

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY S.C.
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

CASE NO: 2016-001831

RECEIVED

FEB 14 2019

SUPREME COURT

The State of South Carolina, ... Respondent.

v.

Timothy Alan Oertel.....

PETITIONER

APPENDIX

James W. Boyd
Post Office Box 36425
1544 Ebenezer Road
Rock Hill, SC 29732
(803) 328-2600

ATTORNEY FOR PETITIONER

South Carolina Attorney General's Office
Alan Wilson
Rembert C. Dennis Building
PO BOX 11549
Columbia, SC 29211-1549

South Carolina Attorney General's Office
William M. Blitch, Jr.
Rembert C. Dennis Building
PO BOX 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

INDEX

Record on Appeal	A.1
Final Brief of Appellant.....	A.186
Final of Respondent	A.201
Final Reply Brief of Appellant	A.221
Opinion of the Court of Appeals	A.228
Petition for Re-Hearing.....	A.231
Return to Petition for Rehearing.....	A.236
Order Denying Petitioner for Rehearing.....	A.240

**THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of General Sessions**

R. Knox McMahon, Circuit Court Judge

APPELLATE CASE NO: 2016-001831

The State of South Carolina..... Respondent.

v.

Timothy Alan Oertel..... Appellant.

RECORD ON APPEAL

**James W. Boyd
Post Office Box 36425
1544 Ebenezer Road
Rock Hill, SC 29732
(803) 328-2600
ATTORNEY FOR APPELLANT**

**South Carolina Attorney General's Office
Alan Wilson
Rembert C. Dennis Building
PO BOX 11549
Columbia, SC 29211-1549
ATTORNEY FOR RESPONDANT**

**South Carolina Attorney General's Office
William M. Blitch, Jr.
Rembert C. Dennis Building
PO BOX 11549
Columbia, SC 29211-1549
ATTORNEY FOR RESPONDANT**

INDEX

Sentencing Sheet 2015-A-40-10600898	1
Sentencing Sheet 2015-A-40-10600899	2
Sentencing Sheet 2015-A-40-10600900	3
Sentencing Sheet 2015-A-40-10600901	4
Sentencing Sheet 2015-A-40-10600902	5
Sentencing Sheet DPI 6082	6
Transcript	7
Opening Statements	
By Mr. Flores	12
By Mr. Boyd	15
Testimonies	
Deputy Sara Parry Hood	22
Direct Examination by Mr. Flores	22
Cross Examination by Mr. Boyd	52
Redirect Examination by Mr. Flores	67
Investigator Richard Carter	72
Direct Examination by Mr. Flores	72
Cross Examination by Mr. Boyd	93
Redirect Examination by Mr. Flores	98
Mid-Trial Motions	101
Closing Argument	
By Mr. Flores	124
By Mr. Boyd	130
Post-Trial Motions	146

Sentencing.....	147
Indictment 2016-GS-40-02104.....	153
Indictment 2016-GS-40-02105.....	155
Indictment 2016-GS-40-02106.....	157
Indictment 2016-GS-40-02107.....	159
Indictment 2016-GS-40-02108.....	161
Indictment 2016-GS-40-02109.....	163
Verdict Form.....	165
Exhibits	
State Exhibit 1.....	167
State Exhibit 2.....	172
State Exhibit 3.....	173
State Exhibit 4.....	174
State Exhibit 5.....	175
State Exhibit 6.....	176
State Exhibit 7.....	177
State Exhibit 8.....	182
Certificate of Appellant	183

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

Timothy A. Oertel vs. _____
 AKA: _____
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL# _____ SID# _____
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 16 -GS- 40 -2104

A/W# 2015A4010600898
 Date of Offense: Sept 1, 2015
 S.C. Code §: 16-15-0345
 CDR Code #: 0375

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
 TO: Attempted Dissemination of Obscene Material to Person Under 18
 In violation of § 16-15-0345 of the S.C. Code of Laws, bearing CDR Code # 0375
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 The charge is ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)
 The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State
 ATTEST.

Lord Solicitor SC Bar # _____ Defendant James Boy Attorney for Defendant SC Bar # _____
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and or payment
 of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

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

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135
 Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:
 §14-1-206 (Assessments 107.5%) \$ _____
 §14-1-211 (A)(1)(Conv Surcharge) \$100 \$ _____
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 §47-12 (Public Def/Prob) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding) \$25 \$ _____
 §14-1-213 (Drug Court Surcharge) \$100 \$ _____
 §50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 §90.7(SCCJA Surcharge) \$5 \$ _____
 1% to County (if paid in installments) \$ _____
 *OTAL \$ _____

Clerk of Court/Deputy Clerk Jeannette W. McBride
 Court Reporter B. S. S. S.

PTUP _____
 _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab Or Job Corp. _____

May serve W/E beginning _____
 Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

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

Presiding Judge [Signature]
 Judge Code: 2195
 Sentence Date 31 Oct 16

SEX OFFENDER REGISTRY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichland

INDICTMENT/CASE#

16 -GS- 40 - 2105AW#: 2015A4010600899Date of Offense: Sept 1, 2015S.C. Code §: 16-15-0345CDR Code #: 0375

SENTENCE SHEET

AKA: Timothy Alan OertelRace: WSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or☐ PLEADSTO: Attempted Dissemination of Obscene Material to Person Under 18In violation of § 16-15-0345of the S.C. Code of Laws, bearing CDR Code # 0375☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury

(defendant's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST:

Solicitor

SC Bar # _____

Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc Rehab Or Job Corp _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv Surcharge)	\$100	\$
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Random Drug/Alcohol Testing ☐

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

\$ _____ Paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk
Court ReporterJeannette W. U. Bricker

Presiding Judge

Judge Code: 215Sentence Date 31 Nov 16SEX OFFENDER REGISTRY

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

16 -GS- 40 . 2106

A/W#:

2015A1010600900

Date of Offense:

Sept. 1, 2015

S C Code §:

16-15-0345

CDR Code #:

0375

SENTENCE SHEET

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADSTO: Attempted Dissemination of Obscene Material to Person Under 18

In violation of §

16-15-0345

of the S C Code of Laws, bearing CDR Code #

0375☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is.

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury

(defendant's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence.☐ Recommendation by the State.

ATTEST:

Joyd F. Feltner AG

SC Bar #

Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, SC Bar #

for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$, provided that upon the service of days/months/years and or payment

of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee. \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPSAttend Voc Rehab Or Job Corp.

