ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2013-002164

THE STATE,

Respondent,

v.

WILLIAM DONALD BOLT,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

PO Box 516
Greenwood, SC 29648
(864) 942-8800

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2013-002164

THE STATE,

Respondent,

v.

WILLIAM DONALD BOLT,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

PO Box 516
Greenwood, SC 29648
(864) 942-8800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

STATEMENT OF ISSUES ON APPEAL

I. There is ample evidence in the record to support the circuit court's determination Appellant freely and voluntarily gave oral and written statements regarding his molestation of the victim.

II. The circuit court properly denied Appellant's directed verdict motion on the lewd act charge because time is not an element of the offense.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF THE FACTS

On May 8, 2009, the Greenwood County Grand Jury indicted Appellant William Donald Bolt on one count of lewd act on a minor. On June 12, 2009, the Grand Jury also indicted Appellant on one count of first degree criminal sexual conduct with a minor. The charges arose from the 2006 molestation of an eleven year old female ("Minor"). The case was called for a jury trial on September 3, 2013, before the Honorable Donald B. Hocker, Circuit Court Judge.

Prior to trial, Appellant moved to exclude oral and written statements he gave to law enforcement the day after he was arrested. (Trial Transcript [TT], pp. 50-57; Record on Appeal [R], pp. 9-16). The circuit court conducted a Jackson v. Denno[1] hearing to determine the voluntariness of Appellant's statements.

Lieutenant Brandon Strickland with the Greenwood County Sheriff's Office testified he arrested Appellant on December 4, 2008, in connection with the alleged sexual molestation of Minor in 2006. Before asking Appellant any questions, he advised Appellant of his Miranda[2] rights, which were on a written form he read to Appellant, and Appellant checked each right individually as Lt. Strickland went over them. Lt. Strickland also read the waiver of rights at the bottom of the form to Appellant, and Appellant signed it. Lt. Strickland testified he did not make any threats or promises to induce Appellant's waiver. At that time, Appellant denied ever molesting Minor, and requested a polygraph. (TT, pp. 58-62, 74-75, 107, State's Exhibit 1 [Miranda Warning]; R., pp. 17-21, 33-34, 401).

---

[1]Jackson v. Denno, 378 U.S. 368 (1964)
[2]Miranda v. Arizona, 384 U.S. 436 (1966).

The next morning, Lt. Strickland contacted a private investigator to conduct the polygraph examination Appellant requested, and escorted Appellant from the jail to an interview room for the examination. After the polygraph examiner advised Lt. Strickland the test indicated deception on key questions related to the alleged molestation, Lt. Strickland interviewed Appellant again. Prior to asking any questions, he again read Appellant his Miranda rights, and Appellant again waived them. Lt. Strickland testified he did not promise Appellant anything to induce the waiver, and denied threatening him in any way. (TT, pp. 63-64, 73-76, 80-81, State's Exhibit 2 [Miranda Warning]; R., pp. 22-23, 32-35, 39-40, 402).

Appellant agreed to give a written statement, which Lt. Strickland wrote for him because Appellant said he did not write very well. Lt. Strickland testified he wrote the introductory part of the statement through the words "the night in question," and all subsequent words describing what occurred with Minor were verbatim from Appellant. In the statement, Appellant admitted going into the room where Minor appeared to be asleep, pulling her pajama pants down, touching her "private area," and putting his finger inside her vagina. (TT, pp. 64-68, 75-78, 80-81, State's Exhibit 3 [Written Statement]; R., pp. 23-27, 34-37, 39-40, 403).

Private investigator Daryl Owen testified he administered a polygraph examination of Appellant at the Greenwood County Law Enforcement Center. He never witnessed anyone making threats or promises to induce Appellant to take the polygraph, and he did not make any threats or promises. Prior to administering the polygraph, Owen went over a consent form with Appellant, informing him it authorized Owen to conduct the polygraph and give the results to the Sheriff's Office. He further informed Appellant

he could not be forced to take the polygraph, and he could leave at any time during the polygraph. Appellant signed the form prior to the polygraph, and again when the polygraph was completed. (TT, pp. 81-85, 93-95, Defense Exhibit 2 [Polygraph Consent Form]; R., pp. 40-44, 52-54, 404).

