THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000425

THE STATE,

Respondent,

v.

JAMES BROWN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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II. Whether the trial court improperly limited Appellant's closing argument regarding the minor's relationship with her fiancé and the motivation for fabrication of the sexual assaults based upon the concerns surrounding the Rape Shield statute?

III. Did the trial court err in failing to quash the indictments, that covered a five-year period of time and were issued shortly before trial, since they were not stated with sufficient certainty and particularity to enable Appellant to know what he was called upon to answer and whether he may plead an acquittal?

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I. Whether the trial court abused its discretion by declining to conduct an in camera review of Victim's mental health records to determine whether the mental health records contained exculpatory evidence after Appellant failed to present evidence sufficient outside of Victim's mental health records to establish a reasonable belief that the mental health records contained such exculpatory evidence.

II. Whether the trial court abused its discretion by precluding Appellant from presenting an argument to the jury in his closing argument that was not supported by evidence in the record and was barred by the Rape Shield statute.

III. Whether the trial court erred in denying Appellant's motion to quash all indictments against him based on Appellant's argument that the indictments were overbroad and vague.

STATEMENT OF THE CASE

In March 2022, a Greenville County grand jury indicted Appellant for two counts of first-degree criminal sexual conduct (CSC) with a minor and one count of dissemination of obscene material to a minor. (Indictment Nos. 2022-GS-23-001373, -001374, & -001375). These three indictments were nolle prossed, as indicated by records from the Greenville County Clerk of Court's Office. (Nolle prosequi notations for Indictment Nos. 2022-GS-23-001373, -001374, & -001375).

In October 2023, a Greenville County grand jury indicted Appellant for ten different offenses. (Indictment No. 2022-GS-23-001376; Indictment Nos. 2023-GS-23-006566A, -006567A, -006568A, -006569A, -006570A, -006571A, -006572A, -006573A, & -006574A). The grand jury indicted Appellant on two counts of first-degree CSC with a minor for digital penetration; one for a minor under the age of eleven between August 15, 2014, and August 14, 2017, and the other for a minor under the age of sixteen between August 15, 2017, and July 21, 2019. (Indictment No. 2022-GS-23-001376; Indictment No. 2023-GS-23-006566A).

The grand jury indicted Appellant for two additional counts of first-degree CSC with a minor for oral sex; one for a minor under the age of eleven between August 15, 2014, and August 14, 2017, and the other for a minor under the age of sixteen between August 15, 2017, and July 21, 2019. (Indictment Nos. 2023-GS-23-006568A & -006569A).

The grand jury indicted Appellant for a fifth count of first-degree CSC with a minor for vaginal sexual intercourse with a minor under the age of sixteen between August 15, 2017, and July 21, 2019. (Indictment No. 2023-GS-23-006572A).

The grand jury indicted Appellant for two counts of third-degree CSC with a minor for fondling Victim's breasts; both for a minor under the age of sixteen with one between August 15,

2014, and August 14, 2017, and the other between August 15, 2017, and July 21, 2019. (Indictment Nos. 2023-GS-23-006567A & -006570A).

The grand jury indicted Appellant for two additional counts of third-degree CSC with a minor for having Victim touch Appellant's genitalia; both for a minor under the age of sixteen with one between August 15, 2014, and August 14, 2017, and the other between August 15, 2017, and July 21, 2019. (Indictment Nos. 2023-GS-23-006571A & -006573A).

Finally, the grand jury indicted Appellant for disseminating obscene material to a person under the age of eighteen between August 15, 2014, and July 21, 2019. (Indictment No. 2023-GS-23-006574A). Apart from this last indictment for disseminating obscene material, all of the indictments fell into two timeframes: one group for events before Victim's eleventh birthday and another group for events on or after Victim's eleventh birthday.[1]

On January 8, 2024, the Honorable Perry H. Gravely ("trial court") held a pretrial hearing. (I Tr. 1). Appellant requested all physical and mental health records for Victim going back to an unrelated 2009 incident as part of pretrial discovery claiming the records could go to show Victim's knowledge of sexual activity and her mental state after the unrelated 2009 incident and before the incidents in this case. (I Tr. 21, 25-26). He argued that Victim's credibility was crucial in this case because no forensic or eyewitness evidence existed. (I Tr. 8). Appellant asserted that the materiality of any evidence in this case was heightened because the entire case centered on Victim's credibility. (I Tr. 9). According to Appellant, Victim talked with two different law enforcement officers as well as her parents on the night of her disclosure. (I Tr. 15). While the "overarching

[1] Before trial, the State acknowledged a scrivener's error in the indictments. (II Tr. 8). Victim's eleventh birthday occurred in 2016 instead of 2017 as indicated in the indictments. (II Tr. 8). The State moved to amend all the indictments to change any reference of 2017 to 2016 to correct this scrivener's error, which the trial court allowed. (II Tr. 8-12).

high points" of Victim's recounting of events to law enforcement and her parents "were the same," Appellant contended that there were differences, "whether it was an addition or omission," between these disclosures that made each statement impeachment evidence. (I Tr. 15-16). He argued that it was possible that Victim gave a different account of events to her therapist at the Julie Valentine Center, which would make her mental health records impeachable evidence. (I Tr. 16).

The State noted that Victim objected to releasing her mental health records. (I Tr. 22). The State argued that under *State v. Blackwell*,[2] Appellant had to present evidence sufficient to establish a reasonable belief that Victim's mental health records contained exculpatory evidence, which the State contended Appellant failed to do. (I Tr. 26-27). The State asserted that Appellant had merely presented an argument that Victim may have had behavioral issues and, therefore, exculpatory evidence must exist in her mental health records. (I Tr. 27). The State argued that Victim receiving mental health counseling alone was not sufficient to warrant an in camera review of her mental health records because Appellant presented no evidence that receiving such counseling somehow automatically made Victim less credible. (I Tr. 27).

Appellant argued that he was seeking information about a prior sexual assault of Victim when she was four years old that led to behavioral issues. (I Tr. 29). He asserted that Victim's current behavioral issues were not just random behavioral issues but rather ones that stemmed from that prior sexual abuse. (I Tr. 29). Appellant contended that such behavior stemming from sexual abuse can last well into adulthood and that some of Victim's statements during the forensic interview in this case are the same as those she exhibited when she was four, which goes to her credibility in this case. (I Tr. 29-30).

