

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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S.C. SUPREME COURT

Appeal from York County  
Honorable John C. Hayes, III, Circuit Court Judge  
Appellate Case Tracking No. 2015-001408

The State,

Respondent,

vs.

Rion McKissick Rutledge,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

1 to call it the 15-Year-Old German Girl. I think it said  
2 15-year-Old Shaved German Girl. Is - are you familiar with  
3 what I'm talking about?

4 A. Yes, sir.

5 Q. Okay. And basically, what I understand, that - that  
6 was created on February 16th, 2010; is that correct?

7 A. Saved, yes, sir.

8 Q. Okay.

9 A. Yeah, it has a creation date, and I know it's kind of  
10 a misnomer.

11 Q. Uh-huh.

12 A. But that's when that file was saved in that directory  
13 on that date.

14 Q. Okay. And the - What has to happen for a file to be  
15 saved?

16 A. Several things could happen. One, the user either  
17 downloads something, and it gets put into that directory,  
18 and it makes a write of that file to that directory. And  
19 so, that's what we call a save. So, it writes that file  
20 content to that directory. And those are - it can be  
21 either program-initiated, whether somebody clicks and says,  
22 hey, it goes there, or it can be a user-initiated, where  
23 somebody takes a file from another location, or, a  
24 document, like a Word document, and you create a document  
25 and you hit save. And so, it creates that instance of that

1 dates, and it just goes into a lot of - lot of science, and  
2 trying to understand the computer system. From my  
3 understanding, the three - three of the third degree  
4 charges that we're talking about, they have creation dates  
5 from them. I'm not sure if this means the same thing as  
6 the download date or not, but basically, it's a date, and  
7 it's the last access date, also. So, it looks like those  
8 files were downloaded at - and never looked at, or never  
9 looked at again, but were just on the machine. Those dates  
10 were all in 2010.

11 The - Now, the - it's interesting to note that the  
12 testimony was that they came in with the search warrant.  
13 They seized a number of computers from the house. And the  
14 only computer that is connected with child pornography is  
15 this one laptop that - You saw it, it's not marked and  
16 introduced in evidence, but you saw it. Out of all the  
17 other computers in the home, in the garage - not in the  
18 garage, in his office, the only one connected with it is  
19 that laptop.

20 So, that would certainly indicate that whoever had the  
21 laptop was the person connecting and gathering the child  
22 pornography. The person, I submit, that we have  
23 established that had it was Will Rutledge. Now, whether it  
24 was he, whether it was Mark Hatfield, a roommate, or someone  
25 else that Will Rutledge knew that had actually used the

1 computer to access these images, we don't know. We submit  
2 it was not Rion Rutledge.

3 Now, the - there's also evidence that, during the time  
4 that the State, or the Attorney General's Office, on the  
5 morning of December the 16th, when the down - when the  
6 State was able to access these images from the - through  
7 the IP address, that Rion Rutledge was not actually at  
8 home. Now, again, it's hard to come back and produce  
9 absolute proof, and he has found what he can find. Those  
10 are - those evidence that he showed you, that he produced  
11 invoices as what he had done at work that morning and that  
12 day. That he had actually delivered some toilets to, I  
13 believe he called it the Mormon Farm, that he had done some  
14 work for B and B Distributors that morning. All those  
15 things show and tend to indicate that he wasn't home during  
16 the period that all of that was going on.

17 Now, have we shown that Will was over there on that  
18 particular date? No, we have not. But we do know that  
19 Will would come there at times that he was not there, and I  
20 submit to you, Will had the laptop. That laptop was used  
21 with those images. Rion Rutledge wasn't home. I submit to  
22 you, there's no one else in his home that would be doing  
23 this. That's what had to occur.

24 Now, have we absolutely proven that? No. But it's  
25 not our burden to prove someone else did it. It's their

1 burden to prove Rion Rutledge did it. I want to, you know,  
2 I want to address a few things about the evidence that  
3 maybe there was just a piece and bit of it. There was some  
4 testimony about a letter that Rion had written his brother  
5 while his brother was incarcerated, and there's - there's a  
6 - a date on the system. I believe a date was - I believe  
7 the date they said was September the 28th, 2010, which, I  
8 guess the State would say, well, because that - the letter  
9 is saved on the system on that date, that indicates that  
10 Rion Rutledge had the computer on that date.

11 My understanding, you take the testimony that you  
12 heard, but my understanding as to what the testimony showed  
13 on that was that, that was the date, a saved date. That is  
14 not the date the letter was created on the system. There  
15 was no date given when that letter was actually created on  
16 the system, so, it could have been at some earlier time  
17 than that. That's just the date the computer shows is the  
18 - it's basically on the system, or saved on the system.

