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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Heath Taylor, Circuit Court Judge

Appellate Case No. 2025-000846

The State of South Carolina, Respondent,

v.

Edwin C. Haney, Appellant.

INITIAL BRIEF OF APPELLANT

Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err by denying Appellant's motion to dismiss based on double jeopardy?

II. Did the Circuit Court err by denying Appellant's motion to subpoena victim records based on the relevance of that evidence to Minor Child's credibility?

III. Did the Trial Court err by denying Appellant's motion for severance when the indictments are distinct offenses occurring on different dates, requiring different evidence, and are not admissible under Rule 404(b), SCRE?

IV. Did Trial Court err by denying Appellant's motion for suppression of untimely disclosed evidence of screenshot messages selected by Minor Child that corroborated the Minor Child's testimony.

V. Did the Trial Court err by denying Appellant's motion to suppress a photograph of the mother's work schedule when the original best evidence should have been required to prove the work schedule corroborated the only specific date listed in an indictment?

VI. Did the Trial Court err by denying Appellant's objections to the State's improper vouching and bolstering of Minor Child's credibility?

STATEMENT OF THE CASE

On April 14, 2022, the Richland County Grand Jury indicted Appellant, Edwin Carl Haney, for six counts of criminal sexual conduct with a minor, victim 11 to 14 years of age, 2nd degree ("CSCM 2nd Degree"). (R. * Indictment Nos. 2022-GS-40-002391–93, 95 –97).

On May 20–21, 2024, Appellant *initially* proceeded to trial before the Honorable Robert Hood and a jury. (Hood Tr. p. 1 – 243). Dayne Phillips and Sukhpreet Singh represented the Appellant, and Assistant Solicitors Theresa Johns and Allison Foster represented the State. Judge Hood ultimately declared a mistrial on the second day of trial.

On April 7–11, 2025, Appellant then proceeded to trial before the Honorable Heath Taylor and a jury. (Trial Tr. p. 1 – 862). Dayne Phillips and Sukhpreet Singh represented Appellant, and Assistant Solicitors Theresa Johns and Allison Foster represented the State. After an *Allen*[1] charge, the jury returned a guilty verdict on one count of CSCM, 2nd Degree (Indictment No. 2022-GS-40-002391), and not guilty verdicts on the remaining five counts of CSCM, 2nd Degree. (Trial Tr. p. 828, line 24 – p. 829, line 4). The Trial Court sentenced Appellant to twenty (20) years imprisonment. (Trial Tr. p. 859, lines 24-25; R. * Sentencing sheet).

On April 16, 2025, Appellant filed a Motion for a New Trial, and if Denied, Motion for Reconsideration of Sentence. (R. *). The Trial Court issued an Order Denying the Motion for Reconsideration on April 25, 2025. (R. *).

On April 29, 2025, Appellant filed a Notice of Appeal. (R. *). This appeal follows.

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[1] *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed.2d 528 (1896).

STATEMENT OF THE FACTS

Indictments

Indictment number 2022-GS-40-002391 is the only indictment that contained a specific date and alleged that Appellant on or about January 11, 2020 "penetrat[ed] her anus with his penis while the minor was sleeping in her bed an awoke to the act of penetration in her anus."

Indictment number 2022-GS-40-002392 alleged that Appellant on or between January 11, 2020, and March 30, 2021, "penetrated[ed] her anus with his penis for a period of time until he stopped, pulled her underwear up and walked out of the room".

Indictment number 2022-GS-40-002393 alleged that Appellant on or between January 11, 2020, and March 30, 2021, "penetrated[ed] her anus after a night of drinking with friends and after the mother was asleep as he was in the minor child's bed".

Indictment number 2022-GS-40-002395 alleged that Appellant on or between January 11, 2020, and March 30, 2021, "penetrated[ed] with his penis after waking her up and inserting his finger in her vagina".

Indictment number 2022-GS-40-002396 alleged that Appellant on or between January 11, 2020, and March 30, 2021, "penetrated[ed] her anus with his penis after a neighbor left the home and he came into her room while she was playing Pokémon video game".

Indictment number 2022-GS-40-002397 alleged that Appellant on or between January 11, 2020, and March 30, 2021, "penetrated[ed] her anus with his penis after texting her to come into his room and pulled her by the arm into his bed".

Relevance of Minor Child's Cell Phone and iPad

Minor Child claimed that she checked her phone to see the date and time after the first sexual assault, and "January 11 at like 1 a.m. is what sticks in my head." (Trial Tr. p. 457, lines

7-13). Minor Child also maintained that she disclosed the sexual assault with an anonymous online friend named "Loaf" who lives in England in a messaging app on her phone. (Trial Tr. p. 508, lines 12-19). Minor Child provided selected screenshots of the purported conversations with the anonymous friend to the State. (Trial Tr. p. 508, lines 11-25; p. 511, lines 1-5; R. State's Exhibit no. 50; p. 520, line 14 – p. 522, line 8; p. 530, line 19 – 531, line 25; R. State's Exhibit nos. 49 and 54).

Minor Child also explained that she held onto her iPad (watching YouTube or playing games) during the purported sexual assaults as a distraction. (Trial Tr. p. 462 – 463; p. 583). The State never conducted an extraction of the cell phone or requested any records related to the cell phone or iPad. Minor Child further stated that she did not understand what had happened (referring to the sexual assault) until she read "Killing Stalking", a horror-themed Koren comic that depicts rape and murder. (Trial Tr. p. 516 – 517). Notably, Minor Child's credibility was the central issue for the jury determination of Appellant's guilt due to the lack of physical and forensic evidence.

Pre-Trial Hearing: Motion for Confidential Records

On October 18, 2022, Appellant filed a motion for personal and confidential records pursuant to Rule 13(A)(2) of the South Carolina Rules of Criminal Procedure (issuance of subpoena for personal or confidential information about a victim) and *State v. Blackwell*, 420 S.C. 127, 801 S.E.2d 713 (2017) (providing the procedure for requesting privileged mental health records). (R. *). Relevant to this appeal, Appellant requested the "[i]nternet history and downloads from the minor child's cell phone and Ipad." (R. *).

In support of the motion, Appellant provided that "[t]he Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3 and 14 of the South Carolina Constitution guarantee criminal defendants the right to a fair trial, substantive and

procedural due process, confrontation of witnesses, compulsory process, the opportunity to present a complete defense, and effective assistance of counsel." (R. *).

On November 3, 2022, Appellant appeared before the Honorable Clifton Newman for a hearing on the motion for personal and confidential records. (Newman Tr. 1 – 17). Dayne Phillips represented Appellant, and Assistant Solicitor Theresa Johns represented the State.[2] Relevant to this appeal, Defense Counsel requested authorization to obtain the internet history and downloads of the Minor Child's cell phone and iPad. (Newman Tr. p. 4, lines 1-2). Counsel argued the requested evidence is relevant to the Minor Child's credibility and Appellant's right to a meaningful opportunity to present a full and complete defense and confrontation of witnesses. Counsel further explained his request for the records:

> There was screen shots of [texts messages from] the minor child's cell phone. She [Minor Child] is talking to this quote unquote anonymous person from England, and she says fun fact, I hallucinate noises.
>
> . . .
>
> And whether the records contain (inaudible) evidence and include, but not limited to, evidence relevant to a witness's credibility. This is a credibility case. The medical records show that there is no evidence of any type of sexual assault.
>
> . . .
>
> The witness [Minor Child] is saying she hallucinates. That goes to her credibility.
>
> . . .
>
> [A]nd again the internet history and downloads from the minor child's cell phone and iPad. The investigator never took them. I'd like to see them because I think they would have some - - probably some really relevant things on them.