Recipient:

May serve W/E beginning Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§47-12 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

§90-7(SCCJA Surcharge)

1% to County (if paid in installments)

*OTAL

\$100

\$100

\$12

\$25

\$500

\$25

\$100

\$50

\$40/ea

\$5

Clerk of Court/Deputy Clerk

Court Reporter:

Jeannette W. McBride AF

Presiding Judge

Judge Code:

Sentence Date

12/14/15
31 April 16SEX OFFENDER REGISTRY

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Richland

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

16 -GS- 40 - 2107

AW#

2015A4010600901

Date of Offense

Sept. 1, 2015

S.C. Code §:

16-15-0345

CDR Code #:

0375

AKA

Race

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

16-15-0345

of the S.C. Code of Laws, bearing CDR Code #

0375

☐ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS

☐ §17-25-45

The charge is

☐ As indicted,

☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury

(defendant's initials)

The plea is

☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☐ Recommendation by the State

ATTEST:

David Flores

Defendant

SC Bar #

Defendant

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections

James Boyd Attorney for Defendant

SC Bar #

for a determinate term of

6 days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and or payment

of \$, plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

of Corrections.

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

Total \$ plus 20% fee \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%) \$

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

§47-12 (Public Def/Prob) \$500 \$

§14-1-212 (Law Enforce Funding) \$25 \$

§14-1-213 (Drug Court Surcharge) \$100 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

§90-7(SCJA Surcharge) \$5 \$

1% to County (if paid in installments) \$

*TOTAL \$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel

§47-12 requires \$500 be paid to Clerk

during probation

Clerk of Court/Deputy Clerk

Court Reporter

Jeanette W. McBride

B. S. Sigala

Presiding Judge

Judge Code:

Sentence Date

2145

31 AUG 16

CCA/217 (11/2009)

SEX OFFENDER

RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

16 -GS- 40-2108

AW#:

2015A4010600902

Date of Offense:

Sept 1, 2015

S C Code §:

16-15-0342

CDR Code #:

2999

SENTENCE SHEET

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADSTO: Criminal Solicitation of a MinorIn violation of § 16-15-0342

of the S.C. Code of Laws, bearing CDR Code #

2999☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST:

David Eschler AG

SC Bar #

Defendant

James Boyd Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,

for a determinate term of

6 days/months/years or☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

, provided that upon the service of

days/months/years and or payment

of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total \$ plus 20% fee \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

§47-12 (Public Def/Prob)

§14-1-212 (Law Enforce Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

§90.7(SCCJA Surcharge)

1% to County (if paid in installments)

*OTAL

Clerk of Court/Deputy Clerk

Court Reporter

Jeannette W. McBrideRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code:

Sentence Date

31 Nov 16

CCA/217 (11/2009)

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

16 -GS- 40 - 2109

A/W#

DPI 6082

Date of Offense:

Sept. 1, 2015

S.C. Code §

16-15-395(A)

CDR Code #:

0379

SENTENCE SHEET

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

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

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADSTO: Attempted Sexual Exploitation of a Minor, 1stIn violation of § 16-15-395(A) of the S.C. Code of Laws, bearing CDR Code # 0379☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State

ATTEST:

Lloyd F. Foytler

SC Bar #

Defendant

James Boy

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections☒ County Detention Center,for a determinate term of 3 days/months/years orand/or to pay a fine of \$ provided that upon the service ofof \$ plus costs and assessments as applicable*, the balance is suspended with probation for days/months/years and or payment

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on.☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Departmentof Corrections. To All other sentences imposed 8/31/16☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

Total: \$

plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$14-1-211 (A)(2)(DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$47.12 (Public Def/Prob)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

\$90.7 (SCCJA Surcharge)

1% to County (if paid in installments)

*OTAL

Clerk of Court/Deputy Clerk

Court Reporter

Jaqueline W. McBrideB. Sigwald

Presiding Judge

Judge Code:

Sentence Date

3/1/16SEX OFFENDER REGISTRY

1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

3
4 Indictment No.: 2016-GS-40-02104
5 2016-GS-40-02105
6 2016-GS-40-02106
7 2016-GS-40-02107
8 2016-GS-40-02108
9 2016-GS-40-02109

7 State of South Carolina,)
8 Plaintiff.)

9 vs.)

Transcript of Record

10 Timothy Alan Oertel,)
11 Defendant.)

12
13 August 30-31, 2016
14 Columbia, South Carolina
15

16 B E F O R E:

17 The Honorable R. Knox McMahon, Judge and a jury.
18

19 A P P E A R A N C E S:

20 Louis Flores, Assistant Attorney General
21 Daniel Gourley, Assistant Attorney General
22 Attorneys for the State

23 James W. Boyd, Esquire
24 Attorney for the Defendant

25 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

I N D E X

	<u>Page</u>
<u>TUESDAY, AUGUST 30, 2016</u>	
Jury Voir Dire.....	6
Jury Selection.....	30
Jury Sworn.....	39
Opening Remarks by the Court.....	39
Opening Statements	
By Mr. Flores.....	48
By Mr. Boyd.....	51
Deputy Sara Parry Hood	
Direct Examination by Mr. Flores.....	58
Cross-Examination by Mr. Boyd.....	78
Redirect Examination by Mr. Flores.....	112
<u>WEDNESDAY, AUGUST 31, 2016</u>	
Investigator Richard Carter	
Direct Examination by Mr. Flores.....	124
Cross-Examination by Mr. Boyd.....	145
Redirect Examination by Mr. Flores.....	150
Mid-Trial Motions.....	152
Questioning of the Defendant by the Court.....	176
Closing Arguments	
By Mr. Flores.....	183
By Mr. Boyd.....	189
Jury Charge.....	201

1		<u>Page</u>
2	Verdict.....	227
3	Post-Trial Motions.....	230
4	Sentence.....	231

5 THURSDAY, SEPTEMBER 1, 2016

6	Appeal Bond Motion.....	237
7	Certificate of Reporter.....	244

8

9 E X H I B I T S

10	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
11	S-1	Emmy Robinson Facebook Profile.....	63
12	S-2	Photograph.....	73
13	S-3	Photograph.....	76
14	S-4	Photograph.....	76
15	S-5	Photograph.....	76
16	S-6	Advice of Rights.....	134
17	S-7	Statement of the Defendant.....	137
18	S-8	Apology Letter.....	144
19	C-1	Juror Note	
20	C-2	Juror Note	
21	C-3	Juror Note	
22	C-4	Juror Note	
23	C-5	Juror Note	

1 THE COURT: Mr. Flores, Mr. Boyd, would y'all step
2 up here for just a moment, please.

3 (There was a bench conference out of the hearing of
4 the Court Reporter.)

