-42-05217, 2019-GS-42-05218, 2019-GS-42-05219, 2019-GS-42-05224, 2019-GS-42-05228, and 2019-GS-42-05229, for criminal sexual conduct with a minor, as multiplicitious.

I. PROCEDURAL BACKGROUND.

For the time period from August 21-31, 2016, the State charges Mr. Hudson with the following allegations of criminal sexual conduct with a minor:

Indictment Number	Charge	Alleged Conduct
2019-GS-42-05213	CSCM Third Degree	Rubbing Breasts
2019-GS-42-05214	CSCM Second Degree	Cunnilingus
2019-GS-42-05215	CSCM Second Degree	Penile/Vaginal Penetration

The only difference in the two indictments for second-degree criminal sexual conduct with a minor are "cunnilingus" and "penile/vaginal penetration." These two indictments took one crime and

[1] Indictment No. 2019-GS-42-05230.

broke it into two crimes.

For the time period from August 31, 2016 to January 31, 2017, the State charges Mr. Hudson with the following allegations of criminal sexual conduct with a minor:

Indictment Number	Charge	Alleged Conduct
2019-GS-42-05217	CSCM Third Degree	Rubbing Genitals Against Genitals
2019-GS-42-05218	CSCM Third Degree	Forcing Child to Rub Penis
2019-GS-42-05219	CSCM Second Degree	Sexual Intercourse
2019-GS-42-05229	CSCM Second Degree	Fellatio

The only difference in the two indictments for third-degree criminal sexual conduct with a minor are "rubbing genitals against genitals" and "forcing the [child] to rub his penis." These two indictments took one crime and broke it into two crimes. The only difference in the two indictments for second-degree criminal sexual conduct with a minor are "sexual intercourse" ad "fellatio." These two indictments took one crime and broke it into two crimes.

For the time period February 1, 2017 to March 31, 2019, the State charges Mr. Hudson with the following allegations of criminal sexual conduct with a minor:

Indictment Number	Charge	Alleged Conduct
2019-GS-42-05224	CSCM Second Degree	Sexual Intercourse
2019-GS-42-05228	CSCM Second Degree	Fellatio

The only difference in the two indictments for second-degree criminal sexual conduct with a minor are "sexual intercourse" ad "fellatio." These two indictments took one crime and broke it into two crimes.

II. LEGAL ARGUMENT.

As a matter of law, the indictments in this case are multiplicitous. "An indictment is multiplicitous when a single offense is charged in more than one count." *People v. Jagdharry*, 118 A.D.3d 722, 723, 987 N.Y.S.2d 91, 93 (2014). Mr. Hudson will address the second-degree criminal sexual conduct with a minor charges first, before turning the third-degree charges.

In this case, Mr. Hudson is charged with a violation of South Carolina Code § 16-3-655(B)(1) in three different timeframes. Each indictment alleges a violation of the same statute. The statute provides, "A person is guilty of criminal sexual conduct with a minor in the second degree if 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." The crime is a sexual battery. "'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes." S.C. Code § 16-3-651(h). Each allegation in each indictment is a sexual battery. A sexual battery is what the legislature intended to punish. The indictments only differ in the means used to accomplish the sexual battery. Nothing in the statute suggests that the legislature intended a separate punishment for each means of performing a sexual battery. The legislature did not intend for each different type of sexual battery to be a separate crime.

As indicted, the State has alleged a single continuous act form August 21-31, 2016, a single continuance act from August 31, 2016 to January 31, 2017, and a single continuance act from February 1, 2017 to March 31, 2019. The State could have indicted for a different act on a specific day. They elected not to take this approach. What the State has done through a creative use of the indictment, is to make the jury believe Mr. Hudson committed two different crimes on his stepdaughter, during each of these three timeframes, and is therefore, an especially bad person.

Our courts have held that such a creative use of an indictment is not proper. As the South Carolina Supreme Court said, "The statute prohibits obscenity; the indictments relate to one crime only, and the description of more than one method of violation does not create a new crime." *State v. Pee Dee News Co*., 286 S.C. 562, 565, 336 S.E.2d 8, 9 (1985). In *State v. Sheppard*, 248 S.C.

464, 150 S.E.2d 916 (1966), the South Carolina Supreme Court held that when a statute gives different means of committing the crime of driving under the influence, only one crime has been alleged when the different means are alleged in one indictment. The Court said:

> The act of operating a motor vehicle with impaired faculties is the gravamen of the offense, and the offense is not multiplied because the condition of impairment was produced by the ingestion of more than one of the substances listed in the statute. The indictment charges only one offense which may be established by proof that the defendant operated a motor vehicle while under the influence of intoxicating liquor or of narcotic drugs, either or both.

Id. at 466-467, 150 S.E.2d at 917.

The same rule applies in this case. The crime is committing a sexual battery on a minor over the age of 11 and under the age of 14. The definition of "sexual battery" simply lists the different means of accomplishing the sexual battery. The legislature did not intend for each to be a separate crime. The State might argue that each different act was a separate crime. This is simply not correct. As in *Shepard*, they are simply the means of accomplishing the crime. They were not intended by the legislature to be different crimes. All the mean of accomplishing a sexual battery are included within one statute with one punishment. As Justice Thurgood Marshall said, "But the Constitution does not permit a State to punish as two crimes conduct that constitutes only one 'offence' within the meaning of the Double Jeopardy Clause." *Missouri v. Hunter*, 459 U.S. 359, 370 (1983)(Marshall dissenting).

Thus, the State divided one crime into four separate crimes. In *State v. Church*, 223 Wis. 2d 641, 589 N.W.2d 638 (Ct. App. 1998), the Wisconsin court was faced with a multiplicitous indictment for the charge of child enticement. The crime of child enticement could be committed in many different ways. In holding the statute permitted only one crime and one punishment, the Court said, "We conclude that there is no basis on which we might conclude that the legislature intended more than a single punishment for a single act of enticement of a single child, thus

confirming our preliminary conclusion that the two convictions are multiplicitous because they are the same in law and in fact." *Id*. at 641, 665, 589 N.W.2d at 648.

Some courts have used the phrase "unit of prosecution" to determine if the charges are multiplicitous. As one court said, "In a unit of prosecution case, the court asks how the legislature has defined the scope of conduct composing one violation of a statute. Under this test, the statutory definition of the crime determines what the legislature intended as the allowable unit of prosecution. There can be only one conviction for each unit of prosecution." *State v. Thompson*, 287 Kan. 238, 245, 200 P.3d 22, 28 (2009). The unit of prosecution here is a sexual battery. A sexual battery is the scope of the conduct. The fact that the legislature uses different mean of accomplishing the sexual battery, does not change the fact that the unit of prosecution is the sexual battery. The legislature determines the unit of prosecution and not the solicitor. "But once Congress has defined a statutory offense by its prescription of the 'allowable unit of prosecution,' that prescription determines the scope of protection afforded by a prior conviction or acquittal." *Sanabria v. United States*, 437 U.S. 54, 69–70 (1978). As the United Supreme Court further explained, "[I]f Congress does not fix the punishment for a federal offense clearly and without ambiguity, doubt will be resolved against turning a single transaction into multiple offenses, when we have no more to go on than the present case furnishes." *Bell v. United States*, 349 U.S. 81, 84 (1955).

Likewise, the State charges Mr. Hudson with third-degree criminal sexual conduct with a minor in two timeframes. For the timeframe August 21-31, 2016, the State alleges a single crime in a single indictment. As indicted, the State has alleged a single continuous act form August 31, 2016 to January 31, 2017. The State could have indicted for a different act on a specific day. They elected not to take this approach. Again, for this second timeframe, what the State has done through

a creative use of the indictment, is to make the jury believe Mr. Hudson committed two different crimes on his stepdaughter, during this timeframe, and is therefore, an especially bad person.

"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." S.C. Code Ann. § 16-3-655(C). The same analysis applies to these two charges.

III. CONCLUSION.

For the foregoing reasons, this Court should quash indictment numbers 2019-GS-42-05214, 2019-GS-42-05213-05215, 2019-GS-42-05217, 2019-GS-42-05218, 2019-GS-42-05219, 2019-GS-42-05224, 2019-GS-42-05228, and 2019-GS-42-05229, for criminal sexual conduct with a minor, as multiplicitious.

IT IS SO MOVED.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charle@groselawfirm.com

Attorney for Cody Hudson

July 14, 2023
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2019-A42-101-01625 – 01640
THE STATE	)	
	)	
	)	
vs.	)	
	)	
	)	
Cody Hudson,	)	
Defendant.	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Wendy D Hallford, Esquire
Seventh Circuit Solicitor's Office
Spartanburg Court House
180 Magnolia Street
Spartanburg, SC 29306
whallford@spartanburgcounty.org

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

July 14, 2023
Greenwood, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	**VERDICT FORM** Indictment No: 2019-GS-42-5213

We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Third Degree**:

X Not Guilty

_____ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT **VERDICT FORM** Indictment No: 2019-GS-42-5214

We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Second Degree:**

__X__ Not Guilty

_____ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July ___, 2023

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	**VERDICT FORM** Indictment No: 2019-GS-42-5215

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Second Degree**:

   X Not Guilty

   _____ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT **VERDICT FORM** Indictment No: 2019-GS-42-5217

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Third Degree**:

   X Not Guilty

   _____ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	**VERDICT FORM** Indictment No: 2019-GS-42-5218

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Third Degree**:

   X Not Guilty

   _____ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	**VERDICT FORM** Indictment No: 2019-GS-42-5219

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Second Degree**:

   X Not Guilty

   _____ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	**VERDICT FORM** Indictment No: 2019-GS-42-5224

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Second Degree**:

_____ Not Guilty

_X_ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT **VERDICT FORM** Indictment No: 2019-GS-42-5228

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Second Degree**:

_____ Not Guilty

_X_ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT
State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	)	**VERDICT FORM** Indictment No: 2019-GS-42-5229

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Criminal Sexual Conduct with a Minor in the Second Degree**:

   X Not Guilty

   _____ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG State of South Carolina, Plaintiff, v. Cody Hudson, Defendant.	IN THE COURT OF GENERAL SESSIONS SEVENTH JUDICIAL CIRCUIT **VERDICT FORM** Indictment No: 2019-GS-42-5230

1. We the jury, unanimously find the Defendant, Cody Hudson, on the charge of **Incest**:

_____ Not Guilty

_X_ Guilty

I certify this decision was the unanimous decision of the jury.

Sheila Truesdale
Foreperson

July 21, 2023

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg

IN THE COURT OF GENERAL SESSIONS

STATE
VS.
Cody Hudson
AKA:
Race: W Sex: M Age: 35
DOB: [redacted] SS#: [redacted]
Address:
City, State, Zip:
DL#* [redacted] SID#

INDICTMENT/CASE#: 19 -GS-42- 5230

A/W#: 2019 A42010640
Date of Offense: 6.31.2016 to 3.31.2019
S.C. Code §: 16-15-0020
CDR Code #: 0090

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: INCEST

In violation of § 16-15-0020 of the S.C. Code of Laws, bearing CDR Code # 0090

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45 (CSC w/minor 1st or CSC w/minor 3rd)

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:

Wendy Hayford 66304 Cody Hudson [redacted] 66063
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction** ☐ **County Detention Center,**

for a determinate term of 1 ~~days/months/years/Time Served~~ ☐ **Youthful Offender Act** not to exceed ___ years

and/or to pay a fine of $___; provided that upon the service of ___ days/months/years/Time Served and or payment of $___; plus costs and assessments as applicable*; the balance is suspended with **probation** for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All indictments

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
___ days/months
☒ To include time spent on monitored house arrest prior to trial and sentencing.
☒ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Cody Hudson INDICTMENT/CASE#: 19 -GS- 42 - 5330

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

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

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: T. Camp
Court Reporter: A. Payne

Presiding Judge: R. Knox Kelly
Judge Code: 2165
Sentence Date: 21 July 2023

SCCA/217 (07/2021)

STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg

IN THE COURT OF GENERAL SESSIONS

STATE
VS.
Cody Hudson
AKA:
Race: W Sex: M Age: 35
DOB: [redacted] SS#: [redacted]
Address:
City, State, Zip:
DL#* [redacted] SID#

INDICTMENT/CASE#: 19-GS-42-5228
A/W#: 2019A4202104639
Date of Offense: 2.1.2017 to 3.31.2019
S.C. Code §: 16-3-655(B)(1)
CDR Code #: 0396

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: CSCM Second Degree

In violation of § 16-3-655(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 CSC w/minor 3rd)

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:

Wendy Hallford 66304 Cody Hudson [illegible] 66663
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction** ☐ **County Detention Center,**

for a determinate term of 5 days/~~months~~/~~years~~/~~Time Served~~ ☐ **Youthful Offender Act** not to exceed ___ years

and/or to pay a fine of $___; provided that upon the service of ___ days/months/years/Time Served and or payment of $___; plus costs and assessments as applicable*; the balance is suspended with **probation** for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2019-GS-42-5224

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
___ days/months
☒ To include time spent on monitored house arrest prior to trial and sentencing.
☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Cody Hudson INDICTMENT/CASE#: 19 -GS- 42 - 5228

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☒ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

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

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$150	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$41	$
§50-21-114 (BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)	TBD	$
☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	$500	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: T. Camp
Court Reporter: Amber Payne

Presiding Judge: R. Keith Kelly
Judge Code: 2165
Sentence Date: 21 July 2023

SCCA/217 (07/2021)

STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg
STATE
VS.
Cody Hudson
AKA:
Race: W Sex: M Age: 35
DOB: [redacted] SS#: [redacted]
Address:
City, State, Zip:
DL#* [redacted] SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 19 -GS-42-5224

A/W#: 20194210101635
Date of Offense: 2.1.2019 to 3.31.2019
S.C. Code §: 16-3-655(B)(1)
CDR Code #: 0396

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: CSCM Second Degree

In violation of § 16-3-655(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 CSC w/minor 3rd)

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:

Wendy Hallford 16304 — Solicitor / SC Bar #
Cody Hudson — Defendant
[signature] 66063 — Attorney for Defendant / SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Correction** ☐ **County Detention Center,**

for a determinate term of 20 ~~days/months/years/Time Served~~ ☐ **Youthful Offender Act** not to exceed ___ years

and/or to pay a fine of $___; provided that upon the service of ___ days/months/years/Time Served and or payment of $___; plus costs and assessments as applicable*; the balance is suspended with **probation** for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run
☐ 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 SCDOC.
_____ days/months
☒ To include time spent on monitored house arrest prior to trial and sentencing.
☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Cody Hudson INDICTMENT/CASE#: 19 -GS- 42 -5224

SPECIAL CONDITIONS:

☐ **PTUP** after _____ months/years

And Other Terms Listed Below:

☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing

☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program

☐ Mental Health Counseling ☐ May serve W/E beginning: _____

☒ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours

☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

☐ Other: _____

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

Total $_____ plus 20% fee: _____ $_____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of $ _____ Beginning _____

§14-1-206 (Assessments 107.5%)		$
§14-1-211 (A)(1)(Conv. Surcharge)		$
§14-1-211 (A)(2)(DUI Surcharge)	$100	$
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§56-1-286 (DUI Breath Test)	$12	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14-1-213 (Drug Court Surcharge)	$25	$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	$150	$
§50-21-114 (BUI Breath Test Fee)	$41	$
§56-5-2942(J) (Vehicle Assessment)	$50	$
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☐ Appointed PD or appointed other counsel, Proviso requires $500 be paid to Clerk during probation and shall be collected before any other fees	TBD	$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	$500	$
	TBD	$
	TOTAL	$ 128.75

Clerk of Court/Deputy Clerk: T. Camp
Court Reporter: A. Payne

Presiding Judge: R. Keith Kelly
Judge Code: 2165
Sentence Date: 21 July 2023

SCCA/217 (07/2021)

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

July 28, 2023

Via Priority Mail

The Honorable Amy W. Cox
Clerk of Court, Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: *State of South Carolina v. Cody Hudson*
Case Numbers 2019-A42-101-01625 – 01640

Dear Ms. Cox:

Enclosed please find Mr. Hudson's Motion for a New Trial, along with a certificate of service.

Also, enclosed please find Mr. Hudson's Motion to Quash the Indictments, along with a certificate of service and cover email. This motion was provided to the Court and counsel, but I apparently overlooked filing it.

Thank you for your attention to this matter. If you have any questions or require additional information, please contact me.

With kindest regards, I am

Yours very truly,

s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.

cc: The Honorable R. Keith Kelly (via email)
Wendy D Hallford, Esquire (via email)
Spenser Smith, Esquire (via email)

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No.
THE STATE	)	2019-A42-101-01625 – 01640
	)	2019-GS-42-05213-05215
	)	2019-GS-42-05217-05219
vs.	)	2019-GS-42-05224, 05228, 052229, 05230
	)	
	)	**Motion for New Trial**
Cody Hudson,	)	
Defendant.	)	
_____	)	

On July 17, 2023, the State brought Cody Hudson to trial on six counts of second-degree criminal sexual conduct with a minor, three counts of third-degree criminal sexual conduct with a minor, and one count of incest. On July 21, 2023, the jurors acquitted Mr. Hudson on four counts of second-degree criminal sexual conduct with a minor and three counts of third-degree criminal sexual conduct with a minor. The jurors convicted Mr. Hudson of incest and two counts of second-degree criminal sexual conduct with a minor. Pursuant to Rule 29, SCRCrimP, Mr. Hudson moves this Court for an order granting him a new trial. Alternatively, Mr. Hudson moves this Court to reconsider the sentences.

A. This Court erred by allowing law enforcement, in violation of his due process rights, to shackle Mr. Hudson during the reading of the verdict and polling of the jurors, and the State cannot demonstrate the error was harmless beyond a reasonable doubt.

After the jurors informed the bailiffs they recached a verdict, law enforcement brought Mr. Hudson into the courtroom in full body restraints, wearing a belly chain and shackled at the writs and ankles. In this particular court room, the seated jurors enter the courtroom through a door located between the witness stand and the judge's bench. The tables where the parties sit are open underneath on the front side. When the seated jurors enter the courtroom, they have an unobstructed view underneath the tables. Because of the layout of the courtroom, some jurors have

angles where they can see underneath the tables. Other jurors have angles where they can behind the tables from the side.

Prior to the jurors returning to the courtroom, Mr. Hudson objected to being shacked during the reading of the verdict and polling of the jurors, citing *Deck v. Missouri*, 544 U.S. 622 (2005) and *People v. Sanders*, 39 N.Y.3d 216, 205 N.E.3d 423 (2023). "The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need." *Deck,* 544 U.S. at 626. *Sanders* held this rule applies during the jury's reading of its verdict and the court's polling of the jurors." 39 N.Y.3d at 219, 205 N.E.3d at 424. "[U]ntil the jury returns to the courtroom, publicly announces the verdict and, if polled, confirms the verdict, there is no finding of guilt, defendant is still presumed innocent, and the constitutional prohibition on restraining a defendant without explanation remains in full force." *Id*., 39 N.Y.3d at 221, 205 N.E.3d at 426; see also *State v. Linder*, 276 S.C. 304, 308, 278 S.E.2d 335, 338 (1981) ("Polling is a practice whereby the court determines from the jurors individually whether they assented and still assent to the verdict.").