[2] 420 S.C. 127, 801 S.E.2d 713 (2017).

Appellant also asked for Victim's therapy records from this incident concerning therapy she received at the Julie Valentine Center. (I Tr. 30). He averred that the version of events Victim relayed to her therapist could be different from the versions of events Victim relayed to others and, if it was different, then it would be impeachment evidence. (I Tr. 30). The State responded that Appellant's argument was merely that Victim had gone to therapy and, therefore, exculpatory evidence existed in the therapy records. (I Tr. 31). The State reiterated that attending therapy does not raise a reasonable presumption that exculpatory evidence exists in the therapy records. (I Tr. 31). The State argued that Victim had not made any inconsistent statements, which Appellant acknowledged. (I Tr. 39-40). Appellant asserted that Victim had included additional information in some statements and omitted information in others. (I Tr. 40). The trial court took the issue under advisement. (I Tr. 42).

In its subsequent order, the trial court noted that Victim did not consent to the disclosure of her mental health records. (Or. 2). Because Victim did not consent, the trial court stated that the next step would be for the court alone to review the mental health records to determine whether disclosure was necessary due to any exculpatory evidence in the records. (Or. 2). However, citing footnote 21 in *Blackwell*, the trial court noted that such an in camera analysis should only take place after the requesting party, Appellant, met the minimum threshold requirement of presenting evidence sufficient to establish a reasonable belief that the records contain evidence that is exculpatory or relevant to the witness's credibility. (Or. 2). The trial court found that Appellant had failed to point to some fact outside of the mental health records that made it reasonably likely that the records contained exculpatory information. (Or. 2). The trial court noted that *Blackwell* precluded Appellant from going on a fishing expedition through Victim's mental health records. (Or. 2-3). The trial court found that Appellant's argument was only that production of Victim's

mental health records would allow him to assess her credibility while nothing outside of the mental health records supported his argument that the mental health records contained any exculpatory evidence. (Or. 3). The trial court concluded that Appellant wished to go on a fishing expedition "without any bait"; therefore, Victim's mental health records were not discoverable. (Or. 3).

On January 29, 2024, Appellant proceeded to a jury trial before the Honorable Perry H. Gravely. (II Tr. 1). Prior to jury selection, Appellant pleaded not guilty to the ten indictments true billed by the grand jury in October 2023. (II Tr. 7). Immediately thereafter, the State moved to amend the indictments regarding the relevant date ranges contained therein. (II Tr. 8). The State informed the trial court that the indictments covered allegations that ranged from when Victim was nine to thirteen years old, with many of the indictments being split into two separate charges based on when Victim turned eleven years old. (II Tr. 8). However, due to a scrivener's error, most of the indictments listed Victim's twelfth birthday as the cutoff or start date for the relevant time period instead of her eleventh. (II Tr. 8). The State requested that all references to the year 2017 in all ten indictments be changed to the year 2016 to correct this error. (II Tr. 8). The State asserted that the noticing language of the indictments was "certainly enough" to put Appellant on notice of the charges against him. (II Tr. 8).

Appellant objected to amending the indictments, arguing that age is an element of the offenses presented to the grand jury. (II Tr. 10-11). He asserted that this was not a scrivener's error because it happened across multiple indictments and with consistency. (II Tr. 11). The trial court allowed the amendments, finding that Appellant was on proper notice. (II Tr. 12-14).

Appellant moved to quash his indictments as being overbroad and vague. (II Tr. 52). He argued, based on *State v. Baker*,[3] that his indictments were defective because the timeframe set

[3] 411 S.C. 583, 769 S.E.2d 860 (2015).

forth in each indictment was so expansive that it lacked specificity and prevented him from rendering a defense. (II Tr. 52). Appellant asserted that he had to defend himself against an effective timeframe of five years and, much like in *Baker* where an indictment covered a six-year period, that time frame was too expansive for him to submit a possible alibi. (II Tr. 55). He acknowledged that four of the indictments covered an approximately two-year period and another five indictments covered a three-year period; however, he argued that because these indictments bookended each other with no gap between them, the indictments covered an impermissibly expansive amount of time with no specificity. (II Tr. 56-58).

The State acknowledged that our supreme court in *Baker* held that six years was too expansive of a time period for a defendant to defend against. (II Tr. 61). According to the State, the *Baker* case is why the State sought additional indictments and purposefully separated out the time periods in the indictments so that the indictments did not cover a time period approaching the impermissible time period in *Baker*. (II Tr. 61). The State argued that our appellate courts have consistently upheld two-, three-, and four-year periods for indictments. (II Tr. 61). The State asserted that a longer overall time frame does not preclude the State from prosecuting Appellant merely because Appellant assaulted Victim for a five-year period. (II Tr. 61). Appellant had known since the arrest warrants were issued that the relevant time period was from when Victim was nine until she was thirteen. (II Tr. 61). The State also argued that Appellant had almost three full months between when the October 2023 indictments were true billed and when this case when to trial at the end of January 2024 to prepare a defense, which was more than enough time. (II Tr. 62). Further, the State argued that Appellant's defense was never an alibi defense but rather a denial of all charges. (II Tr. 62). The State also argued that *Baker* was inapplicable here because the time periods listed in the indictments were all under the six-year limit imposed in *Baker*. (II

Tr. 62). The trial court denied Appellant's motion after reviewing the *Baker* opinion. (II Tr. 62-63, 134).