5 THE COURT: Madam Clerk, would you bring our jury
6 up for us, please.

7 THE CLERK: Yes, Your Honor.

8 THE COURT: And I have six indictments; is that
9 correct, Mr. Attorney general? Mr. Boyd?

10 MR. FLORES: Yes, Your Honor, that's correct.

11 THE COURT: Mr. Boyd, would you pronounce your
12 client's last name for me, please.

13 MR. BOYD: Oertel.

14 THE COURT: Oertel?

15 MR. BOYD: Yes, sir.

16 THE COURT: Thank you.

17 (The jury venire entered the courtroom.)

18 THE BAILIFF: All the jurors are present, Your
19 Honor.

20 THE COURT: All right. MR. Attorney General, you
21 may call your next case for trial.

22 MR. FLORES: Thank you, Your Honor, may it please
23 the Court. State would call State versus Timothy Alan
24 Oertel on Indictment 2016-GS-40-02104, charging attempted
25 dissemination of obscene material of a person under age 18.

1 Indictment 2016-GS-40-02105, charging attempted
2 dissemination of obscene material to a person under age 18.

3 On Indictment 2016-GS-40-02106, charging attempted
4 dissemination of obscene materials of a person under age
5 18.

6 On Indictment 2016-GS-40-02107, charging attempted
7 dissemination of obscene materials of a person under age
8 18.

9 Indictment 2016-GS-40-02108, charging criminal
10 solicitation of a minor.

11 And Indictment 2016-GS-40-02109, charging attempted
12 sexual exploitation of a minor in the first degree.

13 THE COURT: Thank you, Mr. Flores.

14 Mr. Boyd, you represent Timothy Alan Oertel?

15 MR. BOYD: I do, Your Honor.

16 THE COURT: Mr. Oertel present?

17 MR. BOYD: He is, Your Honor.

18 THE COURT: And ready for trial?

19 MR. BOYD: Yes, sir.

20 THE COURT: Thank you, thank you very much.

21 JURY VENIRE

22 THE COURT: Good morning, ladies and gentlemen of
23 the jury panel. We're going through a procedure whereby
24 we -- our goal is to select a fair and impartial jury in
25 the trial of this case, both for Mr. Oertel and for the

1 State, Mr. Flores?

2 MR. FLORES: No, Your Honor.

3 THE COURT: From the defense, Mr. Boyd?

4 MR. BOYD: No, sir, Your Honor.

5 Thank you very much. Mr. Flores, Mr. Gourley, you
6 may certainly address the jury.

7 MR. FLORES: Thank you, may it please the Court?

8 THE COURT: Yes, sir.

9 OPENING STATEMENTS

10 MR. FLORES: Mr. Oertel, Mr. Boyd, members of the
11 jury, good morning. As we stated before during jury
12 qualifications and jury selection, my name is Lloyd Flores
13 and I work at the attorney general's office. Prosecuting
14 this case with me today is Mr. Daniel Gourley. This case
15 is about protection of your children on the internet.

16 The internet is a place where people can go to
17 learn many things. They can learn about our world and
18 communicate with anyone these days. May be down the
19 street, may be in the same state, yet around the world.
20 It's the modern day marketplace of ideas. As you well
21 know, the internet for all its good is a very dark place.
22 Unfortunately, that's why we're here today.

23 This case is about an individual who went on a
24 social media cite, who sent pictures of himself, and told a
25 15-year-old minor what he wanted to do with her and then

1 requested pictures of her. That's what this case is about.
2 The testimony you will hear today will be from Deputy Sara
3 Parry and Senior Investigator Richard Carter, both of the
4 Richland County Sheriff's Department.

5 Luckily, this 15-year-old minor was a school
6 resource officer employed here in Richland County. But Mr.
7 Oertel did not know that at that time. What you will hear
8 from Deputy Parry is that she had a Facebook page set up so
9 she could monitor students and their activities. Students
10 communicate through various social media sites. It's your
11 responsibility to make sure that they're safe, that they
12 are not breaking the law.

13 So she had a site of a 15-year-old student so she
14 could have access to whatever information is out there.
15 Now, this site is entirely public. Anyone can see it.
16 Anyone could see that she was a student listed who was 15
17 years old who goes to A. C. Flora High School. Anyone in
18 the world. As I said, down the street, in the same state
19 and around the world. So anyone could see that.

20 On August 28, 2015, she received a random message
21 from a Tim Oertel. She didn't know a Tim Oertel. But she
22 engaged in a conversation. He reached out to her.
23 There's -- she responded on August 31st, 2015.

24 Hey, how are you.

25 Quickly that conversation became sexual in nature.

1 Mr. Oertel sent pictures of himself. You'll see the
2 details of those at the time at which he sent those images.
3 After doing that, they continue a conversation. He tells
4 her what he would like to do sexually with her if he were
5 there right now. When he decides to finally ask and
6 confirm her age, he realizes he'd done something wrong.
7 It's out there, it's posted on the profile as you will see.

8 She confessed and says, Yes, I'm 15 years old, I'll
9 be 16 soon.

10 He made a mistake. He said, I shouldn't have done
11 that.

12 What does he do next? Well, but seeing you have
13 seen me naked, I want to see you naked. Those are his
14 words. You will see. Once he confirms she's a 15-year-old
15 minor, he wants pictures of her.

16 Because Deputy Parry doesn't conduct general
17 investigations, she contacted Richard Carter. Richard
18 Carter is one of the task force agents across this state to
19 conduct internet crimes against children investigations.
20 She -- he got the chats, he got the pictures. He knew that
21 Mr. Oertel was from Rock Hill. And he went there.

22 He went there and found Mr. Oertel. Mr. Oertel did
23 tell him, Yeah, I did all those things, but really I didn't
24 think she was 15.

25 It will be yours to decide. This case is about

1 protecting our children. Mr. Oertel has been charged with
2 one count of criminal solicitation of a minor, four counts
3 of attempted dissemination of obscene material and one
4 count of attempted sexual exploitation of a minor.

5 At the end of this case, the judge will give you
6 the law as to the elements that the State is required to
7 have met in this case. Through the testimony, we will get
8 out that information through Deputy Parry and Deputy --
9 through Investigator Carter.

