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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Thomas W. McGee, III, Circuit Court Judge

JERAMY DALE PARKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002417

APPENDIX

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THE COURT: From the defense?

MR. SCHWACKE: No, Your Honor.

THE COURT: The Court Reporter will mark this as a Court's Exhibit and the jury will be instructed not to dispose of it.

The next question: Proof or evidence indicating unlawful conduct of MINOR 2. And that is timed 2:25.

Ladies and gentlemen of the jury -- my response will be, ladies and gentlemen of the jury, you have heard the testimony and evidence in this case and it is for you to determine the effect, value, and weight to be given to any testimony that is in the record. You may consider any testimony that is in the record in rendering a decision in this matter. Again, it is for you the jury as the fact-finders to determine the effect, value, and weight to be given to any testimony and evidence in this matter.

If you desire to have any of the testimony replayed, please advise the bailiff and we will accommodate your request immediately.

Any exception from the State?

MS. HERRING-LASH: No, Your Honor.

THE COURT: From the defense?

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MR. SCHWACKE: No, Your Honor.
THE COURT: These written responses will be attached, they will be marked as Court's Exhibits, they will be taken in by the bailiffs and the jury will be advised not to dispose of those notes and so they can remain part of the record in this case.
We will be at ease until we get further instruction from the jury.
(COURT'S EXH. 3, Jury note, was marked for identification.)
(COURT'S EXH. 4, Jury note, was marked for identification.)
(A recess transpired.)
THE COURT: State ready to proceed?
MS. HERRING-LASH: Yes, Your Honor.
THE COURT: Defense ready to proceed?
MR. SCHWACKE: Yes, Your Honor.
THE COURT: The jury has reached a verdict. Please bring in the jury.
(Jury in, 2:56 p.m.)
Is all the jury present?
THE BAILIFF: Yes, Your Honor.
THE COURT: Madame Forelady, is it correct that the jury has reached a verdict?

FORELADY: Yes, ma'am.

THE COURT: If you would give the verdict forms to the bailiff, please.

Sir, stand for publication of the verdicts.

THE CLERK: State of South Carolina v. Jeramy D. Parks, Indictment number 2014-GS-08-254, guilty of criminal sexual conduct with a minor first degree.

State of South Carolina v. Jeramy D. Parks, Indictment 2014-GS-08-260; We, the jury, by unanimous consent, find the Defendant guilty of criminal sexual conduct with a minor first degree. Signed by the foreperson.

State of South Carolina v. Jeramy D. Parks, Indictment 2014-GS-08-261; We, the jury, by unanimous consent, find the Defendant guilty of criminal sexual conduct with a minor first degree. Signed by the foreperson.

State of South Carolina v. Jeramy D. Parks, Indictment number 2014-GS-08-262; We, the jury, by unanimous consent, find the Defendant guilty of criminal sexual conduct with a minor first degree. Signed by the foreperson.

State of South Carolina v. Jeramy D.

Parks, Indictment number 2014-GS-08-263; We, the jury, by unanimous consent, find the Defendant guilty of criminal sexual conduct with a minor third degree. Signed by the foreperson.

State of South Carolina v. Jeramy D. Parks, Indictment number 2014-GS-08-264, We, the jury, by unanimous consent find the Defendant not guilty of unlawful conduct towards a child. Signed by the foreperson.

State of South Carolina v. Jeramy D. Parks, Indictment number 2015-GS-08-1478, We, the jury, by unanimous consent, find the Defendant guilty of criminal sexual conduct with a minor first degree. Signed by the foreperson.

THE COURT: Ladies and gentlemen, if this is your verdict, please raise your right hand.

THE JURY: (Raised hands.)

THE COURT: Let the record reflect that all 12 raised their right hands and the verdict stands, sir. You may put your right hands down.

Is there any request to poll the jury from the State?

MS. HERRING-LASH: No, Your Honor.

THE COURT: From the defense?

MR. SCHWACKE: There is, Your Honor.

THE COURT: Ladies and gentlemen, please listen carefully as the clerk asks two questions of you. She will call out your juror number and she will ask: Is this your verdict and is this still your verdict? If you would answer as she polls you.

THE CLERK: Juror 103, is this your verdict?

A JUROR: Yes.

THE CLERK: Is this still your verdict?

A JUROR: Yes.

THE CLERK: Juror 159, is this your verdict?

A JUROR: Yes.

THE CLERK: Is it still your verdict?

A JUROR: Yes.

THE CLERK: Juror 196, is this your verdict?

A JUROR: Yes.

THE CLERK: Is this still your verdict?

A JUROR: Yes.

THE CLERK Juror 95, is this your verdict?

A JUROR: Yes.

THE CLERK: Is this still your verdict?

A JUROR: Yes.
THE CLERK: Juror 29, is this your verdict?
A JUROR: Yes.
THE CLERK: Is this still your verdict?
A JUROR: Yes.
THE CLERK: Juror 32, is this your verdict?
A JUROR: Yes.
THE CLERK: Is this still your verdict?
A JUROR: Yes.
THE CLERK: Juror 150, is this your verdict?
A JUROR: Yes.
THE CLERK: Is this still your verdict?
A JUROR: Yes.
THE CLERK: Juror 70, is this your verdict?
A JUROR: Yes.
THE CLERK: Is this still your verdict?
A JUROR: Yes.
THE CLERK: Juror 189, is this your verdict?
A JUROR: Yes.
THE CLERK: Is this still your verdict?

A JUROR: Yes.
THE CLERK: Juror 101, is this your verdict?
A JUROR: Yes.
THE CLERK: Is this still your verdict?
A JUROR: Yes.
THE CLERK: Juror 34, is this your verdict?
A JUROR: Yes.
THE CLERK: Is this still your verdict?
A JUROR: Yes.
THE CLERK: Juror 43, is this your verdict?
A JUROR: Yes, ma'am.
THE CLERK: Is this still your verdict?
A JUROR: Yes, ma'am.
THE CLERK: After polling the full panel, Your Honor, the jury has been polled and the verdict still stands.
THE COURT: Thank you ma'am.
Madame Forelady, ladies and gentlemen, we want to thank you for your time and your attention to this case on behalf of the State and the Defendant and defense counsel. We know that jury service is thankless, really. I wish that we

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paid you so much more really than we do, but I hope -- and every time I say this during jury qualifications, everybody busts out laughing because they think I'm being silly, but I really am being quite serious. I'm not the biggest fan of court shows.

And I hope that you really have learned that it's nothing like you see on television. Those shows are what we call binding arbitration, where really any of you could be the judge. It just means two people have decided to let a third person resolve their dispute and waive their right to any appeal. So it is entertainment. It really is nothing like the real process and I hope that by serving on the jury, you have learned what the process is, how the process worked and that it in some small way has reinstilled your faith in the system and that it works because of your willingness to participate in it.

South Carolina has the largest case filings per capita in the nation per judge. We have about 49 circuit judges whose job it is to travel throughout the State and hear cases. We don't stay in one circuit. By the Constitution, we're supposed to live outside of our circuit for

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six months and live at home for six months, but because of the significant budget cuts, we now travel about a week a month outside of our circuit.

I think I've held court in every county in South Carolina, except three at my last count, since my 19 years of being on the bench. And it is -- we have an incredibly wonderful state full of wonderful people, one of the most diverse states, where you could travel from the ocean to the mountains in less than three hours. So we have a very unique state and I count myself really quite fortunate to have been able to see a great deal of that by virtue of having a wonderful vocation.

And I hope that you know how very valuable you are to us. With that large of a capacity of case filings, even though circuit judges hear cases with your services, we also hear cases in a nonjury capacity where we act as the fact-finder. We also have cases where we are what is called -- in the Court of Appeals; those are the magistrate's court, the municipal court, workers' compensation, zoning appeals, and other various matters that we hear.

So pretty much we're in court every day, with the exception of holidays and vacations.

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But we could not do the bulk of what we do without your willingness to be here and act as the fact-finders.

Our system is the only system in the world where 12 ordinary people come to court, listen to witnesses, judge their credibility, believability, apply a very complicated set of laws to those facts, and render verdicts. So, again, I hope this has been educational for you.

You are welcome to remain with us for sentencing if you would like. You are welcome to leave likewise. You are also welcome to discuss this case if you would like. Sometimes lawyers will contact you because they want feedback on how they could do a better job or they just sometimes want another perspective on the case.

You are welcome, again, to discuss it if you would like, but I would ask that you not do that until the entire panel is dismissed for the week. If you don't want to discuss it, you don't have to. If someone should persist or make you feel uncomfortable, please contact us so that we can take the appropriate action to protect and maintain your privacy.

Your work excuses and your checks have

already been distributed -- Mr. Marvin has them and he will distribute them as you leave. Because I feel that you have met your obligation to us this week, I am going to excuse you all for the remainder of the week. Again, I hope it's been educational for you, and you are excused with the Court's profound thanks.

If you wish to remain for sentencing, please let the bailiffs know and we will bring you back into the courtroom.

I'll hear posttrial motions in a moment and I hope the sentencing sheet has been prepared.

(Recess)

THE COURT: Do you have the sentencing sheet?

MS. HERRING-LASH: Yes, Your Honor. I have a question.

THE COURT: Sure.

MS. HERRING-LASH: The first number that was read out was --

THE COURT: All of them are guilty with the exception of the unlawful conduct for a child.

MS. HERRING-LASH: Right, but 54 is what was read out and the indictment number is 59 I think.

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THE COURT: I think that was a slip of the tongue. Could I see the verdict forms, please?

Oh, we need the foreperson. Don't let her leave because she has to sign the Indictments.

It's 259.

MS. HERRING-LASH: I heard 254.

THE COURT: I'm looking at it, it's 259. It was a slip of the tongue. It's 259, 260, 261, 262, 263, 264, and 1478, which is the 2015 indictment.

I need you to have her sign and date those Indictments, please, ma'am.

Are there any posttrial motions?

MR. SCHWACKE: Yes, Your Honor, just briefly. We would renew all of our motions made previously at the close of the State's case and the beginning of ours. We would also move for a new trial based on the error in the admission of the 404(b) and res gestae evidence, as well as the exclusion of the Rape Shield --

THE COURT: When you say res gestae, I can discern no prejudice to him because he was found not guilty on that indictment. So apparently the jury didn't give too much weight to that.

MR. SCHWACKE: And then the error in

excluding the Rape Shield Statute exclusion.

THE COURT: Well, you got all that in through the video, didn't you? And you asked it already before the jury before the State objected, so I can discern no prejudice on that either because the evidence actually wasn't included.

MR. SCHWACKE: Well, Your Honor, it still prejudiced us, because although it got in, your --

THE COURT: No, it got in in your questioning of the witness on Cross.

MR. SCHWACKE: Your ruling was that it should not have come in and it inadvertently did, but your ruling still prevented me from making that part of my argument.

I would also point out that the State --

THE COURT: No, it didn't prevent you from making that a part of your argument. I never restricted you in any way once the evidence came in, and there was no objection made by the State that I ruled on it.

MR. SCHWACKE: It's my understanding you did, Your Honor. If that doesn't reflect --

THE COURT: That's a misapprehension on

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your part. Unless I rule on the record on something, there is no ruling. They made a motion regarding Rape Shield, the evidence came in spontaneously through the young lady, MINOR 1 [redacted] now, her last name is no longer Parks. There was no request to strike the testimony and I didn't, and then you all agreed and stipulated to the admission of the video interview, which included everything that you said you wanted in, which came in.

There is nothing that precluded you from arguing that. Certainly you could have. And while the State filed a motion on third-party guilt, I made it very clear that I was not ruling on anything until it came up in trial and that it should then be heard in camera and then I would rule contemporaneously. And nobody ever raised it and it's not my job to raise it. Since it was not raised, it was never ruled on.

The State apparently didn't make any efforts to pursue that any further and there was nothing that precluded you from making any arguments regarding that testimony, because it was evidence and you could have argued it.

MR. SCHWACKE: Your Honor, just for the

record, my recollection is different and that is the basis, if you wish to deny my --

THE COURT: Would the State like to respond?

MS. HERRING-LASH: No, Your Honor. We will stand by your ruling.

THE COURT: The renewed motions are denied based on the Court's previous ruling, and the basis for the contemporaneous ruling on those matters are incorporated in this portion of the record. There is no basis of a motion for a new trial.

There is more than sufficient factual evidence in the record to support the jury's verdict, as well as the admission of the 404(b) Lyle evidence, based on prior bad acts not the subject of the conviction, and the Court made a full and contemporaneous ruling on that matter and will incorporate those findings into this portion of the record.

As regards to res gestae, the Court can discern no prejudice to the Defendant as the jury apparently did not give particular attention to that evidence, as they did not find the State met their burden beyond a reasonable doubt to find him

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guilty on Indictment 2014-264, which is unlawful conduct of -- toward a child, which they found him not guilty.

As regards to Rape Shield, the evidence ultimately came into the record. It was in the record and the Defendant was free to argue any portions of any evidentiary matter that was in the record until the State made a contemporaneous objection, at which time the Court would have ruled. Every motion and objection that was made, there is a contemporaneous ruling, and therefore I can discern no basis of a new trial on that basis either and that motion is denied.

Are we ready to go forward with sentencing? From the State?

MS. HERRING-LASH: Yes, Your Honor.

THE COURT: From the defense?

MR. SCHWACKE: Yes.

THE COURT: And as I understand it, the only record is from Charleston County -- do we -- well, he's already maxed out those sentences so I would not need to make any reference to those on any sentence sheets. Correct?

MS. HERRING-LASH: Yes, Your Honor.

THE COURT: It's my understanding that

he pled guilty to two counts of assault and battery of a high and aggravated nature in 2007, which he pled down from two counts of a lewd act; is that correct?

MS. HERRING-LASH: Actually, Your Honor, it was a criminal sexual conduct with a minor in the first degree, and he pled to one act of assault and battery of a high and aggravated nature.

THE COURT: So I misunderstood. So the record is corrected, he was originally charged with criminal sexual conduct with a minor in the first degree and he pled that down to assault and battery of a high and aggravated nature in 2007, correct?

MS. HERRING-LASH: Your Honor, the arrest was in '05 and the conviction was '07. I think it was just misstated.

THE COURT: And when I said '07, I meant the conviction.

MS. HERRING-LASH: Yes, Your Honor.

THE COURT: And as I understand it, he was sentenced to five years and five years probation, which he maxed out a five-year sentence; is that correct?

MS. HERRING-LASH: Your Honor, actually

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five years, suspended on 18 months in prison, and three years probation.

THE COURT: So he spent 18 months in --

MS. HERRING-LASH: Yes, ma'am.

THE COURT: And do we know which Judge that was before in Charleston County?

MS. HERRING-LASH: I don't.

THE COURT: Do you have any record of the conviction other than what you've told me?

MS. HERRING-LASH: I do not. We can check.

THE COURT: And as I also understand it, there was a Georgia arrest regarding a child sex act, but there's not any confirmation that that charge was ever adjudicated and after checking into it, Mr. Schwacke said, to his understanding, it was dismissed.

MS. HERRING-LASH: Yes, Your Honor, that's correct.

THE COURT: Okay. State ready to proceed?

MS. HERRING-LASH: Yes.

THE COURT: Defense ready to proceed?

MR. SCHWACKE: Yes.

THE COURT: You may proceed.

MS. HERRING-LASH: Your Honor, to start with, I think that Casey May and Warren May, MINOR 1's parents, would like to address the Court.

THE COURT: Certainly, I would be glad to hear from them.

MS. HERRING-LASH: Would you have them step to the podium?

THE COURT: I just need them to remain there for safety purposes and security. I just need them to speak loudly and clearly and tell me their names.

MS. MAY: My name is Casey May and I'm MINOR 1's mother. I have worked with pregnant teenagers for many years, I'm a schoolteacher. And God called me to become a foster mother and that's how I -- MINOR 1, J. P., and L. P. came into my home, and I'm very blessed to be their mother and grateful for all my many blessings.

My experience working with teenagers over the years and then eventually teaching pregnant teenagers has equipped me to love children such as MINOR 1, J. P., and L. P., all of whom have been forever harmed by the acts that Jeramy committed upon my daughters and son.

Research shows that the damage and

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trauma that Jeramy inflicted upon my daughters and son while in his care has not only changed their emotional health, their psychological health, physical health, but it's changed their DNA, changed their body on a molecular level and they are more susceptible to disease when they grow up, mental health issues when they grow up.

Right now MINOR 1 is lovely. To most people she seems to be a normal healthy seven-year-old. She is precious, she is full of life. What people often don't see is that any time I turn my back on her or I'm not in her presence where she knows that she's not going to be allowed to act out, MINOR 1 tries to harm other children in the ways that her father taught her.

MINOR 1 acts out sexually. When she came to my home -- I guess one of the best examples, when she came to my home as a foster child -- as a mother, a pregnant mother and teacher of pregnant teenagers, we talk about sex in our house often and healthy safe body rules and my children know to say no, keep their private parts covered.

Long story short, my biological children used to play house. MINOR 1 and J. P.

introduced playing mommy and daddy to my biological children. And playing mommy and daddy consists of the same behaviors that was described here in court this week. And MINOR 1 would love to play mommy and daddy at school, she's been caught playing mommy and daddy on the school bus.

MINOR 1 wants to go -- we live on some land. MINOR 1 wants to go play down by the stream, and I can let some of the children go, but I can't let MINOR 1 go because MINOR 1 can't be trusted not to play mommy and daddy. She's seven. He did that to her. So I have another -- so when I go to school and conferences, everybody sees this precious normal healthy seven-year-old.

My children seem old for their age, they also lack the ability to play as a normal healthy child would. They have temper tantrums beyond that expected of a child their age. Sometimes they seem withdrawn, there's chronic aggression, over-hostility towards their peers, animals, adults, their own personal self. They fear failure.

My children watch me from a distance all the time. They watch me when they should be playing with their siblings. They are watching me

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because they're afraid I'm going to abandon them. My breakfast room doesn't have a table in it. I have boxes of food from Costco so that my children know that they're going to be fed. When we run out of cereal and I'm not going to Costco for a couple of days, I put the empty box there so they believe that we have their favorite cereal.

They struggle to listen and carry out instructions, because they're always attentive and aware. As I walk through the house at night and go from room to room to room turning the lights off, kissing and tucking kids in bed, MINOR 1 and J. P. are always aware of everything. They should be sleeping.

We put our kids to bed at 6:00 at night. We have to. That's the only way they're going to get a full night's sleep or enough sleep to function the next day, because they're so aware of when somebody gets up to go to the bathroom at night. When the thunder rocks the house or the dog barks or anything, they are waiting, anticipating someone to violate them.

Since coming to trial and MINOR 1 testifying Monday afternoon, she's been talking as a baby, a little childlike voice of a two-year-old

or a three-year-old and she has regressed below the way they're talking. Asking for snackies and -- she is smart. That's not MINOR 1. And she's going to be fine, she'll come over this part, the baby talk. I've given her until tomorrow, she'll be fine in that aspect; but every time he has forced us to come to family court, every time we've had to, you know, talk about criminal court, that's what he did to my daughter.

They steal, they hoard food, they don't know much about empathy. Even sweet L. P., fixing to turn three; learned behaviors their biological parents never taught them. My daughter will be fine, she will survive. I am determined not to fail her the way everybody in the system, everybody has failed my students.