Based on information supplied by Lt. Strickland and Appellant, Owen formulated the polygraph questions, and went over them with Appellant prior to conducting the polygraph. Owen testified he informed Appellant his responses indicated deception and asked him if he could explain it. Appellant then told Owen he was drunk the night the molestation occurred, he had an erection when Minor was sitting on his lap, he put his arm around her and squeezed her breast. After Minor went to bed that night, he went in the bedroom to cover the children with a blanket, and might have touched Minor on her vagina, but denied inserting his finger inside her. (TT, pp. 85-92, 96-100; R., pp. 44-51, 55-59).

Appellant testified he went to the Sheriff's Office on December 4, 2008, after his wife called him at work and told him the police came by their house looking for their son. When he arrived, Lt. Strickland served an arrest warrant on him, and read him the Miranda rights form, which he signed. He denied the allegations and requested a polygraph "to prove [himself]." (TT, pp. 102-107; R., pp. 61-66).

Appellant further testified he was told he had the right to remain silent prior to taking the polygraph, but he "had nothing to hide." He stated that after Owen told him he failed the polygraph, he told Owen he would say whatever they wanted to hear so he could go home, but he did not understand things said during the polygraph could be used against him in court. (TT, p. 107-110; R., pp. 66-69).

After the polygraph, Appellant's wife and son posted his bond, and as he was getting ready to leave the jail, an officer told him he had to wait on Lt. Strickland. He testified Lt. Strickland took him back into the interview room, and "started getting real hateful and stuff," saying he knew Appellant did something, and threatening to get Appellant's bail increased if he did not tell Lt. Strickland what he wanted to hear. Appellant stated he then told Lt. Strickland "what he wanted to hear," and signed the written statement Lt. Strickland wrote out. (TT, pp. 110-114; R., pp. 69-73).

On cross-examination, Appellant admitted he knew he had the right to remain silent when he talked to Owen and Lt. Strickland. He further admitted Owen did not threaten him or make any promises to induce the statements he made to Owen during the polygraph. (TT, pp. 119-122; R., pp. 78-81).

Appellant presented Johnny Hartley to testify about the polygraph Owen conducted. Hartley testified the machine Owen used was an older instrument (pen and ink), and most examiners now use a computerized polygraph machine, but Owen could still get good recordings with his type of machine. He further stated the questions Owen asked Appellant during the polygraph were appropriate and asked in the right manner. His only criticism of the examination was the length of time between the questions, which he stated should be a minimum of twenty seconds in order to separate the reactions to different questions.[3] Based on his opinion Owen did not allow sufficient time between the questions, Hartley testified he could not interpret the results, and would classify the polygraph as inconclusive. (TT, pp. 142-149; R., pp. 101-108).

[3]Hartley stated there were rules and regulations requiring at least fifteen seconds between questions, but could not produce any rules, regulations or guidelines reflecting such a requirement. (TT, pp. 149-150; R., pp. 108-109).

Based on the evidence presented and the totality of the circumstances, the circuit court found Appellant's statements to Owen and Lt. Strickland were "knowingly, intelligently and voluntarily made by [Appellant]." The court ruled Appellant knowingly waived his Miranda rights on December 4th, which remained effective until he revoked it, and as a result, Miranda warnings were not required prior to the polygraph on December 5th, but were given again prior to Appellant's subsequent statements to Lt. Strickland. The court also noted Appellant admitted during his testimony he understood his rights prior to both statements. (TT, pp. 151-153; R., pp. 110-112).

Appellant then moved to admit all evidence regarding the polygraph, arguing it was necessary to explain why he gave the two statements. The State did not object, and based on the agreement by both parties, the court ruled everything about the polygraph examination was admissible. (TT, pp. 154-156; R., pp. 113-115).

Minor testified she was eleven years old in June 2006, and stayed with her sister and brother-in-law (Appellant's son) sometimes. In the summer of 2006, she went over to Appellant's house with her family, and stayed overnight at times. She stated Appellant began touching her in ways that made her uncomfortable, specifically sitting her on his lap and rubbing her breasts. (TT, pp. 180-183; R., pp. 128-131).

One night in June, Minor and her family spent the night at Appellant's house, and Minor was in bed with her little brother and Appellant's granddaughter. Appellant came into the bedroom and Minor pretended to be asleep. He stood by the bed for a couple of minutes, and then took the blanket off Minor, pulled down her pajama shorts and started rubbing on her, and stuck his finger inside her vagina. Minor testified she did not move or say anything to Appellant because she was scared. (TT, 183-185; R., pp. 131-133).

After Appellant left the bedroom, Minor went into the room where her sister and brother-in-law were sleeping, woke them up and told them she did not feel well. She did not tell anyone about what Appellant did to her because she was scared. (TT, pp. 185-186; R., pp. 133-134).