10 We ask you to be open in this case. What you hear,
11 what you see may disturb you. These cases by their very
12 nature are disturbing because they involve our children.
13 We are confident, however that after you hear the State's
14 presentation of the case that you will find beyond a
15 reasonable doubt that Mr. Oertel is guilty of these six
16 charges.

17 Thank you.

18 THE COURT: Thank you, thank you, Mr. Flores.

19 Mr. Boyd.

20 MR. BOYD: May it please the Court.

21 Ladies and gentlemen, again my name the Jim Boyd
22 and I represent Tim Oertel. This case began when Deputy
23 Sara Parry created a fake Facebook account or page and used
24 the name of Emmy Robinson. On that page, she put some
25 pictures, including a profile picture of a woman in a

1 bikini. The -- she put some made up personal information
2 in there. One of them she said that she went to A.C. Flora
3 high school and she also, per her birth date, that would
4 have made her 15 years old if it were true.

5 Now, Tim Oertel found the Facebook page, saw the
6 pictures, and thought it was attractive and started a
7 private chat with who he thought was Emmy Robinson. They
8 chat back and forth a while and then he asked her would she
9 like to see something hot. She responds, yeah. And then
10 he sends her some nude pictures of himself and the pictures
11 are pretty graphic.

12 You'll see them, they're pretty graphic. She tells
13 him she likes the pictures and they go back and forth and
14 then they start engaging in some sex talk about what they
15 would do if they were together at the time. If we were --
16 if you were here, I would do this. And they go back and
17 forth about that.

18 Then their conversation goes to what each of them
19 does and she -- the person he thinks is Emmy Robinson asked
20 him what he does. He tells her he's an engineer and he
21 asked her what she does.

22 She says that she attends A.C. Flora high school.

23 He then asks, how old are you.

24 She says 15.

25 He then responded to her that he was 26 and should

1 never have sent pictures to her of him naked. And he also
2 says, you must be using someone else's picture.

3 Now, his sending those pictures of himself is the
4 basis for the charge of attempted dissemination of obscene
5 material to a person under 18. He must have done this
6 knowingly. That is, he must have known she was under 18 at
7 the time that he sent the pictures. It will be clear from
8 the evidence, and you'll have this -- they are in black and
9 white, the chat that went on between them. It will be
10 clear from the chat that he didn't know she was --
11 hopefully 18, until after he sent the photographs.

12 Now, notice he is not charged with sending obscene
13 material or disseminating material to a minor, he's charged
14 with an attempt to do. What an attempt means is he was
15 trying to send obscene material to a minor. To try to send
16 obscene material to a minor, who didn't in fact exist, he
17 would have to think that's what he was doing at the time he
18 did.

19 You will see from the evidence that there is some
20 dispute that he did not send any material to her, no
21 picture sent to her after he discovered she was supposedly
22 15 years old. Anything he did after that point can't make
23 a crime a crime after it's happened.

24 The -- he's also charged with criminal solicitation
25 of a minor. And basically, what criminal solicitation of a

1 minor provides that if someone knowingly contacts or
2 communicates or attempts to communicate with a person under
3 the age of 18 or a person reasonably believed to be under
4 18, with the intent of persuading, inducing, enticing or
5 coercing the person to engage or participate in sexual
6 activity and then it's define in the statute. You'll have
7 that.

8 Again, at the time that they engaged in the sex
9 talk about what he -- or I would do if you were here and
10 all that. He did not know that she was claiming to be 15
11 years old. He thought he was talking to an adult at that
12 time.

13 It will be clear from the evidence that that was
14 what was in his mind. In all -- in addition to that,
15 there was no solicitation to do anything. There was talk
16 about what I would -- what we would do if you were here,
17 but she wasn't there. There's never any talk about her
18 coming to meet him. There's no meeting arranged. There's
19 no coming to meet. None of that happens. So there's
20 actually no solicitation to actually perform a sex talk --
21 a sex act, it's fantasy talk about what I'd do if I were
22 with you, if you were here, which she wasn't.

23 So I submit to you, you will see that there is
24 no -- there is no solicitation of a minor.

25 The last charge that he is charged with is the

1 sexual exploitation of a minor. Now, after she told him
2 that she was supposedly 15 years old, he did ask her to
3 send him some pictures. And this is the basis for the
4 charge of first degree exploitation of a minor. What that
5 constitutes, basically is someone employs, induces,
6 coerces, or encourages, or facilitates a minor to engage or
7 assist those engaged in sexual activity or appear in a
8 state of sexually explicit nudity when a reasonable person
9 when referring to the purpose of sexual stimulation or a
10 live performance or for the purpose of producing material
11 that contains a visual representation depicting this
12 activity or a state of sexual explicit nudity when a
13 reasonable person would infer for the purpose of sexual
14 stimulation.

15 I don't expect you to remember everything. You're
16 going to hear all about this a lot later.

17 Well, what the State has charged him of doing is,
18 that he's encouraging her. And I don't think asking for
19 pictures would be considered engaging in a sexual activity.
20 But I think the State is claiming he asked her to appear in
21 a state of sexual explicit nudity; and from the second
22 part, for the purpose of producing material.

23 Tim Oertel wasn't producing material, didn't intend
24 to produce material. There's nothing there. He asked her
25 to send some pictures, but he didn't ask her to appear in a

1 state of sexual explicit nudity for the purpose of making
2 material or creating child pornography basically. He
3 didn't do that.

4 Now, in this case, as the judge has told you, Tim
5 Oertel is presumed to be innocent. That's something you've
6 heard about probably all of your life that everyone is
7 presumed to be innocent. But when you get into the
8 courtroom or you read in the paper that somebody's charged
9 with all these things, it sounds horrible and the
10 presumption of innocence kind of flitters away it seems
11 like. But you, as jurors, have to realize the basic
12 standard of law.

13 And basically what that means, presumption of
14 innocence, is that he's not required to come into the
15 courtroom and to prove to you that he's innocent. The
16 State has to come into the courtroom and prove that he is
17 guilty and they have to prove that guilt by what's called
18 proof beyond a reasonable doubt.

19 Now, the judge will define reasonable doubt to you
20 at the end of the case, but basically they have to produce
21 and prove their case, not that he may be guilty or could be
22 guilty or even that he's probably guilty. They have to
23 prove beyond any reasonable doubt in your mind that he's
24 guilty.

