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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

MAY 19 2014

The Honorable Stephanie P. McDonald, Circuit Court Judge **SC Court of Appeals**

Case No. 2011-GS-10-02511
Appellate Case No. 2012-208388

State of South Carolina,..... Respondent,
v.
Kenneth Thomas Gahagan..... Appellant.

**APPELLANT’S CONSENT MOTION FOR LEAVE TO
SUPPLEMENT RECORD ON APPEAL**

In preparing his Final Briefs in this appeal, Appellant identified three (3) pages of the trial transcript that Appellant cited in his reply brief but that Appellant inadvertently omitted from the Record on Appeal. Specifically, pages 141, 142, and 144 of the trial transcript were inadvertently omitted from the Record on Appeal. Accordingly, Appellant hereby moves this Court for leave to supplement his Record on Appeal by filing these three pages of the trial transcript with the Court and designating these pages as Supplemental Record on Appeal 1-3. Appellant has enclosed these three pages labeled as “S.R. 1,” “S.R. 2,” and “S.R. 3,” respectively. Appellant has consulted with counsel for Respondent, and counsel for Respondent consents to the relief requested this motion.

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By: By: P M Q

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May 19, 2014

1 preconceived beliefs, correct?

2 A. Correct.

3 Q. And they may unknowingly suggest things to
4 children, correct?

5 A. Correct.

6 Q. So that's just something you have to be careful of
7 when you are questioning children?

8 A. Right.

9 Q. And so one way you try to show that you do not have
10 that is by exploring alternative hypotheses, correct?

11 A. Right.

12 Q. In this case what alternative hypotheses did you
13 seek out?

14 A. I don't know if I did seek out any because it was
15 in the middle of the night and she was sleeping, which to
16 me would rule out a caregiving role.

17 Q. But she said she was sleeping, correct?

18 A. Yes.

19 Q. Did you ask her if this was a dream maybe?

20 A. I didn't.

21 Q. Okay. That could be an alternative hypothesis
22 though, right?

23 A. It could be.

24 Q. Also, she indicated that her brother was in the bed
25 with her?

- 1 A. Yes.
- 2 Q. Did you ask her if it could have been him that she
3 felt?
- 4 A. I didn't.
- 5 Q. Okay. That would have been an alternative
6 hypothesis, correct?
- 7 A. Yes.
- 8 Q. Because sometimes alternative hypothesis, that
9 includes looking at issues other than the alleged -- you
10 know, the person accused being the one who did something,
11 correct?
- 12 A. Right.
- 13 Q. It could mean someone else did something, correct?
- 14 A. Correct.
- 15 Q. Let's go more specifically into Nzyra's disclosure
16 of the abuse. You've told us that you thought you were
17 impressed at how detailed it was, right?
- 18 A. For her age, yes.
- 19 Q. And she told you that she was in her mom's room?
- 20 A. Yes.
- 21 Q. Sleeping with her brother, correct?
- 22 A. Correct.
- 23 Q. You asked her several times about her clothes being
24 on, right?
- 25 A. Yes.

- 1 Q. She indicated to you that she never saw Kenneth?
- 2 A. Right.
- 3 Q. And you asked her that several times. She never
- 4 said anything to Kenneth?
- 5 A. Right.
- 6 Q. Kenneth never said anything to her?
- 7 A. Right.
- 8 Q. You started to ask her about how it felt, correct?
- 9 A. Yes.
- 10 Q. And she said, I don't know?
- 11 A. Correct.
- 12 Q. She said that answer several times, right?
- 13 A. I think once or twice, yes.
- 14 Q. When you left the room the third time and came back
- 15 that's when you asked her how it felt again?
- 16 A. Right.
- 17 Q. And that's when she said it hurt?
- 18 A. Right.
- 19 Q. And hurting is a -- children understand hurt,
- 20 correct?
- 21 A. Yes.
- 22 Q. And pain, that's something they learn very early
- 23 on?
- 24 A. Yes.
- 25 Q. So they know if something hurts?

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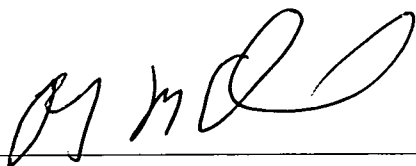
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of Appellant's Consent Motion for Leave to Supplement Record on Appeal in the above referenced case has been served upon Salley Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of May, 2014.

By: _____

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Attorneys for Appellant Kenneth Thomas Gahagan

SUBSCRIBED AND SWORN TO before me
this 19th day of May, 2014.

Bailey Reed (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021