I hear the story, the same story that MINOR 1 gave, I hear it at least once a week where I work, at least once a week. This is my story now and it's my daughter. I don't want to be a grandmother in ten years. I don't want my daughter to be a drug addict. I don't want her to go to jail for being a pedophile. Those are learned behaviors.

I don't believe that he can be

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rehabilitated. I don't believe research supports the idea of rehabilitation. Will he go to jail as punishment? Will he go to jail as prevention? A little bit of both I would really like. I don't know what we call it, punishment or prevention, I don't know, but I do know that there is no rehabilitation. None.

And if he's allowed out, he will hurt another child. He will be 60 years old, he will have another offspring and he will say, she's mine. She's my daughter, I can do with her what I want. You know, he was allowed to do that to my baby. I want punishment and prevention, prevention from all of the other children in the world, all of your children.

I just told you, my children, biological children, played mommy and daddy, and they knew better. They knew better. I am a good mother, and I protect my children. All of my children will be protected from this day forward. And I failed my four biological children when I brought in my three foster kids who played mommy and daddy as taught by Jeramy.

It won't happen again. It will not happen again, I've upped my game. I'm a better

mother because of it. I want him to be punished. I want him to be prevented from teaching another child to behave as he has taught my children to behave. I want the maximum sentence for every single one of those convictions that the jury found, and I want it to be served consecutively. Not concurrently.

He needs to be in jail for the rest of his living life. That's the only way that we're going to break the cycle of abuse and neglect that these children and teenage pregnancy, is if we start taking away the problems. We don't let people just continue to victimize our children. It will not happen to MINOR 1, J. P., L. P., Jackson, Corbin, Anna Rose, or Jonathan ever again. I promise that.

I can't protect baby H. P.; I'm not his mother. I can't protect anybody else that he's going to cross paths with. And I beg of you to please lock him away, make it one less person that I have to worry about, one less person that my students come to me and tell me about.

Thank you. That's all.

THE COURT: Thank you, ma'am.

Yes, sir.

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MR. MAY: I'm Warren May.
THE COURT: Yes, sir.
MR. MAY: I think it's appropriate to talk about the sentence. You will have to determine what sentence to give Jeramy. While you're making your determination, I would ask that you would consider the sentence that Jeramy imposed on MINOR 1; a life sentence. That was made without the benefit of a jury, a judge, or even a defense attorney. The person who is supposed to defend MINOR 1 was, in fact, the perpetrator. Children are supposed to be able to depend on their fathers.
This was very difficult for me today to think of what I should say. I thought about telling you about some of the actions that MINOR 1 has had to go through since she's come to live in our house, but I believe that we've all heard enough testimony, that we know what MINOR 1 had to endure. And I would simply say, as difficult as it was for us to hear it, it was even more difficult for her to live it.
It is something she will have to live with for the rest of her life, it will never go away. So I would simply ask, much like my wife, that Jeramy be given the maximum sentence for each

conviction and that they be served consecutively so that he's given the maximum penalty possible so that he will never be able to harm another child again.

I would just like to reiterate, there is no rehabilitation for pedophiles, they do not get better. There is no option of him overcoming this like some other disease. He will be this way forever. So I would ask that you would put him somewhere where we will never be able to harm another child again and he will not be a danger to society or my children. Thank you.

THE COURT: You're welcome, sir. And I neglected to ask your wife this question, and I should have, is MINOR 1 in counselling? Are the other children in counselling?

MS. MAY: MINOR 1 received counselling at the National Crime Victims Center and she successfully completed counselling, although she will surely need counselling in the future. At this time, she needs good parenting; Warren and I are on it. We are the best that she could have, but I am sure that there is going to come a time where we will need to reach out for professional help again. And we only seek the best.

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THE COURT: Oh, I have no doubt. I was curious because sometimes things fall through the cracks because of the bureaucracies. No reflection on you at all.

MS. MAY: Not here.

THE COURT: I wanted to -- I wanted to make sure. How long was her counselling at the Crime Victim's Center.

MS. MAY: I had to fight to get her into there. They wanted me to go places that I found unacceptable to seek treatment. I was dissatisfied with the professionalism, the credentials of the counselors, and I interviewed several counselors. She finally ended up at National Crime Victim's Center late November 2013, early December, went through their treatment plan, completed it fairly quickly because she knows right from wrong. She's able to articulate very well.

She finished that March 2014, although we were still in the midst of family court, lots of things. So we continued to go every other week and then eventually once a week -- or once a month, pardon me, and now we've been without counselling for about six months or so and -- about six months.

THE COURT: Are there any resources

that are available to her through victim's assistance?

VICTIM'S ADVOCATE: Yes, ma'am, there are.

THE COURT: I want you all to help her because not only is she going to have issues, as a result of this trial she may well suffer from PTSD. And while I have no qualms with the counselling at the National Crime Victim's Center, she needs ongoing intervention as well as the love of both parents she has. And to the extent that you all can provide that, I would appreciate it.

VICTIM'S ADVOCATE: Yes, ma'am.

THE COURT: All right. Anything further the State?

And Mr. and Mrs. May, I thank you so very much for your candor with the court.

MS. HERRING-LASH: Yes, Your Honor. Mr. Parks has been convicted of an extremely serious crime. I don't know what punishment is really appropriate for someone who picks on the most vulnerable among us, but that is what he has chosen to do, and I think by those actions over and over again, he has proven to us and to the Court that he's not safe to be out of prison.

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And the State would ask on behalf of Mrs. Williams, who couldn't be here, also for the maximum sentence. Thank you, Your Honor.

THE COURT: You're welcome.

Be glad to here from you, Mr. Schwacke.

MR. SCHWACKE: Thank you, Your Honor. Mr. Parks is 34 years of age. He was born in Joplin, Missouri.

THE COURT: How did he end up in South Carolina?

MR. SCHWACKE: Well, he came here by way of quite a story, Your Honor, so I'll --

THE COURT: I'm curious.

MR. SCHWACKE: Bear with me and I'll get you to it.

I had him evaluated by Dr Randy Waid prior to trial to be certain of competency issues, and the report is very clear that he does have an understanding of this process and he would be competent.

THE COURT: And he had no concerns about his ability to assist in his representation?

MR. SCHWACKE: He had no difficulties with that at all. As I told you, he was born in Joplin, Missouri. While in school he was involved

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in special educational services throughout his school time.

THE COURT: So he had an IEP.

MR. SCHWACKE: Yes, ma'am. He was diagnosed with disruptive behavior associated with attention deficit hyperactive disorder as well as learning diabilities.

THE COURT: Did they say what the learning disability was?

MR. SCHWACKE: Your Honor, I'll get to his IQ --

THE COURT: I'm sorry. I didn't mean to get ahead of you. That was my next question.

MR. SCHWACKE: His father excessively used alcohol. There was a sister that had a history of psychiatric difficulties, Dr. Waid said likely associated with a bipolar effective disorder as there was previous use of Lithium.

Mr. Parks from age four to eight had been the victim of a parental kidnapping, along with two of his sisters. There were two older sisters that were also kidnapped by the father. Ultimately, they were located by the FBI and returned to his mother.

Following that he resided in a variety

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of settings including living in Charlotte, North Carolina for two years. He then moved in with his grandparents in Kings Port, Tennessee for approximately one year; then there was a return to Charlotte; he lived in Birmingham and then moved and lived with his mother for awhile in Atlanta, Georgia. His mother and stepfather moved to Charleston, South Carolina and Mr. Parks joined them at that time at the age of 20.

Mr. Parks is employed. He's been working as an industrial painter and previously worked at Associated Temps.

With regard to the exams, the Wechsler Adult Intelligence Exam IV had classified Mr. Parks' intellectual functioning to be in the lower average range with a full scale IQ of 85, placing him in the 16th percentile compared to age-related peers.

Another test that Dr. Waid gave, it was a Personality Assessment Inventory. Mr. Parks response set indicated that he was defensive in his responding, portraying himself as being relatively free of common shortcomings to which most individuals will admit. Despite Mr. Parks' level of defensiveness, he described problems of higher

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intensity than is typical of defensive respondents in the areas of stress in the environment, disruption in thought process; suspiciousness; impact of traumatic events; poor sense of identity; feelings of helplessness.

Then he concludes, all in all, Mr. Jeramy Parks is assessed as having a rational, as well as factual, understanding of the legal proceedings against him and of being able to adequately assist counsel in the preparation of his defense.

Your Honor, his mother has been present throughout the trial. She has been here in support of him. She does not feel she is currently of the mindset and ability to address Your Honor.

Mr. Parks also would -- indicates that he does not wish to address Your Honor. Just for purposes and on his behalf, obviously, the sentencing in this for the first degree criminal sexual conduct goes from 25 to life. On the other charge, the CSC third, that's 0 to 15. With the exception of that charge, the other ones would be 85 percent, no parole offenses.

He's also facing the prospect if he should ever be to the point of being near release

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of having to be analyzed for the purpose of the sexually violent predator program. We would ask you to show as much mercy and leniency as you feel appropriate.

THE COURT: Sir, is there anything that you would like to state on your behalf? You need to say that for the record, sir. You don't have to speak. I just want to give you that opportunity.

THE DEFENDANT: I was asking him a quick question. There is something I would like to say. I do plan on appealing this. I'm sorry for what my wife admitted at doing and I do not agree with everything, how it went. It did not go the least bit like I assumed it would. That's why I took over 20 pages of notes with dyslexia, which is --

THE COURT: Is that your diagnosis, you have dyslexia?

THE DEFENDANT: I have many, many things. I was in special classes all my life.

THE COURT: What else do you have?

THE WITNESS: ADHD, I guess some slight retardation. It's like, guys like to sit around and talk about football games. I can't remember people's names. I used to call people, dude,

what's up, at school. I can never remember names. So I was pretty much just the third wheel in every party.

I'm sorry for what happened to my children, the extreme situations with DSS taking them away again and again and again. I feel that has a lot more repercussion than people would normally assume or accept, because every time we got our kids back, they were worse and worse. They acted worse and worse because they were like, if we do anything, if we discipline them, they're going to tell DSS and DSS is going to make us go back to court.

I've paid over $50,000 in DSS court fees for me and my wife over the past five years.

THE COURT: Who did you pay court fees to?

THE WITNESS: Cummings Law Firm, Mr. Cummings and Henry Schline. Cummings was my lawyer on the second case, because on the first case we were told we didn't need an attorney, and we got ran over like a steamroller. So on the second case I called my grandparents and saved up every penny I could and I got a lawyer for me and my wife. I got Cummings and she got Schline, and

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then all the previous cases -- the cases after that was vise versa, I had Schline and she had Cummings.

So the kids really lashed out and did whatever they wanted, and it was very hard to get them to stop, as Mrs. May has found out. And I would accredit that to DSS more so than the alleged situation and circumstances that I am standing here convicted of that I did not do.

And this is my first time taking something this major and having a public defender and helping come with the conclusion I do not feel that I had adequate information to make said decisions. I just --

THE COURT: I'm sorry, you lost me. I don't understand.

THE WITNESS: I said I didn't feel I had adequate information to make adequate decisions on something as grand a scale as this with my disability. I have spoke it and spoke it, and I want to go back to the doctor, not knowing why I was supposed to go to that doctor, and just -- just to help with the case to explain to people, hey, this needs to break down a little bit more. There's more to it.

I mean, I got -- like I said, I've got

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25 pages of notes. I wanted to get on the stand, but the defense that we made was for me not to get on the stand at first, and when it come to my understanding that I needed to get on the stand. My mom's sitting here so we can't call her. She's in the courtroom. We don't have doctors ready. There's no doctor to say it didn't happen. They didn't call a doctor to say it didn't happen. So I believe I just got railroaded.

THE COURT: Do you understand you have one of the best lawyers in the state?

THE DEFENDANT: I understand he was standing up there fumbling with his notes --

THE COURT: No. Do you know his history?

THE DEFENDANT: I know he was the Solicitor of Charleston --

THE COURT: I have know Mr. Schwacke since 1989 when I clerked with Judge Fields and he was the Deputy Solicitor for Charleston County. I can say without reservation he is one of the best trial lawyers in the State of South Carolina.

THE DEFENDANT: He might be.

THE COURT: And lawyers have A personalities. We don't like to lose. It really

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isn't personal about you. We're going to do everything we can to win. We all have that same kind of personality. So its unlikely that a lawyer is just going to sort of lay back and let somebody -- there's something in us that rises up where we just have to -- we're going to do everything we can.

It's -- we're like a hound dog on a scent. We're going to trace it until we get to wherever it goes, and we're not going to rest until we get to the end of it, so -- and I apologize for using that, but that's the one that always comes to mind. It's like somebody sniffing a scent. You're just going to sniff it until it gets to wherever it needs to go, whether it be in the statute books, the evidence books, an evidentiary issue, we have to track down, that's just the nature of our personalities. And that's why we probably all became lawyers. I'm sure if we all had a personality assessment we would almost all come out to have the same type personality.

But I was just curious to know if you knew, because sometimes people think a public defender is not a good lawyer. And in Charleston County especially, and I've traveled the breadth of

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this state, but in Charleston especially, we have some of the best public defenders in the state of South Carolina. We have people who choose to be public defenders who could be out making a whole lot more money in private practice. They are what I call true believers and they really believe in what they do, so they have chosen what is really the most noble, that is defending people who really don't have a voice.

And so without belaboring the point, I wanted you to know that you really have had excellent representation. I don't think -- if he were in private practice, I can't even imagine what he would have charged you to have taken the case.

So I guess maybe because I've known him a little longer and seen him try him lots of different cases and seen him in lots of capacities, not just in trial but in plea court -- and so I've known him a long time. And he and I are not personal friends, we don't hang out or socialize. And so I say that with all deference to him in a professional capacity.

And I think he knows me well enough to know that I don't give feigning compliments. It's not in my personality. If I say it, I really mean

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it.

Is there anything else you want to share with the Court?

THE DEFENDANT: Thank you, Your Honor.

THE COURT: You're welcome, sir.

Is there anything further from the defense?

MR. SCHWACKE: No, Your Honor.

THE COURT: Anything further from the State.

MS. HERRING-LASH: Your Honor, I just once again would ask for you to show him the same mercy he showed this child, and instead of mercy today on our behalf, we're asking for justice.

THE COURT: Just for clarity of the record, and I thought about it when we were doing motions, and I apologize, I didn't want to interrupt everybody while they were talking, Mr. Schwacke is correct that my initial evidentiary ruling was that unless you could establish that certain behavior happened before that would have colored her bank of knowledge of sexual activity would not have been admissible, but once she spontaneously uttered it, again, I didn't strike it.

And then once you all stipulated to the admission of the -- it's not the forensic interview, but the statute calls it -- that's just my real time monitor running out of juice -- it's called an investigative interview I think is what it's called in the statute. So once you all stipulated to it and to the unredacted version, in my estimation, it was in evidence then and you could have argued anything you wanted to, unless there was a contemporaneous objection made. So I wanted to clarify that for the record.

Sir, if you would stand for me please for pronouncement of sentence. And I apologize, Mrs. Herring-Lash, are you asking for a life sentence in this case?

MS. HERRING-LASH: Yes, Your Honor.

THE COURT: Okay. All right. Your client is 34 years old; is that correct?

MR. SCHWACKE: That's correct.

THE COURT: Sir, on each of the criminal sexual conduct charges in the first degree, which are Indictments 2014-GS-08-260, 261, 262, 263, and 259, as well as -- and actually not 263, that's a CSC third -- 2015-1478, you are sentenced to the State Department of Corrections

for a period of 30 years. On the CSC third, which is Indictment 2014-263, you are sentenced to 15 years. Each of the CSC first will run concurrent to one another and the CSC third will run consecutive to each CSC first sentence.

Mr. Parks is 34 years old. He has an additional life expectancy based on the life expectancy table of this state of 44 years. So, in effect, that is a life sentence served at 85 percent day for day.

Thank you very much.

MS. HERRING-LASH: Thank you.

THE COURT: Anything further from the State?

MS. HERRING-LASH: No, Your Honor.

THE COURT: From the defense?

MR. SCHWACKE: No, Your Honor.

THE COURT: Thank you all very much. Have a good day.

(These proceedings were concluded at 3:48 p.m.)

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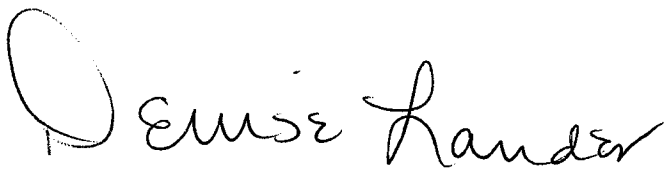
CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 22nd day of December, 2015 at Charleston, Charleston County, South Carolina.



s/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERAMY DALE PARKS,

APPELLANT

APPELLATE CASE NO. 2015-002050

FINAL BRIEF OF APPELLANT

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1.

Whether the trial court erred in charging that the testimony of the victim in this sexual abuse case need not be corroborated, in violation of State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016)?

2.

Did the trial court err in ruling that the child complainant was a competent witness based solely on its viewing of the tape of the forensic interview, refusing to examine the child in court, refusing the defense's request for an independent competency evaluation, and in refusing to allow the defense to conduct *voir dire*?

STATEMENT OF THE CASE

On February 11, 2014, a Berkeley County grand jury indicted appellant Jeramy Dale Parks for five counts of first-degree criminal sexual conduct with a minor, two counts of unlawful conduct toward a child, and one count of third-degree criminal sexual conduct with a minor. R. 509 – 516. On September 14, 2015, appellant was tried before the Honorable Deadra L. Jefferson and a jury. R. 1. Anne Williams and Debbie Herring-Lash represented the State. R. 2. David Schwacke and Debbie Littlejohn represented appellant. R. 2. The trial judge severed one of the unlawful conduct toward a child counts. R. 28, ll. 9 – 14. The jury convicted appellant of five counts of first-degree criminal sexual conduct with a minor and one count of third-degree criminal sexual conduct with a minor, but acquitted appellant of the remaining charge of unlawful conduct toward a child. R. 468, l. 4 – 469, l. 20. Judge Jefferson sentenced appellant to concurrent terms of thirty years' imprisonment on the first-degree criminal sexual conduct charges and a consecutive term of fifteen years' imprisonment on the third-degree criminal sexual conduct charge. R. 506, l. 20 – 507, l. 10. This appeal follows.

ARGUMENT

1.

The trial court erred in charging that the testimony of the victim in this sexual abuse case need not be corroborated, in violation of *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016).

The trial court erroneously charged the jury that the testimony of a victim in a sexual abuse case does not need to be corroborated. R. 456, l. 22 – 457, l. 2. See State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). The issue is preserved for appeal. At the charge conference, the trial judge stated that she intended to give the Stukes charge. R. 400, ll. 18 – 22. Trial counsel objected at the charge conference; the court overruled the objection and gave the charge. R. 402, ll. 7 – 404, l. 23. R. 456, l. 22 – 457, l. 2. Because the error is clear, appellant anticipates the State will argue that the error is harmless.

The error in this case cannot be harmless because the credibility of the child complainant ("Child") was very much at issue. The trial judge used this as one of her justifications for giving the Stukes charge. Judge Jefferson stated that sexual abuse cases "are credibility contests that comes down to one person's word against another. . . ." R. 404, ll. 3 – 12. The court found that "the law is very clear and therefore reason based on legislative intent that the word of a victim need not be corroborated." R. 404, ll. 3 – 12. The trial judge further ruled that the charge was "**appropriate in this – in this instance** and, frankly, and **any other CSC case** and it will be instructed and there is case law to support that instruction."[1] R. 404, ll. 13 – 19 (emphasis added).

