STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

JERAMY PARKS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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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. Tr. pp. 62-63. 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. Tr. pp. 114-19; p. 131.

Victim testified her mother, Candace Parks, saw the abuse and did nothing. Tr. p. 121. Victim also testified Parks put his mouth on her vagina. She described getting "slobber" from Parks' mouth on her vagina. Tr. p. 126-27. Victim further testified Parks penetrated her in the "butt." She told him to stop but he ignored her. Tr. p. 128. Victim explained she disclosed the abuse "so they would know and punish him." Tr. p. 129, 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. Tr. pp. 137-38. 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. Tr. pp. 187-88. Arnold testified Victim disclosed she was abused. Tr. pp. 188-89. Arnold also observed Victim's bottom was red, and Victim said it hurt. Tr. p. 190. Officer Matthew Barlow responded to the Summerville Medical Center. He testified Victim indicated she was sexually assaulted by pointing to her private area. Tr. p. 194; p. 196.

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. Tr. pp. 203-04.

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. Tr. p. 205; p. 210. 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. Tr. pp. 211-12. 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. Tr. pp. 206-08.

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. Tr. pp. 212-13. Candace testified she saw Parks abuse Victim more than four times. Tr. p. 213. One time, Candace asked Parks to stop. He told her Victim was his daughter and he could do whatever he wanted. Tr. p. 214. When she complained or stopped the abuse, Parks would abuse her. Tr. pp. 214-15. One of Candace's sons would intervene when Parks abused Candace. At trial, Candace called this son her protector. Tr. p. 215.

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." Tr. p. 216, lines 7-13. She further explained he was holding onto the bed while he was moving his penis inside Victim's mouth. Tr. p. 216, line 23 – p. 217, 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. Tr. p. 217, lines 13-23. When she tried to go inside, she discovered the door was locked. Tr. pp. 217-18.

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. Tr. pp. 220-21.

In addition to those events, Candace testified about several events occurring in Dorchester County. She saw Parks' hands in Victim's pants. Tr. p. 242. She saw Parks' hands between Victim's legs. Tr. p. 243. She saw Victim on Parks' lap, facing outward, while Parks moved her up and down on his penis. Tr. pp. 244-45. She saw Parks make Victim masturbate him. Tr. p. 245. All told, Candace saw Parks abusing Victim more than eight times. Tr. p. 246. When Candace complained, Parks would curse, yell, and spit in her face. He pushed her up against the door. Tr. p. 246. 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. Tr. pp. 246-47.

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. Tr. pp. 248-49. 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. Tr. p. 250. Candace confirmed she would have sex with Parks on the couch. Tr. p. 250. 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. Tr. p. 252.

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. Tr. p. 282.

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. Tr. pp. 282-83. 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." Tr. p. 284, 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. Tr. p. 293. Victim disclosed she was sexually abused. Tr. p. 293. 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. Tr. p. 295. Yates noted Candace was not attentive to Victim despite the disclosure of abuse. Tr. p. 295.

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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. Tr. pp. 296-98.

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. Tr. pp. 303-06. 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. Tr. pp. 308-11; p. 315.

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. Tr. p. 320-23. 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. Tr. pp. 324-27.

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. Tr. pp. 338-40; p. 347.

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. Tr. pp. 342-43.

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. Tr. pp. 372-75.

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. Tr. p. 375, lines 8-25. Dr. Foster explained a non-protective parent's behavior may implicitly communicate the abuse

must be kept in the family. Tr. p. 377. 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." Tr. p. 379, lines 2-8. About two-thirds of abuse victims do not disclose the abuse until adulthood. Tr. p. 380.

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." Tr. p. 383, 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. Tr. p. 384.

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. Tr. pp. 396-98.

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." Tr. p. 439, 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. Tr. p. 437, lines 7-13; p. 437, line 23 – p. 438, line 1; p. 438, 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?" Tr. p. 44, line 25 – p. 45, 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." Tr. p. 45, line 5-8. The State confirmed there was no indication Victim was incompetent to testify. Tr. p. 45, 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." Tr. p. 45, 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. Tr. p. 104. 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. Tr. pp. 105-06.

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. Tr. pp. 106-07.[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. Tr pp. 108-09.

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. Tr. p. 136, line 13.

Tr. p. 153, line 22 – p. 154, 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. Tr. pp. 43-44.

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,

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ATTORNEYS FOR RESPONDENT

January 6, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2015-002050

THE STATE, ...RESPONDENT,

v.

JERAMY PARKS,.....APPELLANT.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Alexander, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 6th day of January, 2017.

Keely Carter
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January 6, 2017

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RE: State v. Jeramy Parks
Appellate Case No. 2015-002050

Dear Mr. Alexander:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

David Spencer
Senior Assistant Attorney General
S.C. Bar No. 68571

Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services