Appellant requested that the trial court conduct an in camera review of Victim's mental health records, arguing that section 44-22-100 or section 63-11-310 of the South Carolina Code provided an exception to the confidentiality of the mental health records. (II Tr. 137). The trial court stated that its pretrial order found that due to footnote 21 in *Blackwell* about fishing expeditions, Appellant had failed to present any information outside of the mental health records that would make it reasonably likely that the records contained exculpatory information. (II Tr. 144). The trial court asked Appellant again if he could point to any information outside of the therapy records that would make it likely that some exculpatory evidence existed in the therapy records. (II Tr. 144). Appellant contended that the version of events that Victim relayed to her parents, in her forensic evaluation, and in her medical exam were all similar but had different—additional or missing—details. (II Tr. 145). Appellant again contended that *Blackwell* did not require that he had to actually know what was in Victim's mental health records, rather he just had to point to a material circumstance that would show some likely exculpatory evidence in the records. (II Tr. 145-46). According to Appellant, Victim must have discussed this case in therapy and, therefore, her version of events as expressed to her therapist constitutes a fifth version of events, which Appellant contended raised a reasonable probability that exculpatory evidence existed in Victim's mental health records. (II Tr. 146). Appellant argued that our supreme court included evidence that called into question a witness's credibility when it said exculpatory evidence in *Blackwell*. (II Tr. 158).

The State again asserted that just because Victim attended therapy does not entitle Appellant to her mental health records. (II Tr. 148). Further, Appellant failed to show that Victim

discussed the allegations or her version of events with her therapist; therefore, to say what Victim discussed with her therapist is pure speculation. (II Tr. 151). The State asserted that it was possible that Victim could have made additional statements in therapy. (II Tr. 148-49). However, absent some fact showing some exculpatory evidence could be in Victim's mental health records—instead of Appellant's pure speculation—then there is no reason to believe that any exculpatory evidence exists in those records. (II Tr. 149).

The trial court found that Appellant wanted a fishing expedition into Victim's mental health records to hopefully find exculpatory evidence. (II Tr. 150). It determined, again, that Appellant did not meet the minimum threshold of presenting evidence sufficient to establish a reasonable belief that the records contained exculpatory evidence including evidence relevant to Victim's credibility. (II Tr. 157). The trial court noted that Victim's mental health records had been produced to the court, but the court had not opened them. (II Tr. 157). Appellant asked the court to seal Victim's mental health records as a court's exhibit for potential appellate review, to which the State agreed. (II Tr. 160).

At trial, Victim's mother testified that she met Appellant through her husband's work when Victim was around five years old. (II Tr. 181-83). Prior to moving into a shed in her backyard in mid-2018, Appellant had lived in her neighborhood. (II Tr. 183-84). Victim's mother stated that she had no reason to doubt Appellant around her children. (II Tr. 189). Appellant would watch her three children, including Victim, when Victim's mother and her husband both had to work. (II Tr. 189). However, Victim's mother confirmed that she initially told law enforcement that she did not allow Appellant around her children without supervision. (II Tr. 209-10).

In 2019, Victim disclosed to her mother that she had been sexually assaulted in two different houses that Appellant had lived in, as well as in the family home. (II Tr. 190). Victim

told her mother that the sexual assault in her home occurred two weeks prior to Victim's disclosure. (II Tr. 190). Victim's mother stated that the sexual assaults occurred from the time Victim was nine until Victim disclosed in 2019 when she was thirteen. (II Tr. 190). Victim's mother testified that Victim first disclosed to Joshua Waldrop, who was Victim's mother's best friend, and that Waldrop encouraged Victim to tell her parents about the sexual abuse. (II Tr. 191). After Victim disclosed, Victim's mother's husband called law enforcement using Victim's mother's cellphone. (II Tr. 192). When Victim disclosed to her parents, she told them that the most recent incident that occurred in the home occurred when Appellant came inside to use the restroom and fondled Victim. (II Tr. 204).

According to Victim's mother, Appellant had "a liking" for Victim over Victim's mother's other two children. (II Tr. 193). Victim's mother recalled that at a birthday party she held for Victim while Appellant lived at another house in the neighborhood, Appellant wanted Victim to go to his house with him to retrieve her birthday gift. (II Tr. 194). Victim's mother allowed Victim to go with Appellant. (II Tr. 194). She felt it was taking Victim too long to return so she sent her stepson to retrieve Victim from Appellant's house. (II Tr. 194). When she returned, Victim was crying and had a wound to the back of her head. (II Tr. 194).

According to Victim's mother, Victim was going to have a *quinceañera* as a traditional celebration of her fifteenth birthday. (II Tr. 190). Victim's mother told the doctor who preformed Victim's post-disclosure medical examination that she was concerned Victim was no longer a virgin, which Victim's mother said was important because virginity is a requirement for a *quinceañera* and the only exception was for victims of rape. (II Tr. 206-07). The record does not indicate whether Victim had a *quinceañera*.

Victim, who was eighteen years old at the time of trial, testified that in 2019, she disclosed to being sexually touched by Appellant. (II Tr. 226-29). Victim stated that Appellant inappropriately touched her more than once, but she could not remember how many times. (II Tr. 231). Victim did not remember every time the abuse occurred because "it was like almost constantly." (II Tr. 231). She said the inappropriate touching began when she was nine years old and continued through age thirteen. (II Tr. 231). The sexual abuse stopped because she told Waldrop, who convinced her to tell her parents. (II Tr. 231). Law enforcement became involved after that. (II Tr. 231).

Victim testified that Appellant digitally penetrated her and had her perform oral sex on him at both houses he lived at in her neighborhood starting when she was nine years old. (II Tr. 231-36). She stated that Appellant touched her breasts. (II Tr. 233-34). Victim testified that Appellant made her touch his penis for either oral sex or masturbation and that she had tasted Appellant's ejaculation instead of seeing it. (II Tr. 233-34). According to Victim, Appellant showed her pornography on a television in his bedroom at one of the houses he used to live in. (II Tr. 237). Victim testified that the night before she disclosed to her parents, Appellant licked her vagina and "put his private area inside [her] vagina," only pulling out because her parents arrived home. (II Tr. 239).

Victim recalled Appellant babysitting her and her younger siblings when her parents were not home. (II Tr. 237). Appellant came to birthday parties and holidays at her family home. (II Tr. 237). Victim could not recall how old she was when Appellant moved into the shed in her backyard but stated that he lived there for about a year and was living there when she disclosed the sexual abuse. (II Tr. 238). Victim testified that Appellant had pet names for her and touched her sexually but as far as she was aware, he did not do these things with any other member of her

family. (II Tr. 240). Victim testified she felt "disgusted" with herself because Appellant made her feel like the sexual abuse was her fault. (II Tr. 240-41). Victim felt like the abuse was her fault because she let Appellant do these things to her and she could not speak up as Appellant threatened to kill her siblings or commit sexual abuse against them if Victim told anyone. (II Tr. 241). She was scared to tell her parents because she thought she would get in trouble. (II Tr. 241).