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[1] Judge Jefferson did not have the benefit of Stukes when she made her ruling. Nevertheless, the issue is preserved and appellant receives the benefit of Stukes on appeal. See State v. Brown, 401 S.C. 82, 95, 736 S.E.2d 263, 269 (2012) (ruling that Court of Appeals properly applied new rule of law on appeal from case decided after trial judge's ruling).

Child was only seven years old at the time of trial. R. 70, ll. 22 – 24. As will be further explored in Issue 2, Child's credibility was in question during pretrial motions. R. 9, l. 22 – 10, l. 16. Appellant objected to Child's competency as a witness. R. 9, l. 22 – 10, l. 16. Having never heard Child testify in court, the trial judge refused to have a hearing on her competency based solely on her viewing of the forensic interview videotape and called the defense's motion "superfluous." R. 10, ll. 13 – 16. Appellant renewed this motion before and during Child's testimony. R. 69, l. 15 – 70, l. 3. R. 73, ll. 6 – 74, l. 17.

Appellant is Child's father. R. 73, ll. 5 – 21. Child had two sisters and four brothers. R. 70, ll. 3 – 5. When the alleged abuse occurred, Child, her mother, Candace Parks ("Candace") and the rest of her family were living at "Uncle Mike's" trailer. R. 73, ll. 1 – 8.

Child alleged that appellant committed a variety of sexual batteries, but was not always consistent in her allegations. R. 75, l. 6 – 130, l. 20. Child initially stated that appellant "did bad stuff" to her. R. 79, ll. 17 – 18. When asked to explain by the solicitor, Child stated, "he humped me and he put his finger inside me." R. 79, ll. 19 – 22. She claimed this happened on the couch. R. 79, ll. 23 – 25. She defined "humped" as skin-to-skin genital contact. R. 80, 81, l. 2. When asked again by the solicitor, "What did hump mean," Child replied, "it means he put his private in my private." R. 81, ll. 6 – 8. Child then described vaginal penetration and oral sex. R. 81, ll. 11 – 23.

Child then responded inconsistently to questions about vaginal and anal sex. The solicitor asked again if appellant "ever put his penis in any other part of your body?" R. 82, ll. 18 – 19. Child replied, "Nope." R. 82, l. 20. After changing the topic of questioning to the layout of Uncle Mike's trailer, the solicitor asked Child, "Do you know what the word slobber

means?" and was able to get Child to describe appellant allegedly performing oral sex on her. R. 91, ll. 8 – 10. The solicitor then led Child back over the same ground:

> Q. So just to go over and make sure what you have said happened, what did you say Daddy Jeramy did to your vagina?
>
> A. Slobber.
>
> Q. Okay. And did he put anything in your vagina?
>
> A. His fingers.
>
> Q. Anything else?
>
> A. (No response)
>
> **Q. What about his penis?**
>
> **A. No.**
>
> **Q. Are you sure?**
>
> **A. Yes.**
>
> **Q. Okay. Did you just forget it, or why did you say no?**
>
> **A. Just forget it.**
>
> Q. And, [Minor], did he put his penis anywhere else in your body?
>
> A. In my mouth.
>
> **Q. In your mouth. What about anywhere else?**
>
> **A. Nope.**
>
> Q. What about on your bottom?
>
> A. Yes.
>
> Q. And what is that?
>
> A. A butt.
>
> **Q. And tell me about that. What happened with that?**

A. He put his – I mean, his penis in my butt hole.

R. 91, l. 25 – 93, l. 4 (emphasis added).

Child stated that appellant, during the night, would carry her from her bedroom to the couch in the living room of Uncle Mike's trailer. R. 86, ll. 1 – 14. Two other children also slept in this bedroom. R. 86, ll. 1 – 3. Her mother, Candace, would be on the couch during these instances. R. 86, ll. 21 – 22. Child claimed that Candace watched the sexual abuse but did nothing. R. 86, l. 21 – 87, l. 10. R. 102, ll. 15 – 20. She stated she had seen Candace and appellant have sex on the couch. R. 102, ll. 21 – 25.

Child claimed that none of her brothers witnessed the abuse. R. 87, ll. 11 – 18. However, Child was sexually abused by one of her brothers. R. 103, ll. 17 – 24. The Court sustained the State's objection and prevented appellant from cross-examining Child further about this abuse, but during the *in-camera* proffer, stated that her brother had vaginal intercourse with her at Uncle Mike's trailer. R. 109, ll. 13 – 21.

On cross-examination, Child admitted meeting with the solicitors several times before trial. R. 98, l. 23 – 99, l. 20. She did not know how many times she had talked with people about the alleged abuse. R. 134, l. 24 – 135, l. 4. She remembered watching the videotape of a forensic interview. R. 135, ll. 5 – 9. Child remembered her mother offering her "Gummies, a Happy Meal, or a milk shake to talk to the nice lady." R. 135, ll. 13 – 16. When asked, "how many times has your mommy promised you something to talk about this," Child replied, "I don't know." R. 135, ll. 21 – 23.

The State's other star witness's credibility was also very much in question. Candace testified for the State under a proffer agreement. R. 171, ll. 18 – 25. Candace's understanding of the proffer agreement was "that what ever I said after I signed that proffer cannot be used against

me." R. 171, ll. 21 – 24. Candace was not facing sexual abuse charges but a charge of unlawful neglect at the time of trial. R. 172, ll. 1 – 14. She claimed she had not been offered anything by the solicitor and was testifying "to try to help" her kids. R. 172, ll. 1 – 14.

Candace testified that appellant was sexually molesting Child. R. 169, ll. 22 – 170, l. 2. Candace said she "had caught [appellant] a few times. I seen it." R. 177, ll. 15 – 24. Candace saw appellant sexually abuse Child more than four times but said she did nothing about it. R. 177, l. 23 – 178, l. 7. When she asked appellant to stop, she claimed appellant said, "It's his daughter; he can do what he wants." R. 179, ll. 5 – 12. The solicitor used this alleged statement by appellant as the very beginning of her opening statement and the final lines of her closing argument. R. 61, ll. 12 – 13. R. 432, ll. 23 – 25.

During cross-examination, Candace revealed that before moving in with Uncle Mike, she was living with the father of her three oldest boys. R. 223, ll. 9 – 23. Candace admitted fighting with appellant about child support owed by the father and wrote her attorney in Norbert Cummings' office about it. R. 227, l. 23 – 228, l. 23. Defense counsel questioned Candace about a statement made during the forensic interview that Child was "sucking your ninnies." R. 231, ll. 3 – 18. Candace replied, "I wasn't aware if she was. I might have been drunk and passed out." R. 231, ll. 17 – 20. She was forced to admit that her conduct may have been greater than simply being a passive observer because she "drank a lot." R. 231, ll. 21 – 24. She had not yet pled guilty to unlawful conduct. R. 231, l. 25 – 232, l. 23. She admitted lying to doctors at M.U.S.C. R. 239, l. 10 – 240, l. 17.

The solicitor had to address Candace's credibility during her closing argument telling the jury that she "is a disgusting, despicable person, but you have to evaluate her value as a witness." R. 407, ll. 7 – 14. The solicitor also addressed whether Candace coached Child. R. 407, ll. 7 –

408, l. 15. She argued, "if Candace Parks was going to coach her child to say things that hurt [appellant], would she not be smart enough to coach her not to incriminate her?" R. 407, ll. 20 – 23.

The solicitor was also at pains to defend Child's credibility during her closing argument. She argued that Child "did the best job she could to remember what she could." R. 414, l. 24 – 415, l. 8. The State tried to explain differences between Child's forensic interview and her testimony. R. 416, l. 2 – 417, l. 25. The solicitor stated that Child "does remember more on the tape, but that was two and a half years ago. If you notice, she is using more grown-up language in the courtroom." R. 417, ll. 19 – 22. The solicitor also admitted that there were differences between Child's forensic interview, Child's testimony, and Candace's testimony stating, "Are there differences? Yeah, there are differences." R. 418, l. 1 – 419, l. 23. Finally, the solicitor relied on the forensic interviewer to explain Child's odd demeanor on the stand arguing that anxiety produces "restlessness, giggling," in nervous children. R. 427, l. 2 – 428, l. 16.

Defense counsel argued Child's allegations were the result of prodding from DSS and, especially, Candace. R. 435, l. 4 – 439, l. 19. Arguing about the lack of evidence of physical injuries, defense counsel told the jury, "Candace made the effort over the course of the nine months she had solo with her daughter to go ahead and plant the seeds for this testimony that's been going on during the course of the trial." R. 442, l. 24 – 443, l. 6.

As shown above, the jury needed to believe Child and the "despicable" Candace to convict appellant. The Supreme Court has consistently ruled that where credibility is the central issue at trial, errors cannot be harmless. Stukes at 500, 787 S.E.2d at 483. In Stukes, the Court held that the case was not "amenable to a harmless error analysis" because the case "hinged on credibility." Id. See also State v. Anderson, 413 S.C. 212, 219, 776 S.E.2d 76, 79-80 (2015)

(reversing in a child sex case because the case "turned solely on the credibility of the minor and of Appellant" and because the case lacked physical evidence of sexual abuse); State v. Chavis, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015) ("The determination whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim.").

Child's credibility was the central question in the trial. The trial judge did not give the Stukes charge during its general charge on witness credibility, but immediately after she defined the elements of the offense. R. 455, l. 10 – 457, l. 2. The placement of the Stukes charge after the elements of criminal sexual conduct emphasized that the jury could simply believe Child and caused confusion. Therefore, the trial judge's erroneous charge cannot be harmless error beyond a reasonable doubt and this Court should reverse.

2.

The trial court erred in ruling that the child complainant was a competent witness based solely on its viewing of the tape of the forensic interview, refusing to examine the child in court, refusing the defense's request for an independent competency evaluation, and in refusing to allow the defense to conduct *voir dire*.

Appellant filed a motion to exclude Child's testimony for lack of competency to testify. R. 508. Appellant asked, in the alternative, for the court to order a competency evaluation by a child forensic psychiatrist. R. 508. Without ever hearing Child speak in Court, the trial judge overruled appellant's objection to her competence as a witness. R. 9, l. 22 – 10, l. 16. Judge Jefferson called defense counsel's motion "superfluous" and relied solely on her viewing of the videotape of the forensic interview. R. 10, ll. 13 – 16.

The State called Child as its first witness and before her testimony, defense counsel objected again at a bench conference. R. 69, ll. 7 – 70, l. 13. Defense counsel asked the court to

make a determination of her competency outside the presence of the jury. R. 69, ll. 15 – 19. The trial judge denied the request, reasoning that witnesses are presumed to be competent. R. 69, l. 20 – 70, l. 13.

After the solicitor's preliminary questions about the difference between a truth and a lie, appellant again objected at a bench conference and asked again for permission to question the child. R. 73, l. 1 – 74, l. 17. Interrupting defense counsel's argument, the trial judge denied the request stating, "I think I have enough perspective because I've seen more. She's competent; she knows the difference between the truth and a lie. If you want to impeach her, that's up to you. Regarding her ability to recall and otherwise, that wouldn't make her any less competent. There are adults who can't recall things." R. 74, ll. 9 – 16.

The trial judge erred in finding Child competent without an *in-camera* examination based on the court's viewing of a videotape and without giving appellant the opportunity to cross-examine Child outside of the presence of the jury. State v. Hudnall, 293 S.C. 97, 359 S.E.2d 59 (1987). In Hudnall, the Court reversed because the trial judge qualified the child witness "on the basis of the videotaped competency examination." Id. at 99, 359 S.E.2d at 61. The Court also ruled that "the trial judge should have presided during the competency examination of a witness of such tender years rather than determine her competence merely upon the viewing of a videotape." Id. "A judge's presence lends a courtroom-like atmosphere to better evaluate the witness's ability to appreciate the consequences of his or her testimony." Id. Here, the court failed to comply with any of Hudnall's requirements.

The error in appellant's case is more egregious than in Hudnall because the videotape here was of a forensic interview, not a competency examination. Forensic interviewers are no substitute for medical doctors and psychiatrists. Forensic interviewers are not experts in truth-

telling and do not offer scientific testimony. Chavis at 106-07, 771 S.E.2d at 338-39. See also State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013). The Supreme Court reversed in Hudnall **despite** a competency evaluation. Here, the trial judge denied appellant's request for a competency evaluation by a psychiatrist and used a forensic interview as the basis of her decision.

The trial judge also erred by refusing to conduct an *in-camera* examination of Child and allow *voir dire*. South Carolina Dep't of Soc. Servs. v. Doe, 292 S.C. 211, 218-19, 355 S.E.2d 543, 547-48 (1987). In Doe, the Court ruled that a "judge must rely on his personal observations of the child's demeanor **and responses to inquiry on voir dire examination.**" Id. (emphasis added). The trial court here did not allow defense counsel to conduct *voir dire* outside of the presence of the jury. Defense counsel could not conduct an adequate cross-examination on this issue in front of the jury. By this point, Child had already testified and it was too late.

The trial judge's reasoning that Child was presumed competent was also erroneous. Id. "At common law, persons **fourteen years of age and older** are presumed competent to give evidence; **proof of competency is required for children under that age.**" Id. (emphasis added). Child was seven years old and could not be presumed competent.

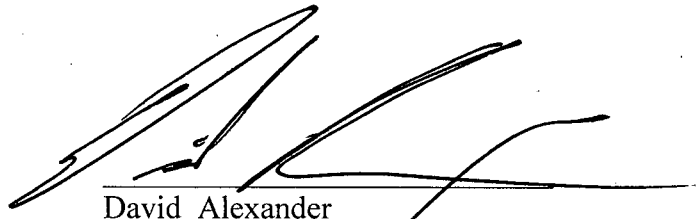
"The test to determine a minor's competency to testify is whether the child is aware of right and wrong and understands the probability of punishment for lying." Hudnall at 99, 359 S.E.2d at 61. The solicitor's initial questions did not meet this test. R. 70, l. 17 – 72, l. 25. Child did not know her birthday. R. 70, l. 25 – 71, l. 2. Child said she was supposed to tell the truth in the courtroom and was able to declare that if the solicitor said a blue pen was pink, it would be a lie. R. 71, l. 22 – 72, l. 25. No inquiry was made about whether Child knew the difference between right and wrong. No inquiry was made about whether Child knew she would

be punished if she told a lie. She was only asked whether telling a lie was "good or bad." R. 72, ll. 7 – 14.

The procedure used by the trial court failed to meet the requirements of Hudnall and Doe. Appellant was never allowed to examine the child on competency issues before her substantive testimony and outside of the presence of the jury. The court denied appellant's request for a competency evaluation and relied on her own viewing of the tape of an unscientifically conducted forensic interview. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand this case for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of February, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERAMY DALE PARKS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of February, 2017.

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

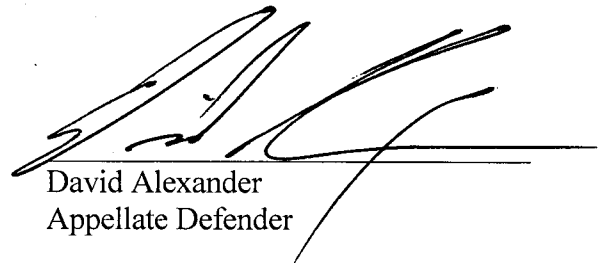
SUBSCRIBED AND SWORN TO before me
this 24th day of February, 2017.

(L.S)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 24, 2017



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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Deadra L. Jefferson, Circuit Court Judge

Appellate Case Number: 2015-002050

THE STATE,

Respondent,

vs.

JERAMY PARKS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Deadra L. Jefferson, Circuit Court Judge

Appellate Case Number: 2015-002050

THE STATE,

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II.

The trial court did not abuse its wide discretion in finding the child victim was competent to testify, and the baseless motion was not made in good faith: defense counsel never articulated a basis to believe Victim might not be competent to testify.

STATEMENT OF THE CASE

The Berkeley County grand jury indicted Appellant Parks for five counts of first-degree criminal sexual conduct with a minor (CSC), two counts of unlawful conduct towards a child, and one count of third-degree criminal sexual conduct with a minor. Parks' daughter (Victim) was the victim of all the charges except one count of unlawful conduct towards a child, in which her brother was the victim. Parks proceeded to a jury trial before the Honorable Deadra L. Jefferson on September 14, 2015. Judge Jefferson severed the indictment charging Parks with unlawful conduct towards Victim. R. pp. 27-28. Parks was convicted of all the remaining charges in which his daughter was the victim and acquitted of the unlawful conduct charge towards her brother.

Judge Jefferson sentenced Parks to thirty years imprisonment for the first-degree CSC convictions and a consecutive fifteen years imprisonment for the third-degree CSC conviction.

STATEMENT OF FACTS

Victim was seven years old at the time of trial. Victim testified she was taken away from her parents because her father, Appellant Jeramy Parks, did bad things to her. She explained Parks "humped her" and digitally penetrated her. He also put his penis in her mouth. She testified she took showers with Parks and he made her "rub" his penis in the shower. She testified when she did this, "white stuff" came out of his penis onto the shower floor. She testified the penile penetration and digital penetration both occurred more than once. R. pp. 79-84; p. 96.

Victim testified her mother, Candace Parks, saw the abuse and did nothing. R. p. 86. Victim also testified Parks put his mouth on her vagina. She described getting "slobber" from Parks' mouth on her vagina. R. p. 91-92. Victim further testified Parks penetrated her in the "butt." She told him to stop but he ignored her. R. p. 93. Victim explained she disclosed the abuse "so they would know and punish him." R. p. 94, lines 21.

On cross-examination, Victim testified she saw Parks and her mother having sex on the couch at least five times. She also testified her older brother "humped" her one time. R. pp. 102-103. Mary Arnold is a foster parent. She testified Victim stayed with her for about three and a half weeks in March of 2013. Victim was dirty, needed clean clothes, and was hungry. Arnold described her demeanor as sad and scared. R. pp. 152-153. Arnold testified Victim disclosed she was abused. R. pp. 153-154. Arnold also observed Victim's bottom was red, and Victim said it hurt. R. p. 155. Officer Matthew Barlow responded to the Summerville Medical Center. He testified Victim indicated she was sexually assaulted by pointing to her private area. R. p. 159; p. 161.

Candace Parks testified she birthed seven children and no longer has custody of any of them. By the time of trial, she signed her parental rights away. Parks is father of the four youngest of her

children. Candace testified her children were taken away because she allowed Parks to be in the same home with her children in violation of the safety plan DSS put in effect. Candace testified the safety plan was put in place because Parks was sexually abusing Victim. R. pp. 168-169.

Despite DSS's safety plan, Candace let Parks back into the household with the children. At that point, she and the children stayed with Mike Miller, a friend of Parks. R. p. 170; p. 175. In March 2013, DSS and law enforcement came to the door and asked Candace if Parks was inside. She replied he was not, which she admitted at trial was a lie. They then asked Miller, and he admitted Parks was in the house. R. pp. 176-177. After DSS and law enforcement found Parks at the same residence with Candace and the children, she was arrested too. Candace testified pursuant to a proffer agreement she signed on August 26, 2013. R. pp. 171-173.