As Minor got older and thought about Appellant's actions, she got angry and started cutting herself. When her mother confronted her about the cutting, Minor finally told her what happened, and they reported it to the police. (TT, pp. 186-187; R., pp. 134-135).

On cross-examination, Appellant's counsel asked Minor about the specific dates the incidents occurred. Regarding the incident in the bedroom, counsel asked if "that was **somewhere around** June 1st of 2006," and Minor replied "yes, ma'am." Then the following colloquy occurred:

> Q. And you mention these other incidents where he would have you on his lap and be touching you?
>
> A. Yes, ma'am.
>
> Q. All of the incidents happened **before that date**, right?
>
> A. Yes, ma'am.
>
> Q. All of them prior to June 1st, 2006.
>
> A. Yes, ma'am.
>
> Q. Nothing after?
>
> A. No, ma'am.

(TT, p. 211; R., p. 159) (emphasis added).

Owen testified about administering Appellant's polygraph, including the consent form Appellant signed, and stated "[t]he results showed a clear deception on the three

relevant questions regarding the incident that he is being tried for." He also testified about Appellant's statements admitting he molested Minor. (TT, pp. 220-235; R., pp. 168-183).

Lt. Strickland testified about his two interviews with Appellant, and Appellant's waivers of his Miranda rights prior to each interview. He also testified about writing Appellant's statement for him, going over the written statement with Appellant, and having Appellant sign the statement. He denied ever threatening to "jack up" Appellant's bond if he did not admit to molesting Minor. (TT, pp. 237-265; R., pp. 185-213).

Appellant moved for a directed verdict on the lewd act charge on the ground the indictment did not cover any acts occurring prior to June 1, 2006, and Minor testified nothing occurred after that date. The State argued Appellant's own statement indicated an incident occurred on the same date as the criminal sexual conduct incident, and time or date was not an element of the lewd act offense, so the indictment was not controlling. The court denied the motion, noting Minor testified the incidents occurred during the summer of 2006, and even though there was some conflict between her direct and cross-examination testimony as to the dates, when viewed in the light most favorable to the State, there was evidence to warrant submitting the case to the jury. (TT, pp. 276-280; R., pp. 224-228).

Appellant testified he went to the Sheriff's Office on December 4, 2008, because his wife told him the police were looking for his son, but after he arrived, he learned they were looking for him rather than his son. He admitted Lt. Strickland read the Miranda warnings to him, but he "totally did not understand the consequences of that." After hearing his rights, Appellant told Lt. Strickland he did not do anything to Minor, and he

requested a polygraph examination "[t]o prove he was innocent." (TT, pp. 307-311, 320; R., pp. 255-259, 268).

He further testified that after Owen told him he failed the polygraph, he confessed to molesting Minor "so [he] could get out of there and get back to his family." He stated he signed the written statement because Lt. Strickland threatened to raise his bond and "[he] was ready to go home." Appellant denied ever molesting Minor, and testified he "just come (sic) up with" the story about putting Minor on his lap and having an erection. (TT, pp. 310-316, 321-325, 328-332; R., pp. 258-264, 269-273, 276-280).

Hartley testified regarding his opinion of the polygraph administered by Owen, and stated he would classify the results as "inconclusive" because the questions were not spaced out properly. On cross-examination, he admitted he did not administer a polygraph examination of Appellant, and he was unable to provide specific citation to any "rule" or "regulation" requiring a particular amount of time between questions during polygraphs. (TT, pp. 336-359; R., pp. 284-307).

The jury convicted Appellant on both charges, and the circuit court sentenced him to thirteen years incarceration on the criminal sexual conduct conviction, and eight years (concurrent) on the lewd act conviction. (TT, pp. 433, 450; R., pp. 381, 398). This appeal followed.

ARGUMENT

I. There is ample evidence in the record to support the circuit court's determination Appellant freely and voluntarily gave oral and written statements regarding his molestation of Minor.

Relying on Missouri v. Siebert, 542 U.S. 600 (2004), and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), Appellant asserts the circuit court erred in admitting his oral and written statements, arguing they were obtained in violation of Miranda because Owen did not advise him of his rights prior to conducting the polygraph. He does not dispute the fact Lt. Strickland advised him of his Miranda rights on December 4th, or that he voluntarily waived his rights at that time and requested a polygraph, but contends his inability to read and limited intelligence mandated he be re-advised of his Miranda rights before the polygraph. Contrary to Appellant's contention, the evidence amply supports the circuit court's ruling.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion, which occurs when the trial court's conclusions either lack evidentiary support, or are controlled by an error of law. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262, 265 (2006). The trial court's factual conclusions regarding the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion, and the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240, 252 (2001); *see also* State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (same); State v. Miller, 375 S.C. 370, 652 S.E.2d 444, 448 (Ct. App. 2007) (same).