25 Now, in this case, a lot of the actual facts of

1 what happened, there's not going to be a lot of dispute
2 about. I mean what happened, happened. Well, the law
3 talks about knowledge, it talks about intent; it talks
4 about belief. And those are the things the State is going
5 to have to prove beyond a reasonable doubt in this case
6 when we submit the case to you.

7 I just want you to keep in mind that you're
8 probably -- you're not going to like what Tim Oertel did.
9 You're not going to like the pictures he sent that you're
10 going to see. But everything that is wrong is not illegal.
11 Everything that's immoral is not necessarily illegal.
12 Everything that's disgusting is not necessarily illegal.
13 You may think Tim Oertel did all those things, did
14 something that was wrong and horrible and disgusting, but
15 there's a difference between doing that and doing something
16 illegal.

17 And Tim Oertel didn't do anything illegal and
18 that's why at the end of this case, we maintain your
19 verdict should be not guilty.

20 Thank you.

21 THE COURT: Thank you. Thank you, Mr. Boyd.
22 Mr. Flores, you may call your first witness.

23 MR. FLORES: Yes, Your Honor, the State would call
24 Deputy Sara Parry.

25 THE COURT: All right. If you would come around

1 for us, please.

2 SARA PARRY,

3 having been duly sworn, testified as follows:

4 THE CLERK: Please have a seat in the jury box and
5 state your full name for the record.

6 THE WITNESS: Deputy Sara Parry Hood.

7 DIRECT EXAMINATION

8 BY MR. FLORES:

9 Q Good morning Deputy Parry, or Hood.

10 A Good morning.

11 Q I'm calling you Deputy Parry because why is that?

12 A Because at the time I was Parry. I just got
13 married.

14 Q So if I interchange or if I say it by accident --

15 A Yes, sir.

16 Q Deputy Hood, where are you currently employed?

17 A Richland County Sheriff's Department.

18 Q And how long have you been at the sheriff's
19 department?

20 A Four-and-a-half years.

21 Q And what is your job title currently?

22 A I'm school resource officer.

23 Q Okay. Where are you assigned.

24 A I was at Heathwood Hall. I am at Edward E. Taylor
25 elementary this year.

1 Q And you just started this year at Edward?

2 A Yes.

3 Q What are your duties as a school resource officer?

4 A So basically, we teach -- educate the students and
5 we counsel them if they need to talk to someone besides a
6 teacher or they feel comfortable with us, they talk to us.
7 And basically go over any law related issues that go on at
8 school.

9 Q All right. In your assignment as the school
10 resource officer, are you familiar with internet based
11 social media?

12 A Yes.

13 Q And how are you familiar with that?

14 A Facebook, whatever the stuff students are on. Snap
15 chat, Instagram, things like that.

16 Q Do your students often come to you concerning
17 issues with social media?

18 A Yes.

19 Q For example what might they come to you about?

20 A Someone talking to them on the internet, someone
21 bullying them. Usually with the high schoolers showing
22 one's pictures and any of that range of stuff.

23 Q Now, you mentioned Facebook. Are you familiar with
24 Facebook?

25 A Yes.

1 Q Could you describe for the jury in your own words
2 what you believe Facebook is?

3 A Social media where you can post pictures, talk to
4 people, post on their walls, basically keep in touch with
5 people from a distance.

6 Q Okay. Now, do you have a personal Facebook page?

7 A Yes.

8 Q And on that Facebook page, what do you have?

9 A Just information about myself and my picture and
10 that's basically about it.

11 Q Is it a public page or is it a private page?

12 A Private.

13 Q And what does that mean?

14 A Well, there where not everybody can find me. Where
15 you can't see all my information. You can't see all my
16 pictures if you're not a friend of mine. If you are a
17 friend, you can see all of that.

18 Q All right. So if we were friends, I could see
19 whatever pictures you posted?

20 A Yes.

21 Q But if you're not a friend, I couldn't just do
22 that?

23 A Yeah.

24 Q What about a public profile?

25 A A public means it's open. Everybody can see it

1 even if you're not a friend, so if I search someone out, I
2 can see all their information. I can see where they're
3 from, their age, their birth date, their -- where they work
4 et cetera, et cetera; all their pictures, if it's open.

5 Q Does Facebook allow you to change between public
6 and private information?

7 A Yes.

8 Q While you were a school resource officer at
9 Heathwood Hall, did you create a Facebook profile for --
10 that represented an underage individual?

11 A Yes.

12 Q Who was that individual?

13 A Emmy Robinson.

14 Q Emmy Robinson.

15 Detective Parry or I'm sorry, Deputy Parry, why did
16 you create a profile for not an -- or, I'm sorry, a
17 fictitious 15-year-old white girl?

18 A Heathwood Hall goes from little to small kids all
19 the way up to high schoolers. A lot of my high schoolers
20 have issues or bullying. Even the middle schoolers have
21 bullying on social media. They're also getting people to
22 talk to them and they add people they don't know and so I
23 like to just monitor and just make sure they're not doing
24 anything they shouldn't be doing.

25 Q So -- but your Facebook profile for Emmy Robinson,

1 did it say Heathwood Hall?

2 A No.

3 Q What did it say?

4 A A.C. Flora.

5 Q Why would you list A.C. Flora if you weren't
6 assigned there?

7 A I listed A.C. Flora because Heathwood Hall is a
8 small school. The class sizes for each class usually range
9 from 30 to 50. The biggest I saw was 70. So if you were a
10 student out there, you would know everybody out there in
11 your class.

12 Q So in order to monitor students at Heathwood Hall,
13 you put down A.C. Flora so they wouldn't suspect that you
14 were fake?

15 A Yes.

16 Q With that fake profile, did you ever go out and
17 conduct undercover investigations to snare criminals?

18 A No.

19 Q So it was merely a passive way -- an active way to
20 monitor the students in which you were a passive
21 investigator, weren't you?

22 A Yes.

23 MR. FLORES: Your Honor, if I may approach the
24 witness?

25 THE COURT: Yes, sir.

1 BY MR. FLORES:

2 Q Deputy Parry, I'm going to mark -- I'm going hand
3 you what's been premarked as State's Exhibit 1. Would you
4 take a moment and just review that information, please.

5 A (Looking.)

6 Q Deputy Parry, are you familiar with these -- this
7 document?

8 A Yes.

9 Q Is this a set of documents -- these pages, are they
10 a fair and accurate depiction of the Facebook profile you
11 created for Emmy Robinson in August of 2015?

12 A Yes.

13 MR. FLORES: Your Honor, we would just ask that we
14 publish -- introduce that into evidence and publish that
15 for the jury.