Candace knew Victim was being sexually abused because she caught Parks in the act several times. Candace recounted a time she saw Parks assaulting Victim when she was only five and a half. Candace admitted she did nothing about it. R. pp. 177-178. Candace testified she saw Parks abuse Victim more than four times. R. p. 178. One time, Candace asked Parks to stop. He told her Victim was his daughter and he could do whatever he wanted. R. p. 179. When she complained or stopped the abuse, Parks would abuse her. R. pp. 179-180. One of Candace's sons would intervene when Parks abused Candace. At trial, Candace called this son her protector. R. p. 180.

Candace testified one time she went into the children's bedroom to check on them and saw Parks "in the bedroom with one hand up on the bar, leaning down, holding his penis with his other hand, rubbing it on [Victim's] mouth while she was laying there." R. p. 181, lines 7-13. She further explained he was holding onto the bed while he was moving his penis inside Victim's mouth. R. p. 181, line 23 – p. 182, line 8.

Candace testified another time she was outside smoking marijuana and she heard a muffled sound, so she peered through a crack in the window and saw Victim laying across Parks' lap while he digitally penetrated Victim. Victim was crying. R. p. 182, lines 13-23. When she tried to go inside, she discovered the door was locked. R. pp. 182-183.

Another time, Victim came up to Candace and complained she had something nasty on her, and Candace cleaned semen off Victim. As Candace cleaned Parks' semen off Victim, Victim asked her why Parks was still living there. Candace answered because she was scared. R. pp. 185-186.

In addition to those events, Candace testified about several events occurring in Dorchester County. She saw Parks' hands in Victim's pants. R. p. 207. She saw Parks' hands between Victim's legs. R. p. 208. She saw Victim on Parks' lap, facing outward, while Parks moved her up and down on his penis. R. pp. 209-210. She saw Parks make Victim masturbate him. R. p. 210. All told, Candace saw Parks abusing Victim more than eight times. R. p. 211. When Candace complained, Parks would curse, yell, and spit in her face. He pushed her up against the door. R. p. 211. This continued once they were in Berkeley County. Candace testified she did not tell anyone about the abuse because she was too scared DSS would take her children away. R. pp. 211-212.

The safety plan went into effect after Victim disclosed to her aunts. Candace testified it was the aunts' idea to go to Trident Hospital and then MUSC. R. pp. 23-214. When Parks began visiting after the safety plan was put into effect, Candace told the children if they told anyone Parks was visiting, they would be taken away. R. p. 215. Candace confirmed she would have sex with Parks on the couch. R. p. 215. At the time of trial, Candace had not seen Victim for over two years, since

she was taken away in March of 2013.[1] Candace had not spoken to Parks since April 2013. She was arrested on May 30, 2013. R. p. 217.

Tawnee Castanon, Victim's aunt, testified she was visiting Candace when she and her sister, Aleshia Gifford Moore, decided to go to the store to buy soda. Victim asked to go with them. Victim told them she did not like Parks and he popped bumps on her butt. (The bumps were MRSA boils that she, Candace, and Parks all suffered from.) She told them Parks hurt her and would put his thing in her hole. R. p. 247.

After Victim disclosed the abuse to them, they told Candace if she did not do something about it, they would. Candace seemed embarrassed rather than mad. Castanon testified they took Victim to Trident Hospital and afterwards DSS was involved. R. pp. 247-248. They saw Parks later that day, and Parks asked Candace a lot of questions, but as they left, Parks told Candace, "If I'm going down, you're going down with me." R. p. 249, lines 1-4.

Officer Katie Yates from the Summerville Police Department responded to Trident Hospital on June 23, 2012. She noted Victim was dirty and unbathed, her clothes were dirty, and she wore shoes that did not fit. R. p. 258. Victim disclosed she was sexually abused. R. p. 258. Yates, who left law enforcement by the time of trial, testified the case was dropped in Dorchester after Victim refused to talk to the forensic interviewer either of the two times Candace took Victim to be interviewed. R. p. 260. Yates noted Candace was not attentive to Victim despite the disclosure of abuse. R. p. 260.

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[1]Considering Candace had not seen Victim in over two years by the time of trial and Victim's testimony incriminated Candace, defense counsel's desperate defense that Candace coached Victim was always too absurd for a reasonable juror to believe.

Laura Morgan, from the Dorchester Children's Center, attempted to interview Victim but could not complete the interview because Victim would not separate from her mother. Morgan testified Candace never disclosed she witnessed Victim being sexually abused. R. pp. 261-263.

Diane Wilson was assigned to the family as a guardian ad litem in October 2012. At the time, Candace was pregnant with her sixth child. Candace and the children were living in a small trailer with Miller, cats, and dogs. Under the safety plan in effect, Parks was not allowed in the home. R. pp. 268-271. Wilson and Damien Massey from the Dorchester DSS became concerned Parks was visiting the home in violation of the safety plan. They went to the trailer with Cory Arrington of the Berkeley Sheriff's Office on March 13, 2013. Candace denied Parks was in the trailer, but they asked Miller and Miller admitted Parks was there. Police removed Parks, and DSS removed the children. R. pp. 273-376; p. 280.

Massey testified he was concerned about living conditions in the trailer. He noted eight or nine cats in the yard. There was not enough food in the trailer. He observed electrical cords hanging out of their sockets. He became suspicious because the boys were standoffish. R. p. 285-288. Massey and Wilson investigated whether Parks was going to the trailer. They waited and watched for a while to see if Parks approached. Then they heard a man and children screaming from the trailer as they approached. They decided to call law enforcement to accompany them before knocking on the door. Subsequently, Parks was found inside the trailer. DSS then removed the children from the home and placed them elsewhere. R. pp. 289-292.

Markita Qualls Johnson, a registered nurse at MUSC, testified she saw Victim on June 23, 2012. She testified she did only a non-acute exam instead of an acute exam based on the information Candace provided. Candace told her Victim was sexually abused over two weeks ago. Victim

would not provide any history. However, Victim pointed to her vagina to indicate she had pain. Victim would not speak. Victim also would not let Nurse Johnson examine her anus area. R. pp. 303-305; p. 312.

Nurse Johnson observed a well-healed cleft at 6:00 on the vagina. The attending physician examined further and observed a narrowing of the hymen at 5:00 and recommended further examination. Additionally, the physician observed Victim's anus was dilated with no stool in the vault. Nurse Johnson notified DSS. Victim was released to Candace for a follow-up appointment on June 29. Victim refused the exam at the follow-up appointment. R. pp. 307-308.

Dr. Allison Foster from ARC (Assessment and Resource Center) testified as an expert in the dynamics of sexual abuse. She testified about the phenomenon of delayed reporting by sexually abused children. Delayed reporting is common among sexually abused children for several reasons. Children are less likely to report when the abuser tells the child not to tell or tells the child about negative consequences of disclosing. Children may be silenced by loyalty, threats, or the fear of being in trouble. Children may learn what is happening to them is wrong but at the same time, they may feel equally to blame. The threat of DSS involvement may keep the child from disclosing abuse. Dr. Foster also noted the component of loyalty and conflicted feelings towards an abusive parent. R. pp. 337-340.

Dr. Foster testified about observational learning from a non-abusing parent who does not protect the child. If the child discloses to the non-abusing parent, or finds out the non-abusing parent is aware of the abuse, and yet the parent does not act, "the child is observing there is an adult who is not capable of intervening." This will reinforce the child's sense of helplessness. R. p. 340, lines 8-25. Dr. Foster explained a non-protective parent's behavior may implicitly communicate the abuse

must be kept in the family. R. p. 342. Dr. Foster noted if a child is being abused in their home, then "they're living in their crime scene. So they're never really away for any length of time from the scene of the crime. It tends to be continuous, it's an ongoing sort of business." R. p. 344, lines 2-8. About two-thirds of abuse victims do not disclose the abuse until adulthood. R. p. 345.

Dr. Foster noted when she interviews children, if they are being asked about the details of past abuse, they may be "flat, sort of not a lot of emotion, to sometimes silly and trying to change the subject, off task, but not especially wanting to connect their emotions to the memories." R. p. 348, lines 12-22. When Dr. Foster sees children seeming silly or acting hyper during an interview, she will ask them if they are nervous and they might say they are. Dr. Foster testified she would expect a courtroom setting to create the same anxiousness in a child that will cause them to seemingly act silly. R. p. 349.

Casey Jackson May testified she adopted Victim and two of her siblings on June 5, 2015. She testified Victim disclosed to her she had been sexually abused. R. pp. 361-363.

ARGUMENT

I.

Physical evidence and an eyewitness corroborated Victim's testimony; therefore the trial court's instruction that a victim's testimony need not be corroborated was harmless beyond a reasonable doubt and the issue is not preserved for review.

The trial court, pursuant to the Supreme Court's decision in State v. Rayfield, 369 S.C. 106, 117-18, 631 S.E.2d 244, 250 (2006), instructed the jury that a rape victim's testimony need not be corroborated.[2] This instruction, previously found appropriate and consistent with the legislature's remedial intent by the Supreme Court in Rayfield,[3] ten years later was found confusing and unconstitutional by the Supreme Court in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016).

In Stukes, the trial court instructed the jury on the no-corroboration requirement. While deliberating, the jury sent the trial court a note, asking: "[T]he South Carolina law that the victim's testimony in CSC . . . does not need to be corroborated, . . . does that law imply that the victim's testimony must be accepted as being true?" Rather than respond directly to the jury's question, the trial court recharged the general law on credibility. The jury immediately returned a guilty verdict. Stukes, 416 S.C. at 497, 787 S.E.2d at 482. The Supreme Court observed "it is inescapable that this charge confused the jury" as "illustrated by the jury's query as to whether our law implies a victim's testimony must be accepted as being true." Id. at 499, 787 S.E.2d at 483.

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[2] S.C. Code Ann. § 16-3-657 provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." Instructing the jury on this statute was first found acceptable in State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

[3] Given Rayfield's finding that the instruction was consistent with legislative intent, the trial court and the prosecutor would have been remiss to not request the instruction and not carry out the legislative intent. The legislature met eight times between Rayfield and Stukes and did not alter the statute.

Turning to the trial court's reaction to the jury note, the Supreme Court lamented, "In our view the trial court's decision to merely recharge credibility, as opposed to answer the question in the negative, did nothing to inform the jury on this issue." Id. Reviewing for harmless error, the Supreme Court found the instruction was prejudicial because the case hinged on victim's credibility: the victim claimed to be raped; the defendant claimed it was consensual. Id.

In the instant case, Parks complains the corroboration charge was harmful because the jury "could simply believe Child . . . ." App. Br. p. 9.[4] However, the corroboration instruction is a correct statement of law; juries may convict if they believe the victim's testimony regardless of the lack of corroboration. If the jury correctly applied the law, there is no prejudice. The prejudice in Stukes was the jury appeared to misunderstand the instruction based on its note to the trial court. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975) (noting jurors are presumed to follow the trial court's instructions). In the instant case, there is no evidence the jury misunderstood the trial court's correct statement of law.

[4] Parks quotes the trial court out of context. The trial court observed, "And under – whether the testimony is corroborated or uncorroborated, and where generally, **as most cases of these type** are, they are credibility contests that comes down to one person's word against another, the law is very clear and therefore reason based on legislative intent that the word of a victim need not be corroborated." R. p. 404, lines 6-12 (emphasis added). Parks left the "most cases" clause out of the quote, which leaves the erroneous impression that the trial court was calling the present case a credibility contest.

The "materiality and prejudicial character of the error must be determined from its relationship to the entire case." State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). The harmless error doctrine preserves the central purpose of a criminal trial, which is to decide the factual question of a defendant's guilt or innocence. State v. Rivera, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013) (citing Arizona v. Fulminante, 499 U.S. 279, 306-08 (1991)). Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (1990).

The instant case is unusual for sexual abuse cases because there was an actual eyewitness. Candace, the biological mother, described multiple instances of child abuse. Further, physical evidence corroborated abuse: the exam indicated a cleft on Victim's vagina and Victim's anus was dilated. Finally, Parks told Candace in front of Victim's aunt that if Parks went down, Candace was going down with him. Unlike Stukes, Parks was incapable of raising a consent defense and did not present a defense at trial. This is not a she said/he said case. This is a child said/mother witnessed it case. Accordingly, Parks was not prejudiced by the corroboration instruction.

Further, the issue is not preserved for review. Parks' argument at trial was the instruction was not warranted because the Victim's testimony was corroborated. Parks claimed "based on the evidence" the instruction would be confusing. R. p. 402, lines 7-13; p. 402, line 23 – p. 403, line 1; p. 403, lines 12-18. Parks did not argue the corroboration instruction was an unconstitutional comment on the facts as found in Stukes. State v. Thomason, 355 S.C. 278, 288, 584 S.E.2d 143, 148 (Ct. App. 2003) ("[A] party cannot argue one theory at trial and a different theory on appeal.").

II.

The trial court did not abuse its wide discretion in finding the child victim was competent to testify, and the baseless motion was not made in good faith: defense counsel never articulated a reason to believe Victim might not be competent to testify.

There was no basis to believe Victim was incompetent to testify. Referencing defense counsel's written motion, the trial court asked, "Are you abandoning this motion regarding incompetency or are you – do you want to proceed on this?" R. p. 9, line 25 – p. 10, line 2.[5] The trial court advised defense counsel she would address the motion "at the time [Victim] testifies, and that's limited to her ability to understand and know the difference between the truth and a lie." R. p. 10, line 5-8. The State confirmed there was no indication Victim was incompetent to testify. R. p. 10, lines 10-11. The trial court observed, "Based on what I saw in that tape, she is fairly articulate and she would know the difference between right and wrong, so I assume that's a superfluous motion." R. p. 10, lines 13-16. Parks did not counter the trial court's observation.

Despite any apparent good faith basis to believe Victim was incompetent to testify, Parks' counsel asked the trial court to determine Victim's competency in camera. R. p. 69. The trial court declined and noted Victim's competency could be established before the jury. Victim spelled her last name, testified she was seven years old, provided her address, and identified the members of her family. She named her school and testified she was in second grade. R. pp. 70-71.

The prosecutor asked Victim what Victim was supposed to talk about in the courtroom and Victim answered, "The truth." She told the prosecutor it was good to tell the truth, and it was bad to

[5] The motion was a written, conclusory motion asking for the trial court to exclude "the testimony of the alleged victim for lack of competency to testify." Parks' counsel did not offer any facts in the motion to support such a drastic ruling.

tell a story or a lie. She remembered that when she put her hand on the Bible, she promised to tell the truth. She testified she was going to tell the truth today. R. pp. 71-72.[6] Parks' counsel made an objection at the side bar. It was not coherent. Parks' counsel still did not explain any good faith basis to believe that there was a competency issue as opposed to merely a desire to harass the Victim. The trial court declined Parks' request to voir dire Victim, noting Parks would be able to impeach Victim on cross-examination. R. pp. 73-74.

After direct examination, and while addressing other issues in camera in the midst of Parks' cross-examination, the trial court made the following ruling on Victim's competency:

> In response to voir dire questions, the State was able to establish her competency and I have found her to be competent to testify, and that is based on my observations of the child and her demeanor. It is clear to me that she does know the difference between right and wrong, truth and a lie, and it is also my observation that she is – at second grade, especially in light of all the things that our children are exposed to, fortunately, or unfortunately, they are not – I would – second grade is not that young.
>
> A second grader is taught in school, not only at home, the difference between the truth and a lie, but she has clearly demonstrated the ability to know the consequences between the truth and a lie. **And based on my own observations of her, not just based – I know I made reference to the interview, but that is not the basis of my decision regarding her competency.**
>
> She is inordinately mature, and that might be too strong of a word, but that's the crux of what I'm trying to convey for a child of her age and has an inordinate ability to communicate concepts, ideas, and – and she has responded quite frankly, better than some adults to questions. So I have no questions regarding her competency to testify and that objection is overruled, although I did it at a side conference.

[6] Parks notes in his brief Victim did not remember her birthday during direct examination. Hardly surprising given her likely nervousness, but she remembered her birthday on cross-examination. R. p. 101, line 13.

R. p. 118, line 22 – p. 119, line 24 (emphasis added).[7]

Every person in South Carolina is presumed competent to be a witness except as otherwise provided by statute or rule. Rule 601(a), SCRE; Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005); State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1998). "A witness must have personal knowledge of the matter and must swear or affirm to tell the truth." Needs, 333 S.C. at 142, 508 S.E.2d at 861. A person will be disqualified as a witness if the court determines that (1) the proposed witness is incapable of expressing himself to the judge or jury concerning the matter or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth. Rule 601(b), SCRE; see South Carolina Dep't of Social Servs. v. Doe, 292 S.C. 211, 355 S.E.2d 543 (Ct. App. 1987) (noting that in making a determination respecting competency of a witness, the trial judge must rely on personal observation of the child's demeanor and responses to questions posed).

In Needs, this Court determined that a "proposed witness understands the duty to tell the truth when he states that he knows that it is right to tell the truth and wrong to lie, that he will tell the truth if permitted to testify, and that he fears punishment if he does lie, even if that fear is motivated solely by the perjury statute." Needs, 333 S.C. at 143, 508 S.E.2d at 861. To be competent to testify, "a witness must have the ability (1) to perceive the event with a substantial degree of accuracy, (2) remember it, (3) communicate about it intelligibly, and (4) be mindful of the duty to tell the truth under oath." Id. at 143, 508 S.E.2d at 861 (citing Commonwealth v. Goldblum, 447 A.2d 234 (Pa. 1982)). The party opposing a witness bears the burden of proving the witness is incompetent. Id. The determination of a witness's competency to testify is a question for the trial court, and the trial

[7] Parks erroneously claims the trial court's ruling was made based on the trial court's viewing of recording of the forensic interview and "[w]ithout ever hearing [Victim] speak in Court" even

court's decision will not be overturned absent an abuse of discretion. Id.; see also TNS Mills, Inc. v. South Carolina Dep't of Rev., 331 S.C. 611, 503 S.E.2d 471 (1998); State v. Green, 267 S.C. 599, 230 S.E2d 618 (1976). After the trial court properly determines if a witness is competent, the resolution of the credibility of the witness is within the province of the jury. Id. at 144, 508 S.E.2d at 862. "Trial judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

"The test to determine a minor's competence to testify is whether the child is aware of right and wrong and understands the probability of punishment for lying." State v. Hudnall, 293 S.C. 97, 99, 359 S.E.2d 59, 61 (1987).[8] Parks relies on Hudnall without reciting the low threshold necessary to allow a child to testify. In Hudnall, unlike the present case, the trial court determined competency based solely on a video-taped competency evaluation. Further, the Supreme Court lamented the poor quality of the video recording and noted the child's "responses to questioning indicate she is incapable of distinguishing right from wrong, truth from falsehood, or reality from make-believe." Id.

Despite counsel's tacit admission – by his silence – that no basis existed to doubt the child's credibility, Parks argues on appeal that Victim should have been evaluated. The Supreme Court held a trial judge has the discretion to order the complainant be examined where the defendant **can show a compelling need.** In re Michael H., 360 S.C. 540, 548-49, 602 S.E.2d 729, 733 (2004).

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though the ruling occurred following direct examination. Br. of App. p. 9.

[8] *Overruled on other grounds by* State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

Specifically, the Supreme Court noted: "We adopt these guidelines, recognizing the serious and significant competing interests presented in this case and similar cases involving child victims. In such cases, a trial judge is, and must be, vested with broad discretion in the conduct of trial." Id.