Victim stated that she first disclosed to her boyfriend, who encouraged her to tell Waldrop, who in turn convinced her to tell her parents. (II Tr. 241). When her parents called law enforcement, she told law enforcement everything she was able to recall. (II Tr. 241). Victim stated that it was difficult to remember all the details because she tried to forget and move on. (II Tr. 242). Victim testified that her therapist encouraged her to think "very good thoughts" and try not to think of the bad things that happened. (II Tr. 242).

Victim confirmed that she met her boyfriend, now fiancé, when she was twelve and that her boyfriend and his mother lived at her house for around three months when she was thirteen. (II Tr. 248-50). She stated that when he lived with her family, her boyfriend stayed in her younger brother's bedroom. (II Tr. 249).

Victim's younger sister testified that when Victim began dating her boyfriend, Appellant would make "really weird" comments about it to Victim. (II Tr. 290). She recalled Appellant telling Victim that she needed to break up with her boyfriend because he, Appellant, would be a better fit for Victim than her boyfriend. (II Tr. 290).

Dr. Lyle Pritchard, a physician in the child abuse pediatrics division of Prisma Health Upstate and an expert in child sexual abuse, testified that he examined Victim on August 19, 2019. (II Tr. 297-300). Dr. Pritchard stated that Victim had a normal hymen exam, which did not indicate what, if anything, had happened to Victim in the past. (II Tr. 309). Dr. Pritchard confirmed that

Victim's medical examination occurred almost a month after Victim disclosed and that in cases where more than three days have passed since the last episode of assault, 95% of girls have a normal exam. (II Tr. 309). Dr. Pritchard also confirmed that Victim's medical history showed that Victim required sutures on her head twice before this examination. (II Tr. 310).

Michael Giovanni, a deputy with the Greenville Sheriff's Department, testified that he was dispatched to Victim's home after her parents called law enforcement. (II Tr. 326-27). Victim disclosed sexual assault to him. (II Tr. 327). Victim told him that the most recent event happened on the Sunday before law enforcement's arrival but noted that the abuse occurred over a long period of time. (II Tr. 327-28). After listening to Victim's disclosure, Deputy Giovanni went to the shed in the backyard to talk with Appellant. (II Tr. 328). He stated that Appellant appeared to be living in the shed. (II Tr. 328). After asking Appellant if he knew why law enforcement was present, Deputy Giovanni read Appellant his *Miranda*[4] rights. (II Tr. 328). Deputy Giovanni told Appellant that someone alleged that Appellant had engaged in inappropriate sexual conduct with someone who lived in Victim's house. (II Tr. 329). Deputy Giovanni stated that he did not mention Victim when informing Appellant of the allegations. (II Tr. 329). Appellant told Deputy Giovanni that he did not know anything about the allegations. (II Tr. 329). Deputy Giovanni stated that Appellant appeared to have no reaction to being told of the allegations. (II Tr. 329). Deputy Giovanni testified that because Appellant "did not seem surprised at all," he believed Appellant was not being truthful. (II Tr. 329).

After both parties rested and before closing arguments, the State addressed an issue that Appellant brought up in his opening argument. The State argued that Appellant's opening argument consisted of Victim having a boyfriend before and during her disclosure as well as Victim

[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

not being able to have a *quinceañera* unless she was a virgin. (II Tr. 452). The State took Appellant's opening argument as an insinuation that Victim made up her allegations against Appellant to cover up sexual acts with her boyfriend so she could have her *quinceañera*. (II Tr. 452). The State contended that the only evidence of this theory that was presented at trial consisted of Victim having a boyfriend before, during, and after her disclosure. (II Tr. 452). Due to the Rape Shield statute, no evidence of other sexual activity was presented to the jury. (II Tr. 453). Further, from the evidence that was presented, Appellant had no evidence to support an argument that Victim was attempting to cover up other sexual activity or that she was even concerned about other sexual activity. (II Tr. 453).

Appellant argued that his argument did not implicate the Rape Shield statute. (II Tr. 453). He stated that testimony from Victim's mother, Victim's mother, showed that a *quinceañera* occurs when a girl is fifteen years old and still a virgin, with an exception for rape. (II Tr. 453). Appellant argued that other evidence showed that Victim's boyfriend, now fiancé, had lived at Victim's home for three months while dating Victim and before she made the allegations against Appellant. (II Tr. 453). He contended that "[w]hatever conclusion the jury draws from that is up to the jury but that doesn't implicate rape shield." (II Tr. 453). Appellant argued that his argument did not consist of prior sexual conduct, rather it was an alternative version of what could have happened and was motivation to lie. (II Tr. 453).

The State responded by arguing that Appellant's argument was the definition of what the Rape Shield statute was designed to prevent. (II Tr. 454). The State contended that Appellant was attempting to make a conclusion that was not shown by the evidence presented at trial and which could not be in evidence at trial because there was no evidence that Victim had any prior sexual contact with anyone. (II Tr. 454). The State argued that it was not a logical conclusion that just

because a twelve-year-old child had a boyfriend, who stayed at her home with his mother for a few months, that Victim must have had sex with him, which she is now attempting to cover up using some elaborate story about Appellant. (II Tr. 454). The State reiterated that Appellant wanted to argue in closing that Victim had sex with someone else and that is why Victim made up these allegations against Appellant. (II Tr. 454).

Appellant argued that evidence of sexual conduct is allowed to impeach a witness's credibility, which was what he sought to do in this argument. (II Tr. 455). He asserted that he was not seeking to impugn Victim's character. (II Tr. 455).

The trial court found that under the Rape Shield statute, Appellant could not introduce evidence of sexual conduct except for very limited purposes. (II Tr. 455). The trial court determined that such evidence had not been introduced during trial. (II Tr. 455). Therefore, the trial court found it inappropriate for Appellant to argue in closing that which he could not introduce as evidence during trial. (II Tr. 455). The trial court stated that Appellant could not argue to the jury that "all this" could lead to an inference that Victim had sex with her boyfriend because the evidence presented at trial did not support such an argument. (II Tr. 456).