[2] The transcript incorrectly lists Jael Gilreath as the Prosecuting Attorney. She previously represented Appellant prior to joining the Fifth Circuit Solicitor's Office.

(Newman Tr. p. 4, line 24 – p. 5, line 2; p. 5, lines 16-20; p. 7, line 25 – p. 8, line 1; p. 11, lines 21-25).

On December 28, 2023, Judge Newman issued an Order denying Appellant's request to subpoena the Minor Child's cell phone and iPad records. (R. *). Judge Newman held, "As for a subpoena for internet history of the minor child's personal cell phone or IPAD data, no statute or case law cited requires the action of this court and the request is denied." (R. *).

First Trial

On May 20–21, 2024, Appellant *initially* proceeded to trial before the Honorable Robert Hood and a jury. (Hood Tr. p. 1 – 243). Judge Hood suppressed *numerous* items that the State intended to introduce into evidence against Appellant based on the State's failure to disclose or timely disclose to Defense Counsel prior to trial. Specifically, Judge Hood suppressed an undisclosed witness statement that Appellant allegedly said he was going to kill himself after the Minor Child's disclosure of abuse and photographs of the Minor Child purportedly before the alleged abuse. (Hood Tr. p. 27, line 5 - p. 31, line 13).

Judge Hood also ruled against the State by not allowing the introduction of other items into evidence based on the South Carolina Rules of Evidence and Due Process Clauses of the United States Constitution and South Carolina Constitution. Specifically, Judge Hood excluded screenshots of purported text messages between Appellant and Juliane Becker (the Minor Child's mother and Appellant's ex-wife) immediately after the disclosure of abuse, a video clip of a Japanese animation movie (*Ninja Scroll*) depicting a sexual act, a video clip of a horror movie (*Evil Dead*) depicting a sexual act, and a video clip of a Pokémon game. (Hood Tr. p. 54, line 23 – p. 65, line 22; p. 128, line 10 – p. 133, line 13; p. 191, line 9 – p. 200, line 8).

Judge Hood prohibited the State from providing additional improper testimony by the

Minor Child's mother that she and Appellant watched legal pornography in their marital bedroom. (Hood Tr. p. 188, line 15 - p. 190, line 25). Judge Hood also issued a curative instruction based on the unfairly prejudicial and false statement by the Minor Child's mother that this was Appellant's third trial. (Hood Tr. p. 232, line 19 - p. 233, line 6).

Judge Hood noted *in camera* that the Minor Child's mother (the State's first witness) also improperly testified to numerous other unfairly prejudicial matters. For example, the Minor Child's mother stated numerous times that Appellant raped her daughter, she believed her daughter, and her daughter never told a lie (despite not having any personal knowledge other than the Minor Child's delayed disclosure of abuse). (Hood Tr. p. 231, line 5 – p 232, line 4). The Minor Child's mother also falsely testified that there was blood found on a pair of panties submitted to Investigator Leonard Cabe. (Hood Tr. p. 212, line 18 – p. 214, line 21).

Judge Hood admonished Counsel prior to the lunch break on the second day that the case was "an inch of away from a mistrial." (Hood Tr. p. 232, lines 6-7). After the break, Assistant Solicitor Johns called the State's second witness, Investigator Leonard Cabe, and after a few questions into direct examination, he identified Appellant and noted that he did not have an opportunity to meet with Appellant. (Hood Tr. p. 240, line 19 – p. 241, line 5). Solicitor Johns then asked, "[Appellant] did not give you an interview, right?", and Investigator Cabe replied, "That's correct". (Hood Tr. p. 241, lines 4-6). Defense Counsel contemporaneously stated, "Your Honor, may we approach?", and Judge Hood responded, "You may."

Judge Hood then inquired, "[W]hen did it become permissible to comment on a defendant's right to remain silent?" Solicitor Johns claimed that she had not commented on his right to silence. (Hood Tr. p. 241, line 23 – p. 242, line 11). Judge Hood then declared a mistrial based on the State's conduct and noted, "It's rise[n] to the level of manifest necessity. . . . Can't comment on

the defendant's right to remain silent." (Hood Tr. p. 242, lines 12-17).

Hearing: Motion to Dismiss

On May 28, 2024, Appellant filed a motion to dismiss pursuant to the Double Jeopardy Clauses of the United States Constitution and South Carolina Constitution. (R. *). Appellant argued that Solicitor Johns intentionally provoked a mistrial by engaging in conduct that would result in a mistrial based on the Court's adverse rulings against the State. (R. *).

On August 19, 2024, Appellant appeared before the Honorable Martha Rivers on Appellant's motion to dismiss. (Rivers Tr. p. 1–57). Dayne Phillips represented Appellant, and Assistant Solicitor Theresa Johns represented the State. Defense Counsel moved for a continuance at the hearing, arguing that Judge Hood was the "proper judge to hear that motion" because "[h]e presided over the trial" and "was the one who would make the credibility determination on that specific motion." (Rivers Tr. p. 3, line 23 – p. 4, line 4). Specifically, "I think it would be unfair for Your Honor to have to be in a position to rule on this case when you weren't personally there in the courtroom presiding over the, the actual trial." (Rivers Tr. p. 4, lines 5-8).

Solicitor Johns objected to the continuance and stated, "I don't see Judge Hood hearing this motion seeing that he is also here today and he's also running a nonjury courtroom. So, had he wanted to hear it, we could just move over to his courtroom. But I don't think that's the case, Your Honor, and I don't think [Defense Counsel] thinks that's the case either." Judge Rivers interjected, "I don't think that's the case either. . . . Ask [Judge Hood] if he's gonna hear any of it and then you can come back." (Rivers Tr. p. 5, lines 8-25). Solicitor Johns then noted that Judge Hood stated in an email that Judge Rivers would preside over the hearing. (Rivers Tr. p. 6, lines 10-12). Defense Counsel and Solicitor Johns confirmed that Judge Hood refused to hear the

motion. (Rivers Tr. p. 7, line 19-22).

Defense Counsel then moved for dismissal before Judge Rivers. (Rivers Tr. p. 9, lines 13-23). Counsel noted that he argued during the bench conference with Judge Hood that the unfairly prejudicial question constituted a *Doyle*[3] violation prior to Judge Hood *sua sponte* mistrial. (Rivers Tr. p. 14, line 1-6). Counsel again moved for dismissal:

> [W]e respectfully move for the Court to dismiss these indictments based on the conduct that intentionally provoked a mistrial engaging in conduct that would have triggered a mistrial.
>
> The solicitor has many years of experience both on criminal defense side and being a prosecutor, and, with that, knowing that a *Doyle* violation would potentially trigger a mistrial, especially after all those adverse rulings, we believe is the tipping point which shows that it rises to the level of where Judge Hood felt it was manifest necessity to trigger a mistrial. But also where it was an intentional set of conduct that would have triggered the mistrial, which is the lynchpin, the cornerstone of when you have a motion to dismiss based on double jeopardy is when it's intentionally done, when you have conduct that triggers the mistrial intentionally.