Here, this Court did not conduct a hearing or make an individualized determination that there was a "special need" for shackling in this case. Mr. Hudson, in fact, informed this Court that shackling of incarcerated defendants is the customary practice in Spartanburg County. The Solicitor did not take a position on this objection. This Court inquired whether the practice is customary, and law enforcement confirmed that the practice is customary. The trial judge stated he does not make security decisions and declined to allow Mr. Hudson to be released from the shackles. Indeed, this Court has a practice of deferring shackling to law enforcement and the Solicitor. *See* Exhibit A (*State v. Batchelor,* Case No. 2016-GS-42-001345, Tr. excerpts where this Court required shackles to be removed with the consent of the Solicitor).

"The State must prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained." *Heyward*, 432 S.C. at 325, 852 S.E.2d at 467 (cleaned up) (citing Deck, 544 U.S. at 635). Unlike *Heyward* where there was no evidence that any of the seated jurors could see the shackles, every one of Mr. Hudson's seated jurors had more than one opportunity to see the shackles. Additionally, this trial was hotly contested, and the seven not guilty verdicts illustrate that the State did not present overwhelming evidence of guilt. This Court, accordingly, should grant a new trial.

B. This Court erred by not removing Juror No. 81 after he failed to disclose to the Court that he knows Sara Jumper and is friends with her on Facebook.

On the final day of trial (Friday), the forelady of the jury requested to see the trial judge. The trial judge interviewed the forelady in the presence of counsel but off the record. The forelady reported that, when the jurors walked to the parking garage the prior evening, Juror No. 81 stated that he knows Sarah Jumper and is friends with her on Facebook. This Court then questioned Juror No. 81, on the record. Juror No. 81 stated that he recognized Ms. Jumper when she was called to the stand to testify on Tuesday and confirmed he and Ms. Jumper are friends on Facebook. See Exhibit B (from Juror No. 81's Facebook). Juror No. 81 reported this information to some of the jurors on Tuesday, but he did not report this information to the Court. Mr. Hudson moved the Court to remove Juror No. 81 and replace him with one of the alternates. Although the juror said he could be fair and impartial, "[b]ias or prejudice is . . . an elusive condition of the mind . . . and it might exist in the mind of one . . . who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence." *Crawford v. United States*, 212 U.S. 183, 196 (1909) (O'Connor, J., concurring); *see also* S.C. Const. Art. I, § 14; S.C. Code Ann. § 14-7-1020; *United States v. Burr*, 25 F. Cas. 49, 50 (D.Va.1807) (a person under the influence of personal prejudice "is presumed to have a bias on

his mind which will prevent an impartial decision of the case, according to the testimony" for such person may declare that "notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him"). This Court, accordingly, should grant a new trial.

C. This court erred by not giving the verbatim instruction required, when requested, by *State v. Logan*.

Mr. Hudson requested this Court to charge verbatim the circumstantial evidence jury instruction approved by *State v. Logan*, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). Exhibit C. When requested, this instruction is mandatory. *State v. Herndon*, 430 S.C. 367, 845 S.E.2d 499 (2020) (failure to provide Logan charge required reversal); *State v. Dent*, No. 2018-001257, 2021 WL 3641728 (S.C. Ct. App. Aug. 18, 2021) (same). In two off the record conferences, counsel for Mr. Hudson informed the Court that the Court's proposed instructions did not follow *Logan.* Mr. Hudson renewed his objection prior to jury instructions and immediately following jury instructions. A proper *Logan* charge was necessary, in part, because the Court's opening remarks to the jurors departed from *Logan*. This Court, accordingly, should grant a new trial.

D. This Court erred by not conducting full voir dire to ensure that the potential jurors could be fair and impartial.

Pursuant to the Sixth Amendment of the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and S.C. Code Ann. § 14-7-1020, Cody Hudson requested that the jurors be placed on their oath and asked questions to determine whether any potential juror "has any interest in the cause, has expressed or formed any opinion, or is sensible to any bias or prejudice." Specifically, he requested the following voir dire that was not asked:

5. There are some crimes that make people so angry that just because a person is accused of the crime, they believe he is guilty. Would you agree with that?

6. If a witness became emotional or cried during his or her testimony, would you be able to put aside your own emotion and sympathy in order to make a decision based upon the evidence in this case?

8. Is there anything about your home, workplace, or anywhere you spend a lot of time that causes you to fear for your safety? If so, please come forward.

19. When you hear the phrases "child sexual assault" or "child sexual abuse," is the first thing you think about unfair to the accused in this case? If it is unfair, please come forward.

23. In this case, you might be shown photographs of a penis. Would any potential juror be so offended by viewing such a photograph that you could not remain fair and impartial? If so, please come forward.

Mr. Hudson requested the Court ask these questions because he believed these questions were relevant to the trial of this case. Courts have long recognized the tricky nature of analyzing jurors' bias. *See Smith v. Phillips*, 455 U.S. 209, 221-2 (1982) (O'Connor, J., concurring) (recognizing that jurors may be incapable of acknowledging their own bias); *Crawford v. United States*, 212 U.S. 183, 196 (1909) ("Bias or prejudice is . . . an elusive condition of the mind . . . and it might exist in the mind of one . . . who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence"); *United States v. Burr*, 25 F. Cas. 49, 50 (D.Va.1807) (a person under the influence of personal prejudice "is presumed to have a bias on his mind which will prevent an impartial decision of the case, according to the testimony" for such person may declare that "notwithstanding these prejudices he is determined to listen to the evidence, and be governed by it; but the law will not trust him"). This Court, accordingly, should grant a new trial.

E. The Court erred by not disclosing the mental health records of Alston Abbott.

Prior to trial, Cody Hudson requested the mental health records of the complaining witness' brother Alston Abbott. After review pursuant to *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713, 726 (2017), the Court declined to disclose the records. Mr. Hudson renewed his request prior to

swearing the jurors. Mr. Hudson once again renews this request. See Court's Ex. 1 and 2. This Court, accordingly, should grant a new trial and disclose the records.

F. This Court erred by not quashing the indictments for second-degree criminal sexual conduct with a minor as multiplicitious.

Prior to trial, Mr. Hudson moved to quash some of the indictments as multiplicitious. This Court denied this motion. The jurors convicted Mr. Hudson on two counts of second-degree criminal sexual conduct with a minor for the time period February 1, 2017 to March 31, 2019. These indictments are summarized as follows:

Indictment Number	Charge	Alleged Conduct
2019-GS-42-05224	CSCM Second Degree	Sexual Intercourse
2019-GS-42-05228	CSCM Second Degree	Fellatio

The only difference in the two indictments for second-degree criminal sexual conduct with a minor are "sexual intercourse" and "fellatio." These two indictments took one crime and broke it into two crimes. Accordingly, Mr. Hudson was convicted twice and sentenced twice for the same offense. For the reasons set forth in Mr. Hudson's motion to quash the indictment, this Court should order a new trial and quash the indictments.

G. Alternately, this Court should reconsider the sentences for the two counts of second-degree criminal sexual conduct with a minor because the court impermissibly imposed consecutive sentences, exceeding the maximin penalty allowed by law, on these two indictments that are multiplicitious.

As set forth in the Motion to Quash Indictments and Subsection F above, the Indictment No. 2019-GS-42-05224 and 2019-GS-42-05228 are multiplicitious. This Court sentenced Mr. Hudson to twenty years imprisonment on Indictment No. No. 2019-GS-42-05224 and a consecutive five years imprisonment on Indictment No. 2019-GS-42-05228. The maximum penalty for second-degree criminal sexual conduct with a minor is twenty years. S.C. Code Ann. § 16-3-655(D)(3). Accordingly, Mr. Hudson was convicted twice and sentenced twice for the same

offense. The sentence exceeds the maximum sentences allowed by law. This Court should reconsider the sentence and impose a sentence that does not exceed the maximum allowed by law.

Additionally, this Court should make certain the Department of Corrections is aware of all of the credit for time served in jail and on monitored house arrest.

CONCLUSION

For the foregoing reasons, this Court should order a new trial. Alternatively, this Court should reconsider the sentences.

IT IS SO MOVED.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charle@groselawfirm.com

Attorney for Cody Hudson

July 28, 2023
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2019-A42-101-01625 – 01640
THE STATE	)	
	)	
	)	
vs.	)	
	)	
	)	
Cody Hudson,	)	
Defendant.	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Wendy D Hallford, Esquire
Seventh Circuit Solicitor's Office
Spartanburg Court House
180 Magnolia Street
Spartanburg, SC 29306
whallford@spartanburgcounty.org

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

July 28, 2023
Greenwood, South Carolina

Exhibit A

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
) 2016-GS-42-001345
COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
) TRANSCRIPT OF RECORD
vs.)
)
BATCHELOR, JONATHAN OLIN,)
)
Defendant)

November 1st - November 4th, 2021

Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, JUDGE

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

Jennifer Elizabeth Wells, Esquire
Attorney for the State

E. Charles Grose, Jr., Esquire
Attorney for the Defendant

Lisa G. Amick
Official Court Reporter

MR. GROSE: I have a matter before the jurors come in.

THE COURT: Okay.

MR. GROSE: I just want the record to reflect that Mr. Batchelor's now in full body chains at his wrisy and ankles and chained to his belly. This is the exact scenario of Deck versus Missouri and I just note our objection for the record.

THE COURT: But the jury has reached a verdict, we haven't taken the verdict yet.

MR. GROSE: Well, we haven't heard the verdict and if they're polled and say it's not unanimous then we're going to be in a mistrial situation because they'll be able to see underneath the table when they come through the door.

THE COURT: Okay. Is there a reason that, can we, Sergeant Brannon?

SERGEANT BRANNON: That's policy for Spartanburg that any time once a verdict is being passed down because he's still incarcerated and under our supervision, they all go in full restraints just like when they're being transported.

THE COURT: Solicitor, you want to be heard?

MS. WELLS: I mean, I understand that's the policy, I mean, Judge, I leave it to your discretion. You know, I ---

THE COURT: Well, I don't want to put us in a mistrial situation. Solicitor Barnett, you want to be heard?

MR. BARNETT: Judge, the reason why I think the policy is there to protect Mr. Grose as well as other people in the Courtroom because I've seen Defense attorneys get attacked before, we've heard of that before. But if the Court sees fit, as long as the officers are here I think he can't do anything else then you can remove those things. But understand, Mr. Grose must understand the risk, he's right beside him.

MR. GROSE: I'm not worried about that.

THE COURT: Okay. Well, let's don't get us in a mistrial. I've had that asked before, but we'll see. I think we have enough manpower. Anything else?

MR. GROSE: No, sir. Thank you, Your Honor.

THE COURT: Alright. Before the jury comes in now, I know we have some family members, I've not met any of you and everything's been very nice and low key this week, but I know tensions are high. So if you cannot control yourselves, I'm going to ask you to please leave now, okay? Because if somebody yells out, claps, applauds, celebrates one way or the other, including Mr. Batchelor, I'm going to have somebody in custody, okay? This is a Courtroom. Alright. Hearing the no, no one leaving, we'll have the jury.

(Whereupon, the jury came into open court with the verdict.)

THE COURT: Mr. Foreman, has the jury reached its verdict?

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

I, the undersigned Lisa G. Amick, Official Court Reporter for the Seventh 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 proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Spartanburg, South Carolina, on the 1st, 2nd, 3rd, and 4th days of November 2021.

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

April 23rd, 2022

_____
Court Reporter

My commission expires: June 30th, 2025

Exhibit B

Donnie Kimbrell

1K friends

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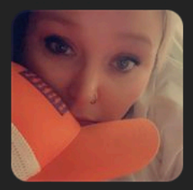
Friends

jumper

All friends | Recently Added | Current city | Hometown | Following



Sara Jumper
Boiling Springs, South Carolina

Add friend

Exhibit C

Subject: Fwd: Statue v. Hudson, Logan Circumstantial Evidence Jury Charge
Date: Thursday, July 20, 2023 at 1:05:44 PM Eastern Daylight Time
From: Charles Grose
To: Smith, Spenser, whallford@spartanburgcounty.org

Best,
Charles

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Fax: 864-538-4405
Web: GroseLawFirm.com
Email: charles@groselawfirm.com

From: Charles Grose
Sent: Wednesday, July 19, 2023 4:17:47 PM
To: Kelly, R. Keith Law Clerk (Sarah Shugars) <kkellylc@sccourts.org>
Cc: Wendy Chappell (wchappell@greenwoodsc.gov) <wchappell@greenwoodsc.gov>; dspencer@scag.gov Spencer <dspencer@scag.gov>
Subject: Statue v. Hudson, Logan Circumstantial Evidence Jury Charge

"There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact."

"Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed."

"The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two."

State v. Logan, 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013) ("trial courts should provide the [above quoted] language as a circumstantial evidence charge, in addition to a proper reasonable doubt instruction, when so requested by a defendant"); see also State v. Herndon, 430 S.C. 367, 845 S.E.2d 499 (2020) (failure to provide Logan charge required reversal); State v. Dent, No. 2018-001257, 2021 WL 3641728 (S.C. Ct. App. Aug. 18, 2021) (same).

Best,
Charles

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Fax: 864-538-4405
Web: GroseLawFirm.com
Email: charles@groselawfirm.com

Subject: Re: Cody Hudson Trial
Date: Friday, July 14, 2023 at 2:04:52 PM Eastern Daylight Time
From: Charles Grose
To: Kelly, R. Keith Law Clerk (Madalyn Dalton), Hallford, Wendy
CC: Laura Wingard
Category: Linked to MyCase
Attachments: 2023 07 14 - Hudson - Motion to Quash Indictments.pdf, 2023 07 07 - Ordernying Motion to Disclose MH Records.pdf

Attached please find Mr. Hudson's motion to quash the indictments. This motion is the only new pre-trial motions.

Also attached is Judge Knie's order of last week denying the motion to disclose the mental health records of the complaining witness' brother. I am not asking Judge Kelly to rehear this motion, but I would like to discuss the logistics of this motion prior to swearing the jurors.

Thank you for your attention to this matter. Please let me know if you have any questions or require additional information.

I hope everyone has a good weekend.

Best,
Charles

E. Charles Grose, Jr.
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
Phone: 864-538-4466
Fax: 864-538-4405
Web: GroseLawFirm.com
Email: charles@groselawfirm.com

From: Kelly, R. Keith Law Clerk (Madalyn Dalton) <kkellylc@sccourts.org>
Date: Thursday, July 13, 2023 at 2:03 PM
To: Hallford, Wendy <whallford@spartanburgcounty.org>
Cc: Charles Grose <charles@groselawfirm.com>
Subject: RE: Cody Hudson Trial

Thank you!

From: Hallford, Wendy <whallford@spartanburgcounty.org>
Sent: Thursday, July 13, 2023 12:59 PM
To: Kelly, R. Keith Law Clerk (Madalyn Dalton) <kkellylc@sccourts.org>
Cc: Charles Grose (charles@groselawfirm.com) <charles@groselawfirm.com>
Subject: RE: Cody Hudson Trial

I have 17 witnesses, but some of them are chain of custody witnesses, so my direct of those witnesses will not take long. I estimate my portion of the trial will be about 2 to 2 ½ days, but that is taking into consideration that I don't know how long Charles' cross-examinations will take.

Wendy Hallford
Seventh Judicial Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, South Carolina 29603
864.596.3822 (work)
864.809.2974 (cell)

From: Kelly, R. Keith Law Clerk (Madalyn Dalton)
Sent: Thursday, July 13, 2023 12:51 PM
To: Hallford, Wendy <whallford@spartanburgcounty.org>
Cc: Charles Grose (charles@groselawfirm.com) <charles@groselawfirm.com>
Subject: RE: Cody Hudson Trial

How many days is expected for trial?

From: Hallford, Wendy <whallford@spartanburgcounty.org>
Sent: Thursday, July 13, 2023 12:30 PM
To: Kelly, R. Keith Law Clerk (Madalyn Dalton) <kkellylc@sccourts.org>
Cc: Charles Grose (charles@groselawfirm.com) <charles@groselawfirm.com>
Subject: RE: Cody Hudson Trial

Mattie:

I apologize for the delay. Here are my motions for the Cody Hudson trial next week.

Thanks!

Wendy Hallford
Seventh Judicial Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, South Carolina 29603
864.596.3822 (work)
864.809.2974 (cell)

From: Kelly, R. Keith Law Clerk (Madalyn Dalton)
Sent: Wednesday, July 12, 2023 9:35 AM
To: Hallford, Wendy <whallford@spartanburgcounty.org>; Charles Grose <charles@groselawfirm.com>
Subject: Cody Hudson Trial

Good Morning,

Please email me your pre-trial motions this week so that Judge Kelly can review them ahead of time.

Thank you,

Mattie Dalton
Law Clerk to the Honorable R. Keith Kelly
125 E. Floyd Baker Blvd.
Gaffney, South Carolina 29340
(864) 596-2400

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No.
THE STATE	)	2019-A42-101-01625 – 01640
	)	2019-GS-42-05213-05215
	)	2019-GS-42-05217-05219
vs.	)	2019-GS-42-05224, 05228, 052229, 05230
	)	
	)	**Motion to Quash Indictments**
Cody Hudson,	)	
Defendant.	)	
_____	)	

The State charges Cody Hudson with incest and multiple counts of criminal sexual conduct with a minor. The State informed undersigned counsel it plans to proceed to trial on the charge of incest[1] and nine indictments for criminal sexual conduct with a minor that are described more particularly below. Mr. Hudson moves to quash indictment numbers 2019-GS-42-05214, 2019-GS-42-05213-05215, 2019-GS-42-05217, 2019-GS-42-05218, 2019-GS-42-05219, 2019-GS-42-05224, 2019-GS-42-05228, and 2019-GS-42-05229, for criminal sexual conduct with a minor, as multiplicitious.

I. PROCEDURAL BACKGROUND.

For the time period from August 21-31, 2016, the State charges Mr. Hudson with the following allegations of criminal sexual conduct with a minor:

Indictment Number	Charge	Alleged Conduct
2019-GS-42-05213	CSCM Third Degree	Rubbing Breasts
2019-GS-42-05214	CSCM Second Degree	Cunnilingus
2019-GS-42-05215	CSCM Second Degree	Penile/Vaginal Penetration

The only difference in the two indictments for second-degree criminal sexual conduct with a minor are "cunnilingus" and "penile/vaginal penetration." These two indictments took one crime and

[1] Indictment No. 2019-GS-42-05230.

broke it into two crimes.