In Michael H., the minor's attorney moved for a mental evaluation of the complainant out of concerns about the questionable mental health of the complainant: counseling records[9] showed the five year old complainant was hearing voices and complainant said the voices made him say bad things. Id. In the instant case, the motion was made without any offer of proof that competency was an issue and seemed to be made merely for purposes of harassing or intimidating Victim. See People v. Beauchamp, 483 N.Y.S.2d 946 (N.Y. App. Div. 1985) (finding "children are not discoverable items"). Parks' counsel made the motion without any evidence to show a compelling need.

Child witnesses are required to carry out incredible acts of courage by being called to the stand to testify about the abuse they suffered at the hands of the abuser who is sitting in the courtroom. Their dilemma is described as follows in a recent legal journal:

> Children of all ages are approaching the bench, being sworn in by a judicial officer, and are asked to sit in a room full of adults to discuss potentially traumatizing and embarrassing events of their victimization. The average adult is intimidated by the criminal justice system and is generally not knowledgeable about court proceedings. The system is even more perplexing for children, especially when asked questions far above their developmental level.

Fanscher, Ashley and del Carmen, Rolando V., "The Child As Witness": Evaluating State Statutes on the Court's Most Vulnerable Population, 36 Child. Legal Rts. J. 1 (Spring, 2016).

[9] Parks' counsel was likewise provided Victim's counseling records. R. pp. 8-9.

In the present case, the trial court quickly surmised Parks' counsel was simply making a frivolous pro forma motion and counsel made no effort to advise the trial court otherwise – counsel's silence proves the frivolous nature of the motion. Nonetheless, the trial court made the ruling after observing Victim's demeanor and specifically noting her ruling was not based on Victim's demeanor in the video recording, differentiating the present case from Hudnall. Undoubtedly, Victim understood the difference between a truth and a lie and the consequences of lying. Of course, Parks' counsel presented no basis for the pretrial motion and even the cold record establishes Victim's competency to testify. Accordingly, the trial court did not abuse its discretion.

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

SCARLET A. WILSON
Solicitor, Ninth Judicial Circuit

BY: _____
DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 16, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Deadra L. Jefferson, Circuit Court Judge

Appellate Case Number: 2015-002050

THE STATE,

Respondent,

vs.

JERAMY PARKS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

SCARLET A. WILSON
Solicitor, Ninth Judicial Circuit

By: _____
DAVID SPENCER

Office of Attorney General
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Columbia, SC 29211
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ATTORNEYS FOR RESPONDENT

February 16, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jeramy Dale Parks, Appellant.

Appellate Case No. 2015-002050

Appeal From Berkeley County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2018-UP-077
Submitted January 1, 2018 – Filed February 7, 2018

AFFIRMED

Appellate Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Attorney General David A. Spencer, both of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, all for Respondent.

PER CURIAM: Jeremy Dale Parks appeals his convictions of three counts of first-degree criminal sexual conduct with a minor and one count of third-degree criminal sexual conduct with a minor, arguing (1) the trial court erred in charging

the jury that the testimony of Victim need not be corroborated and (2) the trial court erred in ruling Victim was a competent witness. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Parks's first argument: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."); *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) ("[A] party may not argue one ground at trial and an alternate ground on appeal."); *State v. Johnson*, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) ("The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.").

2. As to Parks's second argument: *State v. Needs*, 333 S.C. 134, 143, 508 S.E.2d 857, 861 (1998), *modified on other grounds by State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2004) ("The determination of a witness's competency to testify is a question for the trial court, and the trial court's decision will not be overturned absent an abuse of discretion."); Rule 601(a), SCRE ("Every person is competent to be a witness except as otherwise provided by statute or these rules."); Rule 601(b), SCRE ("A person is disqualified to be a witness if the court determines that (1) the proposed witness is incapable of expressing himself concerning the matter as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth."); Rule 601, SCRE cmt. ("Under this rule, children are presumed to be competent unless it is shown otherwise."); *Needs*, 333 S.C. at 143, 508 S.E.2d at 861 ("A proposed witness understands the duty to tell the truth when he states that he knows that it is right to tell the truth and wrong to lie, that he will tell the truth if permitted to testify, and that he fears punishment if he does lie, even if that fear is motivated solely by the perjury statute."); *id*. ("The party opposing the witness has the burden of proving a witness is incompetent."); *id*. at 142, 508 S.E.2d at 861 ("Courts presume a witness to be competent because bias or other defects in a witness's testimony—revealed primarily through cross examination—affect a witness's credibility and may be weighed by the factfinder.").

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

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[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 23, 2018

The Honorable Mary P. Brown
PO Box 219
Moncks Corner SC 29461-0219

REMITTITUR

Re: The State v. Jeramy Parks
Lower Court Case No. 2014GS0800261, 2014GS0800262,
2014GS0800263, 2015GS0801478
Appellate Case No. 2015-002050

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
David A. Spencer, Esquire
Scarlett Anne Wilson, Esquire
The Honorable Deadra L. Jefferson

FORM 5

STATE OF SOUTH CAROLINA)
)
County of BERKELEY)
)
JERAMY DALE PARKS, #324805)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2018-CP-08-1191

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010

2. Name and location of Court which imposed sentence Berkeley County Court of General Sessions; Berkeley, South Carolina

3. Name(s) of co-defendant(s) (if any) Candace Parks

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2014-GS-08-00254; CSC with a Minor, First Degree

   (b) 2014-GS-08-00260; CSC with a Minor, First Degree

592 (c) 2014-GS-08-00261; CSC with a Minor, First Degree

5. The date upon which sentence was imposed and the terms of the sentence:

(a) September 16, 2015; Thirty (30) years

(b) September 16, 2015; Thirty (30) years

(c) September 16, 2015; Thirty (30) years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty XXX

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, I did.

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. February 7, 2018

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2018-UP-00077

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Denial of Effective Assistance of Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel failed to investigate the facts of the case

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No, they have not.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) (10)(a); First Collateral Attack

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

(b) your trial, if any? Yes, I was.

(c) your sentencing? Yes, I was.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I was.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. David Schacke and Debbie Littlejohn

ii. David Alexander, Commission on Indigent Defense

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. South Carolina Court of Appeals

iii. _____

19. State clearly the relief you seek in filing this application:

Based on the above, Sentences **VACATED**, Convictions **REVERSED** and **REMANDED** for a New Trial.

20. Are you now under sentence from any other court that you have not challenged?

No, I am not.

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of BERKELEY)

I, Jermay Dale Parks, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jermay Parks

SWORN to and subscribed before me this 26 day of June, 2018.

Notary Public (L.S.)

My Commission Expires: 9-29-2027

FILED
2018 JUN 29 PM 2:35
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

, APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Jeramy Dale Parks, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jeramy Parks
Applicant

SWORN or affirmed to and subscribed before me this 26 day of June, 2018.

Unique Greene
Notary Public

My Commission Expires: 9-29-2027

FILED
2018 JUN 29 PM 2:35
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Revised 3/2003

ATTACHMENT
POST-CONVICTION RELIEF APPLICATION

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(d) 2014-GS-08-00262; CSC with a Minor, First Degree

(e) 2014-GS-08-00263; CSC with a Minor, Third Degree

(f) 2015-GS-08-04478; CSC with a Minor, First Degree

5. The date upon which sentence was imposed and the terms of the sentence:

(d) September 16, 2015; Thirty (30) years

(e) September 16, 2015; fifteen (15) years

(f) September 16, 2015; Thirty (30) years

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Jeramy Dale Parks #324805, Applicant, v. State of South Carolina, Respondent.	Case No.: 2018-CP-08-1191 **RETURN AND MOTION FOR A MORE DEFINITE STATEMENT**

The State (Respondent), making its Return to the application for Post-Conviction Relief (PCR) filed on June 29, 2018, would respectfully show this Court:

I. Procedural History

Jeramy Dale Parks (Applicant) is presently confined pursuant to orders of the Berkeley County Clerk of Court. In February 2014, the Berkeley County Grand Jury indicted Applicant for three counts of Criminal Sexual Conduct with a Minor, First Degree (2014-GS-08-00254/2014-GS-08-00260/2014-GS-08-00261).

David Schwacke, Esquire and Debbie Littlejohn, Esquire represented Applicant. Assistant Solicitor Anne Williams and Deputy Solicitor Debbie Herring-Lash prosecuted the case. On September 14, 2015 Applicant proceeded to trial as indicted before Judge Deadra Jefferson and a jury. After being found guilty by the jury, Judge Jefferson sentenced Applicant to thirty years on indictment (2014-GS-08-260,261,262,263, and 259). Applicant appealed his conviction, which was affirmed by the Court of Appeals on February 7th, 2018 and the Remittitur was issued on February 23, 2018.

II. Current Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

In relief sought, Applicant is seeking: "Base on the above, sentences vacated, convictions reversed and remanded for a new trial."

Attached to this Return and incorporated by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, the trial transcript, the appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Applicant alleges he received ineffective assistance of counsel. Nevertheless, Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

III. Ineffective Assistance of Counsel

In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in his or her application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). Because Applicant's claims of ineffective assistance of counsel are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the

State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel that are not refuted by the plea transcript.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN HUNTER LIMBAUGH
Assistant Attorney General

By: Benjamin Limbaugh
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 13, 2019

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY JERAMY D. PARKS, #324805 Applicant, vs STATE OF SOUTH CAROLINA, Respondent,	IN THE COURT OF COMMON PLEAS **2018-CP-08-1191** AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leslie T. Sarji, Esquire
Sarji Law Firm
PO Box 20248
Charleston, SC 29403

DATED this the 13th day of February, 2019.

Jennifer Jennison, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA **COUNTY OF 1BERKELEY** **JERAMY DALE PARKS,** **SCDC No. 1#324805** **Applicant,** **v.** **The State of South Carolina,** **Respondent.**	**IN THE COURT OF COMMON PLEAS** **NINTH JUDICIAL CIRCUIT** **Case No.: ~~118~~-CP-08-1191** 2018 JC **ORDER FOR COMPETENCY TO STAND TRIAL EVALUATION PURSUANT TO STATE V. BLAIR** **EVALUATION BY:** **(Select Only One)** **_X_ Department of Mental Health (Mental Illness)** **OR** **Department of Disabilities and Special Needs (Intellectual Disability or Related Disability)**

FILED
2025 JAN 21 AM 11:41
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

This matter is before me for an order requiring Applicant **JERAMY DALE PARKS** (SCDC), pursuing a post conviction relief action, to submit to an evaluation for competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981) and S.C. Code Ann. § 44-23-410 (1976).

BASIS FOR ORDER. I have considered the showing made in support of the motion requesting this evaluation and have reason to believe defendant may lack the competency to understand the criminal proceedings or to assist with the defense as a result of a lack of mental competence.

This order is issued for the following reasons: Counsel for Applicant has attempted to communicate with Applicant but has concerns about whether Applicant can understand her or assist in the case.

THEREFORE, IT IS ORDERED: Defendant shall be examined and observed at an appropriate facility by two examiners of the Department of Mental Health if suspected of having a mental illness or by two examiners designated by the Department of Disabilities and Special Needs if suspected of having an intellectual disability or a related disability, to render an opinion whether defendant is competent to stand trial.

COMPLIANCE DEADLINE/TRANSPORT FOR EVALUATION. The examining

EMAIL: D.DIXON, D.SWOPE 01/21/2025

facility shall schedule the ordered examination no later than thirty (30) days from the examining agency's receipt of this order. If defendant is currently free on bond or personal recognizance, defendant is responsible for making transportation arrangements to attend the examination. In the event defendant does not appear at the scheduled examination, upon written notice of such failure by the examining agency to the Sheriff of the county in which this case arose, defendant shall be taken into custody by the Sheriff and held until an examination can be scheduled and completed, and thereafter shall be released. Defendant's bond or bail is hereby revoked to the extent necessary to carry out the provisions of this order, and upon completion of the examination and release of defendant, any previous bail or bond issued by the Court shall remain in effect. If defendant is in custody at the time of the scheduled examination, the Sheriff is hereby authorized and required to transport defendant to and from the examination, arriving at the examining facility at the time established by confirmed appointment with the staff of the examining facility. In the event defendant is in custody of a law enforcement agency other than a Sheriff's department, nothing herein prevents such agency from carrying out the provisions of this order. **Applicant is currently in the custody of the SC Department of Corrections and a copy of his SCDC screen information is attached.**

TRANSFER TO ALTERNATE AGENCY. If the initial examination is performed by the Department of Mental Health, and examiners find indications of an intellectual disability or a related disability but not mental illness, the Department of Mental Health shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant is "not mentally ill" and shall provide a copy of such notification and a copy of this order to the Department of Disabilities and Special Needs. Likewise, if the initial examination is performed by the Department of Disabilities and Special Needs, and examiners find indications of mental illness but not an intellectual disability or a related disability, the Department of Disabilities and Special Needs shall not render an opinion on mental competency, but shall inform the Court, prosecutor, and defense counsel that defendant does "not have an intellectual disability or a related disability" and shall provide a copy of such notification and this order to the Department of Mental Health.

In either case, the examining agency shall make copies of any records gathered or created in connection with its examination available to examiners designated by the alternate agency, and the alternate agency shall thereafter designate examiners to evaluate defendant as to

competency to stand trial within thirty (30) days of receipt of the notification from the initial examining agency.

FINDING OF DUAL DIAGNOSIS. If examiners of either the Department of Mental Health or the Department of Disabilities and Special Needs find an indication of a dual diagnosis of mental illness and an intellectual disability or a related disability, no opinion on defendant's mental competency shall be rendered, and the dual diagnosis must be reported to the Court, prosecutor, and defense counsel. The examining agency shall also provide notification of the finding and a copy of this order to the other agency. Thereafter, the Department of Mental Health and the Department of Disabilities and Special Needs shall arrange for an examiner from each agency to further evaluate defendant to render a final report on defendant's mental competency. Both agencies are authorized and required to make copies of all relevant records within their possession or control available to examiners for purposes of completing the dual evaluation.

AUTHORIZATION FOR INPATIENT EVALUATION. In the event examiners from either agency determine defendant requires an inpatient examination, upon written notice to this Court from the director of the examining agency or his designee, defendant shall be committed to an appropriate facility of the requesting agency for no more than fifteen (15) days for examination and observation related to defendant's mental competency to stand trial.

REQUEST FOR EXTENSION. Before the expiration of the examination period or the examination and observation period, the Department of Mental Health or the Department of Disabilities and Special Needs, as appropriate, may apply to a judge designated by the Chief Justice of the South Carolina Supreme Court for an extension of time up to fifteen (15) days to complete the examination or the examination and observation.

DETENTION BEYOND EVALUATION PERIOD. If, in the judgment of the designated examiners, defendant is in need of immediate hospitalization or inpatient treatment, upon written request to this Court from the director of the examining facility or his designee, defendant may be detained by the requesting agency in a suitable facility for so long as deemed clinically necessary or until a hearing required and provided by S.C. Code Ann. § 44-23-430 (1976) may be conducted by this Court. An additional Court order **shall** be necessary for ongoing pre-trial inpatient detention of defendant as discussed in this paragraph.

ISSUANCE AND ADMISSIBILITY OF WRITTEN REPORT. Within ten (10) days

of all examinations or the conclusion of the observation period, a written report shall be made to the Court pursuant to S.C. Code Ann. § 44-23-420 (1976). A copy of the report shall also be forwarded to the prosecutor and defense counsel. This evaluation report shall be admissible as evidence in subsequent hearings pursuant to S.C. Code Ann. § 44-23-420(c) (1976); thus, the report is a statutory exception to the rule against hearsay and shall be admissible without need for foundational testimony. However, the report shall be inadmissible in any other proceedings except as expressly permitted by South Carolina law.

OWNERSHIP AND DISCOVERABILITY OF EXAMINING AGENCY FILES. The examining agency is an independent entity, conducting this evaluation pursuant to Court order, and is not aligned with any party before the Court. To promote full disclosure and to assure the cooperation of defendant during the evaluation process, ownership of the examining agency's files shall be vested with the examining agency, including clinician's notes, staff reports, evaluation documents, memoranda, test results, etc. Neither these files nor any of their contents shall be provided to any party except upon presentation of a Court order authorizing such or a release authorization signed by defendant. In the event the examining agency's evaluation opinion is contested, an examiner may be appropriately and fully questioned as to the basis for the examiner's opinion at any hearing pursuant to S.C. Code Ann. § 44-23-430 (1976). However, examiners and agency staff may not be compelled to testify regarding statements made during the competency examination for any purpose other than to establish competency. Also, statements made during the examination may not be used to impeach defendant at trial. Hudgins v. Moore, 337 S.C. 333, 524 S.E.2d 105 (1999).

MEDICAL PROVIDERS/SCHOOLS MUST RELEASE NECESSARY RECORDS. State agency examiners conducting the evaluation may need clinical and school records concerning defendant to assist in forming an opinion. It is therefore ordered, upon presentation by the examining agency of this order with a written request for specific records attached thereto, that any physician or clinician, licensed health care facility, licensed health care provider, or any school district is hereby authorized and required to furnish copies of all records concerning defendant to the Department of Mental Health or the Department of Disabilities and Special Needs, or both.

COUNSEL REQUIRED TO FURNISH NECESSARY RECORDS. Upon written request from the examining agency, counsel for the prosecution and defense shall furnish to the

agency such records and information in counsel's possession as the agency requests, including but not limited to copies of law enforcement reports, investigations, witness statements, statements by defendant (both written and electronic), defendant's medical records, and prior psychiatric or psychological evaluations of defendant. Nothing herein shall be construed to require counsel to divulge any information, documents, notes, or memoranda that are protected by attorney-client privilege or work-product doctrine.

DUTIES OF DEFENSE COUNSEL. Unless the prosecution is the party moving for this evaluation, defense counsel has the responsibility to file, serve, and transmit this order as outlined in the final paragraph below. Defense counsel does not have the right to attend any clinical interview scheduled pursuant to this Order, nor does defendant have a constitutional right to compel counsel's attendance. State v. Hardy, 283 S.C. 590, 325 S.E.2d 320 (1985). The Court recognizes, however, that circumstances may arise through which the examining agency may request counsel's attendance to facilitate the examination. In the event that such a determination is made, the examining agency may request counsel's attendance in writing, and counsel's level of participation shall be prescribed by the examining agency's written evaluation protocol. In this event, because of the substantial number of individuals awaiting examination, such interviews cannot be rescheduled, postponed, or canceled to accommodate counsel except upon presentation to the examining agency of a written statement from a circuit court judge that counsel's attendance is required in Court at the time the examination is scheduled. Whether or not defense counsel is requested to attend the clinical interview, defense counsel must meet with defendant prior to the interview to discuss this Court order, the evaluation process, the clinical interview, defendant's rights with regard to the clinical interview, and penalties associated with non-appearance and non-cooperation. Failure to comply with these requirements may result in sanctions for defense counsel. Defendant's refusal to participate at the interview because of the absence of counsel will be deemed non-cooperation. Failure of defendant to cooperate or participate in the interview may result in cancellation of the interview, examiners being unable to offer an opinion on competency to stand trial, and the case being called for trial without completion of the evaluation.