> In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession. Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep. This list of factors is not an exclusive list. Moreover, no single factor is dispositive and each case requires careful scrutiny of all surrounding circumstances.

State v. Moses, 390 S.C. 502, 702 S.E.2d 395, 401 (Ct. App. 2010) (internal citations omitted). A statement may not be extracted by threats, violence, direct or implied promises, however slight, or the exertion of improper influence. Miller, 652 S.E.2d at 452.

Miranda does not impose a formalistic waiver procedure that a suspect must follow to relinquish those rights, and as a general proposition, the law presumes an individual "who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford." Berghuis v. Thompkins, 560 U.S. 370, 385 (2010). A reasonable interval between a Miranda warning and a defendant's statements does not nullify the warning. U.S. v. Andaverde, 64 F.3d 1305, 1313 (9th Cir.1995) (one day interval between warnings and confession was reasonable); *see also* Biddy v. Diamond, 516 F.2d 118 (5th Cir.1975) (two week interval between waiver and confession did not require new warning), *cert. denied,* 425 U.S. 950 (1976); Martin v. Wainwright, 770 F.2d 918, 930 (11th Cir.1985) (one week interval between defendant's waiver and subsequent

confession did not make new warnings necessary, when defendant indicated he still understood his rights at the time of the confession), *modified,* 781 F.2d 185, *cert. denied,* 479 U.S. 909 (1986); United States ex rel. Henne v. Fike, 563 F.2d 809 (7th Cir.1977) (no readministration of warnings required despite nine hour gap between warnings and subsequent waiver), *cert. denied,* 434 U.S. 1072 (1978); Ballard v. Johnson, 821 F.2d 568, 571–72 (11th Cir.1987) (three to four hour gap between waiver of rights and third confession did not render statement inadmissible).

"Police are not required to rewarn suspects from time to time." Berghuis, 560 U.S. at 386; *see also* State v. Smith, 259 S.C. 496, 192 S.E.2d 870, 871-872 (1972) (when the defendant is properly advised of his Miranda rights, it is "not necessary, as a matter of law, to repeat the warnings at each subsequent phase of the interrogation;" rather, the court must look to the circumstances of each case). Once a defendant voluntarily waives the Miranda rights, the waiver continues until the defendant indicates he wants to revoke the waiver and remain silent, or circumstances establish his "'will has been overborne and his capacity for self-determination critically impaired.'" State v. Rochester, 301 S.C. 196, 391 S.E.2d 244, 246 (1990) (*quoting* State v. Moultrie, 273 S.C. 60, 254 S.E.2d 294, 295 [1979]).

In this case, it is undisputed Lt. Strickland went over the Miranda warnings with Appellant when he was arrested on December 4th, and Appellant signed the form waiving his rights. Appellant then denied any inappropriate conduct with Minor, and asked for a polygraph to "prove" his innocence. During the suppression hearing, Appellant testified he **understood** his rights **prior** to giving any statements to Lt. Strickland and Owen,

including the fact his statements could and would be used against him. (TT, pp. 120-122; R., pp. 79-81).

Based on the testimony from Lt. Strickland and Appellant, the circuit court found Appellant was properly apprised of his Miranda rights on December 4th, he understood those rights and freely waived them. The court further found additional warnings were not required prior to the polygraph conducted at Appellant's request, or prior to Appellant's subsequent statements to Lt. Strickland, but the fact Lt. Strickland went over them again before speaking to Appellant after the polygraph indicated deception further supported the finding Appellant knew his rights and voluntarily waived them.[4] (TT, pp. 151-153; R., pp. 110-112).