For the time period from August 31, 2016 to January 31, 2017, the State charges Mr. Hudson with the following allegations of criminal sexual conduct with a minor:

Indictment Number	Charge	Alleged Conduct
2019-GS-42-05217	CSCM Third Degree	Rubbing Genitals Against Genitals
2019-GS-42-05218	CSCM Third Degree	Forcing Child to Rub Penis
2019-GS-42-05219	CSCM Second Degree	Sexual Intercourse
2019-GS-42-05229	CSCM Second Degree	Fellatio

The only difference in the two indictments for third-degree criminal sexual conduct with a minor are "rubbing genitals against genitals" and "forcing the [child] to rub his penis." These two indictments took one crime and broke it into two crimes. The only difference in the two indictments for second-degree criminal sexual conduct with a minor are "sexual intercourse" ad "fellatio." These two indictments took one crime and broke it into two crimes.

For the time period February 1, 2017 to March 31, 2019, the State charges Mr. Hudson with the following allegations of criminal sexual conduct with a minor:

Indictment Number	Charge	Alleged Conduct
2019-GS-42-05224	CSCM Second Degree	Sexual Intercourse
2019-GS-42-05228	CSCM Second Degree	Fellatio

The only difference in the two indictments for second-degree criminal sexual conduct with a minor are "sexual intercourse" ad "fellatio." These two indictments took one crime and broke it into two crimes.

II. LEGAL ARGUMENT.

As a matter of law, the indictments in this case are multiplicitous. "An indictment is multiplicitous when a single offense is charged in more than one count." *People v. Jagdharry*, 118 A.D.3d 722, 723, 987 N.Y.S.2d 91, 93 (2014). Mr. Hudson will address the second-degree criminal sexual conduct with a minor charges first, before turning the third-degree charges.

In this case, Mr. Hudson is charged with a violation of South Carolina Code § 16-3-655(B)(1) in three different timeframes. Each indictment alleges a violation of the same statute. The statute provides, "A person is guilty of criminal sexual conduct with a minor in the second degree if 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." The crime is a sexual battery. "'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes." S.C. Code § 16-3-651(h). Each allegation in each indictment is a sexual battery. A sexual battery is what the legislature intended to punish. The indictments only differ in the means used to accomplish the sexual battery. Nothing in the statute suggests that the legislature intended a separate punishment for each means of performing a sexual battery. The legislature did not intend for each different type of sexual battery to be a separate crime.

As indicted, the State has alleged a single continuous act form August 21-31, 2016, a single continuance act from August 31, 2016 to January 31, 2017, and a single continuance act from February 1, 2017 to March 31, 2019. The State could have indicted for a different act on a specific day. They elected not to take this approach. What the State has done through a creative use of the indictment, is to make the jury believe Mr. Hudson committed two different crimes on his stepdaughter, during each of these three timeframes, and is therefore, an especially bad person.

Our courts have held that such a creative use of an indictment is not proper. As the South Carolina Supreme Court said, "The statute prohibits obscenity; the indictments relate to one crime only, and the description of more than one method of violation does not create a new crime." *State v. Pee Dee News Co*., 286 S.C. 562, 565, 336 S.E.2d 8, 9 (1985). In *State v. Sheppard*, 248 S.C.

464, 150 S.E.2d 916 (1966), the South Carolina Supreme Court held that when a statute gives different means of committing the crime of driving under the influence, only one crime has been alleged when the different means are alleged in one indictment. The Court said:

> The act of operating a motor vehicle with impaired faculties is the gravamen of the offense, and the offense is not multiplied because the condition of impairment was produced by the ingestion of more than one of the substances listed in the statute. The indictment charges only one offense which may be established by proof that the defendant operated a motor vehicle while under the influence of intoxicating liquor or of narcotic drugs, either or both.

Id. at 466-467, 150 S.E.2d at 917.

The same rule applies in this case. The crime is committing a sexual battery on a minor over the age of 11 and under the age of 14. The definition of "sexual battery" simply lists the different means of accomplishing the sexual battery. The legislature did not intend for each to be a separate crime. The State might argue that each different act was a separate crime. This is simply not correct. As in *Shepard*, they are simply the means of accomplishing the crime. They were not intended by the legislature to be different crimes. All the mean of accomplishing a sexual battery are included within one statute with one punishment. As Justice Thurgood Marshall said, "But the Constitution does not permit a State to punish as two crimes conduct that constitutes only one 'offence' within the meaning of the Double Jeopardy Clause." *Missouri v. Hunter*, 459 U.S. 359, 370 (1983)(Marshall dissenting).

Thus, the State divided one crime into four separate crimes. In *State v. Church*, 223 Wis. 2d 641, 589 N.W.2d 638 (Ct. App. 1998), the Wisconsin court was faced with a multiplicitous indictment for the charge of child enticement. The crime of child enticement could be committed in many different ways. In holding the statute permitted only one crime and one punishment, the Court said, "We conclude that there is no basis on which we might conclude that the legislature intended more than a single punishment for a single act of enticement of a single child, thus

confirming our preliminary conclusion that the two convictions are multiplicitous because they are the same in law and in fact." *Id*. at 641, 665, 589 N.W.2d at 648.

Some courts have used the phrase "unit of prosecution" to determine if the charges are multiplicitous. As one court said, "In a unit of prosecution case, the court asks how the legislature has defined the scope of conduct composing one violation of a statute. Under this test, the statutory definition of the crime determines what the legislature intended as the allowable unit of prosecution. There can be only one conviction for each unit of prosecution." *State v. Thompson*, 287 Kan. 238, 245, 200 P.3d 22, 28 (2009). The unit of prosecution here is a sexual battery. A sexual battery is the scope of the conduct. The fact that the legislature uses different mean of accomplishing the sexual battery, does not change the fact that the unit of prosecution is the sexual battery. The legislature determines the unit of prosecution and not the solicitor. "But once Congress has defined a statutory offense by its prescription of the 'allowable unit of prosecution,' that prescription determines the scope of protection afforded by a prior conviction or acquittal." *Sanabria v. United States*, 437 U.S. 54, 69–70 (1978). As the United Supreme Court further explained, "[I]f Congress does not fix the punishment for a federal offense clearly and without ambiguity, doubt will be resolved against turning a single transaction into multiple offenses, when we have no more to go on than the present case furnishes." *Bell v. United States*, 349 U.S. 81, 84 (1955).

Likewise, the State charges Mr. Hudson with third-degree criminal sexual conduct with a minor in two timeframes. For the timeframe August 21-31, 2016, the State alleges a single crime in a single indictment. As indicted, the State has alleged a single continuous act form August 31, 2016 to January 31, 2017. The State could have indicted for a different act on a specific day. They elected not to take this approach. Again, for this second timeframe, what the State has done through

a creative use of the indictment, is to make the jury believe Mr. Hudson committed two different crimes on his stepdaughter, during this timeframe, and is therefore, an especially bad person.

"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." S.C. Code Ann. § 16-3-655(C). The same analysis applies to these two charges.

III. CONCLUSION.

For the foregoing reasons, this Court should quash indictment numbers 2019-GS-42-05214, 2019-GS-42-05213-05215, 2019-GS-42-05217, 2019-GS-42-05218, 2019-GS-42-05219, 2019-GS-42-05224, 2019-GS-42-05228, and 2019-GS-42-05229, for criminal sexual conduct with a minor, as multiplicitious.

IT IS SO MOVED.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charle@groselawfirm.com

Attorney for Cody Hudson

July 14, 2023
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2019-A42-101-01625 – 01640
THE STATE	)	
	)	
	)	
vs.	)	
	)	
	)	
Cody Hudson,	)	
Defendant.	)	
_____	)	

I certify that I have served a copy of this pleading on the State of South Carolina, by emailing at copy to counsel, at counsel's AIS email address, as reflected below:

Wendy D Hallford, Esquire
Seventh Circuit Solicitor's Office
Spartanburg Court House
180 Magnolia Street
Spartanburg, SC 29306
whallford@spartanburgcounty.org

By s/*E. Charles Grose, Jr.*

E. Charles Grose, Jr.
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404 Main Street
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(864) 538-4466

July 14, 2023
Greenwood, South Carolina

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

September 6, 2023

The Honorable Amy W. Cox
Clerk of Court, Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: *State of South Carolina v. Cody Hudson*
Case Numbers 2019-A42-101-01625 – 01640

Dear Ms. Cox:

Enclosed please find a copy of *Reese v. State,* S.C.Ct.App. Op. No. 6024 (filed September 6, 2023) (Appellate Case No. 2019-000141), which is relevant to Mr. Hudson's new trial motion.

By copy of this letter to Judge Kelly, I am providing the Court with a copy. By copy of this email to Ms. Hallford and Mr. Smith, I am providing a copy to the State.

Thank you for your attention to this matter. If you have any questions or require additional information, please contact me.

With kindest regards, I am

Yours very truly,

s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.

cc: The Honorable R. Keith Kelly (via email)
Wendy D Hallford, Esquire (via email)
Spenser Smith, Esquire (via email)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Robin Gray Reese, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2019-000141

Appeal From Richland County
Jocelyn Newman, Circuit Court Judge

Opinion No. 6024
Heard June 6, 2023 – Filed September 6, 2023

REVERSED AND REMANDED

Appellant Defender Kathrine Haggard Hudgins, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Senior Assistant Attorney General David A. Spencer, Senior Assistant Attorney General Mark Reynolds Farthing, and Assistant Attorney General Joshua Abraham Edwards, all of Columbia, for Respondent.

KONDUROS, J.: Robin Gray Reese (Reese) appeals the order denying her request for post-conviction relief (PCR). Reese contends the PCR court erred in finding she was not prejudiced by being shackled during much of her trial, including when she walked to and from the witness stand. She also maintains the PCR court erred in finding trial counsel was not ineffective for failing to object to

certain testimony of the lead investigator regarding the guilt of multiple parties in the case.[1] We reverse and remand.

FACTS/PROCEDURAL BACKGROUND

Reese and her brother, Henry Gray, were tried and convicted for first-degree lynching and murder in connection with the death of Kenneth Mack (Victim). As a preface to the facts of the trial, it will help to know that before his death from a closed head injury, Victim was assaulted in two separate incidents. He was ultimately found unresponsive by EMTs between buildings F and G of the Gonzalez Gardens housing project.

At trial, Marcellius Brooks testified he saw Reese's daughter, Lucy, and a man he did not know, Victim, in an altercation on the street running beside Gonzalez Gardens in Columbia on February 13, 2010. According to Brooks, Lucy slapped Victim, and Victim knocked her to the ground and was on top of her. Brooks ran to the scene, tackled Victim, and hit him twice with a closed fist. Brooks admitted he was with another man, Angelo Boyd, who pulled him off Victim. According to Brooks, a crowd gathered during this time, but he stated he could not remember who was among the group. Eventually, Victim got up and ran away. Brooks walked Lucy to the nearby convenience store where her mother was playing video poker and told her about the incident.

Boyd was with Brooks on the date of the incident and testified similarly to Brooks. He admitted he kicked Victim in the head during the altercation, but was never charged in the case. Isaac Weathers testified he witnessed the fight and that there were multiple men who attacked Victim. Weathers identified four he knew

---

[1] Reese raises an additional argument in her appellate brief regarding the PCR court's determination that her Rule 59(e), SCRCP motion was untimely. The State does not take a position on this issue. We agree with Reese the PCR court erred in finding the motion was untimely because it was not filed within ten days of Reese receiving notice of the PCR court's denial of her petition. *See* Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); *Curtis v. Blake*, 381 S.C. 189, 191-92, 672 S.E.2d 576, 577-78 (2009) (holding "a motion for a new trial is timely so long as it is served within the time period allotted by the trial judge" and indicating other motions under Rule 59 requiring service within a proscribed period are timely if placed in the mail within that time).

including Brooks and Boyd. He indicated they all hit, punched, and kicked Victim. When it was over, Weathers stated Victim jumped up and ran away.

Amber Hardy, a manager at the CVS store located near the site of the incident, testified she had followed a suspected shoplifter out of the store and pursued the person in her car. She saw four black males and one black female attacking another man. Hardy stated it was a bad beating with the parties taking turns doing karate kicks and punching Victim. She affirmed the beating was brutal, much more than a slap or a kick and that Victim walked away from the incident like a child trying to walk straight after being spun around. The police were able to identify Brooks as being involved, and he was arrested the following day.

Donetti Perry appeared at trial as a reluctant witness for the State.[2] She testified she live in Gonzalez Gardens, and she walked outside on the day of the incident to see Gray talking to a man she didn't recognize about a prior fight— asking "[m]an what happened to you?" Then, after "his phone had rang," Gray swept Victim's legs out from under him, and he fell backward, hitting his head on the sidewalk. Gray began kicking Victim, cursing, and saying he had attacked his niece. According to Perry, Reese came down and kicked Victim and got a metal chair from the front of a neighbor's apartment and hit Victim two or three times.[3] Perry stated Gray also hit Victim with the chair. On cross-examination, Perry stated she did not speak to police the day of the incident and went to the police station with a group of others three days later to describe the altercation between Victim, Gray, and Reese. She indicated she casually knew Brooks, but denied she was affiliated with a gang or concerned about gang retaliation if she did not testify at trial.

Mary Anderson was leaving Gonzalez Gardens after visiting her sister who lived there. Anderson testified she saw the brother and sister who she identified as Gray and Reese, beating up a man who was lying on the ground. She indicated they kicked and stomped him and one of them hit Victim with a chair, but she could not recall which one. Anderson indicated she was wearing reading glasses when she viewed the incident but stated that did not impact her ability to see the events. She identified both defendants in a photo lineup. She also indicated in a February 16th

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[2] Throughout the trial, it was discussed that Gonzalez Gardens was rife with gang violence that made most residents and community members reluctant to cooperate with police. It was intimated that many individuals involved with any of the violence in the case were associated with a gang known as the Bloods.

[3] The chair at issue is described in more detail by some witnesses as a rusty, metal lawn chair.

statement to police that she witnessed the second incident around 4:00 or 4:30 p.m, although it occurred closer to 3:15 p.m. She had also stated Reese said something about Victim approaching her 13-year-old daughter. Anderson acknowledged knowing Brooks because he was sometimes at her brother's apartment, also located in Gonzalez Gardens, but denied Brooks had anything to do with her statement or testimony.

At the time of Victim's death, Kara Chase often stayed with her friend and resident of Gonzalez Gardens, Synovia Thompson. Chase testified she witnessed Gray and Victim exchanged a few words. When Gray went to hit Victim, he missed and in avoiding the punch, Victim was swept off his feet. She had previously told authorities Reese and her brother kicked and stomped Victim and threw a chair on top of him. However, at trial, she complained of a hazy memory resulting from medical issues and was less specific, stating Reese "came around that corner [of the apartment building] so fast and went back around that corner so fast." She stated she did not remember Reese picking up a chair, she just remembered her "hitting." Chase also indicated she went to the police station to give her statement in the days following Victim's death because her friend's brother, Brooks, was being wrongfully accused.

Thompson, another reluctant witness, testified she saw Victim walking in the direction of her building with a knot on his head and bleeding and that he appeared to be intoxicated. Gray initially approached the man in a friendly fashion asking what had happened. Then, according to Thompson "his phone had rung" and "he went inside [his father's apartment]." When she came back, Gray had Victim by the collar and was pushing him around saying "you put your hands on my niece," and "we're going to talk to my sister." Thompson indicated she had walked around the back of her apartment building and did not see everything that took place. When Thompson returned to the front of the building, she viewed Reese come to the scene appearing agitated and asking "why did you put your hands on my baby." She stated Reese kicked Victim in the leg one or two times and then left. She noticed the chair was out of place, but did not see anyone use it.

Sgt. William Pegram was the lead officer on the case. He testified that no one at Gonazalez Gardens talks to the police. According to Sgt. Pegram, the first assault had been reported, but at the beginning of the investigation, police were not aware of the second incident. Once an anonymous tip was provided about Gray's involvement and a metal chair, several witnesses to the second assault came forward and the investigation became even more complex. When asked how his investigation proceeded and why some possible individuals were not charged, he

stated "in my opinion of the law, everybody involved in this case was guilty but I had to determine the principal parties in the case." Sgt. Pegram testified about surveillance video from a nearby business that confirmed Reese had been on her cell phone when she left the convenience store after learning about the incident with her daughter. Sgt. Pegram testified he obtained phone records for Reese's cell phone and Brooks' cell phone. He testified those records showed Reese called her own home at 3:07 p.m. Sgt. Pegram testified in his opinion Reese was calling Gray.[4] This called lasted eleven seconds. She called Brooks four minutes later at 3:11 p.m.

Katie Ukra, a forensic DNA analyst with the South Carolina Law Enforcement Division (SLED), was qualified as an expert in DNA analysis. She testified several swabs were collected from the metal chair at issue in the case and brought to her for analysis. Two swabs tested presumptively positive for blood, but a DNA profile could not be developed from either swab. Ukra testified a presumptive test indicates the possibility of blood being present and other substances, such as rust, could give a false positive. With regard to a third swab, the serological test Ukra performed was not positive for blood, possibly because of chemical testing done in the field, but DNA was present that matched a sample from Victim. Ukra testified she could not determine how DNA came to be on any particular object.

Dr. Bradley Marcus performed Victim's autopsy and testified he suffered a skull fracture to the right back of his head from significant force. In his opinion, the second assault contributed to Victim's death if it was not the sole cause.

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[4] The testimony regarding phone calls prior to the second incident is unclear. Sgt. Pegram testified he had secured phone records for Reese's cell phone and Brooks' cell phone. He indicated those records show Reese calling her own apartment, which is located in Building N, at 3:07 p.m., around the time she was leaving the convenience store. Sgt. Pegram stated his belief that this was Reese contacting her brother. However, Perry and Thompson indicated Gray was at Building G by Reese's and Gray's father's apartment when he received a phone call and then became aggressive toward Victim. Anderson testified she remembered "seeing [Gray] on his cell phone" and "then Robin was there [,] too." Reese testified to calling her own home by mistake and then calling her father's apartment and speaking to her father who was intoxicated and of no assistance. She later elaborated that she told her brother about the situation with her daughter but could not recall how she had reached him.

Reese testified in her own defense. She indicated Brooks brought Lucy to the convenience store and told her what had happened. She stated she mistakenly called her own home and the answering machine picked up. Then she called her father's apartment in Gonzalez Gardens, but he was intoxicated and of no assistance. She acknowledged that she spoke to her brother about what had happened, but could not remember precisely how she had reached him. Reese stated when she saw Victim, he was already on the ground and she tried to kick him but fell and slapped him on the face instead. All the while, she was yelling at him about harassing her daughter. Reese testified she grabbed the metal chair and slung it in anger, but the chair never touched Victim. Her brother showed up and told her to stop and let the police handle it. Reese did not tell police anything about her interaction with Victim when she went to the police station regarding the report of the assault on her daughter and the first incident between Victim and Brooks.