FILING, SERVICE, AND TRANSMITTAL OF ORDER. It is the responsibility of counsel for the party requesting the evaluation to file and serve this order as outlined herein. In the event the evaluation has been requested by consent, or the moving party cannot be determined, defense counsel shall be responsible. After being signed by the Court, the original

order without attachments shall be immediately filed with the Clerk of Court and a certified copy served upon the opposing party. Further, within five (5) business days, a certified copy of this order, together with the attachments listed at the end of this order, must be served upon the examining agency at the address listed below. To expedite commencement of the evaluation process and scheduling of the clinical interview, counsel is instructed to immediately contact the examining agency to advise of the issuance of this order and forthcoming service upon the agency:

Evaluation Order Service Information

Department of Mental Health	Department of Disabilities and Special Needs
Forensic Evaluation Service Paralegal	Office of Clinical Services
S. C. Department of Mental Health	Department of Disabilities and Special Needs
CBHS Forensic Center	Post Office Box 4706
7901 Farrow Road	Columbia, S.C. 29240
Columbia, S.C. 29203-3220	
(803) 935-5540 (Phone)	(803) 898-9694 (Phone)
(803) 935-5544 (Fax)	(803) 898-9660 (Fax)
Email: FES-PARALEGAL@SCDMH.ORG	Email: OBSForensics@ddsn.sc.gov

AND IT IS SO ORDERED.

Berkeley, South Carolina

Dated: 1/21/25

Presiding Circuit Judge

Printed Name of Presiding Circuit Judge

I so move:

s/Denise Grainger Swope
Applicant's Attorney
Swope Law Firm
1525 Sam Rittenberg Blvd, Ste.208
Address
Charleston SC 29407
City, State, Zip
(843) 852-4925
Telephone
swopelawfirm@comcast.net
Email

I consent:

s/Danielle Dixon
Respondent's Attorney
Office of the Attorney General
Post Office Box 11549
Address
Columbia, SC 29211
City, State, Zip
(803) 734-3737
Telephone
DanielleDixon@scag.gov
Email

The following documents must be attached to this order upon submission to the Department of Mental Health or to the Department of Disabilities and Special Needs whichever is

applicable:

1. Completed DMH/DDSN Outpatient Information Appointment Sheet
2. Copy of the indictment(s) (if issued)
3. Copy of the arresting agency's incident report
4. Copy of the warrant(s)
5. Law enforcement investigative reports
6. Defendant's statements to law enforcement, written or electronically recorded
7. Witness statements to law enforcement
8. Defendant's school psychological records (if available)
9. Autopsy reports (if applicable)

THE STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**

COUNTY OF BERKELEY CASE NO.:2018-CP-08-01191

***** ORIGINAL *****

October 13, 2025

BEFORE: The Honorable Thomas McGee

JEREMY D. PARKS,

Appellant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

APPEARANCES:

Denise Swope, Esq.
Appearing for the Appellant.

Danielle Dixon, Esq.
Appearing for the Attorney General/State.

Stenographer: Natalie Dahl, RPR
SC Official Court Reporter

NOTE: *Pursuant to Rule 607 (H)(1)(B), SCACR "A Court REPORTER SHALL RECEIVE THE FEE OF $1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." All requests for a copy of the enclosed transcript shall be sent to: Natalie Dahl, RPR, P.O. Box 762, Conway, SC 29526*

INDEX

EXHIBITS

(None)

Transcript Legend

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
Phonetic (ph)	Indicates a phonetic word
(Inaudible)	Indicates word(s) are not discernable due to audio recording quality
(sic)	Word(s) written as said, but may be in error

P R O C E E D I N G S

THE COURT: This is Mr. Parks?

MR. PARKS: How are you, Your Honor?

THE COURT: Good morning.

Yes, ma'am.

MS. DIXON: Danielle Dixon, Assistant Attorney General for the State of South Carolina. This is Jeremy Parks versus State, Docket No. 2018-CP-08-1191. Mr. Parks is currently serving a 45-year sentence.

In February of 2014, the Berkeley County Grand Jury Indicted him for three counts of criminal sexual conduct with a minor. Those are Indictments 2014-GS-08-254, 260 and 261. He did proceed to a jury trial September 14th, 2015 before Deadra Jefferson. He was represented by David Schwacke, Esquire, and Debbie Littlejohn, Esquire, who were both public defenders at that time.

The jury convicted him, and Judge Jefferson sentenced him to 30 years -- it says 30 years. I don't know. He appealed --

MS. SWOPE: 30 on the CSCs, and 15 on the --

MS. DIXON: I'm sorry. My return is incorrect.

THE COURT: That's okay.

MS. DIXON: He did appeal. It was affirmed by the court of appeals on February 7, 2018. The remittitur was issued February 23, 2018. Pertinent to that, I do believe they are raising an issue as to Issue One on appeal; is that correct?

MS. SWOPE: Yes, we are, Your Honor. It was noted in the appellate record that there was a failure to preserve an objection as to Issue One, which had to do with the charge to the jury, and we would be raising that issue.

There is another instance where I think an objection should have been made, that I'll mention. Because they talk about Dorchester and Berkeley, and then the judge said, guys, we need to stop doing the Dorchester and Berkeley thing, because it was confusing to the jury.

MS. DIXON: That's the first time I heard about that issue. But, anyway....

Moving on, this application was filed June 29, 2018. He was previously represented by Leslie Sarji. I believe she was relieved back in 2021. We have had multiple continuances, the most recent being this past May.

He was scheduled for a competency evaluation

with the Department of Mental Health, and we did receive the results of that a few months ago, and the Department did find him competent to go forward with any kind of hearing.

THE COURT: Okay.

MS. DIXON: At that time, I would ask Counsel -- looks like from his application, the allegation is just ineffective assistance of counsel for failure to investigate. So I would -- I know she mentioned to me the appellate issue that was not preserved, which had to do with the jury charge. Basically, the Court charged the jury that the evidence of a child victim need not be corroborated -- or I guess any victim. I don't know if it is specific to a child victim. But it need not be corroborated.

And of course State versus Stukes had come out in 2016 -- actually, I would say this case came out before State versus Stukes, so it couldn't even apply since this is a PCR. But to the extent it could apply, I will note that Mr. Schwacke did object to the charge, because as he noted to the Court, it was an unnecessary charge here where the child victim's testimony was, in fact, corroborated by, not only her mother's testimony about eight

different instances that she observed, but also forensic evidence showing this child had healing tears on her hymen and dilated --

MR. PARKS: Objection. Can I object?

MS. SWOPE: No. She's stating her version of the facts.

THE COURT: This is not sworn testimony or anything. Of course your lawyer will have a fair and opportunity to tell your side.

MS. DIXON: And, Judge, of course this is all in the trial transcript. This is just me recapping some of the testimony from trial.

But there was medical evidence, as well as the mother's testimony. Basically, Mr. Schwacke's objection at the charge conference is that it was an unnecessary charge. We can get into a little more argument on that issue later. I would just ask for clarity as to any other issue they intend to raise.

MS. SWOPE: Your Honor, Mr. Parks has some complaints he wants to put on the record regarding Mr. Schwacke. And I also noted in my review of the transcript, Pages 18 through 25, there was a discussion regarding -- because there were actually charges in Dorchester, as well as Berkeley. And

the way the questioning went is they went saying, This is a Berkeley County event, this is a Berkeley County event. Shortly after that, the judge said, guys, you need to stop with the Berkeley-County thing because it gives the jury the possible inference that there is more offenses that aren't being discussed, and I noted that the trial counsel didn't object there.

THE COURT: That is pages?

MS. SWOPE: 18 through 25.

MS. DIXON: Are you sure? Can you look at the --

THE COURT: Let me look. I have it here.

MS. DIXON: That's the voir dire.

MS. SWOPE: Oh, excuse me. Let me look back. Okay. I think those are the lines. It starts on Page 220. I apologize.

THE COURT: That's okay. 220.

MS. SWOPE: Those were the line numbers. I apologize for the confusion.

THE COURT: That's okay. So 220. So we've got the ineffective assistance of counsel for failure to investigate. We have -- then we have that charge issue that we talked about, and then the reference you say by the trial judge saying you

have to stop with the Berkeley --

MS. SWOPE: You have to stop with the Berkeley-Dorchester thing because it could give the jury the wrong inference, but trial counsel didn't make an objection. The judge actually handled it.

THE COURT: Right. And that is....

MS. SWOPE: 220, I believe is where it starts.

THE COURT: All right. I'm there now.

MS. DIXON: And, Judge, I just want to note that starting on 221 the jury leaves the courtroom, and doesn't return until --

THE COURT: I see on Page 221, Line 11, Ms. Williams states: "Your Honor, at this time I think we have a matter of law that we would like to take up with the Court."

The trial judge on Line 14 dismisses the jury, and then 222....

MS. SWOPE: I'm trying to see when they came back in. Thank you for noting that.

MS. DIXON: It goes until about Page 235, and they take a break.

MS. SWOPE: I apologize. I didn't realize that was out of the presence of the jury. Thank you.

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THE COURT: So with that being said, Ms. Swope, just to confirm, we have ineffective assistance of counsel for failure to investigate, and then the issue of the charge?

MS. SWOPE: Yes. The issue of the charge where the Court, in their unpublished opinion, noted that the first question, which is regarding the charge, was not preserved for review. The Court -- I can see the argument that he did preserve it, but the appellate court ruled that he did not.

THE COURT: Do you have the site for the -- let me see here.

MS. DIXON: The court of appeals opinion, Your Honor, should be in the court packet.

THE COURT: I've read that. I was just going to see --

MS. DIXON: State versus Stukes?

THE COURT: No. I was just looking to see where that discussion was.

MS. SWOPE: On the appellate record. It is Page 402. I believe on the trial record it is 437. I wasn't sure which one you had in the court packet, so I had both, whether you had the appellate or --

THE COURT: Yeah, I have the appellate court of appeals opinion up, and I just wanted to see for myself. Okay. And here is -- this is the charge conference outside of the presence of the jury; is that right?

MS. DIXON: Yes, Your Honor. Then Mr. -- Page 437, Line 5, the trial judge says: "Any exceptions from the defense?" And that is when Mr. Schwacke says, at Line 7, says: "We would objet to the instruction of corroboration of a victim. In this case, there was actually -- at least in view of the evidence presented by the State -- most favorable to them. There actually is evidence of corroboration based on the testimony of Candace."

And then the trial judge says: "Even though there is -- there is no requirement that there be."

And then Mr. Schwacke says: "We're just concerned, Your Honor, based on evidence, that it could become confusing, and we would ask that it not be charged."

And then they come back and, presumably, that is when the judge -- 438, 439 -- where the judge overrules that objection.

And then Line 20, Page 439, the trial judge says: "I'll note your objection for the record,

and it's denied. Anything further from the defense?

"No."

MS. SWOPE: And in the final brief of the State, they noted that the issue was that he did not argue that the corroboration instruction was an unconstitutional comment on the facts as found in Stukes.

THE COURT: Right. This trial preceded Stukes; did it not?

MS. DIXON: Correct.

MS. SWOPE: Correct.

And they noted that under State versus Thompson, a party cannot argue one theory at trial and a different theory on appeal, was the basis of the lack of preservation of the issue.

THE COURT: Understood.

MS. DIXON: That's how I understood it.

THE COURT: So we have ineffective assistance of counsel for failure to investigate, and then we have the issue of the charge.

Is that all, Ms. Swope?

MS. SWOPE: Let me doublecheck with my client, but I believe so.

My client wishes to raise issues just in

terms of general representation, and I told him this is his day. He can speak. But I'm telling you from a legal perspective what I think is available.

Let me doublecheck with him.

(Ms. Swope and Mr. Parks confer.)

MS. SWOPE: There may be a discovery issue as well. We can cover that with Mr. Schwacke, but my client is saying that he did not have the documentation where the Court discussed the physical evidence of the child, and he was saying he thought that came out of nowhere because that hadn't been explained to him. So I'll let him put that on the record, and we'll cover it with Mr. Schwacke whether he covered the issue or not.

THE COURT: Just the failure to do discovery, or the failure to --

MS. SWOPE: Obviously, my client didn't understand, and he wants to explain why he didn't understand where that came from.

THE COURT: All right. Okay. Was there something else? I want to be sure I have the exhaustive list.

MS. SWOPE: That's it. He's investigating whether or not he should have testified and called

witnesses. He agreed to that on the record, but he wishes to address the issue.

THE COURT: That's okay. Just as you point out, Ms. Swope, I want to be sure that we are all on the same page so the State can fully respond to know what they need to respond to, and so I know as well.

So I have one, two, three ineffective assistance of counsel, failure to investigate, jury charge issue, and we have the failure to explain the issue that you and your client discussed, the issues of a document that he was surprised when a certain document was provided. If that changes, please make me aware on the record.

MS. SWOPE: I certainly will, Your Honor. Thank you for your patience.

THE COURT: Sure. Absolutely. Whenever you are ready, you can proceed.

MS. SWOPE: I would call Mr. Parks to the stand, please.

THE COURT: Mr. Parks, come forward, please, sir. Put your left hand on the Bible and raise your right hand so the clerk can swear you in.

(JEREMY DALE PARKS, having been duly sworn, testified as follows:)

THE CLERK: State your full name.

THE WITNESS: Jeremy Dale Parks, P-A-R-K-S.

THE COURT: Thank you, sir.

MS. SWOPE: Your Honor, if you can give us just a moment. I want to make sure that Mr. Schwacke can hear what is happening, because he's testifying virtually.

THE COURT: Oh, yes. I was going to pull him up so if he had any issues. But go ahead and check with him.

(A conversation had off the record.)

MS. SWOPE: I know he's not here because of some health issues, so I wanted to make sure he could hear.

THE COURT: Yes, ma'am. I appreciate both of you all consenting to that. I'm more than happy under the circumstances to have him do that.

LAW CLERK: Mr. Schwacke, can you hear?

MR. SCHWACKE: I can.

THE COURT: And this is the virtual, not the sealed; is that right?

LAW CLERK: Yes, sir.

THE COURT: Good morning, Mr. Schwacke. I'm going to leave the volume off on mine. If you need anything, if there is any issues, please raise your

hand and speak up and we'll be glad to take care of them, okay?

Yes, ma'am.

DIRECT EXAMINATION

BY MS. SWOPE:

Q Mr. Parks, you understand we're here today for your post-conviction relief hearing?

A Yes, ma'am.

Q You heard us discussing the failure to preserve the issue of the charge to the jury regarding corroboration?

A Yes, ma'am.

Q And you also raised an issue regarding failure to investigate. Can you explain to the Court what you feel Mr. Schwacke should have done that he didn't do?

A He could have told me more about what was going on in my case. Every time I seen him, it was like we started brand new. Like he didn't remember one thing in two-and-a-half years of sitting in this county jail. He couldn't remember what we talked about last time, not one time. So it was like talking to a wall. And then he came at me saying, oh, we got a trial, and then nothing. I mean, I got one stack of paperwork from him that

said she was still a virgin, and that was it. And him telling me a different story each time I seen him, and then we went to trial. So if you want to call that inefficient counsel, I mean.

Q And they noted during the trial that there was some physical evidence regarding the child's physical state, and you told me you were unaware of that evidence at all?

A She had her MRSA. MRSA was on her butt, right next to her butt. And you have to squeeze that to get the puss out of it. And any doctor will tell you that. I don't know why Schwacke didn't have it Googled and present it to the judge, the jury, which I asked him to do, which he didn't, which he was trying to say that he shouldn't because it is inappropriate or something. But it shows that's why she was getting hurt down there. It was a sore, and it was my wife going with her ex-boyfriend that started with this whole thing.

Q And you don't feel like he did a good enough job investigating that?

A Not at all.

Q And you don't feel that he went over the discovery with you that talked about the physical evidence itself? You don't feel that he went over

that with you well enough?

A No. I asked him to go over the evidence because I have a learning disability. I rode the short bus to school. I was in special classes my whole entire life. And I tried to explain that to him, and he just took that as, oh, well, you're stupid, so I don't have to go over anything with you. That is what I felt like, because that is how he treated me. Because he didn't remember one day from the next when we had our conversations. He didn't remember anything at all.

Q Okay.

A And when I asked him to go over evidence or paperwork with him, he would say he didn't have time. In two-and-a-half years, he didn't have time for me.

Q And you feel like if he had gone over the evidence with you in more detail so that you understood --

A I probably would have taken a plea deal instead of doing a trial with nothing, and with a public defender that wasn't having anything in my interest in place, not even remembering who I was.

Q Did they make a plea offer that you refused?

A Yeah. Schwacke said 25, and when we went to

trial, they said 30. He said he might be able to get me 10 to 12, but I said I'm not going to jail for something I didn't do. And next thing I'm going to trial with no people subpoenaed at all or anything.

Q And from my understanding of the transcript, Mr. Schwacke didn't call witnesses because he wanted the last word. He didn't want to put up a defense because he wanted the last word. If Mr. Schwacke explained everything to you so that you would understand, do you think you would have made a different decision and you would have taken the stand and called witnesses?

A Yes, ma'am. I most definitely would have called witnesses and got on the stand.

Q Or, you would have taken the plea that was a guarantee of less time?

A Yes.

Q You would have 25, as opposed to 45?

A 45, yes, ma'am.

Q Is there anything else you want to tell the Court?

A The videotape, he edited it, and he was supposed to show the original copy, but even the edited copy made it to the trial. I asked him

about that, and I never got a response for that.

Q So he didn't go over with you which version --

A He was going to edit out the MRSA, but the MRSA was half our argument, which he didn't even use it in the argument of the trial. I don't even know if he brought up the MRSA. But he sure didn't bring it up to the subject that it was. Because my daughter had MRSA, and my wife, she only went with what the public defender told her to do, because she got two years, suspended to probation, for her part in this. If she wouldn't have gotten that -- you couldn't call her back to the stand to do this all over again, because they don't have anything to hang over her head again. So it ain't be like she would be coming back if I had a retrial, because she only said what the prosecutor told her to say.

Q You feel like if you were granted a new trial, that would no longer be the case because that's not hanging over her head?

MS. DIXON: Objection to speculation. We don't know what she would do if there was a new trial.

THE COURT: Overruled.

A What does that mean?

Q **(BY MS. SWOPE)** Okay. You feel like if there was a new trial -- because she didn't have the case hanging over her head -- that she would testify more truthfully?

A Yes.

Q And you feel like that would have been to your benefit?

A Yes.

Q And led for a different result at trial?

MS. DIXON: Object to leading.

THE COURT: Yeah. I'll sustain that. When we get to the substantive, I understand getting the background laid out, but when we get to these issues, please do not lead.

MS. SWOPE: Yes, Your Honor. I was just trying to move things around. I apologize.

THE COURT: That's okay.

Q **(BY MS. SWOPE)** What do you feel would have been different if your wife would testify at a new hearing?

A I don't think she would be saying the same thing again, because what she was told by the prosecutors to say. I talked to her on the cell phone in prison last time she went and had -- she has three kids since I have been in prison, but

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we're still married. So I got called to go to court, and she gave me her phone number, and I called her on the cell phone in prison and talked to her for about an hour about our kids and everything, find out more what was going on with her. And I don't think she would testify again. That's when she told me that the prosecutor told her what to say.

MS. DIXON: Object to hearsay.

THE COURT: Sustained.

Q **(BY MS. SWOPE)** Is there anything else you would like to raise, Mr. Parks?

A Not right offhand.

MS. SWOPE: Thank you. No questions, Your Honor.

THE COURT: All right. Thank you.

MS. DIXON: Nothing from the State.