In his closing argument, Appellant mentioned that Victim's boyfriend lived at the house for three months. (II Tr. 478). He also mentioned that Victim's mother had testified that a girl must be a virgin at fifteen years old to have a *quinceañera* with an exception for rape. (II Tr. 486).

The jury found Appellant guilty as indicted on all ten indictments. (II Tr. 535-37, 550-51). The trial court sentenced him to the following concurrent sentences: 33 years for both first-degree CSC with a minor charges where Victim was under eleven years old (Indictment No. 2022-GS-23-001376; Indictment No. 2023-GS-23-006569A); 30 years for each first-degree CSC with a minor charge where Victim was under sixteen years old (Indictment Nos.

2023-GS-23-006566A, -006568A, & -006572A); 15 years for each third-degree CSC with a minor charge (Indictment Nos. 2023-GS-23-006567A, -006570A, -006571A, & -006573A); and five years suspended on time served for the disseminating obscene material to a minor charge (Indictment No. 2023-GS-23-006574A). (II Tr. 556-57).

After sentencing, Appellant filed a motion for a new trial, in which he renewed all his objections and motions from trial. (Mot. 1). First, he argued that he was entitled to an in camera review of Victim's mental health records because the totality of the circumstances of his case established a reasonable likelihood that the mental health records contained exculpatory and/or impeachment evidence based on (1) the case against him being solely grounded on Victim's credibility; (2) Victim receiving counseling as the result of her disclosure of Appellant's abuse; and (3) Victim attending counseling through the Julie Valentine Center by referral of DSS. (Mot. 3). Second, Appellant contended that pursuant to *State v. Baker*,[5] the ten indictments true billed on October 31, 2023, were unconstitutionally overbroad and vague because the State failed to set reasonable temporal limits, which violated Appellant's right to present a full and complete defense. (Mot. 4-5). Third, Appellant argued that the trial court erred in preventing him from "addressing particular information" in his closing argument, specifically a potential *quinceañera* party and the relationship between Victim and her boyfriend. (Mot. 5). Appellant argued that the facts he wished to discuss were not specific instances of sexual conduct under the Rape Shield statute. (Mot. 5-6). He asserted that even if they were, *State v. Finley*[6] and *State v. Grovenstein*[7] established that the Rape Shield statute does not act as an outright exclusion of such information when it would be used to explain an alternate source of sexual knowledge or motive to make a false disclosure.

[5] 411 S.C. 583, 769 S.E.2d 860 (2015).
[6] 300 S.C. 196, 387 S.E.2d 88 (1989).
[7] 340 S.C. 210, 530 S.E.2d 406 (Ct. App. 2000).

(Mot. 5-6). He asserted that he was deprived of his ability to present a full and complete defense to the jury and was, therefore, entitled to a new trial. (Mot. 6).

The trial court determined that sufficient evidence existed to support the jury's verdict and that the issues raised by Appellant in his motion for a new trial did not warrant a new trial. (Or. of Dismissal 1).

This appeal followed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only and are bound by factual findings of the trial court unless an abuse of discretion is shown. *State v. Laney*, 367 S.C. 639, 643, 627 S.E.2d 726, 729 (2006). The relevance, materiality, and admissibility of evidence are within the sound discretion of the trial court. *State v. Blackwell*, 420 S.C. 127, 155 n.22, 801 S.E.2d 713, 728 n.22 (2017) (citing *State v. Evins*, 373 S.C. 404, 421, 645 S.E.2d 904, 912 (2007)). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012).

A trial court is vested with broad discretion in dealing with the range and propriety of closing arguments and ordinarily his rulings on such matters will not be disturbed. *State v. Northcutt*, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007). The appellant has the burden of showing that any alleged error deprived him of a fair trial. *State v. Finklea*, 388 S.C. 379, 386, 697 S.E.2d 543, 547 (2010).

The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. *Id.*; *see also State v. Preslar*, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct. App. 2005); *State v. Tumbleston*, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007). Accordingly, an appellate court is bound by the trial court's factual findings when the findings are supported by the evidence and not controlled by error of law. *Baccus*, 367 S.C. at 48, 625 S.E.2d at 220.

ARGUMENT

I. The trial court did not abuse its discretion when it declined to conduct an in camera review of Victim's mental health records because Appellant failed to present evidence outside of the mental health records that was sufficient to establish a reasonable belief that the mental health records contained exculpatory evidence.

The process for determining whether a witness's protected mental health records are discoverable was set forth by our supreme court in *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017). In *Blackwell*, as here, the appellant argued that the trial court denied him his constitutional right to confront and cross-examine the State's "most critical witness" because the trial court did not allow him to impeach the witness's testimony with her mental health records. *Id*. at 150, 801 S.E.2d at 725. Because this constituted a novel question—whether a criminal defendant's right to confront a witness trumped a witness's state constitutional right to privacy and statutory privilege to maintain confidential mental health records—our supreme court adopted a new procedure that gave effect to the legislative mandate in section 44-22-100 of the South Carolina Code as well as the constitutional protections of the Confrontation Clause of the United States Constitution. *Id*. at 151-54, 801 S.E.2d at 725-27.

Our supreme court stated that before any disclosure of privileged mental health records, a trial court "should conduct a hearing with the parties in which the [trial court] inquires whether the witness consents to the disclosure of the privileged records." *Id*. at 154, 801 S.E.2d at 727. However, our supreme court noted that this hearing is to be conducted *only after* the requesting party has "met the minimum threshold requirement of presenting evidence sufficient to establish a reasonable belief that the [privileged mental health] records contain exculpatory evidence, including, but not limited to, evidence relevant to the witness's credibility." *Id*. at 154 n.21, 801 S.E.2d at 727 n.21.

Our supreme court stated that this preliminary showing, "in contrast to a generalized assertion," was necessary to guard privileged mental health records against "fishing expeditions," thereby balancing the witness's right to privacy with the defendant's right to confrontation. *Id*. Further, our supreme court held that the "mere fact" that a witness attended mental health counseling is not evidence sufficient to warrant an in camera hearing because receiving counseling does not automatically make a witness less credible. *Id*.