Kiki Burns testified she worked at the BP gas station near Gonzalez Gardens and witnessed parts of the first assault on Victim. She saw a man running who tripped and fell. Then, three or four guys beat him up and he eventually stumbled away. She called 911 to report the fight, and testified a black female was also involved in the fight.

Dr. Adel Shaker was qualified as part of Gray's defense as an expert in forensic pathology. She testified it would not have been unusual for someone like Victim to have had a lucid interval after the first attack while the bleeding in his brain was beginning to occur. She testified hitting and kicking could have caused the damage he suffered or a fall onto concrete could also cause the type of blunt force trauma that caused Victim's death. Dr. Shaker testified it would be impossible to specifically determine the source of Victim's skull fracture.

Dr. Sandra Conradi, also qualified as an expert in forensic pathology, testified as part of Reese's defense. Dr. Conradi indicated Victim died from a brain injury he suffered "from falling and being propelled onto a hard surface on the back of his head."

In rebuttal to the defense's case, the State called Dr. Clay Nichols who was qualified as an expert in forensic pathology. Dr. Nichols testified the evidence did not support the conclusion Victim suffered blunt force trauma in the first attack, but the evidence did support that he suffered blunt force trauma from falling onto the concrete during the second assault. Therefore, he affirmed that but for the second assault, Victim would not have died.

The jury found Reese and Gray guilty on both charges. Reese was sentenced to thirty years' imprisonment on each charge to run concurrently. Her direct appeal was affirmed by this court. *State v. Reese*, Op. No. 2014-UP-300 (S.C. Ct. App. filed July 30, 2014).

Reese filed an application for post-conviction relief, arguing her counsel had been ineffective because he failed to object to Reese wearing shackles on her hands and feet during the majority of the trial and particularly wearing them while she walked from the defense table to the witness stand for her testimony. Reese also maintained counsel erred in failing to object to Sgt. Pegram's comment that "in my opinion of the law, everybody involved in this case was guilty but I had to determine the principal parties in the case."[5] The PCR court denied Reese's petition stating:

> Trial counsel refuted all allegations that Applicant made in her application as well as during her testimony including, but not limited to, voluntariness of her statement; preparation for the trial; specific potential objections during the course of trial; issues regarding the Applicant being shackled; Applicant's decision to testify; and allegedly impermissible comments made by the solicitor during closing argument. This Court finds that, through the presentation of evidence at the post-conviction relief hearing, Applicant has failed to demonstrate both deficiency by trial counsel, as well as any prejudice caused by trial counsel's actions. Therefore, this allegation is denied and dismissed with prejudice.

Reese filed a motion for reconsideration, seeking specific rulings on each of the claims asserted in the petition. The PCR court denied her motion. Reese appealed and the matter was remanded for the PCR court to file an amended order compliant with section 17-27-80 of the South Carolina Code (2014) and making the more specific and necessary findings on the record.[6] On remand, the PCR court stated:

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[5] Reese raised several additional allegations of ineffective assistance of counsel, but these are the only ones on appeal in this case.

[6] *Reese v. State*, 425 S.C. 108, 820 S.E.2d 376 (2018).

> Counsel confirmed Applicant wore shackles throughout trial and when she walked to the witness stand to testify. Applicant did not testify that the jury saw her in shackles during the rest of trial and presented no evidence the jury saw her in shackles during any other part of the trial. Based on the common practice in General Sessions in Richland County and the absence of evidence to the contrary, this Court has no reason to believe the restraints were visible to the jury at any other point in the trial except when she walked to the witness stand. . . . This Court finds prejudice to Applicant was limited because her exposure to the jury was limited. This is not a case where Applicant was seen in shackles throughout the trial. This Court does not believe the limited time the jury might have observed Applicant in shackles prejudiced her trial under *Strickland* [*v. Washington*, 466 U.S. 668 (1984)]. Further, prejudice was limited, assuming any prejudice at all, by codefendant counsel's argument that was designed to create sympathy for the codefendant and was at least as likely to engender sympathy for Applicant whose counsel pursued the strategy of depicting her as a concerned mother protecting her child. Additionally, the abundance of eyewitness testimony and her admissions placing her at the scene of the murder renders the error harmless beyond a reasonable doubt. Accordingly, although counsel was deficient for failing to object; this Court finds that Applicant was not prejudiced under *Strickland* as an objection was unlikely to affect the outcome of the proceeding. Therefore, this claim is denied.

With regard to Sgt. Pegram's comment, the PCR court stated:

> In this Court's view, put in proper context, the thrust of the answer was an explanation as to why Brooks was charged, and more to the point, Boyd was not. Further, the testimony elicited by the prosecution was responsive

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> to counsel's cross-examination of Boyd. Counsel elicited testimony that Boyd kicked Mack a couple of times during the first assault and he was not charged with anything, including lynching. He was investigated by the police and gave a statement, but was not charged with any crime. Therefore, it was not improper for Sergeant Pegram to explain why he did not charge Boyd. . . . Even if it were technically objectionable, this Court does not find counsel's performance was deficient for failing to object. The testimony made at most a tenuous and oblique reference to the case against Applicant and this Court does not believe it was prejudicial to Applicant. As to the complaint it was a legal opinion, this Court takes the statement as a rather offhand statement about the culpability of actors, in general which did not mention or single out Applicant. At its core, it is a defensive answer about why Boyd was not charged. The jury undoubtedly made its determination of guilt from the evidence and the consideration of the elements of the offense as provided by the trial court in its instructions. This Court does not believe Applicant was prejudiced by the testimony. Further any error was harmless in light of the evidence presented. This Court finds Applicant failed to prove either prong of *Strickland*.

Reese filed a motion for reconsideration. The PCR court found Reese's motion for reconsideration was untimely, but proceeded to deny her motion on the merits. This appeal followed.

STANDARD OF REVIEW

"Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. We review questions of law de novo, with no deference to trial courts." *Smalls v. State*, 422 S.C. 174, 180-81, 810 S.E.2d 836, 839 (2018) (citations omitted).

LAW/ANALYSIS

Reese contends the PCR court erred in finding she was not prejudiced by trial counsel's failure to object to her being shackled during the majority of the trial. We agree.

"A PCR applicant bears the burden of establishing he is entitled to relief." *Terry v. State*, 394 S.C. 62, 66, 714 S.E.2d 326, 329 (2011).[7] "To prove counsel was ineffective, the applicant must show counsel's performance was deficient and the deficient performance caused prejudice to the applicant's case." *Id*. "To prove trial counsel's performance was deficient, an applicant must show 'counsel's representation fell below an objective standard of reasonableness.'" *Smalls*, 422 S.C. at 181, 810 S.E.2d at 840 (quoting *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005)). "To show prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability the result of trial would have been

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[7] In *Deck v. Missouri*, 544 U.S. 622 (2005), the Supreme Court held if a defendant is visibly shackled during trial, the State bears the burden of establishing the error was harmless. *See id.* at 635 ("[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove 'beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained.'" (quoting *Chapman v. California,* 386 U.S. 18, 24 (1967)). However, in a collateral attack, such as a PCR, prejudice is not necessarily presumed and the petitioner is subject to the established prejudice analysis established under *Strickland*. *See Whatley v. Warden, Georgia Diagnostic & Classification Prison*, 927 F.3d 1150, 1175 (11th Cir. 2019), *cert. denied*, 141 S. Ct. 1299, 1302 (2021) (Sotomayor, J., dissenting) ("To be sure, *Deck* does not require reviewing courts to presume prejudice when the defendant fails to object to his shackling at trial. This Court has not decided to what extent such a presumption applies on collateral review, in the context of an ineffective assistance of counsel claim. Cf. *Weaver* v. *Massachusetts*, 582 U. S. [286, 301-02] (2017). Both the Georgia Supreme Court and Eleventh Circuit held that the *Deck* presumption does not apply to ineffective-assistance-of-counsel claims. [*Whatley*], 668 S.E.2d [651, 663 (Ga. 2008) and] 927 F.3d [1150], 1184-1187 [(2019)]. That was not a clearly erroneous application of federal law."). Our courts have continued to apply a *Strickland* prejudice analysis following *Deck. See Ryals v. State*, 439 S.C. 230, 237-38, 886 S.E.2d 239, 243 (Ct. App. 2023) (examining the petitioner's PCR issue of wearing prison garb and shackles for prejudice under the *Strickland* standard).

different." *Terry*, 394 S.C. at 66, 714 S.E.2d at 329. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Id.* "[T]the existence of 'overwhelming evidence' does not automatically preclude a finding of prejudice." *Smalls*, 422 S.C. at 189, 810 S.E.2d at 844. Rather, in a PCR court's analysis of prejudice, the strength of the State's case "is one significant factor the [PCR] court must consider—along with the specific impact of counsel's error and other relevant considerations—in determining whether [the petitioner] has met his burden of proving prejudice." *Id.* at 190, 810 S.E.2d at 845. "[F]or the evidence to be 'overwhelming' such that it categorically precludes a finding of prejudice, . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of 'a reasonable probability . . . the factfinder would have had a reasonable doubt' cannot possibly be met." *Id.* at 191, 810 S.E.2d at 845.

The PCR court found counsel was ineffective for failing to object to Reese's shackles. However, the court found Reese was not prejudiced based on the limited time the jury viewed the restraints and in light of the overwhelming evidence against her. In *Humbert v. State*, 345 S.C. 332, 338, 548 S.E.2d 862, 865-66 (2001), *abrogated on other grounds by Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019), the court conducted prejudice analysis regarding counsel's failure to object to the defendant wearing a prison jumpsuit at trial.

> [T]he evidence of record supports the PCR judge's conclusion petitioner was not prejudiced by counsel's deficient performance. The store clerk identified petitioner as the robber shortly after the crime and, then again, at trial. The clerk's description of the perpetrator's clothing matched the clothing petitioner was wearing approximately 1 ½ hours after the robbery. A blue "Lincoln-Mercury" jacket and baseball cap with the letter "A" on it—items which the clerk stated the robber was wearing—were found in petitioner's vehicle. Petitioner was driving a truck which matched the description of the getaway vehicle. Food and postage stamps were found in the backseat of the patrol car after petitioner was removed from the vehicle. The clerk testified food and postage stamps had been taken from the cash register. Due to the overwhelming evidence against petitioner, there is not a reasonable probability the outcome of his

> trial would have been different had petitioner not been dressed in his prison jumpsuit.

Id.

In this case, after jury selection and opening statements, the trial court was informed that Reese's bond had not been secured to extend through the trial. The trial court ruled she would be remanded back into custody for the remainder of the trial and would therefore be shackled. Reese's attorney did not object to this. At the PCR hearing, counsel testified: "It was my understanding that that was the protocol that they could have on civilian clothes, but they were going to be shackled while they were in custody." Trial counsel also failed to object to co-defendant's counsel referencing handcuffs during opening statements.[8] When questioned as to why he failed to object to co-defendant's counsel mentioning the shackles, trial counsel suggested that he "was more focused on [his] own opening statement in defending Ms. Reese, and that may have gone by and [he] didn't pay that much attention to it in preparing [his] own case for her."

The State asserts the jury only saw Petitioner in handcuffs and leg shackles for a very limited period of time—while she walked to and from the witness stand— and that such minimal exposure, weighed against the overwhelming evidence against her, did not result in prejudice. We disagree.

It is unclear from the record whether the jury could view Reese's shackles at other times during the trial. According to the PCR trial transcript, this question was not specifically asked and the PCR court operated under the assumption the shackles were not visible at other times based on the general practice of the courts to minimize such exposure when cuffs are necessary. However, in this case, Gray referenced shackles in his opening statement, and when Reese rose from the defense table, her perhaps previously unseen hands and feet were in shackles which she then wore on her walk to and from the witness stand and during her testimony. Furthermore, in this particular case, the charges stem from Reese's allegedly violent conduct. The shackles could have suggested the court was concerned she would experience a violent outburst, or more problematically, their appearance *after* opening statements could imply Reese exhibited some conduct between opening statements and the beginning of testimony that necessitated shackling. *See United States v. Bell*, 819 F.3d 310, 321-22 (7th Cir. 2016)

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[8] Gray's counsel referenced his client's shackles to elicit sympathy suggesting he was wrongly accused.

("Consistent with the presumption of innocence, a defendant has a right to appear in front of a jury free from physical restraints, as such restraints pose a danger, *inter alia,* that the jury will view the defendant as both dangerous and guilty."); *Deck*, 544 U.S. at 630-31 ("Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process."). Consequently, the potential impact on the jury was far greater than the PCR court's order suggests.

With respect to the evidence, this case is distinguishable from *Humbert*. The evidence that Reese confronted Victim about harassing her daughter was admitted and uncontroverted, but testimony regarding the extent and severity of her conduct was less so. In some cases, eyewitness testimony that a defendant kicked and stomped a victim may amount to overwhelming evidence of guilt, particularly under the hand-of-one-hand-of-all theory. However, this particular case was permeated with allegations that a first altercation, described alternatively as "brutal" and getting some "licks" in, was the cause of Victim's death and the second confrontation was exaggerated to draw suspicion away from Brooks. None of the witnesses spoke to police until three days after Victim's death and after Brooks had been arrested. According to Reese, she yelled at Victim, attempted to kick him, threw the chair out of anger, and then her brother showed up to calm her down. Victim's DNA was found on the metal chair, but the State's expert could not say with certainty how that DNA got there, and the testing could not confirm Victim's blood was on the chair.

Based on the specific facts of this case and the impact of counsel's error, we conclude Reese has demonstrated prejudice. Therefore, based on all of the foregoing, the PCR court's order is

REVERSED AND REMANDED.[9]

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[9] Because we grant Reese's petition based on the shackling issue, we decline to fully address the issue of Sgt. Pegram's statement. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (decling to reach an issue presented on appeal when a prior issue was dispositive). However, because the case is remanded, we note that statements regarding "guilt" are inappropriate as they will in most cases invade the province of the jury, particularly from law enforcement in whom a jury may place more trust or influence. *Richmond v. Tecklenberg,* 302 S.C. 331, 334, 396 S.E.2d 111, 113 (Ct. App. 1990) ("The general rule is that opinion testimony which is determinative of the ultimate fact in issue should be excluded as an invasion of the province of the factfinder.").

VINSON, J. and LOCKEMY, A.J., concur.

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October 6, 2023

The Honorable Amy W. Cox
Clerk of Court, Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: *State of South Carolina v. Cody Hudson*
Case Numbers 2019-A42-101-01625 – 01640

Dear Ms. Cox:

Enclosed please find a copy of *State v. James Heyward,* S.C.S.Ct. Op. No. 28182 (filed October 5, 2023) (Appellate Case No. 2021-000122), which is relevant to Mr. Hudson's new trial motion.

By copy of this letter to Judge Kelly, I am providing the Court with a copy. By copy of this email to Ms. Hallford and Mr. Smith, I am providing a copy to the State.

Thank you for your attention to this matter. If you have any questions or require additional information, please contact me.

With kindest regards, I am

Yours very truly,

s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.

cc: The Honorable R. Keith Kelly (via email)
Wendy D Hallford, Esquire (via email)
Spenser Smith, Esquire (via email)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

James Heyward, Petitioner.

Appellate Case No. 2021-000122

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Richland County
R. Knox McMahon, Circuit Court Judge

Opinion No. 28182
Heard May 17, 2023 – Filed October 5, 2023

AFFIRMED AS MODIFIED

Madison Claire Healy, of K&L Gates LLP, of Raleigh; Tara C. Sullivan and Jennifer Hess Thiem, of K&L Gates LLP, of Charleston; Chief Appellate Defender Robert Michael Dudek, of Columbia, all for Petitioner.

Attorney General Alan McCrory Wilson, Assistant Attorney General William Joseph Maye, Deputy Attorney General Donald J. Zelenka, Senior Assistant Deputy Attorney General Melody Jane Brown, Solicitor Byron E. Gipson, of Columbia, all for Respondent.

JUSTICE FEW: James Heyward was convicted of multiple crimes arising from the armed robbery, brutal beating, and murder of Alice Tollison during the burglary of

her home. We granted Heyward's petition for a writ of certiorari to address the trial court's refusal to remove Heyward's leg shackles during the striking of the jury, and four evidentiary issues. As to three of the evidentiary issues—the authentication of a fingerprint card, the admission of gruesome autopsy photographs, and the State's use of Heyward's alias—we find the trial court acted within its discretion. As to the other evidentiary issue—a firearms expert's testimony Heyward's pistol was operational at the time of the crimes—we affirm the court of appeals' ruling that if there was any error in the admission of that testimony it did not prejudice Heyward. As to the leg shackles, we find the trial court erred in failing to exercise its discretion in determining whether Heyward should be required to wear leg shackles in the presence of the jury. However, because the State conclusively proved Heyward's guilt through overwhelming evidence such that no rational conclusion could have been reached other than Heyward is guilty of these crimes, we nevertheless affirm.

I. Facts and Procedural History

On Sunday October 11, 2015, Tollison and her granddaughter—then eight years old—went to church, returned to Tollison's home, and began watching television. When they heard a knock at the door, Tollison went to answer it. According to the granddaughter's testimony at trial, the granddaughter stayed on the couch for a few minutes before going into the kitchen "to get some of my toys." In the kitchen, she found Tollison sitting at the table, and a man told the granddaughter to sit across the table from her. The man was carrying a duffel bag, and the granddaughter saw him take out a pistol, place it on the kitchen table, and demand money from Tollison. After Tollison refused to give the man any money, the man strangled her grandmother to unconsciousness while she watched. The man then ordered the granddaughter to go into a closet and shut the door. While she was in the closet, she heard the man rummaging through the house. He returned to the closet, moved her to another room, and tied her arms and legs with electrical cords. The man eventually left the house, taking with him items of Tollison's personal property. The granddaughter testified she struggled to free herself for approximately thirty minutes and fell asleep. When she awoke, she was able to loosen the cords enough to reach the kitchen and call 9-1-1. When officers arrived, Tollison was dead.

Initially, officers investigating the crimes did not have a suspect. A fingerprint expert with the Richland County Sheriff's Department—Investigator Trisha Odom—found fingerprints at the crime scene and had them uploaded into the FBI's Automated Fingerprint Identification System—commonly referred to as AFIS—to search for a match. That search returned a match for James Heyward from a fingerprint card entered into AFIS from New Jersey. Based on this match, officers

included a picture of Heyward in a photographic lineup shown to the granddaughter. The granddaughter identified Heyward as the man who robbed and murdered her grandmother.

Officers soon arrested Heyward for the crimes and took his fingerprints when they booked him into jail. Investigator Odom compared fingerprints taken from him at the time of his arrest—the "booking prints"—to the prints found at the crime scene. From that comparison, Odom concluded the crime scene prints belonged to Heyward. Odom testified she also compared the New Jersey prints to the booking prints and crime scene prints and found all three sets of prints to match.