THE COURT: Thank you, Mr. Parks. I appreciate it. Careful at the step there.

MR. PARKS: Thank you, Your Honor.

THE COURT: Yes, ma'am, Ms. Swope.

MS. SWOPE: No further questions. I believe the State is going to call Mr. Schwacke.

MS. DIXON: Do you mind if I sit?

THE COURT: No. No. Whatever works best.

MS. DIXON: May it please the Court. The State calls David Schwacke.

THE COURT: Mr. Schwacke, can you raise your right hand for me, please?

(DAVID SCHWACKE, having been duly sworn, testified as follows:)

DIRECT EXAMINATION

BY MS. DIXON:

Q How are you today?

A Doing good.

Q Can you tell us briefly about your background as a lawyer?

A As a lawyer, I was admitted to the South Carolina Bar in 1981. My first two jobs out of school was clerked for two circuit courts; one with Judge Kyle (phonetic) and one was John Edwin Smith. I then went to work at the Solicitor's Office in Charleston. I had a three-year stent in the Solicitor's Office in the Aiken circuit, and then back to Charleston at the time I was elected Solicitor. I have been in private practice after 2001. Then, later, in 2008, joined the staff of the Public Defender's Office up here in Berkeley County, and served there until my time about two years ago.

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Q And do you recall about when you were appointed to this case?

A Um.....

THE COURT: While he's looking at that, are you --

MS. SWOPE: I can see her's.

THE COURT: Do you need another one?

MS. SWOPE: No, I'm okay. I will probably step closer to Ms. Dixon.

THE COURT: That's fine. Just let me know.

Sorry, Mr. Schwacke.

A Okay. So I was assigned the file on June (inaudible).

COURT REPORTER: I can't hear.

LAW CLERK: Mr. Schwacke, I'm sorry, can you begin again? I don't think the court reporter could hear and maybe speak up a little bit more.

MR. SCHWACKE: Yes. I moved a little bit closer, does that help? Because I've already turned my volume up.

There. Okay.

A So the time regarding the discovery?

Q **(BY MS. DIXON)** When you became involved in this case, when you were appointed.

A Yeah. So that was assigned to me in the

Public Defender's Office on June 20, 2013. So I had that case assigned to me through the time of the trial. That was -- we tried the case in August of 2016.

Q And do you know about how many times you met with Mr. Parks?

A The times that we asked to come over, and there were times he asked -- he wanted us to come over, so there were letters that he had written, whenever those came, we went and had discussions about his case.

The issue about his case is when we received the discovery on anything that might be a child abuse case, because of the problems that might cause concern or some problems for the client served with such an offense, we would ask them if they wish to have us maintain the discovery in our office, and we would bring it in, kind of, steps.

We received it in -- a bunch of different -- well, I'm making a mess. I'll try to find that again.

Q Well, let me ask you this --

A There were, roughly, 18 requests.

Q Do you feel like you had sufficient time to meet with him and review discovery with him?

A I do. We went over things, and usually with an investigator in some instances. So I believe that we had given him more intensive observation than -- representation as we got closer to the trial date.

Q And if you had to ballpark it, do you think you met with him more than five times, more than ten times? Approximately, how many times do you think you all met?

A I would say that probably would be about 15 to 18.

Q Fifteen to 18 times? Okay.

And during that time, did you have an opportunity to discuss the charges with him?

A I did.

Q And did you have --

A Along with Debbie Littlejohn, who was also co-counsel on the case.

Q Did you all have a chance to discuss defenses?

A I'm sorry?

Q Did you have a chance to discuss defenses?

A Defenses, yes.

Q Did he have any?

A He did. There were some people that he

wished to have us go and interview people, particularly that Mr. Mike. Mr. Mike was some family friend that Jeremy had began to sort of -- take it as -- the person that he would be able to point to the jury and have him be the person who committed the offense. The problem there, obviously, is once the victims have their opportunity to talk and we went through that process, they are identifying him, and not Mr. Mike.

Mr. Mike had an interview that was done by a police officer, and then there was another interview by a private investigator we hired to go and talk to Mr. Mike. Mr. Mike was not going to be anywhere helpful to Jeremy on what that case would present, based on his statement.

So other than some additional list -- during the course of the trial, he was sitting second chair with me. I was in the left seat. Jeremy was in the middle seat. Ms. Littlejohn on the far right seat. He would take a note and give it to Debbie, Ms. Littlejohn. Obviously, that was at a point where you couldn't particularly do anything helpful, because there were new people that we were just hearing from, and they were not on a witness

list. We did do a witness list, and we did as much as we could to help Jeremy.

Q In terms of an investigation, I think you said you did go to talk to Mike; is that correct?

A That's correct.

Q Is there any other investigation that he asked you to do?

A Most -- again, the ones that he would have given us were all parties within the case. So we would not have any additional people to sort of -- working in this case.

Q And then in terms of the discovery, I believe he testified on direct that he had never seen any of the forensic or medical evidence that was introduced at trial. Do you recall if that is something you had in discovery about the victim's medical exam?

A MRSA?

Q Yes. That, and also the results from the testimony from the doctors about the findings of her sexual assault exam?

A He would have had those given to him, because they are written statements and numbered with the -- let's see. Yeah. There are 329 pieces of documents that were submitted to him that were

broken down in times as we received them. As we received it from the State, we would then make copies and present those to Dale -- or Jeremy. When Jeremy got that, again, we had a question: Do you want this to be protected from people looking through your belongings at jail, or is that not a concern for you? He expressed that it was a concern for him until he got much closer. Because it was based on, like, a March date in this letter so we had all of those things that are included in that.

Q And so, to clarify, he did see those records, those medical records?

A Yeah. He would have seen those reports if he read what we had given.

Q Did he ever discuss MRSA with you?

A The MRSA is not a sexually transmitted illness. It is only -- this was information that was given to the DSS caseworker for them, because that was also going on in the background. But MRSA is -- would not be an indication of sexual activity. It only would be a cleanliness issue for them.

But the things that are being brought up was aunts, A-U-N-T-S, were also bringing that up, that

would have been heard -- give me a second. I've got Parkinson's, so it sometimes throws me off.

Could you repeat the question?

Q Yes. Is MRSA -- he brought up during direct examination that he wanted you to bring out MRSA and get evidence about MRSA, and that that was the reason that, I guess, the child made these allegations, I guess. Is that something you all discussed?

A They are in our discovery. They were taken to a Doctor's Care facility. Dr. Brittain was the treating physician there. And they were all, I guess, getting that tested for the first time together. Because, at that point, there were not any criminal offenses that had been made, but it did come up later. We did consider it, but it would have been more than what we were able to get out of it, which was not much, just that there was a shared infection, again, non-sexual contact.

Q And, to be clear, the child's testimony and the mother's testimony about what happened went way beyond the scope of popping bubbles, correct?

A Right.

Q And would you agree that the child's testimony was detailed and descriptive about the

different sex acts?

A Was what now?

Q Detailed and descriptive.

A Yes.

Q And how about the mother's testimony? Did she also describe in detail various sex acts that she observed?

A Yes.

Q And then were there any plea negotiations?

A There were. There was a plea offer. The author is from Ann Williamson at the Solicitor's Office in Berkeley County. She was being assisted at trial by, I believe, the main prosecutor for these offenses down in Charleston County office.

The charges were criminal sexual assault with a minor in the first degree, criminal sexual conduct with a minor in the third degree, and then a painful -- or unlawful conduct towards a child.

The offer for that was one count of criminal sexual conduct with a minor in the first degree, straight-up -- which means no offer, which is you are going to plea to a charge, and you'll be sentenced for the charge -- and then two counts of unlawful conduct, with sentences to run concurrent.

Jeremy had always understood that offer, and

he knew that. In the description of the offense itself, it pretty much tells you what the conduct was. But to be specific as to what qualified the sexual act was explained to her -- I mean to him, and that's how he was made aware of the charges.

Q Okay. And in terms of the plea offers -- so you did convey them to him, it sounds like. What was his response?

A His response to the offer?

Q Yes. Yes, sir.

A He was aware of it. He described it here today in his testimony.

Q Right.

A So he knew what he was charged with and what it would carry.

Q And just to reiterate, I guess, I believe you testified earlier that you felt like you had adequate time to prep for this trial?

A Had a? Say that again.

Q Oh, I'm sorry. Just to clarify, I believe you testified earlier that you believe -- that you felt like you had adequate time to prepare; is that correct?

A Yes.

Q And did you have adequate time to discuss

with him the trial strategy and everything that you would be doing at trial?

A Yes.

Q And any concerns with his ability to understand your conversations?

A I got no indication from him that he was not understanding what was being said. If he was just asking questions to get information, we certainly asked (sic) any question he had about what the charges carried, what their subsequent punishments are, how long the percent of the offenses are, all of those different things, more than just the possibility of the life sentence.

MS. DIXON: Thank you. I have nothing further.

THE COURT: Cross examination?

MS. SWOPE: Can I have a moment?

THE COURT: Yes, ma'am.

(A brief pause in the proceedings while Ms. Swope confers with Mr. Parks.)

CROSS EXAMINATION

BY MS. SWOPE:

Q Good morning, Mr. Schwacke. How are you today?

A Good.

Q Can you hear me all right?

A I do. There is an echo that comes back.

Q You are aware that the appellate court felt that you did not preserve the objection regarding the charge about corroboration of the child's testimony?

A You are talking about that?

Q Yes. So you are aware that you did not preserve that objection, so it couldn't be addressed on appeal?

A That's what they say. I mean, the transcript tells what happened. I can't deny it.

Q I understand completely.

Mr. Parks indicated, I believe during his direct examination, that he wrote notes to you and Ms. Littlejohn during the trial?

A There were little squares of paper that I guess Ms. Littlejohn had given to him and a pen, so he had -- in her section of the file, you can find those notes with people that are in the ongoing process of the trial --

Q Right. And did you see those or respond to those -- I'm sorry, I didn't mean --

A When we would break for lunch or just to have a short meeting, she would go through them with

him, just to see if there was anything that they can try to get a person come in and testify.

Most of the people had testified for the State, and I think he had a couple of questions that he wanted to be able to ask them during the course of the trial. Ms. Littlejohn expressed to him that the way these cases would be handled, and if they could be called as a witness, where we would go from there.

Q And just so I understand, he gave Ms. Littlejohn the notes, and then you guys would take a break and would go over everything -- did I understand that correctly -- so you could respond to his notes?

A Right. We would -- yes. I mean, we would have found out that we wouldn't have anything that would be a successful outcome from doing that, and that's kind of the best we could do for him on that. We had -- for instance, whatever defense that he was trying to say -- Jeremy was trying to say -- give me a second, because I'll remember this.

(A brief pause.)

Someone was trying to show themselves as an expert witness in legal notifications or something,

and he wanted to make sure we covered that, and I remember that one. We did get that one, because no judge was going to examine that as an expert witness.

(A brief pause in the proceedings.)

MS. SWOPE: Beg the Court's indulgence one moment, Your Honor.

THE COURT: Yes, ma'am.

(A brief pause in the proceedings.)

Q (BY MS. SWOPE) Mr. Schwacke, during the child's testimony, the Court in the transcript -- I believe beginning on Page 75, and then ending on Page 82 -- she discussed what acts had been done -- or allegedly done -- and she seemed to say yes, and then no, and then yes again when the State was questioning her. I note that there was no objection at that point from you?

MS. DIXON: What page? 75?

MS. SWOPE: Let me make sure I'm telling you correct. Page 75. It was in the child's testimony, and it continues through 82.

MS. DIXON: So that's not.

MS. SWOPE: They are talking about the appellate record.

THE WITNESS: Does it have two sets of

numbers?

MS. SWOPE: I believe that is the appellate record numbers.

MS. SCHWACKE: So what are they?

THE COURT: Is it the larger, darker set of numbers? I see two different --

MS. DIXON: Probably. Because it is not the transcript.

MS. SWOPE: I can tell you where it is on the transcript, if you give me just a second.

THE COURT: Okay.

(A brief pause in the proceedings.)

MS. SCHWACKE: I just see -- so I was given the transcript to try to use that for the questions.

MS. SWOPE: Looks like maybe 133.

THE COURT: I see -- I have two numbers. 109 looks like the normal sized number, but then there is a larger, darker 74.

MS. SWOPE: Yup. So it is 109.

THE COURT: That's where I see it. But there is also -- looks like some kind of objection going on. I don't know if she testified beforehand or -- oh, yeah.

MS. DIXON: It appears that there was a bench

conference at 108 and 109.

THE COURT: You're right. So the direct examination of the child looks like at 105 and 70.

MS. SWOPE: Yes. That is what I have as well on the actual trial transcript.

Q (BY MS. SWOPE) Mr. Schwacke, I wanted to clarify. The question was: The child appeared to contradict herself, giving one answer and then another answer, and you didn't object on the record to that?

MS. DIXON: Before he answers, can we get specificity as to where that is in the transcript?

THE COURT: I'm trying to follow along, but I -- that would be helpful.

MS. DIXON: Just to ask a....

THE COURT: Again, I think the child's testimony begins on 70, slash, 105, whichever one. So if there is somewhere after that, I need to look.

MS. SWOPE: And then under the appellate record, starting on Page 75, the child stated that the appellant did bad stuff to her. When asked to explain by the Solicitor, "He humped me and put his finger inside me." She claimed this happened on the couch. She described it as "humping me."

And when asked -- regarding the questions of vaginal and anal sex, on Pages 82 of the transcript, appellate transcript, she said, "No," when earlier she said, "Yes."

So I understand she was five, but I'm just pointing out there was some inconsistencies?

MR. PARKS: She was seven.

A She had a number of things that she changed over and was more explanatory.

Q **(BY MS. SWOPE)** Right. And did you address those inconsistencies, Mr. Schwacke?

A I'm trying to think. I guess -- yeah, if there is not an objection, again, on the transcript....

(A brief pause in the proceedings.)

A Yeah, why not object to one question and not to the others? It might be that you are waiting to bring that up in a closing argument, or not. If there's not an objection to it, then there's not an objection.

(A brief pause in the proceedings.)

MS. SWOPE: Your Honor, I don't believe I have any further questions for Mr. Schwacke.

THE COURT: All right. Thank you.

MS. DIXON: Nothing further.

THE COURT: Anything further from the State?

MS. DIXON: No further witnesses.

THE COURT: Anything else, Ms. Swope?

MS. SWOPE: Nothing.

THE COURT: Can we excuse Mr. Schwacke?

MS. SWOPE: Absolutely.

THE COURT: Mr. Schwacke, thank you very much, sir, and you are free to jump off.

MS. SCHWACKE: Thank you, sir.

THE COURT: Or watch, if you would like to.

All right.

MS. SWOPE: Okay. Your Honor, just to summarize, the defendant's testimony, he says that he did not understand the proceedings or what was going on. He stated that had he understood the physical evidence, forensic evidence, that he would have made different decisions regarding a plea or changing his mind to testify.

More importantly, I think the plea is pretty clear, there would have been less time had he accepted that plea.

Secondly, Your Honor, the appellate court notes that as to Mr. Parker's first argument, which is the argument regarding the charge, under State versus Dunbar, 2003, in order for an issue to be

reserved for appellate review, it must have been raised and ruled on by the judge. And under State versus Prioleau, a party may not argue one ground at trial and an alternate on appeal.

Under State versus Johnson, the objection must be addressed to the Court in a sufficiently sufficient matter that brings the issue for the Court's attention.

Mr. Parks counsel, Mr. Schwacke, did not argue that the corroboration instruction was unconstitutional, comment on the facts, bringing inappropriate inference.

The error in the case that it was not preserved cannot be deemed harmless, because the issue of credibility is crucial, especially given the child's inconsistencies in her testimony, bringing inappropriate emphasis to her credibility, can very much change the outcome of this case.

It comes down to -- very much to what is believable and what is not. The Court itself noted that this is -- it comes down to a credibility contest. It comes down to one person's word over another. And that's the judge's statement herself and Page 404 of the appellate transcript.

So I think it's pretty clear that the

credibility reverting this child is of paramount importance, and that the appellate court ruled that that issue was not preserved for discussion. So I think it easily could have changed the outcome of this case.

THE COURT: Thank you, ma'am.

MS. DIXON: May it please the Court.

As Your Honor is aware, the standard we are here under is the Strickland versus Washington. We're measuring Mr. Schwacke's effectiveness as a lawyer, and in doing so, we're going to look at whether he's deficient, whether his actions are within prevailing professional norms that is, of course, viewed as of the time of trial under the law that existed at the time of trial.

And then if there is a deficiency, whether it prejudices Mr. Parks, that would be viewed. As to whether there is a reasonable likelihood, the outcome would have been different but for any alleged deficiency. We submit that they haven't shown any deficiencies or any real ineffectiveness at all today.

I think if you take a step back and read the trial transcript as a whole, you will see that Mr. Schwacke was very prepared, had a good strategy.

It is kind of difficult -- you know, this one is interesting in terms of child sexual cases, because most at the time, we do not have corroborating evidence.

In this particular case, the mother got up and testified to, I believe, eight different instances that she observed this happening, various places, various positions, various types of sexual abuse. This was not a situation where we only had the child victim testify.

In addition to that, there was forensic evidence that corroborated it. I think that does make it very different from state versus Stukes, which was a situation that we normally have where it is only the victim's word and nothing else.

Of course State versus Stukes was decided after this trial, so counsel cannot be deficient for not being aware of this case that didn't come out. But I think more to the point, State versus Stukes is different than this case because that was a case with no corroboration. It is kind of hard to argue in a case where there is a lot of corroboration that telling the jury, you know, you don't need corroboration is an unconstitutional comment on the facts. So I think this is vastly

different than State versus Stukes. I don't think counsel can be deficient for not anticipating that that case would come out a year later, nor do I think it would have been reversible on appeal had it been adequately argued and raised. And that is primarily due to the amount of other corroboration in this case.

As to the failure to investigate, they have brought nothing additional here today. I think he talked about MRSA, but I am not sure how that would have impacted the outcome of the trial. I will note the child victim did testify about people popping bubbles on her butt. I don't know that it would have been a good strategy to dive deep into that with a jury. I think there is a lot of things that could go wrong there.

And then as to the failure to review discovery, Mr. Schwacke did testify he reviewed the discovery, and he also testified that he believe the defendant understood. And I think you heard the testimony today, he's very competent. He was clear in what he wanted to say. He understood what was going on. He had a memory of this trial. And so I think the evidence here today shows that he did not meet his burden of proof.

THE COURT: All right. Thank you, ma'am.

Anything further, Ms. Swope?

MS. SWOPE: Just that Mr. Schwacke attempted to object on the issue. Obviously, he felt there was an issue there. The court specifically ruled that it was not preserved so that could not be discussed at the appellate level. I think that that is a clear failure, and that inappropriate inferences regarding the credibility of this child could make a vast difference regarding the outcome of this case.

THE COURT: All right. Thank you all very much. I really appreciate your briefing on this matter, as well as your arguments.

I've noted several places in here, in the record, that have come up specifically. I did scan over the record. It's well over 800 pages, I believe. But I've noted sections that I would like to read before I give my decision to make sure my notes are correct and it jogs with all of your all's arguments. So what I am going to do is look at that, and I'll take it under advisement and advise both of you all at the same time of my decision. It shouldn't be long.

Good luck to you, sir.

(Whereupon, the proceedings concluded.)