Therefore, before a trial court can review privileged mental health records in camera, the requesting party must show evidence outside of the those privileged mental health records that establishes a reasonable belief that those records contain exculpatory evidence. The evidence outside of the mental health records presented by the requesting party needs to be more than a generalized assertion and also more than a statement that the witness attended mental health counseling. Only when the requesting party has met this minimum threshold of presenting evidence outside of the mental health records should a trial court conduct a hearing to determine if the witness consents to the disclosure of their privileged mental health records. After the requesting party has met the minimum threshold and the witness has declined to consent to disclosure, then may the trial court proceed with an in camera review of the privileged mental health records to determine whether exculpatory evidence, including evidence relevant to the witness's credibility, is contained within the privileged mental health records.

Here, the trial court did not abuse its discretion in declining to review Victim's mental health records in camera because Appellant failed to present evidence sufficient to establish a reasonable likelihood that exculpatory evidence existed in Victim's mental health records. Rather, Appellant presented nothing more than a generalized assertion that because Victim had mental health counseling, exculpatory evidence must exist in her mental health records.

Appellant asserted, both below and now on appeal, that Victim had given multiple different versions of events in this case. (II Tr. 145; App. Br. 9, 11). He contends that Victim must have provided a different version of events to her therapist, which would constitute impeachment evidence as evidence relevant to her credibility. (I Tr. 30; II Tr. 146, 150; App. Br. 9, 11). However, during arguments below, Appellant specifically admitted that Victim's versions of events were consistent with each other. (II Tr. 15, 144-45). He acknowledged that the only differences between them were additions or omissions. (II Tr. 15). Thus, her statements were not contradictory or even substantially different; each statement on its own was merely a partial version of events.

Appellant provided no evidence to the trial court that Victim's mental health records contained any mention of the events in this case, much less that any potential mention of the events in the mental health records is different from the versions Victim provided outside of her mental health records. Because Appellant had no evidence of what Appellant discussed in her therapy sessions, Appellant's argument rests on the assumption that because Appellant attended therapy, there *must* be exculpatory evidence in her mental health records. (I Tr. 30).

Appellant's arguments rely on pure speculation and generalized assertions that exculpatory evidence exists in Victim's mental health records, which is precisely what our supreme court stated should be guarded against in the balancing of a witness's right to privacy and a criminal defendant's right to confrontation. (II Tr. 151). *See Blackwell*, at 154 n.21, 801 S.E.2d at 727 n.21. Therefore, Appellant has not presented any evidence to establish a reasonable belief that exculpatory evidence exists in Victim's mental health records.

Should this Court determine that the trial court abused its discretion in declining to review Victim's mental health records in camera because Appellant's speculative argument constituted evidence sufficient to establish a reasonable belief of exculpatory evidence in Victim's mental

health records, then this Court should simply review the mental health records in camera and conduct a harmless error analysis. *See Blackwell*, 420 S.C. at 156, 801 S.E.2d at 728 (holding that when a trial court errs in declining to review mental health records and refusing to accept a proffer of the mental health records, "these errors do not automatically warrant reversal as 'a violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis'" (quoting *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012))).

"Whether . . . an error is harmless in a particular case depends upon a host of factors." *Gracely*, 399 S.C. at 375, 731 S.E.2d at 866 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)). "The factors include the *importance of the witness's testimony* in the prosecution's case, whether the testimony was *cumulative*, the presence or absence of evidence *corroborating* or contradicting the testimony of the witness on material points, the *extent of cross examination* otherwise permitted, and, of course, the *overall strength* of the prosecution's case." *Id*. (emphasis in original). And if, as in *Blackwell*, this Court determines that the mental health records are not material or not exculpatory, then this Court should hold any error to be harmless and affirm Appellant's convictions and sentences.

II. The trial court did not abuse its discretion by precluding Appellant from presenting an argument to the jury in his closing argument that was not supported by evidence presented at trial.

Generally, a party's closing statements should remain within the evidence presented at trial and reasonable inferences therefrom. *See State v. Durden*, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975); *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997); *State v. New*, 338 S.C. 313, 319 S.E.2d 237, 240 (Ct. App. 1999).

Here, Victim testified that her boyfriend lived at her family home with his mother and stayed in her younger brother's room for around three months when she was twelve and before she disclosed Appellant's sexual abuse to her parents. (II Tr. 248-49). Further, Victim's mother

testified that Victim had been excited for her *quinceañera* and that virginity was a requirement for a *quinceañera* with an exception for rape. (II Tr. 190, 207).

Appellant's contention that the trial court abused its discretion by precluding him from arguing that Victim's relationship with her boyfriend, who lived in her family home when she was twelve and before her disclosure, created motivation for Victim to fabricate her allegations against Appellant is without merit. His argument is outside of the evidence presented at trial. Further, it is not reasonable to infer from the evidence presented at trial that just because Victim—a twelve-year-old child—had a similarly-aged boyfriend who stayed in her brother's room at her family home while his mother also stayed with the family, Victim must have had sexual contact with him, much less that this led her to fabricate allegations against Appellant so she could have a *quinceañera* over a year after she disclosed. The evidence presented at trial did not discuss the nature of Victim's relationship with her boyfriend nor any sexual conduct with anyone other than Appellant. Further, Appellant did not attempt to impeach Victim during her testimony with any evidence of fabricating these allegations due to sexual conduct with her boyfriend.

Moreover, evidence of a victim's sexual conduct with anyone except a defendant is generally not admissible with few exceptions. *See* S.C. Code Ann. § 16-3-659.1 ("Evidence of specific instances . . . , opinion evidence . . . and reputation evidence of the victim's sexual conduct is not admissible . . . ; however, evidence of the victim's sexual conduct with the defendant . . . is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. Evidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded.").