Other investigators collected DNA samples from scrapings underneath Tollison's fingernails, the skin of her neck, and several other places. A DNA expert testified the DNA under Tollison's fingernails and on her neck matched James Heyward to a high degree of certainty.

During the striking of the jury, Heyward's counsel asked the trial court to remove the shackles from around Heyward's lower legs because—counsel told the court—the shackles were visible to the jury pool. The trial court responded without discussion, "All right. That motion is denied."

The jury found Heyward guilty of murder, burglary in the first degree, armed robbery, two counts of kidnapping, assault and battery in the first degree, pointing and presenting a firearm, and unlawful possession of a firearm by a person convicted of a crime of violence. The trial court sentenced Heyward to life in prison for both murder and burglary, and an additional seventy years for the other crimes consecutive to the life sentences. The court of appeals affirmed. *State v. Heyward*, 432 S.C. 296, 852 S.E.2d 452 (Ct. App. 2020).

II. Analysis

We will address the five substantive issues in this section and whether any error warrants a new trial in section III.

A. Leg Shackles

"The law has long forbidden routine use of visible shackles during [a jury trial]; it permits a State to shackle a criminal defendant only in the presence of a special need." *Deck v. Missouri*, 544 U.S. 622, 626, 125 S. Ct. 2007, 2010, 161 L. Ed. 2d 953, 960 (2005); *see also id.* ("This rule has deep roots in the common law." (citing

4 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 317 (1769))). As the *Deck* Court stated, "Visible shackling undermines the presumption of innocence and the related fairness of the factfinding process." 544 U.S. at 630, 125 S. Ct. at 2013, 161 L. Ed. 2d at 963. Thus, American trial courts long ago "settled virtually without exception on a basic rule embodying notions of fundamental fairness: Trial courts may . . . shackle defendants . . . only if there is a particular reason to do so." 544 U.S. at 627, 125 S. Ct. at 2011, 161 L. Ed. 2d at 961; *see also Holbrook v. Flynn*, 475 U.S. 560, 568-69, 106 S. Ct. 1340, 1345-46, 89 L. Ed. 2d 525, 534 (1986) (observing that "shackling" a defendant during a jury trial is an "inherently prejudicial practice that . . . should be permitted only where justified by an essential state interest specific to each trial").[1]

This Court addressed whether "the shackling of appellant violate[s] his [constitutional] rights" in *State v. Tucker*, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995). After first finding the trial court in that case articulated a valid reason for requiring the defendant be shackled, we explained the trial court acted within its discretion in balancing the prejudicial effects of shackling against the valid State interest in having the defendant shackled. First, the trial court made sure the defendant's shackles "were not visible to the jury." *Id.* We further explained,

> Throughout the trial, the judge ensured appellant was sitting at the defense table or on the stand prior to the jury's entrances and exits into the courtroom.
>
> The trial judge took precautions to minimize any prejudice the restraints might have caused throughout the trial and offered to give a curative instruction to explain appellant's failure to stand when the judge entered and exited the courtroom. Balancing the effect of the restraints and the need for security, the trial judge did not err in restraining appellant based upon appellant's prior history of escapes and his resistance to arrest.

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[1] The court of appeals' statement "Heyward was not prejudiced" by being forced to wear shackles in the presence of the jury is inconsistent with *Holbrook*, and thus error. *See Heyward*, 432 S.C. at 325, 852 S.E.2d at 467 (stating "we find any error in denying the motion to remove Heyward's shackles was harmless because Heyward was not prejudiced"); *see also infra* note 6.

320 S.C. at 209-10, 464 S.E.2d at 107.

This careful balancing of the competing interests—and articulation of the balancing on the record for the benefit of appellate courts—is necessary to honor the defendant's due process rights whenever the State seeks to restrain the defendant in the jury's presence. In *United States v. Samuel*, 431 F.2d 610 (4th Cir. 1970), the United States Court of Appeals for the Fourth Circuit held, "Whenever unusual visible security measures in jury cases are to be employed, we will require the district judge to state for the record, out of the presence of the jury, the reasons therefor and give counsel an opportunity to comment thereon, as well as to persuade him that such measures are unnecessary." 431 F.2d at 615. Similarly, the Supreme Court of the United States recognized the necessity the trial court "s[ee] the matter as one calling for discretion," *Deck*, 544 U.S. at 634, 125 S. Ct. at 2015, 161 L. Ed. 2d at 966, and refused to sanction the "discretionary" use of shackles when the trial court did not articulate a valid reason for them and "did [not] explain why, if shackles were necessary, he chose not to provide for shackles that the jury could not see," 544 U.S. at 634-35, 125 S. Ct. at 2015, 161 L. Ed. 2d at 966. This Court required balancing of the competing interests in *Tucker*, stating, "The trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security." 320 S.C. at 209, 464 S.E.2d at 107 (citing *Illinois v. Allen*, 397 U.S. 337, 343, 90 S. Ct. 1057, 1061, 25 L. Ed. 2d 353, 359 (1970)).

Thus, a defendant in a criminal trial may not be required to wear handcuffs, leg shackles, or other restraints in the presence of the jury unless the trial court makes specific findings on the record as to the particular reasons the restraints are necessary. If the court finds restraints are necessary, it must make every reasonable effort to ensure the restraints are not visible to the jury. *See Deck*, 544 U.S. at 629, 125 S. Ct. at 2012, 161 L. Ed. 2d at 963 (stating the Due Process Clauses of "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial").

In this case, the trial court made no effort whatsoever to assess whether the shackles were necessary, nor to ensure the jury could not see them. The trial court's failure in this case to even consider Heyward's request was an abuse of discretion. *See State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) ("A failure to exercise discretion amounts to an abuse of that discretion." (quoting *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997))); *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) ("When the trial judge is vested with

discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."). We address whether this error warrants a new trial in section III.

B. Firearms Expert Testimony

During her testimony at trial, the granddaughter described the pistol Heyward placed on Tollison's kitchen table as "gold and rusty." One investigator testified a similar pistol—"silver and black and rusty"—was recovered from the house where Heyward was renting a room. Investigator David Collins was later called to testify whether the pistol found at Heyward's home was capable of being fired at the time he committed the crimes. Heyward objected, arguing whether the gun was operational was not relevant. The trial court ruled whether the gun was operational and could cause death or great bodily injury was relevant, using armed robbery and the pointing and presenting charge as examples to explain its ruling.

We agree with the trial court that Investigator Collins' testimony was relevant in Heyward's trial. Whether a pistol is capable of being fired is relevant, for example, on a charge of burglary in the first degree. *See* S.C. Code Ann. § 16-11-311(A)(1) (2015) (providing a person is guilty of burglary in the first degree if he enters a dwelling without consent with intent to a commit a crime and is either "armed with a deadly weapon" or "uses or threatens the use of a dangerous instrument"). The operational capabilities of a firearm *could* also be relevant to malice—an element of murder—which requires the State to prove the defendant acted with an intent to harm. *See, e.g.*, *State v. Belcher*, 385 S.C. 597, 609 n.5, 685 S.E.2d 802, 808 n.5 (2009) ("The term malice indicates a formed purpose and design to do a wrongful act . . . ." (quoting *State v. Fennell*, 340 S.C. 266, 275 n.2, 531 S.E.2d 512, 517 n.2 (2000))).

On appeal to the court of appeals, however, the State argued only that the testimony was relevant as to armed robbery, pointing and presenting a firearm, and malice. The court of appeals did not address the malice argument, apparently because the trial court had not specifically mentioned it among the examples it cited to illustrate its ruling, but observed that neither armed robbery nor the crime of pointing and presenting a firearm requires the weapon to be capable of being fired. *Heyward*, 432 S.C. at 316-18, 852 S.E.2d at 462-63; *see* S.C. Code Ann. § 16-11-330 (A) (2015) (providing a person may be guilty of armed robbery "using a representation of a deadly weapon"); S.C. Code Ann. § 16-23-410 (2015) (making it unlawful to point either a loaded or unloaded firearm, indicating operability is not essential to the crime). The State now concedes the testimony was not relevant to armed robbery or pointing and presenting a firearm. The State did not argue to this Court the testimony

was relevant to burglary or malice. Thus, we accept the State's concession the evidence was not relevant to the two crimes it argued. As we will explain in section III, however, the admission of Investigator Collins' testimony—if error—did not prejudice Heyward.

C. Fingerprint Card Authentication

Fingerprints found at a crime scene can be very important evidence in a criminal trial, and the State can use them to make a convincing connection between a suspect and the crime. The theory behind the connection is obvious—*if* the State can prove whose fingerprints they are, the State has proven the person was present at the scene of the crime and may have proven (depending on the circumstances) who committed the crime. The connection depends, however, on the State's ability to prove whose prints they are. To do this, a fingerprint expert must compare the unknown prints from the crime scene to another set of prints the expert knows belong to a particular suspect. These are typically called "known prints," and that term is defined—according to Investigator Odom's testimony at trial—as "a full set of ten fingerprints taken from a known source." When the comparison of the unknown crime-scene prints and the known prints demonstrates both sets of prints belong to the same person, the State has established the connection.

Heyward's objection at trial and his argument before this Court are based on his contention the State offered the New Jersey fingerprint card as the "known prints" in Investigator Odom's comparison analysis. Thus, Heyward argues, the State was required to meet the authentication requirements set forth in *State v. Rich*, 293 S.C. 172, 173-74, 359 S.E.2d 281, 282 (1987), as "clarified" in *State v. Anderson*, 386 S.C. 120, 128, 687 S.E.2d 35, 39 (2009). As we will explain, however, this case is different from *Rich* and *Anderson* on two important points. First, the "known prints" in this case are the booking prints taken from Heyward when he was arrested, so the State was not required to rely only on a fingerprint card on file at a local law enforcement agency or on AFIS as was the case in *Rich* and *Anderson*.[2] Second, the

[2] In both *Anderson* and *Rich*, the State did not use post-arrest ("booking") fingerprints to prove the fingerprints from the crime scene belonged to the defendant. Rather, the State's expert compared the crime-scene prints with a fingerprint card on file at the South Carolina Law Enforcement Division (SLED) to prove the crime-scene prints belonged to the defendant. To make this comparison, the State was required to authenticate the SLED fingerprint cards as "known prints." *See Anderson*, 386 S.C. at 124, 687 S.E.2d at 37 (summarizing the testimony of the Lieutenant "in charge of the crime information center at SLED" as to when the

State authenticated the New Jersey fingerprint card through Odom's comparison of that card to the known booking prints card, an option not available to the State in *Rich* or *Anderson* because in those cases there were no booking prints. *See* Rule 901(b)(3), SCRE (stating "the following are examples of authentication . . . conforming with the requirements of this rule: **(3) Comparison by Trier or Expert Witness.** Comparison . . . by expert witnesses with specimens which have been authenticated").

As to the first point, the following dates are important. The crimes occurred on Sunday, October 11. Odom had the crime-scene prints uploaded into AFIS on October 12 and promptly received back the New Jersey fingerprint card bearing Heyward's name. Odom compared the unknown crime-scene prints to the New Jersey prints the same day and concluded both sets of prints belonged to the same person. Based in part on Odom's conclusion, investigators presented the photographic lineup to the granddaughter later on October 12. The granddaughter identified Heyward as the man she watched strangle her grandmother. Officers arrested Heyward and took the booking prints on October 13. Odom compared the crime-scene prints to the booking prints on October 16 and again concluded the crime-scene prints belonged to Heyward.

During Odom's testimony at trial, Heyward objected to statements Odom made in three reports prepared on October 12 in which she indicated the crime-scene prints and the New Jersey prints were a match. After the trial court excused the jury to hear the objection, Heyward argued, "Judge, the analysis and the evidence that they are about to bring into the record is that the items analyzed on the 12th were compared against a . . . print card [Odom] received from the AFIS system." Here, Heyward correctly argued the October 12 comparison could not make the necessary connection to show his presence at the crime scene unless the State authenticated the New Jersey fingerprint card as known prints by proving the fingerprints on the New Jersey card were Heyward's prints, as we found the State failed to do in *Rich* and succeeded doing in *Anderson*. *See Rich*, 293 S.C. at 173, 359 S.E.2d at 282 (finding the State did not prove the prints on the card belonged to the defendant); *Anderson*, 386 S.C. at 128-32, 687 S.E.2d at 39-41 (stating, "we find . . . the State presented

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defendant's fingerprint card was made and how it was stored to demonstrate the prints on the card belonged to the defendant); *Rich*, 293 S.C. at 173, 359 S.E.2d at 281 (stating the fingerprint expert used an "inked card bearing a name and signature" from SLED's files to compare to the crime-scene prints).

sufficient evidence to authenticate the ten-print card," and then discussing four subsections of Rule 901, SCRE, the State satisfied).

The State then made authenticating the New Jersey fingerprint card as Heyward's known prints unnecessary, however, by having Investigator Odom explain to the trial court—still outside the jury's presence—that her opinion the crime-scene prints belong to Heyward was based on her comparison of the crime-scene prints and the booking prints, not based only on the comparison she originally made to the New Jersey prints.

> Solicitor: In doing your analysis, did you only rely on the card originally that came from AFIS on the 12th or did you rely on his booking prints as well?
>
> Odom: The first three reports, which were all written on the 12th, I obviously used the only card we had, which was the one generated through [AFIS]. When I did the kind of shoring up of everything else and did the remainder of the comparisons, I then had that card that had been rolled at [the jail].
>
> Solicitor: So when you did your final comparison on the -- I believe it was the 16th -- you used both the original card obtained from AFIS and the South Carolina card obtained at booking?
>
> Odom: Yes.

This is the first point that distinguishes this case from *Rich* and *Anderson*. Having thus established that the crime-scene prints belonged to Heyward by comparing the crime-scene prints to Heyward's booking prints, it was unnecessary for the State to offer the October 12 comparison results into evidence, and unnecessary for Odom to discuss the New Jersey fingerprint card, to make the connection between the known booking prints and the crime-scene prints.

What is required to authenticate a particular piece of evidence is necessarily determined by what the proponent claims the evidence is. "The requirement of authentication . . . as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question *is what its proponent claims*." Rule 901(a), SCRE (emphasis added). Unlike in *Anderson* and *Rich*, the

State in this case did not need to claim the New Jersey fingerprint card was the "known prints" component of Investigator Odom's final October 16 comparison analysis. Rather, it appears the State was using the New Jersey card to explain to the jury how Heyward became a suspect. In other words, the State claimed the New Jersey fingerprint card, with Heyward's name on it, was the thing that made Heyward a suspect and led officers to put his picture in the photographic lineup presented to the granddaughter. Focusing on the authentication requirement the State prove the New Jersey card is what the State claimed it is, the authentication requirement would be satisfied in this case simply by having Odom testify "this is the fingerprint card I received back from AFIS, based on which we developed Heyward as a suspect." That testimony by itself would be sufficient for the trial court to find the card was what the State claimed, and thus that it was properly authenticated.

Even so, the State authenticated the New Jersey fingerprint card as illustrated in Rule 901(b)(3) when Odom testified she compared the New Jersey card to the booking prints and both sets of prints were made by the same person. Thus, the trial court acted within its discretion to admit the New Jersey fingerprint card as properly authenticated.

D. Autopsy Photos

The State called Dr. Amy Durso—the pathologist who conducted Tollison's autopsy—as an expert witness. Dr. Durso testified the cause of Tollison's death was "strangulation." In addition, she explained "all of the violence, including all of the bruising and contusions, fractures, not only to her neck, but also her head and her left arm." She began her explanation by describing the injuries apparent from her exterior examination of Tollison's body. She stated, for example,

> So the things that really stood out to me were the findings mostly around her neck. She had a [ligature] furrow where it looked like she had been strangled with some kind of – something wrapped around her neck. She had bruises and abrasions around her neck. She had what we call "petechial hemorrhages" around her face and her eyes, and she had other bruises and injuries primarily involving her left arm.

She then explained that "petechial hemorrhages" are "the breaking of tiny blood vessels . . . below the skin surface or within the sclera of the eyes, the white parts of your eyes," and those result "often in the more violent strangulations." She also

described a "bruise on the underside of her chin," which she explained "is a very common finding in strangulations."

After describing the injuries she could see from her external examination, Dr. Durso began to explain what she found on the inside of Tollison's body. She explained the work she did in Tollison's torso and neck area and then turned to her work on Tollison's head after she "reflected" the scalp.[3] She stated,

> At that point, we realized that she had multiple bruises around her head, not just to one surface, but . . . to at least four different planes, which is not – it can't just be from a fall. You know, there had to be some kind of multiple blunt force injuries.

When asked, "[W]hen you did the external exam, were you able to see those injuries or do they only manifest internally," Dr. Durso answered essentially that she could see the head injuries only after reflecting the scalp. At this point, the State offered two gruesome autopsy photographs that showed what Tollison's head looked like after Dr. Durso reflected the scalp. The photos showed the inside of Tollison's scalp and the tissue normally covered by the scalp. Heyward objected pursuant to Rule 403, SCRE, and the trial court excused the jury from the courtroom.

To begin the hearing that followed, the trial court asked the State to proffer Dr. Durso's testimony regarding the photos.

> Solicitor: Dr. Durso, when you reflected the scalp back and noticed these injuries, please tell the Court what significance they had in your ultimate conclusions and in the performance of this autopsy?
>
> Dr. Durso: So it demonstrates that there was a struggle and that there – it was a violent death, the fact that her head had to have been struck on multiple different planes, not just one from a terminal fall, but it actually demonstrates that there was more than just a

[3] Dr. Durso explained "reflecting" the scalp begins "by making the incision on the back of the head" and pulling the scalp forward over the face to expose the inside of the scalp and the tissue normally covered by the scalp.

strangulation, that her head had been struck on multiple different areas.

Solicitor: And are these injuries part of the cause of death in this case?

Dr. Durso: It contributes to it, yes.

Dr. Durso then testified the two photos—which she called "the best examples that were gathered at the autopsy"—were "necessary" to assist her "in explaining these injuries to the jury and the cause of death."

After the proffer, the trial court heard arguments from Heyward and the State on Heyward's Rule 403 objection. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ."). The trial court then put its analysis of the objection on the record, beginning with its assessment of the probative value of the photographs. After summarizing Dr. Durso's testimony during the proffer, the trial court found the photographs were "corroborative of the testimony that has been previously presented . . . [and] corroborative of the testimony of Dr. Durso." The court stated "the probative value is high."