Appellant's reliance on Seibert and Navy is misplaced because of one major distinguishing fact. In both cases, the police officers questioned the defendants **before** advising them of their Miranda rights, and only advised them of those rights **after** they gave incriminating statements. Missouri, 542 U.S. at 604-606; Navy, 688 S.E.2d at 839-841. In this case, however, it is undisputed Lt. Strickland advised Appellant of his Miranda rights **before** asking him any questions on December 4th, and advised him of those rights **again** on December 5th **before** asking him any questions arising from the

[4]Even though the circuit court did not make a specific finding regarding Lt. Strickland's purported threat to "jack up" Appellant's bond if he did not confess, it is clear from the record the court doubted there was any threat. Specifically, the court found "there's only one possible threat, and **I'll put threat in quotation marks**, that was brought out in the testimony, that being from [Appellant], that officer Strickland had threatened to jack the bond up if he did not make some sort of confession." The court further noted Appellant also testified he had already made bond prior to the alleged threat, and therefore, even if the threat was made, it had no significance concerning the voluntariness of Appellant's confession. (TT, p. 52; R., p. 11) (emphasis added).

polygraph results. Appellant testified he **understood** those rights when he talked with Lt. Strickland and Owen.

There is ample evidence in the record, including Appellant's own testimony, supporting the circuit court's finding Appellant was aware of, and understood, his Miranda rights, and voluntarily waived those rights before making any statements to Lt. Strickland and Owen. Therefore, the circuit court did not abuse its discretion, and its ruling on this issue should be confirmed.

II. The circuit court properly denied Appellant's directed verdict motion on the lewd act charge because time is not an element of the offense.

Appellant contends the circuit court also erred in denying his motion for directed verdict on the lewd act indictment under the *corpus delicti* rule, based on the purported lack of evidence regarding the date such acts occurred. He argues his own statements were the only evidence a lewd act occurred on or after June 1, 2006, as alleged in the indictment, and the State failed to present sufficient independent evidence the acts occurred on or after that date. In essence, Appellant asserts he was entitled to a directed verdict even though the State presented evidence establishing each material element of the lewd act charge.

The trial court must deny a directed verdict motion when the State presents any direct evidence or substantial circumstantial evidence to prove the defendant's guilt. State v. Phillips, 2014 WL 5839922, 4 (S.C. Ct. App., filed November 12, 2014). In reviewing the denial of a directed verdict motion, the appellate court must view the evidence in the light most favorable to the State, and affirm the trial court's ruling if there is such evidence in the record. *Id.*; State v. Lane, 2014 WL 5836814, 1 (S.C. Sup. Ct., filed November 12, 2014).

Under S.C. Code § 16–15–140 (1976), it was "unlawful for a person over the age of fourteen years to willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or

of the child."[5] Time was **not** a material element of the lewd act on a minor offense. State v. Perry, 410 S.C. 191, 763 S.E.2d 603, 606-607 (Ct. App. 2014) (citing State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 [Ct. App. 2007]).

"It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*." State v. Osborne, 335 S.C. 172, 516 S.E.2d 201, 202 (1999); State v. Abraham, 408 S.C. 589, 759 S.E.2d 440, 441-442 (Ct. App. 2014) (same). "'[G]enerally speaking, the term '*corpus delicti*' means, when applied to any particular offense, that **the specific crime has actually been committed**.'" Osborne, 516 S.E.2d at 202, n. 4 (*quoting* State v. Teal, 225 S.C. 472, 82 S.E.2d 787, 788 [1954]) (emphasis added).

This rule of law is known in South Carolina as the corroboration rule, which requires the State to introduce substantial independent evidence tending to establish the trustworthiness of the defendant's statement. *Id.* at 202, n. 5, 204. The rule "is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extrajudicial statements and, **together with such statements**, permits a reasonable belief that **the crime occurred**." *Id.* at 205 (emphasis added); Abraham, 759 S.E.2d at 442 (same).

The material elements of a lewd act charge under §16-15-140 were: 1) a person over the age of fourteen years; 2) willfully and lewdly committed or attempted a lewd or lascivious act; 3) upon or with the body, or its parts, of a child under the age of sixteen

[5] The "lewd act" statute was repealed by the Omnibus Crime Act, 2012 Act. No. 255, §14, which incorporated the lewd act statutory elements into a new offense of criminal sexual conduct with a minor in the third degree. *See* S.C. Code §16-3-655(C) (Supp. 2013). The offense at issue in this case occurred prior to enactment of §16-3-655(C).

years; and 4) with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or the child. Appellant does **not** contend the indictment failed to notify him of the material elements required to prove the lewd act charge.[6]

The gist of Appellant's argument is the purported lack of evidence any lewd acts occurred between June 1, 2006 and October 2008. As discussed above, however, time was not a material element of a lewd act charge. Therefore, the dates set forth in the indictment were not controlling. "It is not necessary to prove the precise day or even year laid in the indictment, except where time enters into the nature of the offense, or is made part of the description of it." State v. Peak, 133 S.E. 31, 34 (S.C. 1926) (*quoting* State v. Branham, 13 S.C. 389 (S.C. 1880); *see also* State v. Wade, 306 S.C. 79, 409 S.E.2d 780, 783-784 (1991) (same).