(Rivers Tr. p. 14, line 15 – p. 15, line 6).

In response, Solicitor Johns maintained that the conduct was not intentional, and that the State did not want a mistrial. Solicitor Johns even acknowledged Defense Counsel's argument that, if the State was allowed to proceed with a second trial, Appellant would lose the ability to suppress the non-disclosed and untimely disclosed evidence previously suppressed by Judge Hood. (Rivers Tr. p. 33, lines 15-19-24). At the conclusion of the hearing, Judge Rivers took the motion under advisement. (Rivers Tr. p. 42, lines 9-11).

On September 3, 2024, Judge Rivers issued an Order denying Appellant's motion to bar a second prosecution based on double jeopardy. (R. *). Judge Rivers denied the motion and

[3] *Doyle v. Ohio*, 426 U.S 610 (1976).

provided the following ruling:

> To bar further prosecution of defendant, this court must find that the prosecutor's acts or omissions that led to the mistrial were intentional in nature. There is insufficient information for this court to determine that. It is clear the trial was less than ideal. The court had warned the attorneys that a mistrial was possible when a witness, the minor child's mother, testified improperly. However, when looking at the items suppressed, those items do not appear to be so integral to the heart of this case to be the basis for goading of a mistrial. . . .
>
> This court agrees with the trial court and the defense that the prosecution's testimony was an inappropriate comment upon the defendant's right to remain silent. Unfortunately, even seasoned attorneys make mistakes of this nature in trial. Therefore, the fact of the error itself is not enough to prove intent to goad a mistrial in violation of *Kennedy*. Looking at the trial as a whole, defendant has not provided sufficient evidence of intent to goad a mistrial.

(R. * Order Denying Motion to Dismiss).

Second Trial

On April 7–11, 2025, Appellant proceeded to trial before the Honorable Heath Taylor and a jury. (Trial Tr. p. 1 – 862).

Motion to Dismiss

Pre-trial, Appellant renewed the motion to dismiss based on double jeopardy. (Trial Tr. p. 6 –11; R. Defendant's Exhibit Nos. 2—Motion to Dismiss, 2A—Order, 2B—Day one transcript, and 2C—Day two transcript). In response, the Trial Court denied the motion and previously noted, "I don't have the authority to overturn Judge Rivers' order." (Trial Tr. p. 10, line 11 – p. 11, line 8).

Motion for Severance

Pre-trial, Appellant moved for severance of indictments "because these indictments are distinct offenses occurring on different dates, requiring different evidence of proof of guilt, and

are not admissible under Rule 404(b) of the South Carolina Rules of Evidence." (Trial Tr. p. 21, lines 8-19; R. Motion for Severance). Appellant cited *State v. Middleton*, 288 S.C. 21, 23-24, 339 S.E.2d 692, 693 (1986), and noted "our Supreme Court found that the trial judge erred in consolidating the charges where the crimes did not arise out of a single [chain] of circumstances … and required a different evidence of proof." (Trial Tr. p. 21, line 20 – p. 22, line 1). Appellant then explained the allegations contained in the six indictments, that the allegations would not be admissible in a separate trial under Rules 403 and 404(b) of the South Carolina Rules of Evidence, and that consolidation of charges is fundamentally unfair. (Trial Tr. p. 22 – 26).

In response, the State argued the allegations are "all very similar by nature", and "the State would be pursuing all of these under a *res gestae* theory". (Trial Tr. p. 27, lines 8-18). Appellant referenced the written motion and argued that the separate allegations were not *res gestae*. The Trial Court responded, "I would tend to agree". (Trial Tr. p. 28, lines 11-14).

The Trial Court then denied the motion for severance and provided the following ruling:

> I have evaluated your motion under *State v. Tallent*. The test is that it must arise out of a single chain of circumstances.
>
> I'll find that there does - - does appear to be that the charges arise out of a single [] chain …in taking it in a light most favorable to the State, a single chain of circumstances being a - - a course of alleged sexual abuse over a period of time, they must be proved by the same evidence.
>
> Again, …I think it's the same type of evidence, and they must be of the same general nature. Certainly, these are. I don't find there to be any prejudice to the [Appellant].

(Trial Tr. p. 28, line 21 – p. 29, line 17).

Motion for Suppression of Untimely Disclosure of Evidence

Pre-trial, Appellant moved for suppression of the untimely disclosure of evidence. (Trial Tr. p. 76 – ; R. Defendant's Exhibit Nos. 6A and 6B). The State sent the trial notice on March 18

and subsequent email on April 1 regarding "additional screenshots of Amino app chat messages that were disclosed". (Trial Tr. p. 76, line 19 – p. 77, line 4; R. Defendant's Exhibit No. 6A). Appellant explained,

> Specifically, there are messages that are - - or screenshots of messages that had never been disclosed. This case ha[s] been called for one trial, but didn't make it to the roster, called for another trial, but was continued because of discovery issues, called for the third trial, which we selected the jury, that resulted in a mistrial.
>
> And now, here we are, several years later, and we have discovery being sent to us on April 1st. ... I'd already written this motion. There was additional chat messages that were sent last night or yesterday evening, afternoon....

(Trial Tr. p. 77, lines 5-77). Appellant also argued that the disclosure of those messages is untimely under Rule 5 of the South Carolina Rules of Criminal Procedure and violative of our Supreme Court's General Sessions Docket Management Order. (Trial Tr. p. 77 – 78). Appellant noted that "Defense Exhibit 6B is the Supplemental Motion for Disclosure of Evidence that was filed on behalf of the defendant that specifically request these" records, and the motion "was sent back in May of '22, and it specifically requests all the screenshots, photos, video recordings, data dumps, phone records". (Trial Tr. p. 78, lines 9-15).

Appellant marked correspondence from the Solicitor's Office as Court's Exhibit number 1 regarding the screenshots provided by the Minor Child of alleged conversations "with an anonymous friend in England" and confirming that the Minor Child's "phone was not downloaded." (Trial Tr. p. 80, lines 5-15; R. Court's Exhibit No. 1). Notably, Appellant informed the Trial Court, "leading up to the prior trial, we kept getting additional screenshots of - - from this alleged Amino app on more than one occasion" and "now we have one from April 1st and one from yesterday." (Trial Tr. p. 80, line 25 – 81, line 3).