Turning to unfair prejudice, this Court has consistently recognized since at least 1986 that gruesome autopsy photographs carry the inherent tendency to cause an emotional reaction on the part of the jury. *See, e.g.*, *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (explaining autopsy photographs similar to the ones at issue in this case have potential "to arouse the sympathies and prejudices of the jury"). We recently discussed a long line of our cases in which we criticized the casual admission of gruesome autopsy photographs because of the emotional reaction they tend to cause. *State v. Nelson*, ___ S.C. ___, 891 S.E.2d 508, 511-13 (2023). *See also State v. Torres*, 390 S.C. 618, 624, 703 S.E.2d 226, 229 (2010) ("Today, we strongly encourage all solicitors to refrain from pushing the envelope on admissibility in order to gain a victory which, in all likelihood, was already assured because of other substantial evidence in the case."). This potential for an emotional reaction is the essence of the danger of unfair prejudice. *See State v. Jones*, 440 S.C. 214, 259, 891 S.E.2d 347, 371 (2023) (stating "photographs are unfairly prejudicial if they 'create a "tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one"'" (quoting *State v. Franklin*, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995))); *see also Old Chief v. United States*, 519 U.S. 172, 180, 117 S. Ct. 644, 650, 136 L. Ed. 2d 574, 587-88 (1997)

("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."). In every case in which the State seeks to introduce gruesome autopsy photographs, therefore, the trial court must acknowledge the significant danger that the photos will cause unfair prejudice.[4]

In two recent cases—*Jones* and *Nelson*—we found the trial court erred in admitting gruesome photos because the inherent tendency of the photos to cause unfair prejudice substantially outweighed what we found was very little probative value. In *Nelson*, for example, we found, "Under a Rule 403, SCRE, analysis, the photos had limited probative value." ___ S.C. at ___, 891 S.E.2d at 514. Our finding in *Nelson* of limited probative value was based on two important observations we made after a careful study of the record of the trial. First, in defense counsel's opening statement to the jury in that case, he admitted the truth of every potentially disputed fact except *who* committed the crime. ___ S.C. at ___, 891 S.E.2d at 510. "We disagree about one thing," defense counsel told the jury, "Who killed her." *Id.* Primarily because of this concession, we found "the information gained from the autopsy photos was not in question," and the "facts evidenced by the autopsy photos" were "undisputed." ___ S.C. at ___, 891 S.E.2d at 513. Second, we found "these photos provide no insight as to who killed Victim." ___ S.C. at ___, 891 S.E.2d at 514. "Thus," we stated, "we do not believe the autopsy photos corroborate Daniel's testimony that Carmie killed Victim." *Id.*

This case is different from *Nelson* on both points. Here, Heyward conceded nothing in his trial. As to the head injuries Dr. Durso testified were shown by the autopsy photos, Heyward specifically denied Tollison suffered those injuries during the crime sequence. In his argument to the trial court that the photos should be excluded, Heyward's counsel stated, even after hearing Dr. Durso's testimony to the contrary, "Again, this is just rabid speculation. There is no proof that those injuries happened during the course of the struggle which, again, unfortunately ended Ms. Tollison's

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[4] The court of appeals stated "we find [the photographs] were not unduly prejudicial." *Heyward*, 432 S.C. at 323, 852 S.E.2d at 466. As we have explained here and in previous cases, however, and as Justice Kittredge explains in his concurring opinion, gruesome autopsy photographs always carry an inherent danger of *unfair* prejudice. The question, therefore, is not whether autopsy photographs pose a danger of unfair prejudice, but whether that danger substantially outweighs the probative value under Rule 403.

life." Counsel then suggested the head injuries occurred in the very manner Dr. Durso testified the photos refute—that the injuries occurred from a fall. This leads to the second point. If Heyward had accepted Dr. Durso's finding the head injuries did not occur during a fall, or even if he had not specifically challenged the finding, her testimony might not have needed corroboration. In either circumstance, we would likely agree with Justice Kittredge's conclusion the photos had little probative value. Given counsel's specific challenge to the finding, however, it made perfect sense for the trial court to find "high" probative value in the extent to which the photos corroborate Dr. Durso's testimony.

It is important here that the granddaughter—the only eyewitness to the crimes—did not testify Heyward beat Tollison in the head. Thus, the *only* evidence Tollison suffered "multiple blunt force injuries" to her head was Dr. Durso's testimony from her observations after reflecting Tollison's scalp and the autopsy photographs corroborating Dr. Durso's testimony. The State stresses this "gap in the testimony from the granddaughter" in its brief as support for the probative value of the autopsy photographs and points out that in her closing argument the solicitor argued Heyward returned to Tollison after he put the granddaughter in the closet "to finish her off." This would explain why the granddaughter did not see Heyward hit Tollison in the head. Also, while the head injuries were not the direct cause of Tollison's death, these injuries independently support Heyward's conviction for assault and battery in the first degree.

Rule 403 requires the trial court to balance the probative value of the evidence against the danger of unfair prejudice. In this case, the trial court engaged in that balancing and placed its reasoning on the record. When a trial court finds the evidence has "high" probative value and—importantly—when we find evidence in the record that logically supports the trial court's finding, our discretionary standard of review requires that we affirm.

In recent years, this Court has scrutinized the admission of gruesome autopsy photographs more and more closely. We will continue to do so. It remains true, however, that when the trial court actually exercises its discretion in balancing the inherent danger of unfair prejudice posed by these photographs against "high" probative value, and puts its reasoning on the record for the appellate court to review,[5] the trial court's ruling that the danger of unfair prejudice does not

[5] Dr. Durso's testimony the photographs were "necessary" for her explanation to the jury of the head injuries is not insignificant, but the testimony is by no means dispositive of the Rule 403 objection. Rather, whether the trial court's ruling is

substantially outweigh the probative value is a decision that we will almost always find within the trial court's discretion. *See Morris v. BB&T Corp.*, 438 S.C. 582, 587, 885 S.E.2d 394, 397 (2023) ("The exercise of discretion is then to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances. The trial court's recognition of its responsibility to exercise discretion will be apparent when the record indicates the court followed such a thought process." (citations omitted)).

E. Heyward's Alias

We affirm the court of appeals as to this issue for the reasons it explained, *Heyward*, 432 S.C. at 318-20, 852 S.E.2d at 463-64, and pursuant to Rule 220(b), SCACR, and the following authorities: Rule 403, SCRE ("[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ."); *Vasquez v. State*, 388 S.C. 447, 459, 698 S.E.2d 561, 567 (2010) (describing circumstances in which arguments meant to arouse religious animosity are prohibited).

III. Harmless Error

We have repeatedly observed we will not reverse a criminal conviction for the erroneous admission of evidence unless the defendant shows on appeal the error was prejudicial. *See, e.g.*, *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) ("To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice."). In this case, Heyward was convicted of murder by violent strangulation, burglary in the first degree, armed robbery, two

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within its discretion is determined by the *trial court's analysis*, as reflected on the record. This is another point on which this case differs from *Nelson*. In that case, as far as we can tell from the record, the trial court simply relied on the testimony of the pathologist who stated, according to the trial court, "it would help him show the jury the cause of death." ___ S.C. at ___, 891 S.E.2d at 510. The record in *Nelson* contains no other analysis by the trial court. In this case, on the other hand—in remarkable contrast to the lack of analysis on the shackling issue—the trial court did put its own analysis on the record, noted the importance of considering the particular crimes being tried and their elements, and stated the photographs "indicate[] a struggle, a violent death, multiple injuries, . . . *more than just strangulation*."

counts of kidnapping, assault and battery in the first degree, pointing and presenting a firearm, and unlawful possession of a firearm by a person convicted of a crime of violence. The evidence showed Heyward not only strangled Tollison to death but also severely beat her about her head and body, and he tied up a child victim with electrical cords and kept her restrained in a closet while he rummaged around the house looking for items to steal. In *this* case, the fact a witness testified the pistol Heyward used to accomplish the crimes was operational in the sense that it was capable of firing a bullet could not possibly have had any impact on the outcome of the trial. We find any error in the admission of Investigator Collins' testimony was harmless beyond a reasonable doubt because it could not possibly have prejudiced Heyward. *See State v. Reyes*, 432 S.C. 394, 405–06, 853 S.E.2d 334, 340 (2020) ("Some errors—when considered in the context of the facts of a particular case—are so insignificant and inconsequential they do not require reversal of a conviction.").

Visible shackles on a defendant, however, are "inherently prejudicial," and thus, when "a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." *Deck*, 544 U.S. at 635, 125 S. Ct. at 2015, 161 L. Ed. 2d at 966 (first quoting *Holbrook*, 475 U.S. at 568, 106 S. Ct. at 1345, 89 L. Ed. 2d at 534). Rather, the error requires reversal unless the State "prove[s] 'beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained.'" *Id.* (first alteration added) (quoting *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 828, 17 L. Ed. 2d 705, 710 (1967)).

We find the State did that in this case by conclusively proving Heyward's guilt with other overwhelming evidence such that no other rational conclusion could be reached except that he is guilty of each crime. *Reyes*, 432 S.C. at 406, 853 S.E.2d at 340. We have already recounted much of the evidence on which we rely to reach this conclusion, including—most notably—the fact Heyward's DNA was found under Tollison's fingernails and on her neck. The State's DNA expert testified "the frequency of seeing this [DNA] profile in . . . the African-American population [is] approximately one in 21,000,000,000,000,000,000. We also rely on the fact Heyward's fingerprints were found at the crime scene. As context for this DNA and fingerprint evidence, there is no evidence Heyward had ever been inside Tollison's house, nor that Heyward had any other contact with Tollison that could have led to his DNA being under her fingernails. The only other times Heyward and Tollison ever met were within one week before the crimes when, first, Tollison stopped briefly by the home of Mattie Canzater—where Heyward rented a room—to drop off yard sale signs, and second, two days before the crimes when Canzater asked Heyward for help retrieving tables Tollison offered to loan Canzater for use at the

yard sale. Heyward provided the help, but did not go inside Tollison's home. The court of appeals discussed other evidence that supports our conclusion no other rational conclusion could be reached except that Heyward is guilty. *Heyward*, 432 S.C. at 318, 852 S.E.2d at 463.

In light of this overwhelming evidence of Heyward's guilt, we find the trial court's error in shackling him in the presence of the jury was harmless error beyond any reasonable doubt.[6]

IV. Conclusion

For the reasons stated above, we affirm Heyward's convictions.

AFFIRMED AS MODIFIED.

JAMES, J. and Acting Justices Kaye G. Hearn and Stephanie P. McDonald, concur. KITTREDGE, Acting Chief Justice, concurring in a separate opinion.

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[6] The State argues the error is harmless for the separate reasons "nothing in the record indicates that any juror could or did see his shackles" and "the shackles were removed [after the jury was sworn] for [the] trial." We do not accept this argument, nor do we agree with the portion of the court of appeals' opinion that appears to accept it. *See Heyward*, 432 S.C. at 325-27, 852 S.E.2d at 467-68 (discussing *State v. Johnson*, 422 S.C. 439, 458, 812 S.E.2d 739, 749 (Ct. App. 2018), and other cases distinguishable from this one). When Heyward's counsel raised the issue by asking the shackles be removed, it was the trial court's responsibility—as explained above—to justify the shackling as in some legitimate State interest, and if justified, to make every reasonable effort to ensure the shackles were not visible to the jury. The reason "nothing in the record indicates" the jury could see the shackles is the trial court refused to fulfill this responsibility. We will not find harmless error on this basis.

ACTING CHIEF JUSTICE KITTREDGE: I concur in result. I join Justice Few's well-reasoned majority opinion, with one exception. I respectfully disagree with the majority's determination that the trial court did not abuse its discretion in admitting the challenged autopsy photographs. Pathologist Dr. Amy Durso testified in great detail as to the victim's additional injuries beyond the strangulation. Dr. Durso graphically described the nature and extent of these additional injuries, which she referred to as "multiple blunt force injuries." As stated in the majority opinion, "the State offered two gruesome autopsy photographs that showed what [the victim's] head looked like after Dr. Durso reflected the scalp." In my firm judgment, the trial court erred in admitting the two gruesome autopsy photographs. Given the graphic and detailed testimony of the pathologist, the horrific autopsy photographs were unnecessary. *See State v. Kornahrens*, 290 S.C. 281, 288–89, 350 S.E.2d 180, 185 (1986) ("[P]hotographs of the murder victims should be excluded where the facts they are intended to show have been fully established by competent testimony."). I am convinced the photographs were intended for the sole purpose of arousing "the sympathies and prejudices of the jury." *See State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986). I find as a matter of law that the probative value of the autopsy photographs here is substantially outweighed by the danger of unfair prejudice. I nevertheless concur in result on the basis of harmless error, as demonstrated in the majority opinion.

I add two observations. First, this Court has repeatedly cautioned restraint in the admission of gruesome autopsy photographs due to their inherent tendency to evoke an emotional reaction from the jury. I respectfully urge our state's fine prosecutors and trial court judges to heed our admonition rather than rely on the possibility of an appellate court rescuing a conviction on harmless error grounds. In doing so, I harken back to a fundamental principle: "Prosecutors are ministers of justice and not merely advocates." *State v. Quattlebaum*, 338 S.C. 441, 449, 527 S.E.2d 105, 109 (2000). They must ensure an accused is afforded his constitutional rights and that any conviction is based on proper evidence admissible under the rule of law. *See* Rule 3.8 cmt. 1, RPC, Rule 407, SCACR. Should a prosecutor instead push the envelope and pursue a guilty verdict at all costs—for example, by seeking to introduce dubious evidence designed to improperly inflame the emotions of the jury—the prosecutor's actions fail to serve justice. *See State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 822 (2001).

Second, returning to the case here, and in keeping with its past practices in similar cases, the State at trial and on appeal sought to justify the admission of the autopsy

photographs largely on the basis that the gruesome photographs proved malice.[7] According to the State, the more horrific and gruesome autopsy photographs are, the greater the malice. However, this reflects a fundamental misunderstanding of malice.

Malice is a legal term of art that "indicates a wicked or depraved spirit intent on doing wrong." *State v. Kelsey*, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998). Malice "signifies . . . a general malignant recklessness of the lives and safety of others." *State v. Mouzon*, 231 S.C. 655, 662, 99 S.E.2d 672, 675–76 (1957) (quoting *State v. Heyward*, 197 S.C. 371, ---, 15 S.E.2d 669, 671 (1941)). Thus, in the legal context, malice connotes "a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it." *State v. Fennell*, 340 S.C. 266, 275 n.2, 531 S.E.2d 512, 517 n.2 (2000) (citation omitted).

There are no degrees of malice—it either exists, or it does not. It follows, then, that a "gruesome" murder does not necessarily contain a greater degree of malice than a less violent murder. Take the following scenarios to illustrate this simple fact. In the first scenario, Defendant A has no history with the victim but, after drinking too much at a bar, gets into an argument with another bar patron and violently murders him with a broken beer bottle. The murder scene is bloody and gruesome, as are the autopsy photographs. In the second scenario, Defendant B slowly poisons and ultimately murders a close family member over an extended period of time. The presence of the poison is detected through testing of tissue samples, yet the autopsy reveals no visible injuries. Malice exists in both scenarios, but no one with a minimum understanding of the law would suggest Defendant A demonstrated greater malice than Defendant B.

In this case, the solicitor relied primarily on the malice argument to justify the admission of the autopsy photographs. The trial court followed suit in remarking that the autopsy photographs were "essential in proving the necessary element such as malice." The trial court further observed: "Courts and juries cannot be too squeamish about looking at unpleasant things . . . especially when the truth is on trial." I agree that "the truth is on trial," but the pursuit for truth must be done in a manner that ensures a fair process. In law, the ends do not justify the means. In our justice system, "the truth" is not the sole criteria for the admissibility of evidence,[8]

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[7] The majority opinion avoids reliance on the malice argument, instead articulating its own (and more convincing) rationale for the admission of the photographs.

[8] There are numerous examples where "the truth" is excluded from evidence, including—among a host of other examples—evidence seized as a result of an

including autopsy photographs. To find otherwise would mean all autopsy photographs must be admitted into evidence, for they are "the truth." We can do better.

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unlawful search and seizure; confessions to law enforcement obtained in violation of constitutional rights; propensity evidence; and relevant (and perhaps truthful) evidence for which the probative value is substantially outweighed by the danger of unfair prejudice.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF
	)	GENERAL SESSIONS
	)	OF THE SEVENTH
COUNTY OF SPARTANBURG	)	JUDICIAL CIRCUIT
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
	)	2019-GS-42-05215
vs.	)	2019-GS-42-05217
	)	2019-GS-42-05219
CODY ALLEN HUDSON,	)	2019-GS-42-05224
	)	2019-GS-42-05228
	)	2019-GS-42-05529
Defendant.	)	2019-GS-42-05530
	)	

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October 25, 2022
Spartanburg, South Carolina

B E F O R E:

HONORABLE R. KEITH KELLY, Judge.

A P P E A R A N C E S

WENDY D. HALLFORD, ASSISTANT SOLICITOR
For The State

SPENSER H. SMITH, ASSISTANT SOLICITOR
For The State

E. CHARLES GROSE, JR., ESQUIRE,
For The Defendant

Julie A. Cendroski,
Circuit Court Reporter III
Seventh Judicial Circuit

I N D E X

EXHIBITS

	MARKED	ENTERED

NO EXHIBIT PROFFERED

THE STATE VERSUS CODY ALLEN HUDSON

THE COURT: Mr. Grose?

MR. GROSE: Yes, sir. And just sort of as a preliminary matter, there are two that are listed on the docket that I got, and one was a motion that was already handled pretrial, quashing the indictments. That was something I had sent out, I guess, Friday before the trial started when I prepared these motions. The new trial motions, I realized that when I was up here for the trial I had filed a copy of that. So I just looked at it. So that was e-filed that already was heard as part of the record.

I was going to, I think, just follow the order that, the motions appear in the pleadings. As the Court is aware, the trial started on July 17th. The verdict was on July 21st. The jurors acquitted Mr. Hudson of seven counts, but convicted him of three counts. Of course, Your Honor imposed sentence the same day. The following week we made new trial motions and provided a copy to the court and opposing counsel.

The first issue that appears in the motion has to do with the shackling during the reading of the verdict. You know, Mr. -- I guess Mr. Hudson, he had been out on bond for most of the pretrial matters, albeit on house arrest, with the electronic monitoring. At some point

that was proposed to keep him in custody.

During the trial, you know, he was brought into the courtroom in shackles while the jury wasn't in the courtroom, but never appeared in front of the jurors in shackles until the reading of the verdict.

And what happened at that point is that we learned there was a verdict. He was brought into the courtroom, shackled while the jurors were brought in. I cited the Deck versus Missouri case, and I also cited People versus Sanders, which is a New York case. It talks about how the rule in *Deck* applies, even through the reading of the verdict and polling of the jurors. That the verdict isn't final until the jurors have been polled.

Since I filed that motion, there has been two new appellate court cases that have come out. One is Robin Gray Reese versus the State, which is the South Carolina Court of Appeals opinion number 6024. It was filed on September 6th of 2023.

The other case is State vs. Heyward, H-e-y-w-a-r-d, which is South Carolina Supreme Court opinion number 28182, which was filed on October 5th of 2003. I've provided copies of those cases to opposing counsel and filed copies with the clerk of court. Both of those cases dealt with shackling during points of the

trial. And both of those cases found prejudice and ordered a mistrial.