19 The - it doesn't mean it was originally written at  
20 that time, or even originally written on this particular  
21 laptop. The - Another thing, there certainly - and I don't  
22 have an opportunity to get up here and stand up here and  
23 talk to you again after the State has presented it's  
24 closing argument, so, there may be things the State will  
25 bring up.

1           Each indictment charges a separate and distinct  
2 offense. You must decide each indictment separate on the  
3 evidence and the law applicable to that indictment,  
4 uninfluenced by what you find on the others. That means  
5 you could convict or acquit Mr. Rutledge on any or all of  
6 the indictments. You will write a separate verdict of  
7 guilt or not guilty on each - for each indictment. They  
8 will actually be on the verdict form, that I'll explain to  
9 you later, Madam Forelady.

10           But the point is that each stands or falls on its own  
11 merit, each charge. The indictments I will not send in to  
12 you in the jury room. They charge, in the statutory  
13 language, that Mr. Rutledge did, on December 16th, 2010,  
14 commit the crime of sexual exploitation of a minor in the  
15 second degree, and there are three of those. And then, on  
16 March 2nd of 2011, it's alleged that he committed  
17 exploitation of a minor in the third degree, and there are  
18 four counts of that. And again, each stands or falls on  
19 its own set of facts as you determine them to be.

20           Mr. Rutledge, like anyone charged with any offense in  
21 our system, is presumed innocent of these seven charges.  
22 Anyone charged with an offense in our system is presumed  
23 innocent of that charge, and is presumed innocent until the  
24 State is able to prove, if it can, that person's guilt  
25 beyond a reasonable doubt.

1           This presumption of innocence is a substantial right.  
2           It's not a mere legal theory or a mere legal phrase, but a  
3           substantial right. The presumption of innocence attaches  
4           to an individual at the time of their arrest, remains with  
5           them as their case is processed through our court system.  
6           The presumption of innocence in Mr. Rutledge's favor  
7           remains with him right now, as I speak, and remains with  
8           him as you deliberate. The presumption of innocence in Mr.  
9           Rutledge's favor is removed if and when, and, only if and  
10          when you are unanimously convinced of his guilt beyond a  
11          reasonable doubt.

12           Now, the State is not required to prove one's guilt  
13          beyond all or beyond every doubt, but beyond a reasonable  
14          doubt. Our courts have described a reasonable doubt as the  
15          kind of doubt that would cause a reasonable person to  
16          hesitate to act. Proof beyond a reasonable doubt is proof  
17          that leaves you firmly convinced of one's guilt.

18           There are very few things in our world, as I said,  
19          that we can know with absolute certainty, and criminal law  
20          does not require proof that overcomes every possible doubt.  
21          If, based on your consideration of the evidence, you are  
22          firmly convinced that Mr. Rutledge is guilty of one or more  
23          of the charges, you would find him so.

24           If, on the other hand, you think there's a real  
25          possibility that he is not guilty as to one or more of the

1 charges, you would give him the benefit of that doubt and  
2 find him not guilty. He is entitled to the benefit of any  
3 reasonable doubt you have as to any issue in this case.

4 I remind you that I am the sole judge of the law in  
5 this case, and you must take, accept, and apply the law as  
6 I charge it. I remind you that this is true, even if you  
7 think I charge the law in error, or even if you think the  
8 law should be different. Your oath requires you to take,  
9 accept, and apply the law as I charge it.

10 You are not to infer from anything I have said or done  
11 or anything I now say or do as indicating an opinion of  
12 mine on the facts. Our law does not allow a trial judge to  
13 formulate or express to a jury any opinion on the facts.  
14 It is solely your job as the trial jury in this case to  
15 examine the evidence, give to the evidence the effect, the  
16 value, the weight, and the truth you believe it should  
17 have.

18 In doing this, you may believe one witness, as opposed  
19 to several, several witnesses as opposed to one. You may  
20 believe all, part, or none of a witness's testimony. In  
21 analyzing the evidence, use your common sense, your sense  
22 of logic, your sense of reason. Use your experiences in  
23 life.

24 As judges of the facts, you must judge the  
25 credibility, that is, the believability of the witnesses

1 who have testified. In assessing believability, use the  
2 things I have just talked about. Use the things that you  
3 find in your day-to-day life as indicating truthfulness in  
4 an individual, and you can use certain evaluators: A  
5 witness's demeanor, how the witness acted on the stand,  
6 were they hesitant or straightforward. Look at the  
7 consistencies or inconsistencies. Was the witness - had  
8 this witness have any reason to help or hurt one side or  
9 the other? That is, is there any bias or prejudice of the  
10 witness? And you can consider the opportunity a witness  
11 had to know those things to which the witness testified.  
12 All of these things you consider, determine the true facts,  
13 apply the law, and you will be in a position to return a  
14 verdict that does, in fact, speak the truth.