In response, Assistant Solicitor Allison Foster explained that the State disclosed the

screenshots of the messages provided by the Minor Child in 2022, that the Minor Child sent the State additional screenshots of messages in preparation for trial in 2024, and that the Minor Child sent the State more screenshots of messages on April 1st in preparation for this trial. (Trial Tr. p. 81, line 11 – p. 83, line 14). The State noted that the Minor Child is a witness, that the messages were not in the State's possession, and that the messages were disclosed after being received. The State did, however, acknowledge that the screenshots of these messages were relevant to the prosecution's case, and that Investigator Cabe did not download the Minor Child's phone in 2022. (Trial Tr. p. 83, lines 18-24). Assistant Solicitor Foster explained that she received additional screenshots of messages during her meeting with the Minor Child in 2024. (Trial Tr. p. 84 – 85).

The Trial Court interjected, "[T]he investigator knew about them [messages on the Minor Child's phone] back in 2022 and didn't do anything to obtain them?" Solicitor Foster replied, "The investigator obtained disclosures that the [Minor Child] made to this anonymous peer or this anonymous friend. So he obtained the ones that the [Minor Child] found in her found in real time in that moment. The investigator didn't go any further." (Trial Tr. p. 85, lines 8-16). Solicitor Foster admitted that "the State didn't take any further action, but the [Minor Child], sua sponte, on April 1st, said, 'Hey, I've got some more of these, and I don't think I turned them over to you. Is it too late?'" (Trial Tr. p. 85, lines 17-23).

Appellant referenced the supplemental motion for discovery, the email to the State in 2024, requesting "complete text messages, not screenshots, of the communications", the Investigator's failure to do a cell phone extraction, the constant "drip" of additional screenshots of messages leading up the first trial in 2024 and not this trial in 2025. (Trial Tr. p. 86, line 18 – 87, line 14). Notably, Appellant explained that the State has allowed the Minor Child to "pick and choose what screenshots to send them" despite our Supreme Court's Docket Management Order while they

"willfully put their head in the sand", and that Judge Newman denied Appellant's request to obtain these records. (Trial Tr. p. 87, line 6 – 88, line 88). Appellant further argued, "There could be evidence on that phone that completely exonerates [Appellant], but we've been denied access to it." (Trial Tr. p. 88, lines 2-4).

The State interjected, "The State intends to admit [these screenshots of messages], Your Honor. The State would intend to admit it in its entirety." (Trial Tr. p. 96, line 24 – p. 97, line 1). Appellant again referenced that this case had been previously continued due to the untimely disclosure of evidence, and a mistrial due to the State's conduct. (Trial Tr. p. 100, lines 1-4).

At trial, the Minor Child testified that the first person she told regarding the purported abuse was her online friend "named Loaf" from England. The Trial Court admitted screenshot messages between Minor Child and the anonymous online friend over Appellant's renewed objection as State's Exhibit number 50. (Trial Tr. p. 508, lines 11-25; p. 511, lines 1-5; R. State's Exhibit no. 50). The Trial Court allowed the State to have the Minor Child read the screenshot messages verbatim, "So my stepdad used to rape me in my sleep or just play with me. . . ." (Trial Tr. p. 513, lines 7-8; R. State's Exhibit no. 50). The Trial Court also admitted additional screenshot messages between the Minor Child and the anonymous online friend over Appellant's renewed objection as State's Exhibit numbers 49 and 54 (Trial Tr. p. 520, line 14 – p. 522, line 8; p. 530, line 19 – 531, line 25; R. State's Exhibit nos. 49 and 54).

Motion to Subpoena Victim Records

Pre-trial, Appellant renewed Judge Newman's denial of his motion to subpoena the Minor Child's cell phone and iPad evidence. (Trial Tr. p. 102, lines 1-22; R. Defendant Exhibit Nos. 7, 8A, and 8B). The Trial Court inquired, "Well, have you sent a subpoena?" Appellant replied, "You can't. The subpoena rules [referring to Rule 13(a)(2), SCRCrimP] say that we have to

...have a court hearing, and Judge Newman denied - - specifically denied those requests." (Trial Tr. p. 109, lines 3-7; p. 113, lines 4-24). The Stated took the position that Rule 4(b) of the South Carolina Rules of Criminal Procedure prevents the Trial Court from overruling another Circuit Court Judge's prior ruling. (Trial Tr. p. 114, lines 12-14). The Trial Court ultimately denied the motion to obtain the Minor Child's cell phone and iPad records. (Trial Tr. p. 114, lines 15-20; p. 119, lines 16-17).

Motion for Suppression of Evidence

Pre-trial, Appellant moved for suppression of a photograph of a work schedule under authentication and the best evidence rule. (Trial Tr. p. 167 – 170). The State sought to admit a photograph of the Minor Child's mother's work schedule to prove she was at work on the night "one of the occasions that the rape occurred" on January 11 and 12. (Trial Tr. p. 167, lines 19-25). The State claimed that the mother lost the original document and only had the photograph. (Trial Tr. p. 168, lines 3-6).

Appellant argued that the witness could not authenticate the document because she did not create the document, it's not the original document, it's not a public record. (Trial Tr. p. 169, lines 7-24). The Trial Court denied that motion "if there's an appropriate foundation laid". (Trial Tr. p. 170, lines 4-11). Appellant also argued that the original is required under the best evidence rule, and the Trial Court denied that motion. (Trial Tr. p. 170, lines 20-23).

At trial, Juliane Decker testified that the photograph of her work schedule ("staff duty roster") listed her duty assignment as scheduled for January 11–12, 2020. The Trial Court admitted the photograph over Appellant's renewed objection as State's Exhibit number 45. (Trial Tr. p. 264, lines 11 – 265, line 1; R. State's Exhibit no. 45).

Objections to Vouching and Bolstering

Appellant objected to the State's comments during opening statement: "Pay attention to what she tells you and ask yourself, Why did she come in this courtroom today and tell you what she experienced if it is not true?" Appellant objected, "She's vouching, and this is Opening Statement, not argument. She's not allowed to argue that." The Trial Court replied, "I don't think that it was to the level of vouching. It was getting close" and overruled the objection. (Trial Tr. p. 232, line 20 – p. 233, line 18).

During the State' direct examination of Dr. Stephanie Schaller, Appellant objected to the following exchange:

STATE:	"And, Dr. Schaller, if our - - if the Court system had to rely on you coming to court and saying solely based on - -
DEFENSE:	Objection, Your Honor.
COURT:	What's the objection?
DEFENSE:	Improper bolstering, Your Honor, in addition to being outside the scope of her expertise.
COURT:	Overruled.
STATE:	If our court system is to rely on expert testimony from people like you to prove based solely upon physical presence of injury to prove rape, then what you're saying would be that 95 percent of the 300 to 325 patients you saw last year are lying. Is that fair to say.
DR. SCHALLER:	Can you restate your question again? Sorry.
STATE:	If you were to rely on the physical results, 95 percent of the 300 to 325 cases you saw last year, these patients were not telling the truth?
DR. SCHALLER:	I would say not all patients come in with sexual assault cases, but those that did, most of those would not be - - they would not - - I could not diagnose if I just went on physical findings because, again, there are no, usually no physical findings. Most of these cases, their findings are completely wrong.
STATE:	And are you misleading this jury by saying - -

DEFENSE:	Objection.
COURT:	What's the objection?
DEFENSE:	Once again, Your Honor, bolstering credibility.
COURT:	Overruled.