So our position here is, is that Deck versus Missouri would require an individualized determination based on whether or not Mr. Hudson, in particular, specifically opposed a kind of a danger or risk. There's absolutely nothing in the record that would support making that kind of finding.

It appears to me from my limited involvement, the limited number of trials I've had in this county, that it perhaps functioned this whole courthouse, but it appears to me that the best defense is that for defendants who are in custody that once a verdict has been reached, that they are then, you know, either placed in shackles or reading the verdict without, you know, any determination by the Court.

I point out in my pleadings that, you know, Your Honor and I had another case where that came up. And in that case Solicitor Barnette gave the okay that shackles should be removed before the verdict of the jurors, which was done. Here the State didn't make the decision and neither of those states had made the decision, and john and I were part of the testimony, and deferred that decision to law enforcement.

The way these courtrooms are set up, where the --

the courtroom that we're in today is a mirror image of the one we had at the trial. Those are the courtrooms where the jurors come in from the back and have the ability to look and see under the table, see if somebody's shackled.

So many of the jurors, at least some of them, would have views under the table from the jury box. Some are probably had where they can see under the table, see his shackles and the chains. And that's not dissimilar from the situation, I believe, of either case, where our Supreme Court found prejudice. So we would ask for a new trial based upon the shackles.

I think I also pointed out in my pleadings that, you know, with the number of acquittals and the jury was out for at least some period of time, number of acquittals, the fact that you had that, this is not a case where an appellate court or this court would be able to say beyond a reasonable doubt that shackles didn't impact the verdict.

Personally, I think it's more of a structural error, but to the extent that appellate or harmless error be applied. I don't think harmless error applies to this case.

The second issue is regarding juror number 81. And, of course, we address this ---

SOLICITOR HALLFORD: Pardon me. May I?

(Discussion occurred off the record between counsel.)

MR. GROSSE: She wants to know if you want to address each individually or do you want me to go through everything first? I defer to you.

THE COURT: Do you want to address them one at a time?

SOLICITOR HALLFORD: It's easier on everybody if we did it that way.

MR. GROSSE: Okay, that's fine.

THE COURT: All right. Let's do that. Go ahead.

SOLICITOR HALLFORD: And also, Mr. Smith is handling some of them and I'm handling some of them.

THE COURT: Okay.

SOLICITOR HALLFORD: Your Honor, regarding Deck v. Missouri, that was a death penalty case where the defendant was shackled during the sentencing phase, there'd be testimony during that phase. And the case that he cites, People versus Sanders, which is a New York case which does say that *Deck* principles apply to taking the verdict and polling, is not controlling in South Carolina. And there aren't any cases in South Carolina that address that.

Regarding the Heyward case and the *Reese* case, in

the Reese case the defendant's hands and feet were shackled for almost the entire trial. And also, while the defendant was walking up to the witness stand to have testimony taken.

And in the *Reese* case, they also heard after jury selection. It says: The Court emphasized that having him shackled after or having her shackled after a jury was selected, could cause a jury to start thinking, oh, this is a violent crime, so then everybody can provide an outburst.

And that's distinguishable from this case. He was not shackled at any point prior to the verdict having been to his side and his back. And the Heyward case, Your Honor, as well. He was shackled during the jury selection in this case. And for us he was not shackled during jury selection or at any point until the jury had rendered their verdict and had filled out the verdict form, brought it out here. And as they were coming out, hand the forms to the bailiff after the foreman gets to his seat.

So the State's position is that we don't even know that any of the jurors looked over at the defendant. For the most part, we might have a few jurors that saw, but the verdict had already been rendered. It was already written down.

They were polled. No one, that I can remember, hesitated at all to confirm that that was their verdict at the time they rendered it and it was still their verdict. So the State's position is that we have that burden and it's not reasonable to believe that having the reasonableness to have known that shackles would have made someone want to change their verdict. And even if they had wanted to, they were told you cant. It is a tax decision. But the cases that defense counsel cites are completely different from the you can't change that decision. But the cases that defense counsel typed are completely different from the circumstances in this case.

THE COURT: Okay, thank you.

Mr. Grose, you were on Jury 81?

MR. GROSE: Yes, sir. With regards to juror number 81, this was an issue that we learned about in the last day of trial, but an issue that arose early in the trial unbeknownst to us. It turned out that one of the jurors, juror 81, knew the mother of the plaintiff witness. And that that juror shared that information with other jurors. Apparently, the foreperson of the jury did not learn about that until the Thursday night, the night before or the eve of the final date of trial, is when the forelady learned about it. And, you know,

she brought that matter to Your Honor's attention.

We did interview the juror. We were off the record at that point. I was present. Mr. Hudson was present. And I'm not sure if he was present at that point, but you did interview the juror -- the foreperson off the record.

And then we went on the record. Mr. Hudson was present at that point and we questioned the juror about that. And, obviously, the record speaks for itself as to what the nature of that relationship was, but they did know each other in a business context because the mother of the plaintiff's witness worked at a convenience store.

The juror had worked for a company that made calls to the salesperson, sales representative to make calls on that store. They also were friends on Facebook. Since the trial, I confirmed that and provided, you know, a copy of what I could find on what's publically available on Facebook, you know, confirming what the juror had said.

This is the type of information that we would have wanted to have known in order to be able to exercise, you know, with a preemptory strike. It's the type of information that also could lead to a motion to have the juror excused for cause. I know you might say

that the prosecution is gonna argue that the juror said that they can be very impartial, but I'm also going to think that as well. And as well as our statute regarding voir dire, it's obvious whether or not the juror is saying they' can be fair and impartial. It's whether or not the Court determines whether or not they can be fair and impartial, unbiased juror.

And I believe that's what happened here. I've had many trials, and I'm sure Your Honor has as well, where people state that they can be fair and impartial but they're still removed because of the nature of the connection, because it appears that that person may not be able to be a fair and unbiased juror. And I believe that is what happened here.

And had we known that information during voir dire, we would have had probably asked -- not probably, I would have asked, based on that relationship, that the juror be removed for cause. If he was not removed for cause, I would have used a preemptory strike on that juror, being the nature of the relationship and the role of the mother of the of the child witness we had in the case. Had that information come to light during the trial, when the juror realized it, either from seeing the witness in the courtroom or by hearing the witness testify, the jury is going to now know that that juror

was removed for cause. Swayed that I would have asked her to be removed for cause and if not removed for cause, I would have used a preemptory strike on that juror due to the nature of the relationship and the role that the mother of the child witness had in the case.

Had that information come to light during the trial when the juror realized it, either from seeing the, the witness in the courtroom or by hearing the witness testify, the juror is going to now know that the juror is removed for cause and one of the alternates seated. And, certainly, once we learned of it on the final morning at trial, I did make that request.

You know, once again, this is not a case where the State points to affirming evidence because you have the credibility determinations that have to be made by jurors regarding Mr. Hudson. The other witnesses in the case generally know that the child witness testified. It's our position that Mr. Hudson is entitled to a new trial because that juror did not disclose that information in voir dire. Once he knew that information, once he knew certain witnesses. So that's our position.

THE COURT: Solicitor?

SOLICITOR HALLFORD: Thank you, Your Honor. Under State versus Tucker, 815 S.E. 2d 457, reviewing

the new trial motion based on this juror's concealment during voir dire said that a new trial is warranted when the juror intentionally concealed information. And also, the information withheld would have triggered a challenge for cause or been material to a party's choice to use a preemptory challenge, which Mr. Grose said he would have. So the issue is whether our juror intentionally concealed information during voir dire.

The State's witness list had her as Sara Hudson, and she is friends with the defense -- excuse me, with juror 81, as Sara Jumper. And juror 81 would have no reason during voir dire to know that Sara Hudson is the person she knows as Sara Jumper. They were not here during the striking of the -- excuse me, during the drawing of the jury. So, you know, to stand up to identify.

So he didn't intentionally conceal anything. And I believe what he says was that he thought the juror had over -- had heard him when he was initially talking about it. And, Your Honor, did inquire whether he could be fair and impartial and he said he could. If we're gonna have to second guess and ask that to everyone, then we're never really gonna be able to seek jurors at all if we disregard their assertion saying I can be fair and impartial.

He also said that his contact with her was limited to him delivering back when he knew her or had personal interactions, that he would deliver stuff to the convenience store in which she worked.

And I asked if I could ask him some questions after Your Honor asked him. And I asked him if there were any posts originated where it talks about the trial. And the reason I asked that was because I was kind of hoping he would, so that we could get rid of him because to know Ms. Jumper or Ms. Hudson is not necessarily to like her.

So my position was he could possibly be detrimental to my case. But, ultimately, he did not intentionally conceal information. So we did the first part of the test under Tucker is not met. He did say he could be fair and impartial. And there was a split verdict. So he obviously didn't run back there and go, ooh, I knew her and I believe her and persuade the jury to render a guilty verdict about everything.

So, we believe that questioning when it's appropriate. That he can even be fair and impartial. He did not intentionally conceal his knowledge of her and his relationship with her, that you could even characterize it as a friendship when he knows her on Facebook and hasn't actually seen her for years. He

said was limited, so...

And I haven't gotten a copy of the transcript yet, so I can't remember exactly what your question is, but I think he said close, personal friend. It was that kind of stuff. So he was not currently having any kind of a face-to-face relationship with her and did not describe himself as being a close personal friend of hers. And, obviously, I've had lots of people who were friends with me on Facebook and I don't think much of their character and wouldn't necessarily believe anything they said. And I think that's the case for a lot of us, so...

SOLICITOR SMITH: Your Honor, if I can just briefly on this. State v. Rowell, which is 436 S.C. 54, it's citing Woods, State v. Woods, 335 S.C. 583. Intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and so significant that the failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs when the question imposed is ambiguous or incomprehensible to the juror or is so different, the inquire, it's so different, the inquiry, it's insignificant or so far removed in time that the juror's failure to respond is reasonable under the

circumstances.

And then it also talks about that these are the fact intensive inquiries. And I don't have the exact language, but I've tried several cases in front of Your Honor and I don't necessarily think that your question should have triggered a response.

I think he was good to come forward when he realized it and came forward. But I'm not totally sure that the question should have even triggered. So, to make believe that he was intentionally concealing it, we believe it's too far. And if anything it would have given unintentional -- obviously in light of the fact that her name was read as a different name than Facebook posts, you know, and as you're looking at the decision of whether it was intentional or unintentional, to me it would seem odd he was intending to sway the jury that he would disclose this openly to the forelady, which triggered the Court to look into the matter.

If he had some ulterior motive, he could have just tried to have kept that quiet and silently tried to sway people to his position. But, meaningfully -- and, Your Honor, intentional says that if you find it to be unintentional concealment of evidence and the results should be affirmed. Thank you, Your Honor.

THE COURT: Thank you.

MR. GROSE: If I could respond to those, because I think this is a very important matter in this case. First, I would note that the character of the posts on Facebook is not an issue before the Court. The Court is to measure the relationship between Juror 81 and the witness that was in the case. And to the extent -- well, first of all, we don't know whether or not this juror actually knew Ms. Jumper as Ms. Hudson. We didn't see the Facebook information I provided to the Court something that we learned after the case. My recollection was that -- is that Ms. Hudson and Ms. Jumper's testimony it came out that, you know, she hadn't been using that as her last name because they were married, but then she started going by, you know, Jumper again, you know, after all these allegations arose. So we don't know for sure. And there's reason to believe that the juror did know her as Sara Hudson.

But regardless, once the juror was aware of that information, we know that at some point in the trial, and later when Ms. Sara Jumper Hudson testified, we know that there was no longer any ambiguity and the juror did not disclose that to Your Honor. You know, and that had to be disclosed through another -- through the foreperson in this case.

And with regards to, you know, the questioning,

you know, in our request for voir dire, I did cite the State vs. Guilledeaux case, which was 362 S.C. 276 and 70 S.E. 2d '99 and 2004. Guilledeaux is spelled G-u-i-l-l-e-d-e-a-u-x. And that had to go to, you know, request of the Court to ask, you know, enough questions so that you can identify for the parties whether or not there were relationships like this.

I find it a little bit -- well, it's more than concerning. I find it extremely troubling. I'm learning now in this posttrial motion that this is a juror that the solicitor wanted excluded as well. Certainly, had they said that at the time, we could have had this juror replaced by agreement of the parties and we wouldn't have had this issue arise on appeal.

I know from people coming into our office that, you know, you do have interactions with people who regularly come into your office. You have the same postal people or same delivery people, for example.

And this is a convenience store where you would have, you know, the juror coming in as a sales representative to come in on a regular ongoing basis and it's just, you know, almost impossible, I think, under the circumstances of this particular relationship between this juror and this witness that the juror would not have formed some sort of opinion in the context that

a juror would end up knowing the witness, you know, in a professional, friendly type of setting, whether they disagreed with it. So, we do believe that that is a big problem in this case.

THE COURT: Anything further from the State?

MS. HALLFORD: Nothing further.

THE COURT: Anything further from the defendant?

MR. GROSE: Not on this issue.

THE COURT: Next.

MR. GROSE: The next issue that I raised in our motion in regards to the jury instructions under State versus Logan. The *Logan* case is 405 S.C. 83, 727 S.E. 2d 444 from 2013.

We've had two cases. One, State versus Ferdinand, which is 430 SC. 367, being 45 S.E. 2d 499 from 2020.

And the *Ferdinand* case found that the failure to do the *Logan* charge charge was not an error, but was prejudicial part and parcel. State versus Dent, which was from August -- well, it was Court of Appeals said the same thing. *Dent* is, I think, has recently been reversed. It's my case, and found that there was error, but then could not find error was prejudicial in that case.

Here, I think that we need to require or

establish prejudice for two reasons. One reason is this is for a case where the State relied on both direct and circumstantial evidence. So, the failure to give the charge of Logan, as required by Logan, would be prejudicial based on that.

The other reason -- and I don't have the transcript yet either. I've ordered the transcript in anticipation of an appeal or a retrial following this motion hearing. But in Your Honor's opening remarks to the jurors, you discussed circumstantial evidence and departed from the -- for our Motion to Quash regarding circumstantial evidence. So, I believe based on that as well as the reliance, at least in part, on circumstantial evidence establishing the necessary prejudice. Thank you.

THE COURT: Okay.

SOLICITOR SMITH: Your Honor, just to point out the standard, in order for reversal, the trial court's view of the chart was both harmonious and prejudicial. We believe it was neither. I know we don't have the benefit of the transcript, but the *Logan* charge was not opposed by the State. We were okay with that language being charged. And we believe that it was substantially charged.

I don't know exactly what line in the actual jury

charge they're saying is different than Logan, but Mr. Grose did provide, which I think is one of the exhibits to his, what he wanted. We were not opposed to it, and we believe that it was substantially charged.

And if you look at *Logan*, which is 405 S.C. 83, at the very end of page four they find: Accordingly, the trial court did not error in providing search and seizure charge consistent with *Gribbon*. A lot of these *Logan* cases, the judge explicitly said I'm not charging *Logan*, which is completely different than whatever the final order of the transcript says that Your Honor did. You did charge *Logan* that we believe, as far as we can tell, almost word-for-word.

But when you look at footnote eight of Logan, it says: Additionally, erroneous jury instructions are subject to harmless error analysis. Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions which may be misleading do not constitute reversible error. A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. The trial court's jury instruction, as a whole, properly conveys the applicable law. Thus, any conceivable error was harmless beyond a reasonable doubt.

So, that would be our position, Your Honor, is that the presumption of innocence, the burden of proof, the instruction on reasonable doubt, there are cases that the Court is asking to supplant any errors and evade any circumstantial, but we're not agreeing that any error was made.

Your Honor, another interesting note from *Herndon* -- and I actually printed up copies of this. In *Herndon*, actually, in footnote one, they actually changed the language of *Logan* and they removed the "all of the circumstances must be consistent with each other."

We believe that you charged that, so -- and I'm not saying that that was improper, but it's more than needs to be charged. So we think that was a benefit to the defendant when you consider the jury charge in its entirety.

They basically developed the role thinking that that had to be judged as invading the fact-finding role of the jury. And we do believe that was the language that was charged. So, in a way, the charge might have been more than the law required.

The defense says that this case was, was largely -- was a mixture of direct and circumstantial evidence. It's probably impossible for a case to not have some

aspect of circumstantial evidence. But the bulk of this case was the victim, who testified from the stand, relatives that testified from the stand, and then things that were found on cellphones/email accounts. So that was the bulk of what the case was. That is what Ms. Hallford spent time in her closing argument discussing.

And dovetailing into that, in State v. Dent, which he did say he was gonna return, which we thought was interesting. And then it was overturned after he filed his brief. But *Dent* is a child sex case.

They specifically note that the majority relied on direct evidence. They did talk about the medical exam being negative, and they view that more as going to the credibility of the direct evidence rather than some sort of circumstantial evidence piece. Obviously this case was a child sex case as well, Your Honor, we believe relied on direct evidence.

And also in *Dent* the court specifically refused the *Logan* charge and the court still upheld the charge because the rest of the charge regarding reasonable doubt, presumption of innocence, and the burden of proof, I know Your Honor's instructions on those, are consistent with what the law says on those.

So, again, we don't believe there was any error given at least the efforts to charge the exact language

of *Logan*, but even if it was an error, it would be impossible to say that there was any prejudice that resulted in it. As has been pointed out by Ms. Hallford, he was acquitted on 70% of his charges. And then when you look at the facts of the case and, and how the decision came down, it would be impossible to say that prejudice came.

Obviously, Your Honor can take this under advisement until we get the actual transcript, but the proposed charges that we had, it's the exact same language of *Logan*. I have a copy of it, so...

THE COURT: Anything else?

SOLICITOR SMITH: Not on that.

MR. GROSE: Unless you have any questions, I don't have anything else on that issue. Going through the new trial motions, the fourth issue that's raised has to do with we had a number of requests of voir dire that were, were not given in this case. Specifically, I point out 5, 6, 8, 19, and 23 from our request for voir dire that were not given. I think I cite two from the same case law that was cited in our request for voir dire about the need to the Supreme Court if jurors have secular bias. And the jurors may not always recognize what the biases are. If you have questions, notice that the city attorney has said that. I want to come back

and speak more to that issue.

THE COURT: Okay.

SOLICITOR SMITH: Your Honor, I have two cases I'm gonna hand up. Your Honor, on page five of *Hill*, under number six of the voir dire: In general the scope of voir dire and the manner in which to conduct it, are within the Trial Court's sound discretion, constitutes a reversible error or limitation on discretion must render the child trial fundamentally unfair.

Upon review of the juror's response must be examined in the light of the entire voir dire with the primary consideration being that the juror is unbiased, impartial, incapable of following instructions on the law. That's from *Hill*, Your Honor.