15 In criminal cases, there are generally two types of  
16 evidence presented, direct and circumstantial evidence.  
17 Direct evidence is evidence which directly proves the  
18 existence of a fact, and does not require deduction.

19 Circumstantial evidence is proof of a chain of facts  
20 and circumstances which indicate the existence of a fact.  
21 Crimes may be proven by circumstantial evidence. Our law  
22 makes no distinction between the weight or value to be  
23 given either direct or circumstantial evidence.

24 However, to the extent the State relies on  
25 circumstantial evidence, all of the circumstances must be

1 consistent with each other, and when taken together, point  
2 conclusively to the guilt of the accused beyond a  
3 reasonable doubt. If these circumstances merely portray a  
4 defendant's behavior as suspicious, the proof has failed.  
5 The State has a burden of proving the defendant guilty  
6 beyond a reasonable doubt, and this burden rests on the  
7 State, regardless of whether it relies on direct evidence,  
8 circumstantial evidence, or a combination of the two.

9 Now, the - there was testimony in this case by  
10 investigators who had special knowledge, training, and  
11 experience in a certain area; that is computers.  
12 Generally, individuals can only testify as to facts. That  
13 is, something they see or heard or sensed with one of their  
14 other three senses. However, where someone has special  
15 training and experience, that person can give what we call  
16 opinions.

17 Now, the opinions of these witnesses are allowed into  
18 evidence to assist you. They're not binding on you. You  
19 can take or accept an opinion of someone who offers what we  
20 would call expert testimony on a subject. That is, you can  
21 accept that testimony, or you can reject that testimony.  
22 As to that testimony, you look at that witness with the  
23 same lens that you look at the other witnesses. Use all  
24 those things I've talked about regarding how you evaluate a  
25 witness's credibility and testimony.

1           In addition, as to someone who testifies in an expert  
2 capacity, you also look at whether or not you believe they  
3 had the qualifications to give the opinions they gave, and  
4 you can also examine the reasons they gave for their  
5 opinions. You can accept or reject, in whole or in part,  
6 their testimony. This testimony is allowed into evidence  
7 to assist you. It is not binding on you. Again, you may  
8 accept that testimony from individuals testifying as  
9 experts, or you may reject it, in whole or in part.

10           Our legislature has set out, in our code of laws,  
11 these two offenses, sexual - sexual exploitation of a  
12 minor, and they have two degrees, second and third, and  
13 I'll go into those more.

14           The legislature has defined certain words that are to  
15 be used when interpreting and determining whether or not  
16 one has violated these statutes. The term, minor, means an  
17 individual who is less than eighteen years of age -  
18 eighteen years old. You'll hear me use the word, material.  
19 Material is defined by our legislature as this: Material  
20 means pictures, video recordings, films, digital or  
21 electronic files, or other visual depictions.


22           The legislature has defined the term, sexual activity,  
23 as follows: Sexual activity includes any of the following  
24 acts or simulations thereof: Masturbation, whether done  
25 alone or with another human or animal; vaginal, anal, or

1 oral intercourse, whether done with another human or an  
2 animal; touching in an act of apparent sexual stimulation  
3 or sexual abuse of the clothed or unclothed genitals, pubic  
4 area, or buttocks of another person, or the clothed or  
5 unclothed breasts of a human female.


6 Our legislature has enacted this provision of law,  
7 second degree sexual exploitation of a minor. An  
8 individual commits sexual - the offense of sexual - this is  
9 - I'm going through the statute at this time of Section  
10 1615-405, but you don't need to recall the number. That  
11 states that an individual commits the offense of second  
12 degree sexual exploitation of a minor if, knowing the  
13 character or content of the material, he distributes,  
14 transports, exhibits, receives, sells, purchases,  
15 exchanges, or solicits material that contains a visual  
16 representation of a minor engaged in sexual activity, or  
17 appearing in a state of sexually explicit nudity, when a  
18 reasonable person would infer the purpose is sexual  
19 stimulation.

20 You may infer that a participant in the sexual  
21 activity depicted in the material as a minor through its  
22 title, text, visual representations, or otherwise, is a  
23 minor. Mistake of age is not a defense to a prosecution,  
24 pursuant to this section.

25 The law, as to the third degree sexual exploitation of




1 a minor states that an individual commits this offense, if,  
2 knowing the character or content of the material, he  
3 possesses material that contains a visual representation of  
4 a minor engaged in sexual activity, or appearing in a state  
5 of sexually explicit nudity, when a reasonable person would  
6 infer the purpose is sexual stimulation.