(Trial Tr. p. 426, line 9 – p. 427, line 15).

Appellant objected during the State's redirect examination of the Minor Child during the following exchange:

STATE:	And finally [Defense Counsel] asked you about your meetings with me. [Minor Child], what did I tell you was the number one rule?
DEFENSE:	Objection. ... vouching.
STATE:	Your Honor, does that - -
COURT:	Overruled. Overruled.
STATE:	When I have met with you, what have I told you?
MINOR CHILD:	Speak your truth and nothing but the truth. That's about it. I treated our conversations like therapy if anything because, I don't know, it felt nice that way.

(Trial Tr. p. 599, lines 10-20).

During the State's closing argument, the Trial Court sustained Appellant's objection based on improper vouching to the following comment: And she [Dr. Schaller] ethically and honestly comes into Court and tells you" (Trial Tr. p. 721, lines 5-9). The Trial Court then overruled Appellant renewed objection to vouching and bolstering: "And when asked by Ms. Foster, 'Why, [Minor Child], would you come in here and make this up?' you won't forget this, she says, 'Why would I do this to myself? Why would I put myself through this? Why would I make this up?'" (Trial Tr. p. 721, line 24 – p. 722, line 7).

Motion for New Trial

Post-verdict, Appellant renewed all prior motions and objections and moved for a new trial, and the Trial Court denied the motion for a new trial. (Trial Tr. pp. 833 – 834). Appellant also specifically referenced State's Exhibit number 50 because the State disclosed that screenshot of a highly inculpatory disclosure message for the first time the week prior to trial and renewed the prior motion to suppress this evidence. The Trial Court denied that renewed motion. (Trial Tr. p. 835, line 10 – p. 837, line 9).

Motion for New Trial

On April 16, 2025, Appellant filed a Motion for a New Trial, and if Denied, Motion for Reconsideration of Sentence. (R. *). The Trial Court issued an Order Denying the Motion for Reconsideration on April 25, 2025. (R. *).

ARGUMENT

I. THE CIRCUIT COURT ERRED BY DENYING APPELLANT'S MOTION TO DISMISS BASED ON DOUBLE JEOPARDY.

Standard of Review

In criminal cases, an appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (citations omitted). "This Court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial judge's ruling is supported by any evidence." *Id.* at 6, 545 S.E.2d at 829. 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).

Law

The Double Jeopardy Clauses of the United States and South Carolina Constitutions protect citizens from being twice placed in jeopardy of life or liberty. *See* U.S. Const. amend. V; S.C. Const. art. I, § 12; *Harden v. State*, 360 S.C. 405, 410, 602 S.E.2d 48, 50 (2004) (citation omitted). "Under the law of double jeopardy, a defendant may not be prosecuted for the same offense after an acquittal, a conviction, or an improvidently granted mistrial." *State v. Coleman*, 365 S.C. 258, 263, 616 S.E.2d 444, 446 (Ct. App. 2005) (citation omitted).

"Prosecutorial conduct that might be viewed as harassment or overreaching, even if sufficient to justify a mistrial on defendant's motion . . . does not bar retrial absent intent on the part of the prosecutor to subvert the protections afforded by the Double Jeopardy Clause." *Oregon v. Kennedy*, 456 U.S. 667, 675-76, 102 S. Ct. 2083, 2089, 72 L. Ed. 2d 416 (1982). Therefore, a properly granted mistrial poses no double jeopardy bar to a subsequent prosecution.

Notably, "[o]nly where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." *Id.* at 676, 102 S. Ct. at 2089; *see also State v. Mathis*, 359 S.C. 450, 460, 597 S.E.2d 872, 877 (Ct. App. 2004) (noting that a defendant who has moved for and been granted a mistrial may invoke the Double Jeopardy Clause to prevent a second prosecution when the prosecutor's conduct giving rise to the mistrial was intended to provoke him into moving for the mistrial).

The determination of whether double jeopardy attaches depends upon whether the prosecutorial conduct was undertaken with the intent to subvert the Double Jeopardy Clause. *State v. Coleman*, 365 S.C. 258, 263, 616 S.E.2d 444, 447 (Ct. App. 2005) (citation omitted). "The trial court's finding concerning the prosecutor's intent is a factual one and will not be disturbed on appeal unless clearly erroneous." *Id.* (citation omitted). "Case law . . . has consistently emphasized that application of the double jeopardy bar is dependent on a showing of the prosecutor's subjective intent to cause a mistrial in order to retry the case." *U.S. v. Williams*, 472 F.3d 81, 85-86 (3rd Cir. 2007). The intent necessary is not that "a person intends the natural and probable consequences of his or her acts if those acts are knowingly done." *Id.* at 88.

If a court focuses on the natural and probable consequences of prosecutorial conduct, rather than the intent underlying that conduct, then any prosecutorial misconduct could bar retrial. *Id.* Therefore, courts have to determine whether the subjective intent of the solicitor was to cause a mistrial. *Id.* This is not an easy task to undertake, because it is almost unimaginable that a solicitor would admit that he or she took certain actions in an effort to cause the defendant to move for a mistrial.

Discussion

In this case, the Circuit Court erred by denying Appellant's motion to dismiss based on double jeopardy. *See generally Coleman*, 365 S.C. at 263, 616 S.E.2d at 447. Judge Hood's adverse rulings, admonishments, and the Prosecutor's blatant conduct illustrates that she intentionally provoked a mistrial by engaging in conduct that would result in a mistrial. (Hood Tr. p. 54, line 23 – p. 65, line 22; p. 128, line 10 – p. 133, line 13; p. 191, line 9 – p. 200, line 8; pp. 232 – 242). *See generally State v. Parker*, 391 S.C. 606, 707 S.E.2d 799 (2011).

At the hearing before Judge Rivers, Defense Counsel provided the basis for the motion to dismiss:

> [W]e respectfully move for the Court to dismiss these indictments based on the conduct that intentionally provoked a mistrial engaging in conduct that would have triggered a mistrial.
>
> The solicitor has many years of experience both on criminal defense side and being a prosecutor, and, with that, knowing that a *Doyle* violation would potentially trigger a mistrial, especially after all those adverse rulings, we believe is the tipping point which shows that it rises to the level of where Judge Hood felt it was manifest necessity to trigger a mistrial. But also where it was an intentional set of conduct that would have triggered the mistrial, which is the lynchpin, the cornerstone of when you have a motion to dismiss based on double jeopardy is when it's intentionally done, when you have conduct that triggers the mistrial intentionally.

(Rivers Tr. p. 14, line 15 – p. 15, line 6). Judge Rivers' finding that "even seasoned attorneys make mistakes of this nature in trial" is misplaced when taken in context of the entire record. (R. * Order Denying Motion to Dismiss).

Pre-trial, Appellant renewed the motion to dismiss based on double jeopardy. (Trial Tr. p. 6 – 11; R. Defendant's Exhibit Nos. 2—Motion to Dismiss, 2A—Order, 2B—Day one transcript, and 2C—Day two transcript). In response, the Trial Court denied the motion and previously noted, "I don't have the authority to overturn Judge Rivers' order." (Trial Tr. p. 10, line 11 – p. 11, line

8). Therefore, the Circuit Court erred by denying Appellant's motion to dismiss based on double jeopardy.