16 THE COURT: Mr. Boyd?

17 MR. BOYD: No objection.

18 THE COURT: State's 1 is in evidence without
19 objection. And you may publish.

20 MR. FLORES: Thank you, Your Honor.

21 (State's Exhibit Number 1 was entered into
22 evidence.)

23 BY MR. FLORES:

24 Q To your left on the screen for the jury, is this
25 your Facebook profile for Emmy Robinson?

1 A Yes.

2 Q Okay. And if a member of the public clicks your
3 name is this what they would have seen in August of 2015?

4 A Yes.

5 Q All right. Now, I know it's a little blurry for
6 the jury here, but it's a little bit clearer on your
7 documents which will be sent back, but what does yours read
8 as to where you go to school? That would be right here.

9 A A.C. Flora high school.

10 Q A.C. Flora high school. This says -- what's this
11 line here?

12 A Lives in Columbia, South Carolina.

13 Q And you're reading that from that set of documents?

14 A Yes.

15 Q Where does it say you were born?

16 A From Florence, April -- I'm sorry, I can't read it,
17 April 15, 20 -- 2000.

18 Q April --

19 A 15th, 2000.

20 Q April 15th of 2000. Okay. So this is all -- if
21 you were to click on your site, Emmy Robinson, this is what
22 they would see, first thing?

23 A (Witness nodded head.)

24 Q Where is -- where are the pictures located here?

25 A You can click on my profile and look at my pictures

1 or you can click under the photos.

2 Q So if you click up here --

3 A Uh-huh.

4 Q -- or a photo session which will be down further?

5 A It's on the top bar below my name. Over -- it's
6 the second one to the -- that end.

7 Q All right. Right here?

8 A Yeah.

9 Q All right. But this is what they would see?

10 A Uh-huh.

11 Q All right. Let's talk about your profile picture
12 for a moment. Is that a picture of you?

13 A No.

14 Q All right. Did you take a picture of a 15-year-old
15 student to get that?

16 A No.

17 Q Where did you get that picture?

18 A Pinterest.

19 Q Pinterest. What is Pinterest?

20 A It is a social site where if you wanted to search
21 something, people have pinned things on this site to make
22 it easier to find. So you can do crafts or you could find
23 pictures of hair like you wanted to style your hair, that
24 kind of thing. But a lot of females use it.

25 Q Well, I'm into baking cakes, can I go to Pinterest

1 to find cakes?

2 A Yes.

3 Q Okay. So you found this profile picture on
4 Pinterest. What did you do to find it?

5 A Searched young girl.

6 Q Young girl. And this was one of many pictures that
7 came up --

8 A Yes.

9 Q -- for your profile?

10 So according to this profile, this picture: Birth
11 date, April 15, 2000. How old was Emmy Robinson in 2015?

12 A 15.

13 Q 15 years old. Is there anything else about that
14 picture that you can tell? Just a girl jumping? Is there
15 any other information about her on this site?

16 A That should be -- I put my birth date or the date
17 of birthday, the school and where I lived and that's about
18 it. And then made it where it just was open to everybody.
19 Everybody should have seen it.

20 Q Okay. So everybody could see that this profile
21 picture was associated with your information, which lists
22 your age as 15?

23 A (Witness nodded head.)

24 Q So when you clicked on it, it didn't send you to
25 Pinterest, did it?

1 A (Witness shook head.)

2 Q So it didn't send you to any other website with any
3 other additional information?

4 A No.

5 Q Just sent you to that profile, age 15?

6 A Uh-huh.

7 Q Now, as part of that documentation that you have
8 there, is the profile -- is there any other information in
9 that set of documents that you have?

10 A Like what other information?

11 Q What do the other pages include?

12 A The messages that Oertel sent me.

13 Q All right. So is that a fair and accurate
14 representation of the exchange you had with Mr. Oertel in
15 August and September of 2015?

16 A Yes.

17 MR. FLORES: Your Honor, we're going to go through
18 that dialogue. It's already in evidence. As part of the
19 presentation, we'll go through that dialogue.

20 THE COURT: Yes, sir.

21 BY MR. FLORES:

22 Q According to that information that you have during
23 this exchange with Mr. Oertel, when was the first time that
24 you received a message?

25 A August 28th at 9:58 a.m., 2015.

- 1 Q All right. And what did Mr. Oertel say?
- 2 A Hello there.
- 3 Q Now, did you ever reach out to Mr. Oertel?
- 4 A After.
- 5 Q After. Not before?
- 6 A No, I didn't reach out to him initially; he reached
- 7 out to me.
- 8 Q So he sent the first message to you on this date
- 9 right here. How did you respond and when did you respond?
- 10 A A few days later, saying, how are you.
- 11 Q Why did you respond to Mr. Oertel?
- 12 A Because I didn't want him to say anything on my
- 13 wall because if I was fake or to do anything where my
- 14 students would see that.
- 15 Q Okay. So you engaged in conversation in order to
- 16 protect your undercover identity?
- 17 A Yes.
- 18 Q What message did you receive next?
- 19 A I'm great. Yourself?
- 20 Q And when did you receive that?
- 21 A Doing -- it's about on the 31st, 2015 at 10:47.
- 22 Q Now was this the time that you would normally be
- 23 at --
- 24 A School.
- 25 Q -- Heathwood Hall --

- 1 A Yes.
- 2 Q -- during school hours, on duty as an officer?
- 3 A Yes.
- 4 Q And when did you respond to that?
- 5 A About one o'clock in the afternoon on the 31st.
- 6 Q And what did you say?
- 7 A Doing well, enjoying this nice weather.
- 8 Q All right. That have when did you receive the next
- 9 message?
- 10 A August 31st, 2015, 11:30 p.m. It was a picture.
- 11 Q It was a picture?
- 12 A Uh-huh.
- 13 Q All right. So August 31st, 2015, you received this
- 14 picture from Tim Oertel. Can you tell from what you have
- 15 and what's on display where that picture perhaps is being
- 16 taken?
- 17 A Looks like the shower.
- 18 Q Looks like the shower. So Mr. Oertel sends you a
- 19 picture at 11:30 p.m. purporting to be in the shower.
- 20 When did you respond to this picture next?
- 21 A September 1st at 9:42 a.m.
- 22 Q All right. And what do you post then?
- 23 A I just posted some. I think he was asking for
- 24 pictures.
- 25 Q All right. So you just posted some new pictures

1 and you were telling him yes?