At no point during trial did Appellant attempt to introduce evidence of Victim's supposed sexual conduct with her boyfriend, which might have given rise to a reasonable inference that she fabricated her allegations *if* such evidence existed, was properly introduced and was known to or observed by Appellant. *See generally State v. Finley*, 300 S.C. 196, 200, 387 S.E.2d 88, 90 (1989) (holding that exclusion of evidence of the victim's sexual conduct with a third party, which was observed by the defendant, was prejudicial error because the defendant's defense was that he did not commit the alleged assault, the charges against him were fabricated to silence him about his observation of the victim's sexual conduct with the third party, and to extort money from him).

Instead, Appellant waited to make this assertion in his closing argument based on nothing other than conjecture and speculation. Further, Appellant was allowed argue the facts presented at trial, namely Victim's boyfriend living with her family and the virginity aspect of having a *quinceañera*, to the jury. Appellant was not allowed to argue his unsupported inference based on these facts, and he cannot show this deprived him of a fair trial. *See State v. Finklea*, 388 S.C. 379, 386, 697 S.E.2d 543, 547 (2010) (holding that the appellant has the burden of showing that any alleged error in limiting closing arguments deprived him of a fair trial).

The trial court did not abuse its discretion by precluding Appellant from arguing that Victim fabricated the allegations because she—as a twelve-year-old child—had a similarly-age boyfriend who lived with her family for a few months and because she had to be a virgin to have a *quinceañera* over a year after she disclosed unless she had been raped. The evidence presented at trial does not raise a reasonable inference that Victim fabricated the allegations in the way that Appellant wished to argue; thus, it would be inappropriate for Appellant to argue in closing something that was not shown by the evidence at trial and which cannot support a reasonable inference therefrom. Therefore, the trial court properly limited Appellant's closing argument.

III. The trial court did not err in denying Appellant's motion to quash all indictments against him because the offenses in each indictment were stated with sufficient certainty and particularity to enable Appellant to know what he was called upon to answer.

Appellant argues that the trial court erred in denying his motion to quash the indictments against him. He asserts that the indictments were unconstitutionally overbroad and vague because the indictments alleged the offenses occurred at an unspecified time over a five-year period. Thus, Appellant contends that it was impossible for him to try to defend against accusations spanning such a lengthy period.

"An indictment is a critical document in criminal defense preparation that is grounded in constitutional and statutory principles." *State v. Baker*, 411 S.C. 583, 588, 769 S.E.2d 860, 863 (2015); S.C. Const. art. I, § 11 ("No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed . . . ."); S.C. Code Ann. § 17-19-10 ("No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury . . . ."). As our supreme court explained in *State v. Gentry*:

> The indictment is the charge of the state against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation, and demand the judgment of his peers on the merits of the charge. If he omits the former, and chooses the latter, he ought not, when defeated on the latter,—when found guilty of the crime charged,—to be permitted to go back to the former, and inquire as to the manner and means by which the charge was presented.

State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 499-500 (2005) (citations omitted).

If a defendant raises a timely challenge to an indictment's sufficiency, then the reviewing court is charged with determining whether:

> (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

Id. at 102-03, 610 S.E.2d at 500. "In determining whether an indictment meets the sufficiency standard, the trial court must look at the indictment with a practical eye in view of all the surrounding circumstances." *State v. Tumbleston*, 376 S.C. 90, 97, 654 S.E.2d 849, 853 (Ct. App. 2007). In doing so, "one is to look at the 'surrounding circumstances' that existed pre-trial, in order to determine whether a given defendant has been 'prejudiced,' i.e., taken by surprise and hence unable to combat the charges against him." *State v. Wade*, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991).

Notably, Appellant does not argue on appeal that the indictments failed to correctly identify the statutory elements of the offenses charged; therefore, the analysis of this issue is confined to the narrow issue of whether the timeframes in the indictments were unconstitutionally overbroad. *See Baker*, 411 S.C. at 588 n.3, 769 S.E.2d at 863 n.3 (2015) ("Baker makes no assertion that the indictments failed to correctly identify the statutory elements of the offense. Accordingly, our analysis is confined to the narrow issue of whether the six-year time frame was unconstitutionally overbroad.").

In *State v. Baker*, our supreme court determined that when viewing the indictments against Baker in view of all the surrounding circumstances, Baker was prejudiced because he was "undoubtedly" taken by surprise and significantly limited in his ability to combat the charges against him. *Id*. at 590, 769 S.E.2d at 864. In its decision, our supreme court stated that Baker

was presented with new indictments a mere two weeks before trial. *Id*. These indictments were no more specific than the original indictments, which covered only three consecutive summers. *Id*. at 586-90, 769 S.E.2d at 862-64. Our supreme court also noted that no temporal limitation was identified in the indictments despite the indictments covering a six year and three month timeframe. *Id*. at 590, 769 S.E.2d at 864. The supreme court stated that Baker's defense was further hampered because employment records for two years of the relevant timeframe had been previously destroyed, which meant Baker could not adequately establish his whereabouts for almost a third of the timeframe. *Id*. at 591, 769 S.E.2d at 864. Our supreme court also determined, in view of the surrounding circumstances, that a six-year timeframe was too expansive for Baker to be able to effectively defend against. *Id*. "Although we recognize the difficulty the prosecution faces in identifying exact dates in child sexual abuse cases, the class of criminal cases should not translate into an exception that operates to circumvent constitutional and statutory principles." *Id*. at 592, 769 S.E.2d at 865.

Here, unlike in *Baker*, the timeframes of Appellant's indictments was not overbroad. *Compare State v. Wade*, 306 S.C. 79, 80, 409 S.E.2d 780, 781 (1991) (upholding indictment for first-degree CSC with a minor alleging digital penetration of the victim's vagina even though the timespan of the indictment was written as "during 1984 through 1985"), *and Tumbleston*, 376 S.C. 90, 101-02, 654 S.E.2d 849, 855 (Ct. App. 2007) (upholding indictments for first-degree CSC with a minor and lewd act upon a child covering a three-year timespan because "indictments for a sex crime that allege offenses occurred during a specified time period are sufficient when the circumstances of the case warrant considering an extended time frame"), *with Baker*, 411 S.C. at 590-91, 769 S.E.2d at 864 (holding that the trial court erred by failing to quash Baker's indictment for lewd act upon a child because Baker was re-charged two weeks before trial and his new

indictment spanned an approximately six-year timeframe instead of the timeframe of his previous indictment, which included three summers only).