II. THE CIRCUIT COURT ERRED BY DENYING APPELLANT'S MOTION TO SUBPOENA VICTIM RECORDS BASED ON THE RELEVANCE OF THAT EVIDENCE TO MINOR CHILD'S CREDIBILITY.

Standard of Review

This issue has the same standard of review as Issue I.

Law

Rule 13(a)(2) of the South Carolina Rules of Criminal Procedure provides, in relevant part, "A subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order." Prior to an order being entered, the court is required to give "notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object." Rule 13(a)(2), SCRCrimP.

The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article I, Sections 3 and 14 of the South Carolina Constitution guarantee criminal defendants the right to a fair trial, substantive and procedural due process, confrontation of witnesses, compulsory process, the opportunity to present a complete defense, and effective assistance of counsel. The South Carolina Constitution further guarantees defendants the right to be "fully heard in his defense by himself or by his counsel or by both." S.C. Const. art. I, § 14.

Specifically, "the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683 (1986). Our Supreme Court has reiterated that "[d]ue process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense." *State v. Mabe*, 306 S.C. 355, 358, 412 S.E.2d 386, 388 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984)). The opportunity to present a

full and complete defense includes "a defendant's privilege to request and obtain material evidence from the state." *Id.*; *see also Town of Fairfax v. Smith*, 285 S.C. 458, 330 S.E.2d 290 (1985). U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3, 14.

"The Confrontation Clause of the Sixth Amendment, extended against the States by the Fourteenth Amendment, guarantees the right of a criminal defendant 'to be confronted with the witnesses against him.'" *Richardson v. Marsh*, 481 U.S. 200, 206 (1987) (quoting U.S. Const. amend. VI). This constitutional right "include[s] the right to cross-examine those witnesses." *Pointer v. Texas*, 380 U.S. 400, 401 (1965). "A criminal defendant may show a violation of the Confrontation Clause 'by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness.'" *State v. Mizzell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 680, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) (internal quotation marks omitted)).

Discussion

In this case, the Circuit Court erred by denying Appellant's motion to subpoena victim records based on the relevance of that evidence to Minor Child's credibility. *See generally Mabe*, 306 S.C. at 358, 412 S.E.2d at 388 (citing *Trombetta*, 467 U.S. 479). Specifically, Judge Newman erroneously held, "As for a subpoena for internet history of the minor child's personal cell phone or IPAD data, no statute or case law cited requires the action of this court and the request is denied." (R. *).

Pre-trial, Appellant renewed Judge Newman's denial of his motion to subpoena the Minor Child's cell phone and iPad evidence. (Trial Tr. p. 102, lines 1-22; R. Defendant Exhibit Nos. 7,

8A, and 8B). The Stated took the position that Rule 4(b) of the South Carolina Rules of Criminal Procedure prevents the Trial Court from overruling another Circuit Court Judge's prior ruling. (Trial Tr. p. 114, lines 12-14). The Trial Court ultimately denied the motion to obtain the Minor Child's cell phone and iPad records. (Trial Tr. p. 114, lines 15-20; p. 119, lines 16-17).

The Minor Child's cell phone and iPad evidence is critical for Appellant to have an opportunity to present a complete defense, adequate cross-examination of Minor Child, and fair trial. Therefore, the Circuit Court erred by denying Appellant's motion to subpoena victim records based on the relevance of that evidence to Minor Child's credibility.

III. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR SEVERANCE WHEN THE INDICTMENTS ARE DISTINCT OFFENSES OCCURRING ON DIFFERENT DATES, REQUIRING DIFFERENT EVIDENCE, AND ARE NOT ADMISSIBLE UNDER RULE 404(B), SCRE.

Standard of Review

This issue has the same standard of review as Issues I and II.

Law

Our Supreme Court has held that criminal charges can be tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. *See State v. Smith*, 322 S.C. 107, 470 S.E.2d 364 (1996) (reversing a homicide by child abuse conviction based on the trial court's failure to grant severance of charges). The elements for the consolidation of charges test are conjunctive (i.e., analyzed together, not separately). Conversely, where the offenses are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together. *See State v. Middleton*, 288 S.C. 21, 23-24, 339 S.E.2d 692, 693 (1986) (holding the trial judge erred in consolidating the charges for a joint

trial where the crimes "did not arise out of a single chain of circumstances, and required different evidence for proof").

Discussion

In this case, the Trial Court erred by denying Appellant's motion for severance when the indictments are distinct offenses occurring on different dates, requiring different evidence, and are not admissible under Rule 404(b), SCRE. *See Middleton*, 288 S.C. 21, 23-24, 339 S.E.2d 692, 693 (1986) (holding the trial judge erred in consolidating the charges for a joint trial where the crimes "did not arise out of a single chain of circumstances, and required different evidence for proof").

The six indictments illustrate the different types of sexual assault, different locations, unknown dates and times, and different potential witnesses. The Trial Court erroneously denied the motion for severance and held:

> I have evaluated your motion under *State v. Tallent*. The test is that it must arise out of a single chain of circumstances.
>
> I'll find that there does - - does appear to be that the charges arise out of a single [] chain ...in taking it in a light most favorable to the State, a single chain of circumstances being a - - a course of alleged sexual abuse over a period of time, they must be proved by the same evidence.
>
> Again, ...I think it's the same type of evidence, and they must be of the same general nature. Certainly, these are. I don't find there to be any prejudice to the [Appellant].

(Trial Tr. p. 28, line 21 – p. 29, line 17). Therefore, the Trial Court erred by denying Appellant's motion for severance when the indictments are distinct offenses occurring on different dates, requiring different evidence, and are not admissible under Rule 404(b), SCRE.

IV. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR SUPPRESSION OF UNTIMELY DISCLOSED EVIDENCE OF SCREENSHOT MESSAGES SELECTED BY THE MINOR CHILD THAT CORROBORATED THE MINOR CHILD'S TESTIMONY.

Standard of Review

This issue has the same standard of review as Issues I, II, and III.

Law

The State's disclosure obligations in criminal cases are outlined the United States Constitution, the South Carolina Constitution, the South Carolina Rules of Criminal Procedure, and relevant court decisions. *See* U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; Rule 5, SCRCrimP; *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The due process rights recognized by *Brady* applies to both exculpatory and impeachment evidence. *See United States v. Bagley*, 473 U.S. 667 (1985).

Rule 5 of the South Carolina Rules of Criminal Procedure requires disclosure of evidence by the State, in relevant part:

> (a) Disclosure of Evidence by the Prosecution.
>
> (1) Information Subject to Disclosure.
>
> (C) Documents and Tangible Objects. Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant.
>
> (D) Reports of Examinations and Tests. Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become

known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

(2) Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case, or of statements made by prosecution witnesses or prospective prosecution witnesses provided that after a prosecution witness has testified on direct examination, the court shall, on motion of the defendant, order the prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified; and provided further that the court may upon a sufficient showing require the production of any statement of any prospective witness prior to the time such witness testifies.

(3) Time for Disclosure. The prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court.