2 A Yeah.

3 Q All right. All right. What's next?

4 A I -- oh, I said, yeah, Rock Hill is not too far.

5 Q So he told you that he was from Rock Hill?

6 A Uh-huh.

7 Q Well, how far is Rock Hill from here?

8 A Hour, hour-and-a-half, maybe.

9 Q What next?

10 A He responded on September 1st, at 9:44. Where at,
11 I just checked and didn't find any. Like pics of your
12 beautiful face. Yeah, it's about an hour away.

13 Q So he posted next, so he looked at your photos and
14 perhaps didn't see any new ones, but he wanted to see pics
15 of your beautiful face?

16 A (Witness nodded head.)

17 Q What happened next?

18 A September 1st, 11:41, Hmm, I wonder what happened.
19 By the way, I do like your picture. Oh, an hour is an easy
20 drive.

21 Q Okay. So that's how you responded. I wonder what
22 happened because the pics weren't there?

23 A Yeah.

24 Q He asked you whether or not you liked his picture?

25 A Yes.

1 Q So you're saying yeah. Why would you respond that
2 way?

3 A Because he asked and I didn't want to get him mad
4 and I knew that it was a little weird that he was sending
5 me pictures of him so I had already talked to Carter and he
6 was telling me --

7 Q Okay. Before we go on, again, you don't normally
8 do proactive investigations with your cases, do you?

9 A No.

10 Q So did you contact someone at Richland County
11 concerning your investigation at this point?

12 A Yeah. Yes, I did. I contacted Investigator
13 Carter.

14 Q Okay. And why did you contact Investigator Carter?

15 A Because I knew he was -- he dealt with internet
16 crimes.

17 Q All right. And had he conducted these
18 investigations before?

19 A Yes.

20 Q So how did he instruct you to proceed with this
21 chat dialogue?

22 A To just keep dialogue going to see what else he
23 said, see if he'd come down because that's what he was
24 going to. That's why he asked -- something about Rock
25 Hill. So he was just telling me, you know, encourage him

1 to keep going with the dialogue.

2 Q Did you say, you should ask him to come down?

3 A He said to see if he would actually come down.

4 Q Okay. To see if he would actually come down. So
5 he instructed you to be a passive participant of this
6 conversation?

7 A Yes.

8 Q Keep it going?

9 A Keep it going.

10 Q But not necessarily take it in any direction?

11 A Yeah. Just be passive.

12 Q Okay. So you said, by the way, I did like your
13 picture. Over an hour is an easy drive.

14 He responds, Yeah.

15 What does he say next?

16 A September 4th, 2015, 11:42 a.m., Yep, you want to
17 see something hot.

18 Q Okay.

19 MR. FLORES: I'm -- if I may approach the witness,
20 Your Honor?

21 THE COURT: Yes, sir.

22 MR. FLORES: Thank you.

23 BY MR. FLORES:

24 Q I'm going to hand you what's been marked as State's
25 Exhibit 2.

1 A Okay.

2 Q Would you please take a look that the exhibit?

3 A Okay.

4 Q Do you recognize this exhibit?

5 A Yes.

6 Q All right. So in response to -- I'm sorry is it a
7 fair and accurate representation of what you received next
8 in that chat dialogue?

9 A Yes.

10 MR. FLORES: Your Honor, we would offer State's
11 Exhibit 2 and ask it be published to the jury.

12 MR. BOYD: No objection.

13 THE COURT: State's 2 is in evidence without
14 objection.

15 (State's Exhibit Number 2 was entered into
16 evidence.)

17 BY MR. FLORES:

18 Q So this is what you received?

19 A Yes.

20 Q All right. This is a picture of?

21 A Tim Oertel.

22 Q Tim Oertel. He's in the shower and he's nude, is
23 that right?

24 A Yes.

25 Q You didn't ask for this picture?

- 1 A No.
- 2 Q None of this dialogue that we've gone through, you
- 3 never asked for it?
- 4 A No.
- 5 Q After he sent you that, what did he say next?
- 6 A Hold on. (Looking.)
- 7 I just said, Yeah, at 11:43.
- 8 Q I think we're at 11:44.
- 9 A 11 -- well -- all right. He said on September 1st,
- 10 11:44 a.m., What do you think. I -- do you want me to keep
- 11 going?
- 12 I responded back at 1:45, I like. Look good.
- 13 Q Okay. Why did you respond that way?
- 14 A Just to keep the conversation going so he wouldn't
- 15 get weirded out and quit talking.
- 16 Q Okay. Sow just wanted to keep the conversation
- 17 going?
- 18 A Uh-huh.
- 19 Q That's a passive response, like, he asked you a
- 20 question?
- 21 A Yeah.
- 22 Q What did he say next?
- 23 A He said at 11:45 a.m., Thanks, baby. You like my
- 24 dick.
- 25 Q And you responded?

1 A Yes, it looks very nice.

2 Q What did Tim say next?

3 A At 11:45, he says, Yep, I love my dick and then he
4 continued on with more pictures.

5 Q Okay. So he sent you more pictures at this point?

6 A Yes.

7 MR. FLORES: Your Honor, if I may approach the
8 witness?

9 THE COURT: Yes, sir.

10 MR. FLORES: Thank you sir.

11 BY MR. FLORES:

12 Q I'm going to hand you what's been marked State's
13 Exhibits 3, 4, and 5, and ask are you familiar with these
14 pictures?

15 A Yes.

16 Q All right. Are these pictures the ones that Mr.
17 Oertel sent to you at 11:46 on September 1st?

18 A Yes.

19 Q Did you ask for these pictures?

20 A No.

21 MR. FLORES: Your Honor, we ask that we can publish
22 exhibits 3, 4, and 5 to the jury.

23 MR. BOYD: No objection.

24 THE COURT: State's 3, 4, and 5 is in evidence
25 without objection. And you may publish.

1 MR. FLORES: Thank you, Your Honor.

2 (State's Exhibit Number 3, Number 4, and Number 5
3 was entered into evidence.)

4 MR. FLORES: Thank you, Your Honor.

5 BY MR. FLORES:

6 Q So this is the first picture you received at 11:46
7 a.m. that's State's Exhibit 3?

8 A Yes.

9 Q This is the next picture, State's Exhibit 4. And
10 this is State's Exhibit 5?

11 A Yes.

12 Q You received those all to the Facebook account for
13 Emmy Robinson?

14 A Yes.

15 Q Did not ask for any of them?

16 A Did not ask for them.

17 Q How did the conversation continue?

18 A He said, You like, at 11:47.

19 And I said, Oh wow, sure do.

20 Q All right. And why did you respond in that way?

21 A To keep the conversation going.

22 Q Proceed.

23 A He responded back at 11:48, Maybe one day he will
24 be all yours, so I can see what you look like -- so can I
25 see what you look like.