7 It is not illegal to possess a computer-generated  
8 image of a minor engaged in sexual activity. In order to  
9 make a finding of guilt against the defendant, you must  
10 find beyond a reasonable doubt that any minor depicted was  
11 a real person and not a computer-generated image. In order  
12 to make a finding of guilt, you must find beyond a  
13 reasonable doubt that any minor depicted was actually a  
14 minor.

15 Your verdict must be unanimous, again the State must  
16 prove these offenses beyond a reasonable doubt. Your  
17 verdict must be unanimous. All twelve jurors must agree  
18 before you, Madam Forelady, write the jury's verdict. Your  
19 verdict cannot be based on passion and prejudice, sympathy,  
20 public opinion or matters outside the record.



21 If, why you're deliberating, you have any questions,  
22 please write them down knock on the door, and give them to  
23 the bailiff and send them out, and I will, after consulting  
24 with the attorneys, answer the note. It may be that I can  
25 send a written answer back in to the jury room. If I do,

1 with an answer, send the note back, keep that note and turn  
2 it in with the evidence, because it has to be a part of the  
3 record. It may be that I'll have to bring you back here  
4 into the courtroom and, in open court, address whatever  
5 questions you may have.

6 I do not send a written charge on the law in to you,  
7 but if you wish me to go over any part or all of my charge,  
8 let me know and I will bring you back out and here in  
9 court, go over any part or all of my charge on the law, if  
10 you need it.

11 You can have testimony replayed. If you wish to have  
12 any testimony replayed, please let us know, and we will  
13 bring you back out and do that. As to the videos and the  
14 still images, if you wish to view those, let us know. We  
15 will bring you back in the courtroom, and they will be  
16 displayed on the screen, with no one making any comment.  
17 That would be - we can certainly bring you back in and show  
18 you those, if you need to.

19 Now, again, the verdict must be unanimous. Once you  
20 have reached a verdict, Madam Forelady, knock on the door  
21 and tell the bailiff. The bailiff will tell - will tell us  
22 that you have reached the - a verdict, and we will send for  
23 you as promptly as we can.

24 We have ordered lunch. It's pizza, and you can work  
25 during lunch, or you can take a break during lunch. Ms.

1 Sturkie, you will stay with us as the alternate. You will  
2 not be participating any further.

3 When you first go into the jury room, please do not  
4 start deliberating. I must go over, with the attorneys, my  
5 charge. If I have made an error, I will have to bring you  
6 back in and correct it. If I have not made an error, I  
7 will send in to you the exhibits and the verdict forms and  
8 the jury - and the bailiff will instruct you to start your  
9 deliberation. Again, when you have reached a verdict, let  
10 the - When you have reached a verdict, please let the  
11 bailiff know, and we will send for you.

12 Now, my law clerk has pointed out, and I noticed it  
13 when I was going over my charge, in both second degree and  
14 third degree, I used the term, sexually, appeared -  
15 sexually explicit nudity. That is, I charged you that as  
16 to both offenses - That as to second degree sexual - let me  
17 see Counsel up here just a minute.

18 (BENCH CONFERENCE OFF THE RECORD, OUT OF THE HEARING  
19 OF JURORS 12:28 P.M..)

20 THE COURT: I charged you as follows, and I'm going to  
21 correct it right here and now, so there won't be any  
22 question: I charged you that, as to second degree sexual  
23 exploitation of a minor included showing the act of minors  
24 in what is called a sexually explicit - in sexually  
25 explicit nudity. That is not the law. That is a

1 typographical error, so I'm going to re-charge you second  
2 degree exploitation of a minor in third degree, leaving out  
3 that language. And please disregard that language, as I  
4 said, it is a typographical error, and an error on my part.

5 So, second degree sexual exploitation of a minor says,  
6 under the law, is when an individual - an individual  
7 commits the offense of second degree sexual exploitation of  
8 a minor, if, knowing the character or content of the  
9 material, he distributes, transports, exhibits, receives,  
10 sells, purchases, exchanges, or solicits material that  
11 contains a visual representation of a minor engaged in  
12 sexual activity.

13 The third degree: An individual commits this offense,  
14 that is, the offense of third degree sexual exploitation of  
15 a minor, if, knowing the character or content of the  
16 material, he possesses material that contains a visual  
17 representation of a minor engaged in sexual activity.

18 So, as to both, the State must prove beyond a  
19 reasonable doubt that the material had a visual  
20 representation of a minor engaged in sexual activity.

21 Now, the verdict forms are all the same. And in order  
22 to assist you, we've got, on the verdict form, the word,  
23 verdict form. And then, is set forth an identification as  
24 to which indictment refers to which set of images. As an  
25 example, the first verdict form I'm looking at says,