In this case, the actual dates did not go to the nature of the alleged offense, and were not used to describe it. Further, Appellant's defense was denial the offense ever occurred, not alibi, which renders the specific dates even less significant. *See* Wade, 409 S.E.2d at 783 (defendant's defense of denial severely weakened any argument regarding prejudice from the dates alleged in the indictment).

Minor's testimony clearly corroborated Appellant's statements regarding the material elements of the lewd act charge: 1) Appellant was over the age of fourteen: 2) Minor was eleven years old; 3) Appellant sat Minor on his lap and rubbed her breasts for

---

[6]The indictment is a notice document. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, 500 (2005). If a defendant timely objects to the sufficiency of the indictment, the circuit court should judge the indictment's sufficiency by determining whether: (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) **whether it apprises the defendant of the elements of the offense charged**. *Id.*

an extended time on more than one occasion; 4) with the intent to gratify Appellant's lust, passion or sexual desires. Combined with Appellant's statements, the evidence could lead to a reasonable belief the lewd act crime occurred.

On direct examination, Minor testified the lewd acts occurred "in the summer of 2006," and the criminal sexual conduct incident occurred in June 2006. Significantly, she did not indicate a specific date during her direct testimony.

Toward the end of Minor's cross-examination, Appellant's counsel asked Minor if the criminal sexual conduct occurred "somewhere around June 1 of 2006," and Minor said "yes, ma'am." Counsel then referenced the lewd acts, and asked if "[a]ll those incidents happened before that date." When Minor responded affirmatively, counsel asked if all of them happened before June 1, 2006, and Minor again responded affirmatively. Thus, counsel started with "somewhere around June 1," went to "that date," and then ended with June 1 as **the** date for everything.[7]

Further, the circuit court acknowledged the conflicts in Minor's testimony, but properly found the issue was one for the jury. "Any concerns about contradictory statements by the accuser, whether on the stand or outside the courtroom setting, were ultimately about his credibility and therefore in the domain of the jury." State v. Nicholson, 366 S.C. 568, 623 S.E.2d 100, 103 (Ct. App. 2005); *see also* State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402, 406 n. 6 (2001) (whether a witness was credible

[7]After enduring the humiliation of recounting molestation at the age of eleven by someone she considered part of her family, and having her personal life since that time explored on cross-examination, it is not difficult to see how Minor would respond as she did, particularly regarding the dates of incidents occurring more than seven years prior to trial. *See* Wade, 409 S.E.2d at 783 (minor victim could legitimately have difficulty remember the specific date the defendant molested her, and only be capable of remembering it happened "sometime in 1984 or 1985."

goes to the weight of the evidence and is therefore not considered by the trial court when it considers a directed verdict motion).

Significantly, Appellant himself told Owen one lewd act occurred the same day the criminal sexual conduct occurred. Thus, to the extent Appellant's counsel made the specific date an issue as to the lewd act charge, there was evidence from which the jury could find beyond a reasonable doubt Appellant performed a lewd act on Minor "somewhere around June 1, 2006." Thus, the circuit court's denial of Appellant's directed verdict motion on the lewd act charge should be affirmed.

CONCLUSION

Based on the foregoing, Respondent submits Appellant's conviction and sentence should be affirmed.

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

By: Deborah R.J. Shupe
DEBORAH R.J. SHUPE

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

ATTORNEYS FOR RESPONDENT

January 20, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2013-002164

THE STATE,

Respondent,

v.

WILLIAM DONALD BOLT,

Appellant.

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
SC Bar No. 5098

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

By: Deborah R.J. Shupe
DEBORAH R.J. SHUPE

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

ATTORNEYS FOR RESPONDENT

January 20, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenwood County
The Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2013-002164

THE STATE,

Respondent,

v.

WILLIAM DONALD BOLT,

Appellant.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

David Alexander
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

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

This 20th day of January 2015.

Sally B. Ellison

SALLY B. ELLISON
Administrative Assistant

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

ALAN WILSON
ATTORNEY GENERAL

January 20, 2015

David Alexander
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

Re: The State v. William Donald Bolt
Appellate Case No. 2013-002164

Dear Mr. Alexander:

Enclosed are two copies of the Final Brief of Respondent, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

DRJS/sbe

Enclosures

cc: The Honorable Jenny A. Kitchings (original and 9 copies enclosed)
Victim Services (with enclosure)

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283