(c) Continuing Duty to Disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) Regulation of Discovery.

(2) *Failure to Comply With a Request.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, *or it may enter such other order as it deems just under the circumstances*. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

Rule 5, SCRCrimP (emphasis added).

"Under Rule 5(d)(2), SCRCrimP, where a party fails to comply with Rule 5, the court may order the noncomplying party to permit inspection, grant a continuance, prohibit introduction of the nondisclosed evidence, or *enter such order as it deems just under the circumstances*." *State v. Kerr*, 330 S.C. 132, 150, 498 S.E.2d 212, 221 (Ct. App. 1998) (emphasis added) (citation omitted). "Sanctions for noncompliance with disclosure rules are within the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.* (citing *State v. Davis*, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992)).

On May 24, 2023, our Supreme Court issued a General Sessions Docket Management Order that became effective on July 3, 2023, requiring the timely disclosure of discovery:

> (2) Discovery; General.
>
> (A) Timely and complete production and supplementation of discovery material in accordance with Rule 5 of the South Carolina Rules of Criminal Procedure (SCRCrimP) and Brady v. Maryland, 373 U.S. 83 (1963), and its progeny is <u>paramount</u>. . . . Law enforcement should provide the Solicitor with discovery and available Brady material within thirty (30) days of the arrest. The prosecuting solicitor shall regularly monitor all files to ensure prompt, complete, and good faith production of discovery and Brady material.
>
> . . .
>
> (B) As noted below in paragraph (b)(1)(F), the Solicitor *shall not list any case on the proposed trial docket in which production of discovery and available Brady material is not complete at the time the proposed docket is presented to the CJAP and the Clerk of Court.*
>
> . . .
>
> (b) Trial Docket.
>
> (1) General.
>
> (F) *The Solicitor shall not list any case on the proposed trial docket that the Solicitor does not reasonably expect to be ready for trial during the term of court. The Solicitor shall not list any case in which the State (the Solicitor and law enforcement) has not*

> *complied with Rule 5 and Brady at the time the proposed trial docket is transmitted to the CJAP and the Clerk of Court.* As used in this Order, the term "discovery" is defined as any material subject to 11 discovery under Rule 5, SCRCrimP. See Paragraph (a)(2)(A).6

General Sessions Docket Management Order (S.C. Sup. Ct. dated May 24, 2023, as amended on January 15, 2025) (emphasis added).

Discussion

In this case, the Trial Court erred by denying Appellant's motion for suppression of untimely disclosed evidence of screenshot messages selected by the Minor Child that corroborated the Minor Child's testimony. *See* Rule 5, SCRCrimP; *General Sessions Docket Management Order* (S.C. Sup. Ct. dated May 24, 2023, as amended on January 15, 2025); *see generally Earley v. State*, 418 S.C. 255, 267, 792 S.E.2d 226, 232 (2016) (noting the purpose of Rule 5, SCRCrimP, is for the Defendant to have a meaningful opportunity to prepare a defense based on the evidence that may be introduced at trial).

Pre-trial, Appellant moved for suppression of the untimely disclosure of evidence. (Trial Tr. p. 76 – ; R. Defendant's Exhibit Nos. 6A and 6B). The State sent the trial notice on March 18 and subsequent email on April 1 regarding "additional screenshots of Amino app chat messages that were disclosed". (Trial Tr. p. 76, line 19 – p. 77, line 4; R. Defendant's Exhibit No. 6A).

Appellant referenced the supplemental motion for discovery, the email to the State in 2024, requesting "complete text messages, not screenshots, of the communications", the Investigator's failure to do a cell phone extraction, the constant "drip" of additional screenshots of messages leading up the first trial in 2024 and not this trial in 2025. (Trial Tr. p. 86, line 18 – 87, line 14). Notably, Appellant explained that the State has allowed the Minor Child to "pick and choose what screenshots to send them" despite our Supreme Court's Docket Management Order while they "willfully put their head in the sand", and that Judge Newman denied Appellant's request to obtain

these records. (Trial Tr. p. 87, line 6 – 88, line 88).

At trial, the Minor Child testified that the first person she told regarding the purported abuse was her online friend "named Loaf" from England. The Trial Court admitted screenshot messages between Minor Child and the anonymous online friend over Appellant's renewed objection as State's Exhibit number 50. (Trial Tr. p. 508, lines 11-25; p. 511, lines 1-5; R. State's Exhibit no. 50). The Trial Court allowed the State to have the Minor Child read the screenshot messages verbatim, "So my stepdad used to rape me in my sleep or just play with me. . . ." (Trial Tr. p. 513, lines 7-8; R. State's Exhibit no. 50). The Trial Court also admitted additional screenshot messages between the Minor Child and the anonymous online friend over Appellant's renewed objection as State's Exhibit numbers 49 and 54 (Trial Tr. p. 520, line 14 – p. 522, line 8; p. 530, line 19 – 531, line 25; R. State's Exhibit nos. 49 and 54).

Therefore, the Trial Court erred by denying Appellant's motion for suppression of untimely disclosed evidence of screenshot messages selected by the Minor Child that corroborated the Minor Child's testimony.

V. THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO SUPPRESS A PHOTOGRAPH OF THE MOTHER'S WORK SCHEDULE WHEN THE ORIGINAL BEST EVIDENCE SHOULD HAVE BEEN REQUIRED TO PROVE THE WORK SCHEDULE CORROBORATED THE ONLY SPECIFIC DATE LISTED IN AN INDICTMENT.

Standard of Review

In general, rulings on the admissibility of evidence are within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion resulting in prejudice to the complaining party. *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

Law

Rule 1002 of the South Carolina Rules of Evidence provides, "To prove the content of a

writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute."

The question of whether to admit evidence under the "best evidence rule" is also addressed to the discretion of the trial court. *Wayne Smith Constr. Co., Inc. v. Wolman, Duberstein, & Thompson*, 294 S.C. 140, 146, 363 S.E.2d 115, 118 (Ct. App. 1987). The preliminary inquiry into whether there has been sufficient evidence to prove loss, destruction or unavailability of an original document to justify the admission of secondary evidence is an inquiry, the answer to which is largely within the discretion of the trial court. *Windham v. Lloyd*, 253 S.C. 568, 573, 172 S.E.2d 117, 119 (1970).

An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. McDonald*, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). Further, for an error of law to warrant reversal based on exclusion of evidence, the appellant must prove the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the verdict was influenced by the lack of the evidence. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005); *State v. Gault*, 375 S.C. 570, 574, 654 S.E.2d 98, 100 (Ct. App. 2007).

Discussion

In this case, the Trial Court erred by denying Appellant's motion to suppress a photograph of the mother's work schedule when the original best evidence should have been required to prove the work schedule corroborated the only specific date listed in an indictment. *See* Rule 1002. The State failed to provide sufficient evidence to prove the loss, destruction or unavailability of an original document to justify the admission of secondary evidence is an inquiry.