CERTIFICATE OF REPORTER

State of South Carolina)

County of Berkeley)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Berkeley County, South Carolina, on the 13th day of October, 2025.

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

December 23, 2025

Natalie Dahl, RPR

_____

Natalie Dahl
Registered Professional Reporter
State of South Carolina Official Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Jeremy Dale Parks, #324805, Applicant, v. State of South Carolina, Respondent.	Case No.: 2018-CP-08-01191 **ORDER OF DISMISSAL**

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Jeremy Dale Parks (Applicant) June 29, 2018. On February 14, 2019, Respondent made its return requesting an evidentiary hearing. On October 13, 2025, an evidentiary hearing convened before the Honorable Thomas W. McGee, III.[1] Applicant was present and represented by Denise Swope, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. At the hearing, Applicant testified on his behalf. Respondent called a witness trial counsel David Schwacke, Esquire. Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate forty-five-year sentence. In February 2014, the Berkeley County Grand Jury indicted Applicant for three counts of first-degree criminal sexual conduct (CSC) with a minor (2014-GS-

[1] This matter was previously continued on July 26, 2019; January 29, 2020, so that Applicant could be evaluated; September 22, 2022, after Applicant's former counsel was relieved; December 1, 2021; March 7, 2022, at the request of counsel for Applicant; December 16, 2024, at the request of counsel for Applicant; and May 27, 2025, at the request of counsel for Applicant. Applicant was previously represented by different counsel, who was relieved September 30, 2021. On October 7, 2021, Denise Swope, Esquire, was appointed to represent Applicant.

08-00260, -261, -262) and one count of third-degree CSC with a minor (-263). In September 2015, the Berkeley County Grand Jury indicted Applicant of an additional count of first-degree CSC with a minor (2015-GS-08-01478).

On September 14, 2015, Applicant proceeded to a jury trial before the Honorable Deadra Jefferson. Public Defenders David Schwacke and Debbie Littlejohn represented Applicant, and Deputy Solicitor Debbie Herring-Lash prosecuted the case. The jury convicted Applicant, and Judge Buckner sentenced him to concurrent terms of thirty years for each first-degree CSC charge, and a consecutive term of fifteen years for the third-degree CSC charge.

Applicant timely filed a notice of appeal, which was perfected by Appellate Defender David Alexander. On appeal, Applicant argued the trial court erred in (1) charging the victim's testimony need not be corroborated and (2) ruling the victim was a competent witness. The South Carolina Court of Appeals affirmed issue two on the merits but found issue one was unpreserved. The remittitur was sent February 23, 2018.

CURRENT APPLICATION

On June 29, 2018, Applicant timely commenced this PCR action alleging counsel was ineffective for failing failed to investigate the facts of the case. Respondent filed a return requesting an evidentiary hearing. At the start of the hearing, Applicant relayed he was proceeding on the ground in his application as well as additional allegations that counsel was ineffective for (1) not properly preserving the issue related to the trial court's charge that the victim's testimony did not need to be corroborated; and (2) failing to explain the evidence, which he contends caused him to be surprised by a document.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Berkeley Count Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records of Applicant's direct appeal, and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.[2] After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment," and an applicant must overcome this presumption to receive relief. Id.; Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failed to investigate facts of case

[2] This Court will reference PCR testimony where relevant below.

Applicant first contends trial counsel was ineffective for not investigating. Applicant did not prove this ground. In order to prevail upon a claim that counsel did not adequately prepare a case, an applicant must present evidence of what counsel could have discovered or what other defenses counsel could have developed and presented had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). An applicant must also present evidence showing the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997), and Skeen v. State, 325 S.C 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At the PCR hearing, Applicant testified counsel could have told him more about what was going on in his case, and every time he saw counsel, counsel could not remember what happened at the prior meeting. Applicant stated he receive d a stack of paperwork indicating the victim was still a virgin. He explained the minor victim had MRSA on her behind and "you have to squees that to get the puss out." Applicant averred this could have been offered as an explanation about why the minor victim was "sore down there." Applicant testified counsel edited the recording of the minor victim's forensic interview, and counsel did not use the MRSA argument at trial. Finally, he testified the victim's mother—who testified against him at trial—received a two-year sentence suspended to probation. He averred she merely said what the prosecution wanted her to say at trial, and she would not offer the same testimony if he was tried again. However, Applicant did not call the victim's mother as a witness at the PCR hearing.

Trial counsel testified he met with Applicant approximately fifteen to eighteen times, and

they reviewed discovery, the charges, and potential defenses. Counsel testified he had adequate time to meet with Applicant and review discovery. He stated most of the witnesses Applicant wanted him to interview were already parties in the case, and Applicant received their written statements. Counsel testified Applicant wanted him to investigate "Mr. Mike" as the possible perpetrator of the sexual abuse, but the problem with that defense was the victim (who was Applicant's daughter) identified Applicant as the abuser. Counsel testified he had an investigator talk to Mike, but he stated Mike would not have been helpful to Applicant's case. Regarding MRSA, counsel explained it was not an STD or an indication of sexual activity and would not have formed a reasonable defense. He testified the mother's testimony about the sexual abuse she observed went beyond the popping of blisters. Ultimately, counsel testified he had adequate time to prepare for trial and discuss the case with Applicant, and he asked Applicant questions to ensure he had no further questions

This Court finds counsel's foregoing testimony credible. Based on this credible testimony, this Court finds counsel's preparation and investigation of this case was reasonable under prevailing professional norms and not deficient. Likewise, a review of the trial transcript shows counsel reviewed the discovery produced by the State and was prepared for trial. Applicant has not set forth anything more counsel should have done that would have reasonably changed the outcome and thus did not prove deficiency.

Applicant also did not prove prejudice. Critically, Applicant did not produce any additional witnesses or evidence at the PCR hearing that counsel may have uncovered upon further investigation and thus did not meet his burden of proof. Cf. Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) ("In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the

rules of evidence. The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). This allegation is thus denied.

Failure to properly preserve direct appeal issue

Applicant next contends counsel was ineffective for not properly objecting when the trial court charged the jury that the victim's testimony did not need to be corroborated. Although counsel *did* object to this charge—on the basis the victim's testimony here was, in fact, corroborated—Applicant contends counsel did not properly argue the objection raised on appeal. Applicant did not prove this ground.

In his argument to the Court of Appeals, Applicant relied on State v. Stukes, 416 S.C. 493, 78 S.E.2d 480 (2016), which held that charging section 16-3-657 of the South Carolina Code[3] was an unconstitutional comment on the facts and confusing to the jury. Critically, Stukes had not been decided at the time of Applicant's 2015 general sessions trial, and Stukes reversed prior caselaw that provided the corroboration charge was not reversible error as long as it was not "unduly emphasized and the charge as a whole comports with the law." State v. Rayfield, 369 S.C. 106, 117-18, 631 S.E.2d 244, 250 (2006), abrogated by State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). Because the charge was proper under the law that existed at the time of trial and Stukes had not yet been decided, counsel was not deficient for not raising the argument in Stukes. See Pantovich v. State, 427 S.C. 555, 562–63, 832 S.E.2d 596, 600 (2019) ("[A] retrospective PCR analysis under Strickland . . .seeks to determine whether counsel was ineffective at the time of the alleged error. . . . [W]e do not require attorneys to be clairvoyant in anticipating changes to the law . . . ."); Winkler v. State, 418 S.C. 643, 653, 795 S.E.2d 686, 692 (2016) ("Because the law did not

[3] This section provides "[t]e testimony of the victim need not be corroborated in prosecution [for CSC]."

support the double jeopardy objection, we found counsel acted reasonably in not making it."); id. ("An attorney is not required to anticipate potential changes in the law which are not in existence at the time of the conviction." (quoting Hayden v. State, 360 S.C. at 408, 602 S.E.2d at 49)).

Further, based on the substantial and overwhelming corroborating evidence presented by the State here, it is not reasonably probable the outcome would have been different had counsel objected to this charge for the reason set forth in Stukes. Unlike many criminal trials involving CSC with a minor, which hinge on the credibility of the victim alone, the State presented substantial evidence to corroborate the victim's testimony about the sexual abuse perpetrated by Applicant. Specifically, the victim's mother testified she witnessed Applicant sexually abusing the victim "[m]ore than eight times" (Tr. 245-46; R. 210-11), and she described several occasions in detail. (Tr. 216-18, 220-21, 242-46; R. 181-83, 185-86, 207-11). Likewise, the forensic evidence showed the victim had a well-healed cleft on vagina and her anus was dilated with no stool. (Tr. 342; R. 307). Finally, after the victim disclosed the abuse and DSS became involved, Applicant told the victim's motion, "[I]f I'm going down, you're going down with me." (Tr. 284; R. 249). Here evidence did, in fact, corroborate the victim's testimony. Thus, there is no reasonable probability the outcome would have been different had the Stukes argument (which was contrary to existing law at the time) been preserved for appeal.

Failed to explain evidence

At the PCR hearing, Applicant asserted counsel was ineffective for not explaining the evidence, which he asserted left him surprised by a document. More specifically, at the hearing, Applicant alleged trial counsel showed him paperwork indicating the victim was a virgin. He then stated counsel did not review discovery with him. Applicant testified he had a learning disability, and counsel treated him like he was stupid. Although he initially stated he would have accepted a plea offer if counsel had explained the evidence, he later stated he turned down a twenty-five-year

plea offer because he "wasn't going to jail for something [he] didn't do." Applicant also stated he would have testified in his defense if counsel had reviewed discovery.

Counsel, in contrast, testified he reviewed discovery with Applicant and asked Applicant questions to ensure he had no further questions. Counsel explained the State offered a straight-up plea to one count of first-degree CSC and two counts of unlawful conduct, to run concurrent. He testified he relayed the offer to Applicant and Applicant understood the offer.

This Court finds credible counsel's foregoing testimony. This Court likewise finds not credible Applicant's testimony that (1) he had paperwork indicating the victim was a virgin, (2) counsel did not review discovery with him, or (3) he would have accepted the plea offer if counsel had explained the evidence. Based on counsel's foregoing credible testimony, counsel's representation here was reasonable under prevailing professional norms and not deficient. Finally, Applicant has not shown how the outcome would have been different had counsel further explained the evidence and thus did not prove prejudice.

CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with pre*judice; and*

2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 30 day of October, 2024.

THOMAS W. MCGEE, III
Presiding Judge
Ninth Judicial Circuit

2726

Columbia, South Carolina

AMW2013-05-01378

WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201303011151

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

May 30, 2013

ACTION OF GRAND JURY

True Bill

Thomas Martin Jr.
Foreperson of Grand Jury
Date: 2-11-14

VERDICT guilty

Jay B. McGrath 9-18-15
Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2014GS0800261

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2014

THE STATE

Vs

JERAMY DALE PARKS
DOB: 1981-[redacted]
W/M

Indictment for

Criminal Sexual Conduct with a Minor, First Degree

FILED
14 FEB 11 PM 12:56
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

999

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on Febrary 11, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, First Degree

That Jeramy Dale Parks, date of birth [redacted], did in Berkeley County, South Carolina, on or between August 15, 2012 and May 30, 2013, commit a sexual battery upon a minor who was less than eleven years of age, to wit: fellatio upon [redacted] date of birth [redacted], 2007, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

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

ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW2013-05-01378

WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201303011151

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

May 30, 2013

ACTION OF GRAND JURY

True Bill

Thomas Martin Jr.
Foreperson of Grand Jury
Date: 2-11-14

VERDICT

Guilty

Jeffrey B McDonald 9-16-15
Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2014GS0800262

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2014

THE STATE

Vs

JERAMY DALE PARKS
DOB: 1981-[redacted]
W/M

Indictment for

Criminal Sexual Conduct with a Minor, First Degree

FILED
14 FEB 11 PM 12:56
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

668

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on February 11, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, First Degree

That Jeramy Dale Parks, date of birth [redacted], did in Berkeley County, South Carolina, on or between August 15, 2012 and May 30, 2013, commit a sexual battery upon a minor who was less than eleven years of age, to wit: cunnilingus upon [redacted], date of birth [redacted] 2007, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

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

ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW2013-05-01378

WITNESSES

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201303011151

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

May 30, 2013

ACTION OF GRAND JURY

True Bill

Thomas Martin Jr.
Foreperson of Grand Jury
Date: 2-11-14

VERDICT Guilty

Jay C. McDowell 9-16-15
Foreperson of Petit Jury *Date:*

INDICT

DOCKET NO. 2014GS0800263

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2014

THE STATE

Vs

JERAMY DALE PARKS
DOB: 1981-[redacted]
W/M

Indictment for

Criminal Sexual Conduct with a Minor, Third Degree

FILED
14 FEB 11 PM 12:56
MARY B. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

670

JH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on February 11, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, Third Degree

That Jeramy Dale Parks, date of birth [redacted] 1981, being over the age of fourteen years, did in Berkeley Count on or between August 15, 2012 and May 30, 2013, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body of one [redacted], a child under the age of sixteen (16) years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the actor or such child. This is in violation of Section 16-3-655(c) of the South Carolina Code of Laws (1976) as amended.

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

ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW/0222385/2013-05-01378

~~WITNESSES~~

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

2013-0311151

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

05/30/2013

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury *Date:* 9-8-15

VERDICT

Guilty

Jay B. McDowell 9-16-15

Foreperson of Petit Jury *Date:*

DOCKET NO. 2015-GS-08-01478

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2015

THE STATE

VS.

JERAMY DALE PARKS
W/M DOB: [redacted]-1981

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

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

FILED
15 SEP -8 PM 1:46
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

672

KWM

KWM

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on September 8, 2015, the Grand Jurors of Berkeley County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That in Berkeley County, South Carolina, between August 1st 2012 and May 30th 2013 the Defendant, Jeramy Dale Parks,DOB[redacted]1981, did commit a sexual battery to wit: digital pentration upon the victim, [redacted], a minor who was less than eleven years of age in violation of Sections16-3-655(A)(1) South Carolina Code of Laws, (1976), as amended.

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

Debb Hennessy for
ANNE M. WILLIAMS
SENIOR ASSISTANT SOLICITOR

Anne Williams

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

JERAMY DALE PARKS

AKA:

Race: White Sex: M Age: 34

DOB: [redacted]1981 SS#: [redacted]2521

Address: [redacted]

City, State, Zip: Summerville, SC 29483-3217

DL# [redacted] SID#

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0800261
A/W: 2014GS0800261
Date of Offense: 08/15/2012
S.C. Code §: 16-03-0655(A)(1)
CDR Code #: 0385

SENTENCE SHEET

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

TO: **Criminal Sexual Conduct With A Minor, First Degree**

In violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

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

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

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

ATTEST:

Anne M. Williams, Senior Assistant Solicitor SC Bar # 76463 | Defendant | Attorney for Defendant | SC Bar # 4981

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-GS-08-263

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso 47.9 (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
Proviso 90.5 (SCCJA Surcharge)	$5	$5.00
3% to County (if paid in installments)	$	$3.90
TOTAL		$133.90

☐ **Ordered** **PTUP** _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____

$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: K. Mills

Court Reporter: Denise Lander

Presiding Judge: [signature]

Judge Code: 2128

Sentence Date: 9-16-15

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF GENERAL SESSIONS

STATE VS.

JERAMY DALE PARKS

INDICTMENT/CASE#: 2014GS0800262
A/W: 2014GS0800262
Date of Offense: 08/15/2012
S.C. Code §: 16-03-0655(A)(1)
CDR Code #: 0385

AKA:
Race: White Sex: M Age: 34
DOB: [redacted]1981 SS#: [redacted]2521
Address: [redacted]
City, State, Zip: [redacted]
DL# [redacted] SID#

RECEIVED
SEP 29 2015
SC Court of Appeals

SENTENCE SHEET

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

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

TO: **Criminal Sexual Conduct With A Minor, First Degree**

In violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

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

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

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

ATTEST:

Anne M. Williams, Senior Assistant Solicitor SC Bar # | Defendant | Attorney for Defendant | 4981 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-GS-08-263

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Recipient: _____

Substance Abuse Counseling ☐

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso 47.9 (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
Proviso 90.5 (SCCJA Surcharge)	$5	$5.00
3% to County (if paid in installments)	$	$3.90
TOTAL		$133.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____

$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: K Mills

Court Reporter: Denise Lauder

Presiding Judge: [signature]

Judge Code: 2128

Sentence Date: 9-16-15

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

JERAMY DALE PARKS

AKA:

Race: White Sex: M Age: 34

DOB: [redacted]1981 SS#: [redacted]-2521

Address: [redacted]

City, State, Zip: [redacted]-3217

DL# [redacted]6 SID#

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0800263
A/W: 2014GS0800263
Date of Offense: 08/15/2012
S.C. Code §: 16-03-0655(B)(4)
CDR Code #: 3661

SENTENCE SHEET

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

TO: **Criminal Sexual Conduct with a Minor, Third Degree**

In violation of § 16-03-0655(B)(4) of the S.C. Code of Laws, bearing CDR Code # 3661

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

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

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

ATTEST:

Anne M. Williams, Senior Assistant Solicitor SC Bar # 76463 | Defendant | Attorney for Defendant | SC Bar # 4981

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 15 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ ____; provided that upon the service of _____ days/months/years and or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: to all of 9/16/15 2014-GS-08-259, 260, 261, 262; 2015-GS-08-1478

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso 47.9 (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
Proviso 90.5 (SCCJA Surcharge)	$5	$5.00
3% to County (if paid in installments)	$	$3.90
TOTAL		$133.90

☐ **Ordered** **PTUP** _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____

$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: K. Mills

Court Reporter: Denise Lauder

Presiding Judge: DL Jeffcoat

Judge Code: 2128

Sentence Date: 9-16-15

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

JERAMY DALE PARKS

AKA:

Race: White Sex: M Age: 34

DOB: [redacted]1981 SS#: [redacted]2521

Address: [redacted]

City, State, Zip: [redacted]3-3217

DL# [redacted] SID#

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-08-01478
A/W: 2015GS0801478
Date of Offense: 08/15/2012
S.C. Code §: 16-03-0655(A)(1)
CDR Code #: 0385

SENTENCE SHEET

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

TO: **Criminal Sexual Conduct With A Minor, First Degree**

In violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

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

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

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

ATTEST:

Anne M. Williams, Senior Assistant Solicitor SC Bar # 76463 | Defendant | Attorney for Defendant | SC Bar # 4981

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center,** for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and or payment of $_____, plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-GS-08-263

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____		$_____
§14-1-206 (Assessments 107.5%)		$_____
§14-1-211 (A)(1)(Conv. Surcharge)	$100	$100.00
§14-1-211 (A)(2)(DUI Surcharge)	$100	$_____
§56-5-2995 (DUI Assessment)	$12	$_____
§56-1-286 (DUI Breath Test)	$25	$_____
Proviso 47.9 (Public Def/Prob)	$500	$_____
§14-1-212 (Law Enforce. Funding)	$25	$25.00
§14-1-213 (Drug Court Surcharge)	$150	$_____
§50-21-114 (BUI Breath Test Fee)	$50	$_____
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
Proviso 90.5 (SCCJA Surcharge)	$5	$5.00
3% to County (if paid in installments)	$	$3.90
TOTAL		$133.90

☐ **Ordered** **PTUP** _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of $_____ Beginning _____

$_____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: K. Mills

Court Reporter: Denise Lauder

Presiding Judge:

Judge Code: 2128

Sentence Date: 9-16-15

SCCA/217 (03/2011)