Stanko, on page two, the top right paragraph: The scope of voir dire, a narrative which conducted a general level of discretion, the trial judge can use in their discretion per the trial court ruling based on an error of law. It cannot seek irreversible error. A limitation of questions must, again, make the trial fundamentally unfair.

The questions cited by the defense legally would have been covered by other questions that were asked. Again, we don't have the transcript to know exactly what was said, but number five should have been covered by

the fact that I know that we addressed that this was going to be a child sex case. And those allegations alone rendered you incapable of reaching a fair and impartial verdict. Every sex case I've ever seen we use it with jurors on that case. I don't remember how many, but we believe that number five certainly would have been covered by that.

Number six, I believe it starts commenting on the facts of the case. It's about if a witness cries will you be able to put that aside and not just believe them because you feel sorry for them. So in light of the fact that it's a young woman testifying, I can see the Court thinking that's in the Court's discretion, that's getting too close to the facts involved with the case.

Number eight is there anything about your work, home, or anywhere else you spend a lot of time that causes you fear for your safety? I'm not totally sure how that's relevant in any way to a child sex case or to any criminal case for that matter.

And then 19 and 20 kind of -- and 23, again, they deal with the fact that the child sex -- sexual abuse case, the fact that you might see graphic imagery. All of that would have been covered by Your Honor's questions. And then the bar they have to prove to get a new trial on this is the trial is fundamentally unfair

because you did not ask these questions. And, also, that you did ask all of the other questions. We believe that's a burden they can't meet. Ultimately, again, he's acquitted on seven out of the ten charges that were against him, so we believe that a fair jury was instructed in this case. Thank you, Your Honor.

THE COURT: Okay.

MR. GROSE: If I could respond to that briefly?

THE COURT: Sure.

MR. GROSE: Both the first cases that they cite, *Hill* and *Stanko*, capital cases where -- and the challenge was not made to the voir dire that the Court asked counsel to make to file individual voir dire. At least the attorneys for the accused in this case is the one asked about.

In the *Hill* case, the question was whether they would give up a vote in order to go with a majority. In the *Stanko* case, the questions that the defense counsel wanted asked, specifically with the insanity defense, neither of which are, are issues in this case, nor is individual voir dire in this case.

And having had one capital trial, I've read transcripts on multiple other trials, capital jurors are voir dired, questioned in more detail about biases that they might bring to a, to a case, and what happens if

under ordinary circumstances.

With regards to some of the specifics that were raised, our Supreme Court has made it clear not to just do voir dire, also through the closing arguments. Of course, closing arguments aren't an issue in this case, but they've made it clear that jurors are not to decide cases based on, you know, some sort of passion, prejudice, or emotion that have been cited on the facts of the case. And I think these particular questions go to some sort of bias or emotion. Several of them go to the nature of the crime as well.

Transcripts in the beginning are reflective, but I don't think we had any jurors that, you know, self-selected, said they couldn't be fair in this case. And these questions, many of the questions would go into that. Certainly, it would be questions about witnesses crying hearing testimony, would go to whether or not the jurors put aside emotion or not.

And with regards to anything about your crime in the workplace or anywhere you spend time because you fear for your safety, also goes to the nature of the case and how the State typically prosecutes these cases, and then be prosecuted of the facts in this case as far as these crimes that are comitted in secrecy and it's not over types of witnesses.

The jurors do -- might have some sort of bias because of situation or work situation. Of course, a lot of times these situations can be uncomfortable. If we have a bias in the break from this case, it was several times that it happened. So, I was supposed to be behind some of those questions.

Certainly the questions about witnesses crying during testimony would go to whether or not the jurors would decide based on emotion or thought. And with regards to anything about your crime in the work place and crime that would cause fear for your safety, also goes to the nature of the case and how the State typically prosecute these cases and do prosecute the facts in this case as far as the crimes that are committed.

It's not other types of witnesses, the jurors do -- might have some sort of bias because of a situation or work situation. And a lot of these situations are uncomfortable and would have a bias they would bring to this case with a bias of a situation where they don't feel comfortable would have a bias in this case with some of these questions.

THE COURT: Anything?

SOLICITOR SMITH: Your Honor, I, you know, was citing those cases for the law that they talk about for

the standard of overturning them. I will point out that all the single case voir dire cases involves the death penalty cases. Thank you.

THE COURT: Okay.

MR. GROSE: The next matter raised in the new trial motion goes to the counseling records. And I think we had -- I know Your Honor had reviewed those in camera and I believe that they're marked as a Court's exhibit, which is available for the appellate court. But in this case it was, I think it was counsel on the records related to the conduct of the witness who testified.

He ended up not testifying in this case but, you know, our concern is that they're taking information in those records, particularly given the fact that his testimony in this case from the child -- excuse me, given in this case about not talking about this in front of people that may be witnesses in the case. But I know under the circumstances with the testimony, there shouldn't have been anymore witnesses. You know, I want that issue a part of the trial motion because Your Honor, ask the Court how to deal with those.

THE COURT: Okay.

SOLICITOR HALLFORD: Just to correct something. Mr. Grose said that he thought it was you that reviewed

the records *in camera*. It was Judge Knie who reviewed those. We did a whole *Blackwell* procedure. We had a hearing in front of Judge Knie on June 23rd. Since counsel or I can't go into the reasons why those records should be obtained for the judge to look at and see if they need to be exculpatory.

We did get the records to her and on July 7th of 2023 she issued an order regarding defendant's motion for disclosure of non-appellate records from a third party. And she specifically found that the aforementioned -- I'm sorry, I can't talk judge -- records do not contain exculpatory evidence and should not be disclosed, which is kind of a moot point because I didn't call him as a witness, but defense counsel could have called him and they didn't call him either. But the proper procedures were followed and we did have a judge who reviewed those, and she said there was no testimony found.

MR. GROSE: All right. She is correct. It did go to Judge Knie. And I know you didn't say it, but I assume that Your Honor reviewed it too. But to follow with *Blackwell* procedure -- and I've had other circuit court judges, you know, point this out as well, the problem with *Blackwell* procedure is that a judge who's viewing those records and doesn't know all of the

essence of the case, doesn't know what's exculpatory and what's not exculpatory and what might be an official defense in order to gender a defense.

And so the trial judge, of course, is in a better position -- maybe not as good a position as the defense to know what testify official. The trial judge is in a better position than a judge who made a pretrial ruling because the trial judge sees now the evidence relevant to the case and can realize the circumstances have changed and would require a disclosure during the case. And, yes, we did call Mr. Williams, but there may very well be something in those records that would have changed that decision. And we wanted to call the nurse if we had those records to corroborate what we believe the evidence disclosed.

THE COURT: Okay. Okay. All right.

MR. GROSE: The final two issues in the brief, sections F and G are connected. And this also goes to the Motion to Quash, which was argued. The Court had the written motion, the State had the written motion. I went and got the clerk's file after the trial and we argued those motions prior to the jurors being sworn. I raise it again now for two reasons. Under section F I raise it because we want to preserve -- I want it to be a part of the new trial motion that we're raising this

issue for appeal.

Of course, that motion has been moving in part because of the acquittals, but it was not moved because of the two convictions for second-degree criminal sexual conduct with a minor, one of which alleges intercourse and one which alleges fellatio.

We think these indictments are multi-duplicatus and should be cumulative quashed. And the reason for the final section, and I'm sure you can see where everybody can see, Your Honor did impose consecutive sentences.

So if an appellate court ultimately agrees with us that we're correct that both of those indictments should have been one indictment, if we're all correct on that, then we have a situation where Mr. Hudson ends up with a consecutive sentence with regards to what should have been in one indictment. Essentially he has a 25-year sentence, when you have under our belief, 20 years. And that would also be a violation of the state constitution and federal constitution.

THE COURT: Okay.

SOLICITOR HALLFORD: Your Honor, in our original argument on this issue, which I narrowed it to 280 S.E. 2d 56, is a case regarding criminal sexual conduct in the first degree, sexual intercourse, and

fellatio. And in that case, the sexual intercourse and fellatio happened within minutes of each other.

In this case the victim testified that there were multiple times that he had sexual intercourse with her on multiple occasions. Excuse me, multiple occassions he had sexual intercourse with her, multiple occasions that they had fellatio, for her to perform fellatio on him.

But State v. Smith says: The new and well settled that extended acts of rape on multiple crimes is separately punishable. And they held that "extended acts of sexual battery as therein defined are properly chargeable as separate issues. And with a minor statute defines sexual battery as sexual intercourse, anal intercourse, fellatio, cunnilingus, or digital intrusion however slight. State v. Smith states five from a Wisconsin case and a California case.

And the Wisconsin case had some good language that says each intrusion of the body of the victim is a sexual offense, sexual assault is a different legislatively protected inferences made.

And I apologize, I cannot speak today. And then they also go on to say that each separate act requires a separate volitional act. So in this case, multiple times he chose to have sexual intercourse with her and

multiple times he chose to have her perform fellatio on her teach her, have him perform fellatio on her.

The indictments should be separate. They should have been charged that way. And as far as the defense saying nothing's tied, that is entirely up to the discretion of the judge, except in instances where there is a mandatory respective finding where you absolutely have to be discretionary. And, Your Honor, in your discretion showed that he should have additional time for an additional indictment. So we think that the correct decision was made and that you were absolutely right to keep those two separate.

THE COURT: Anything further?

MR. GROSE: I stand on what we argued in our pretrial motions, the arguments we made.

THE COURT: Okay.

SOLICITOR HALLFORD: I said I had not got the transcript, and I didn't want to make that sound like I haven't ordered it yet. I want to be completely candid with the Court, but if there's a need for it I will.

THE COURT: Okay. I'll take this under advisement. The Court is gonna do a lot of reading.

SOLICITOR HALLFORD: Thank you, Your Honor.

THE COURT: Do you have any idea when you'll get the transcript?

SOLICITOR HALLFORD: You ordered yours a good little while ago.

MR. GROSE: Yeah. Well, it's hard to say because it just varies. I mean, you know, court reporter time is precious and we are ordering it for the appeal and it's contemplated possibly for that. You know, the rules say they get 60 days and it's initially, and the time for that be extended. So I want to say I ordered it a week after the trial. Maybe it was longer than that, but it was close in proximity to the trial, so I don't think that initial 60 days is up, so...

THE COURT: Okay. Thank you.

SOLICITOR SMITH: Thank you, Your Honor.

(Hearing concluded at 11:08 a.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 25th day of October, 2023.

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

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA) COUNTY OF SPARTANBURG)	IN THE COURT OF GENERAL SESSIONS FOR THE SEVENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA)	**ORDER**
vs.)	2019A4210101625 to 2019A4210101640 19-GS-42-5213 to 19-GS-42-5215 19-GS-42-5217 to 19-GS-42-5219 19-GS-42-5224; 19-GS-42-5228 to 19-GS-42-5230
CODY HUDSON,) DEFENDANT.)	

This matter came before the Court for a hearing on Defendant's Motion for a New Trial. A hearing was held on October 25, 2023 before Judge R. Keith Kelly. Defendant was present and was represented by his attorney, E. Charles Gross, Esq. The State was represented by Assistant Solicitor Wendy Hallford and Assistant Solicitor Spenser Smith.

On July 21, 2023, a jury found Defendant guilty of incest and two counts of Criminal Sexual Conduct with a Minor, Second Degree. The jury acquitted Defendant of four counts of Criminal Sexual Conduct with a Minor, Second Degree and three counts of Criminal Sexual Conduct with a Minor, Third Degree. Defendant filed a Motion for a New Trial on July 28, 2023 where he alleged the following:

A. This Court erred by allowing law enforcement, in violation of his due process rights, to shackle Mr. Hudson during the reading of the verdict and polling of the jurors, and the State cannot demonstrate the error was harmless beyond a reasonable doubt.

B. This Court erred by not removing Juror No. 81 after he failed to disclose to the Court that he knows Sara Jumper and is friends with her on Facebook.

C. This Court erred by not giving the verbatim instruction required, when requested, by *State v. Logan*.

D. This Court erred by not conducting full voir dire to ensure that the potential jurors could be fair and impartial.

E. The Court erred by not disclosing the mental health records of Austin Abbott.

F. This court erred by not quashing the indictments for second-degree criminal sexual conduct with a minor as multiplicitous.

G. Alternatively, this Court should reconsider the sentences for the two counts of second-degree criminal sexual conduct with a minor because the court impermissibly

imposed consecutive sentences, exceeding the maximum penalty allowed by law, on these two indictments that are multiplicitous.

SHACKLING THE DEFENDANT

Prior to the reading of the verdict and subsequent polling of the jurors, Defense Counsel objected to Defendant being shackled during those proceedings. Defendant was not shackled in the presence of the jury before the verdict was reached. After the Court received the verdict and the jurors were polled, Defense Counsel renewed his objection; therefore, the issue was preserved for review.

During argument at the October 25, 2024 hearing on Defendant's Motion for a New Trial, Defendant failed to show that the trial court did not find a particular reason to shackle Defendant. The United States Court of Appeals for the Fourth Circuit noted in *United States v. Samuel,* 431 F.2d 610, 615 (4th Cir. 1970), "Whenever unusual visible security measures in jury cases are to be employed, we will require the district judge to state for the record, out of the presence of the jury, the reasons therefore and give counsel an opportunity to comment thereon, as well as to persuade him that such measures are unnecessary." In *State v. Heyward,* 895 S.E.2d 658, 663 (2023), the South Carolina Supreme Court noted, "In this case, the trial court made no effort whatsoever to assess whether the shackles were necessary, nor to ensure the jury could not see them."

Contrary to the circumstances in *Heyward,* this Court made a specific finding outside the presence of the jury that the handcuffs were necessary for security purposes. As recorded by the Court Transcript, in response to Judge Kelly's inquiry, courtroom officers advised that shackles are put on Defendant before the reading of the verdict to prevent Defendant from harming himself or others. Defendant was seated behind the defense table before the jury entered the courtroom and remained seated during the reading of the verdict and the polling of the jury. Defense Counsel provided no evidence that the jury could see the shackles; he only opined that it was possible. Defense Counsel offered no other alternative to shield the jurors from the shackles besides removing them completely. This Court finds Defendant was shackled for a necessary purpose but also finds that there was overwhelming evidence to convict Defendant of the charges for which the jury found him guilty, and therefore any error would be harmless.

It is therefore ordered that Defendant's Motion for a New Trial based upon Defendant being shackled during the reading of the verdict and the polling of the jurors is **DENIED**.

JUROR NO. 81

Defense Counsel contends this Court erred by not removing Juror No. 81 after he failed to disclose during voir dire that he knew one of the State's witnesses. The witness in question was listed as Sarah Hudson on the State's witness list, but Juror No. 81 knew her as Sarah Jumper. During an *in camera* hearing, Juror No. 81 stated he only realized he knew Ms. Jumper when he saw her testify. When questioned about the nature of their relationship, Juror No. 81 advised he met Ms. Jumper at a job he had several years prior delivering goods to a convenience store where Ms. Jumper worked; he was also friends with her on Facebook. He further noted he had not seen any Facebook posts from her regarding the case and asserted he could be fair and impartial.

"[T]he court should not grant a mistrial based on a juror's concealment of information "unless absolutely necessary." *State v. Coaxum,* 410 S.C. 320, 327, 410 S.C. 242, 245 (2014). In *State v. Guillebeaux,* 362 S.C.270, 274, 607 S.E.2d 99, 101 (Ct. App. 2004), the Court stated, "A new trial is warranted if the court finds: (1) the juror intentionally concealed the information; and (2) the concealed information would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." The *Guillebeaux* court further noted that "a determination that a juror did not intentionally conceal information ends the court's inquiry." *Id.*

Defense Counsel did not provide any evidence that Juror No. 81 intentionally concealed his knowledge of Sara Jumper or that Defendant was prejudiced by the circumstances. "If a juror's nondisclosure of information during voir dire is unintentional, the trial court may exercise its discretion in determining whether to proceed with the trial with the jury as is, replace the juror with an alternative, or declare a mistrial." *Id.* at 327, 410 S.C. 246. This Court finds that Juror No. 81 did not intentionally conceal his relationship with Sarah Hudson and it was properly within its discretion not to remove Juror No. 81.

It is therefore ordered that Defendant's Motion for a New Trial based upon Juror No. 81 not being removed is **DENIED**.

JUROR INSTRUCTION FROM STATE V. LOGAN

Defense Counsel argues this Court erred by failing when requested to charge verbatim the circumstantial evidence charge from *State v. Logan,* 405 S.C. 83, 99, 747 S.E.2d 444, 452 (2013). This Court finds that it substantially complied with the *Logan* jury charge for both direct and circumstantial evidence.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court failed to give the verbatim jury instruction from *Logan* is **DENIED.**

REQUESTED VOIR DIRE QUESTIONS

Defense Counsel asserts this Court erred by not conducting full voir dire to ensure that the potential jurors could be fair and impartial. This Court finds that it conducted voir dire properly, and that is is in the discretion of the trial judge to determine which questions will be asked.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court erred in not conducting full voir dire is **DENIED.**

MENTAL HEALTH RECORDS OF AUSTIN ABBOTT

Defense Counsel asserts that the Court erred by not disclosing the mental health records of Austin Abbott. After a review pursuant to *State v. Blackwell,* 420 S.C. 127, 801 S.E.2d 713 (2017), the Court declined to disclose the records. As the decision whether to release mental health records is in the discretion of each judge, this Court finds not releasing the mental health records of Austin Abbott was proper.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court erred in not disclosing the mental health records of Austin Abbott is **DENIED.**

QUASHING INDICTMENTS

Defense Counsel avers that this Court erred by not quashing the indictments for second-degree criminal sexual conduct with a minor as multiplicitous. This Court finds the indictments for second-degree criminal sexual conduct with a minor were not duplicitous as each one constituted its own statutory crime.

It is therefore ordered that Defendant's Motion for a New Trial based upon whether this Court erred in failing to quash the indictments is **DENIED.**

RECONSIDERING SENTENCES

Defense Counsel asserts that this Court should reconsider the sentences for the two counts of second-degree criminal sexual conduct with a minor because the court impermissibly imposed consecutive sentences exceeding the maximum penalty allowed by law. This Court will not reconsider the sentences for the two counts of second-degree criminal sexual conduct with a minor.

It is therefore ordered that Defendant's request that this Court reconsider the sentences is **DENIED.**

IT IS SO ORDERED.

s/ R. Keith Kelly

The Honorable R. Keith Kelly
Administrative Judge, Seventh Judicial Circuit

7 March, 2024
Spartanburg, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions
R. Kieth Kelly, Circuit Court Judge

Appellate Case No. 2024-000439

The State, ...Respondent

v.

Cody Hudson, ...Appellant.

Rule 210, SCACR Certification

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By s/*E. Charles Grose, Jr.*

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June 2, 2025
Greenwood, South Carolina