The prejudice to Appellant is obvious based on the jury's verdicts. The jury acquitted

Appellant on five of the six indictments. The lone guilty verdict also occurred after an *Allen* charge for Indictment number 2022-GS-40-002391, which is the only indictment that contained a specific date for the offense that corresponds to the photograph of the mother's work schedule establishing that she was at work from January 11–12, 2020. The Trial Court admitted the photograph over Appellant's renewed objection as State's Exhibit number 45. (Trial Tr. p. 264, lines 11 – 265, line 1; R. State's Exhibit no. 45).

Therefore, the Trial Court erroneously denied Appellant's motion to suppress a photograph of the mother's work schedule when the original best evidence should have been required to prove the work schedule corroborated the only specific date listed in an indictment.

VI. THE TRIAL COURT ERRED BY DENYING APPELLANT'S OBJECTIONS TO THE STATE'S IMPROPER VOUCHING AND BOLSTERING OF MINOR CHILD'S CREDIBILITY.

Standard of Review

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002) (citations omitted). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) (citation omitted).

Law

Zealous advocacy crosses the line and becomes improper vouching, however, when the prosecutor indicates to the jury—even implicitly—that her argument as to the credibility of a witness is based on anything other than the evidence admitted. *State v. Busse*, 439 S.C. 104, 886 S.E.2d 208 (2023). The verb "vouch"—when speaking "[o]f a lawyer before a jury"—means "to comment favorably on the credibility of one or more witnesses based on the lawyer's personal

knowledge." *Vouch*, BLACK'S LAW DICTIONARY (11th ed. 2019). The legal concept of "vouching" prohibits a prosecutor from giving the jury any indication she knows something about the credibility of a witness that the jury does not know, or that is based on an event or proceeding outside the presence of the jury. *See State v. Kelly*, 343 S.C. 350, 368, 540 S.E.2d 851, 860 (2001) ("Vouching constitutes an assurance by the prosecuting attorney of the credibility of a Government witness through personal knowledge or by other information outside of the testimony before the jury." (quoting *United States v. Walker*, 155 F.3d 180, 184 (3d Cir. 1998))), rev'd and remanded on other grounds, *Kelly v. South Carolina*, 534 U.S. 246, 122 S. Ct. 726, 151 L. Ed. 2d 670 (2002); *State v. Shuler*, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001) ("Improper vouching occurs when the prosecution . . . mak[es] explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony," or "when a prosecutor implies he has facts that are not before the jury"); 344 S.C. at 629, 545 S.E.2d at 818 (finding no vouching when the solicitor did not "imply special knowledge" of the witness's credibility).

"The assessment of witness credibility is within the exclusive province of the jury." *State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012). Therefore, "even though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others." *State v. Kromah*, 401 S.C. 340, 358, 737 S.E.2d 490, 499 (2013). Moreover, a witness "may not . . . give testimony that improperly bolsters the credibility of the victim." *Briggs v. State*, 421 S.C. 316, 323, 806 S.E.2d 713, 717 (2017).

Improper bolstering is "testimony that indicates the witness believes the victim, but does not serve some other valid purpose." *Id.* at 325, 806 S.E.2d at 718. Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that the witness believes the victim,

or when there is no other way to interpret the testimony other than to mean the witness believes the victim is telling the truth. Id. at 324, 806 S.E.2d at 717; *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011); *McKerley*, 397 S.C. at 465, 725 S.E.2d at 142. However, an expert's testimony is not improper bolstering "when the expert witness gives no indication about the victim's veracity . . . ." *State v. Perry*, 420 S.C. 643, 663, 803 S.E.2d 899, 910 (Ct. App. 2017), cert. granted, (April 19, 2018).

Discussion

In this case, the Trial Court erred by denying Appellant's objections to the State's improper vouching and bolstering of Minor Child's credibility. *See generally Busse*, 439 S.C. 104, 886 S.E.2d 208; *See generally Briggs*, 421 S.C. at 323, 806 S.E.2d at 717. The State consistently from opening statement to closing argument focused on trying to either improperly vouch or bolster the Minor Child's credibility based on the lack of physical and forensic evidence. (Trial Tr. p. 232, line 20 – p. 233, line 18; p. 599, lines 10-20; p. 721, line 24 – p. 722, line 7). The also State also sought to bolster the Minor Child's credibility using Dr. Stephanie Schaller's testimony. (Trial Tr. p. 426, line 9 – p. 427, line 15; p. 721, lines 5-9).

Therefore, the Trial Court erroneously denied Appellant's objections to the State's improper vouching and bolstering of Minor Child's credibility.

CONCLUSION

Based on the foregoing reasons, Appellant Edwin Carl Haney respectfully requests that this Court reverse his convictions and sentences and remand this case to the Richland County Court of General Sessions for a new trial.

Respectfully submitted,

s/ Dayne Phillips

Dayne Phillips
S.C. Bar No. 77712

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29072
803-272-4503 (office)
803-807-0234 (cell)
dayne@pricebenowitz.com

ATTORNEY FOR APPELLANT

May 22, 2026

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Heath Taylor, Circuit Court Judge

Appellate Case No. 2025-000846

The State of South Carolina, Respondent,

v.

Edwin C. Haney, Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. True-Billed Indictments
2. Sentencing Sheet
3. Notice of Appeal
4. Motion for Confidential Records filed October 18, 2022
5. Motion Hearing Transcript dated November 3, 2022
6. Order Release of Confidential Records dated December 28, 2023
7. Order Releasing Records filed January 16, 2024
8. Motion for Personal and Confidential Records filed May 13, 2024
9. Trial Transcript dated May 20-21, 2024
10. Motion to Dismiss Pursuant to Double Jeopardy dated May 23, 2024
11. Motion Hearing Transcript dated August 19, 2024
12. Order Denying Motion of Defendant to Bar Second Prosecution Based upon Double Jeopardy filed September 3, 2024
13. Trial Transcript dated April 7-11, 2025
14. Defendant's Exhibits
15. Court's Exhibits
16. State's Exhibits nos. 45, 49, 50, 54,
17. Motion for a New Trial, and if Denied, Motion for Reconsideration of Sentence dated April 16, 2025
18. Order Denying Motion for Reconsideration filed April 25, 2025

I certify that this designation contains no matter which is irrelevant to this appeal.

Dayne Phillips, Esq.

PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, South Carolina 29072
(803) 807-0234
dayne@pricebenowitz.com

May 22, 2026

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SC Court of Appeals

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APPEAL FROM RICHLAND COUNTY
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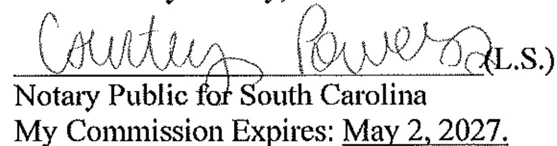
Edwin C. Haney, Appellant.

CERTIFICATE OF SERVICE

The undersigned Counsel certifies that a true copy of the Initial Brief of Appellant and Designation of Matter to be included in the Record on Appeal has been served upon **Mark Farthing, Esquire,** at S.C. Attorney General's Office, PO Box 11549, Columbia, SC 29211, on **May 22, 2026.**

Dayne Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Ste. D.
Columbia, SC 29201
(803) 807-0234
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 22nd day of May, 2026.


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