Many of Appellant's charges were divided into separate indictments with different timeframes specifically to allow Appellant a better ability to defend himself. (II Tr. 61). These divided indictments count for eight of Appellant's ten indictments. (Indictment No. 2022-GS-23-001376; Indictment Nos. 2023-GS-23-006566A, -006567A, -006568A, -006569A, -006570A, -006571A, & -006573A). Further, these divided indictments provide for temporal limitations as they separate an otherwise five-year timeframe into two-year and three-year timeframes. The only indictment that has a timeframe of more than three years is the one for dissemination of obscene material. That indictment has a timeframe of just under five years. (Indictment No. 2023-GS-23-006574A).

Moreover, despite the expanded time frame from the original indictments, the ten new indictments were more specific because they split the overall timeframe for the charges between those before and after Victim turned eleven years old. (Indictment No. 2022-GS-23-001376; Indictment Nos. 2023-GS-23-006566A, -006567A, -006568A, -006569A, -006570A, -006571A, -006572A & -006573A). While this meant that Appellant had more overall indictments, the timeframes were limited by Victim's eleventh birthday, which gave Appellant more specific timeframes to defend against.

Additionally, unlike in *Baker* where the State only gave Baker two weeks' notice of the new indictments before trial, Appellant received almost three *months*' notice before trial, which is over six times more than *Baker*. And, much unlike *Baker* where Baker's destroyed employment records acted as an almost complete preclusion of an alibi for almost a third of his new indictment's

timeframe, Appellant cannot point to any similar external factors limiting his defense, particularly where his defense did not consist of an alibi claim.

In view of all the surrounding circumstances of this case, Appellant cannot show that he was prejudiced by a new set of indictments being issued *three months before trial* despite a more expansive overall timeframe. *State v. Wade*, 306 S.C. 79, 86, 409 S.E.2d 780, 784 (1991) (holding a court "is to look at the 'surrounding circumstances' that existed pre-trial, in order to determine whether a given defendant has been 'prejudiced,' i.e., taken by surprise and hence unable to combat the charges against him.").

Nine of the ten new indictments were temporally limited to between Victim's ninth to eleventh birthdays or from her eleventh birthday to Appellant's arrest shortly before Victim's fourteenth birthday. One indictment had a timeframe of just under five years, covering the time from Victim's ninth birthday until Appellant's arrest. All ten indictments have a timeframe that is well under the six-year timeframe that our supreme court determined was too expansive in *Baker*. Moreover, Appellant's arrest warrants, which also provided notice, stated that the relevant timeframe covered the time between when Victim was nine to thirteen years old. (II Tr. 61).

All ten indictments correspond to some relevant part of the approximate five-year timeframe in which Victim stated she was sexually abused by Appellant. *See Tumbleston*, 376 S.C. 90, 101-02, 654 S.E.2d 849, 855 (Ct. App. 2007) (upholding indictments for first-degree CSC with a minor and lewd act upon a child covering a three-year timespan because "indictments for a sex crime that allege offenses occurred during a specified time period are sufficient when the circumstances of the case warrant considering an extended time frame"). Unlike *Baker*, Appellant cannot point to some external fact that limited his ability to establish an alibi defense for a sizable portion of any indictment's timeframe.

Appellant was not prejudiced or surprised by the new indictments or the timeframes they cover, and he had adequate time to prepare his defense before trial. Therefore, the trial court did not err by denying Appellant's motion to quash his indictments.

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for five counts of first-degree CSC with a minor, four counts of third-degree CSC with a minor, and dissemination of obscene material to a minor, as well as his associated sentences.

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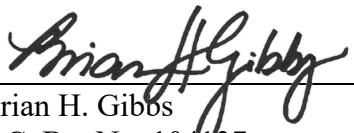
By: 
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Attorneys for Respondent

August 15, 2025
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000425

THE STATE,

Respondent,

v.

JAMES BROWN,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the following to be included in the Record on Appeal:

1. Indictment No. 2022-GS-23-001373 and Greenville County Clerk of Court's Office nolle prosequi notations;

2. Indictment No. 2022-GS-23-001374 and Greenville County Clerk of Court's Office nolle prosequi notations;

3. Indictment No. 2022-GS-23-001375 and Greenville County Clerk of Court's Office nolle prosequi notations;

4. Indictment No. 2022-GS-23-001376 and corresponding sentencing sheet;

5. Indictment No. 2023-GS-23-006566A and corresponding sentencing sheet;

6. Indictment No. 2023-GS-23-006567A and corresponding sentencing sheet;

7. Indictment No. 2023-GS-23-006568A and corresponding sentencing sheet;

8. Indictment No. 2023-GS-23-006569A and corresponding sentencing sheet;

9. Indictment No. 2023-GS-23-006570A and corresponding sentencing sheet;

10. Indictment No. 2023-GS-23-006571A and corresponding sentencing sheet;

11. Indictment No. 2023-GS-23-006572A and corresponding sentencing sheet;

12. Indictment No. 2023-GS-23-006573A and corresponding sentencing sheet;

13. Indictment No. 2023-GS-23-006574A and corresponding sentencing sheet;

14. Motion hearing transcript, dated January 8, 2024, pages 1-43;

15. Discovery order, filed January 16, 2024;

16. Trial transcript, dated January 29 to February 2, 2024, pages 1-66 and 132-557;

17. Defendant's motion for new trial, dated February 12, 2024;

18. Order denying Defendant's motion for a new trial, dated March 8, 2024; and

19. Court's Exhibit 2 (Victim's mental health records – under seal).

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

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

[*signature block on following page*]

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CINDY S. CRICK
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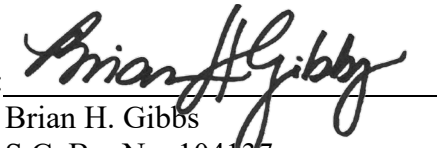
By: 
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August 15, 2025
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2024-000425

THE STATE,

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v.

JAMES BROWN,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Initial Brief of Respondent and Designation of Matter on Gary H. Johnson, II, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 15th day of August 2025.

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