- 1 Q So at this point, he's already asking you for
2 pictures?
- 3 A Yeah.
- 4 Q Not specifying exactly?
- 5 A Yeah, not specifying.
- 6 Q He wants to see more pictures of you?
- 7 A Uh-huh.
- 8 Q Continue.
- 9 A I responded, I just need to get some pictures, at
10 11:50.
- 11 Q At 11:50. What did he say next?
- 12 A What would you do with it if it was with you -- if
13 I was with you naked in front of you right now.
- 14 Q And you did not say anything about sex. This is
15 the full dialogue, correct?
- 16 A Yeah.
- 17 Q So at 11:50 in the morning, he asked what you would
18 do? Now, did you ask Investigator Carter about how to
19 respond to a question like that?
- 20 A Yeah, he just said just keep the conversation going
21 as much as you can. It was awkward.
- 22 Q Okay. Had you ever done these kind of
23 conversations before?
- 24 A No.
- 25 Q So you've never done this with other cases?

- 1 A No.
- 2 Q All right. So how did you respond to this?
- 3 A I said probably just start kissing you. After
- 4 that, I'm not really sure, I'm not really experienced.
- 5 Q So as part your instruction, were you told just
- 6 keep it going, but don't offer?
- 7 A Yeah.
- 8 Q So you don't say something sexually explicit, see
- 9 what they're going give you?
- 10 A Yeah.
- 11 Q What did he say next?
- 12 A LOL, I love to kiss, by the way.
- 13 Q LOL, what does that mean?
- 14 A Laugh out loud.
- 15 Q Laugh out loud. Is that common?
- 16 A Yeah.
- 17 Q Shorthand, abbreviation?
- 18 A Uh-huh.
- 19 Q Okay. What did you say next?
- 20 A Good, because I'm good at that, LOL.
- 21 Q How did he respond next?
- 22 A Well, maybe this weekend we can hang out. Well, I
- 23 will be the judge of that.
- 24 Q So, maybe this weekend we can hang out?
- 25 A He was wanting to get together.

1 Q So he was wanting to get together. You didn't say
2 we should get together or asked that we meet, did you?

3 A (Witness shook head.)

4 Q Well, I will be the judge of that, was that in
5 response to a previous comment?

6 A Yes.

7 Q What did you do next?

8 A A wink emoticon.

9 Q So it was a smiley face with a wink?

10 A Yeah, emoji, basically.

11 Q Emoji?

12 A Uh-huh.

13 Q What did Mr. Oertel say next?

14 A So what do you like to do to my dick, baby -- what
15 would you -- yeah, what do you.

16 Q So he's going back to --

17 A His dick.

18 Q -- sexual conversation?

19 A Yes.

20 Q How did you respond?

21 A Hmm, probably kiss around it again, I'm not
22 experienced, I guess I would need help.

23 Q Passive?

24 A Yes.

25 Q Keep the conversation going?

1 A Yes.

2 Q How did Mr. Oertel respond?

3 A LOL, well, you know what I would do if you were
4 here in front of me naked.

5 Q How did you respond?

6 A What would you do.

7 Q What did Mr. Oertel say that he would like to do to
8 you? At 12:03 p.m.?

9 A I would push your naked body against mine as you
10 feel my rock hard dick slide between your legs. I'd slam
11 you up AGC, I'm guessing against, the wall, holding your
12 head, kissing those soft, wet lips. I'd run my hands down
13 your body to your legs, then to your beautiful butt to grab
14 then and pull you onto me, something like that.

15 Q So this conversation on September 1st, started
16 around 9:42 in the morning, correct?

17 A Yes.

18 Q And by 12:03, received all these pictures, four
19 pictures, and this statement about having sex?

20 A Yes.

21 Q And perhaps a meeting already?

22 A Yes.

23 Q But you solicited none of it; you asked for none of
24 it?

25 A No.

- 1 Q What did you do next?
- 2 A At 1:45 a.m., Oh, wow, what do you do.
- 3 Q All right. So at 1:45 p.m., is that when you
- 4 finally read that message?
- 5 A Yeah.
- 6 Q Do you typically have duties around the lunch hour?
- 7 A Yes.
- 8 Q So is that where you were?
- 9 A I was busy, yeah.
- 10 Q Busy at that time. So at this point in the
- 11 conversation, you turned it back around to find out more
- 12 about Mr. Oertel?
- 13 A Yes.
- 14 Q All right. And how did he respond?
- 15 A I'm an engineer. And you?
- 16 Q What did you say?
- 17 A I'm still in school.
- 18 Q All right. What next?
- 19 A So what do you think if I had you right now. Cool
- 20 where at.
- 21 Q So the first message is going back to where?
- 22 A Back to the sex, what he would do.
- 23 Q And he happens to respond also --
- 24 A To the other part, to my part --
- 25 Q The other part of the conversation?

- 1 A Yes.
- 2 Q So Mr. Oertel wanted to go back to previous
- 3 conversation --
- 4 A Uh-huh.
- 5 Q -- but you were going forward with this other
- 6 conversation?
- 7 A Yes.
- 8 Q How do you respond?
- 9 A A.C. Flora HS for high school.
- 10 Q How does Tim Oertel respond?
- 11 A Cool, how old are you.
- 12 Q And how do you respond?
- 13 A 15, but I will be 16 in February.
- 14 Q All right. So at this point in time, you tell him
- 15 you're going to be 16 in February?
- 16 A Uh-huh.
- 17 Q Your profile says April?
- 18 A Yeah.
- 19 Q Is that a mistake in the conversation?
- 20 A Yes.
- 21 Q You just forgot what you put on your profile page?
- 22 A Yeah.
- 23 Q But you're always 15 in these conversations?
- 24 A Yes.
- 25 Q The profile itself depicts it as 15, correct?

1 A Yes.

2 Q And A.C. Flora is a high school?

3 A Yes.

4 Q Is there a middle school?

5 A No -- well, it's Hand, I think, Middle, that feeds
6 into it. Different, you know --

7 Q Different names, so it's always going to be high
8 school?

9 A Yes.

10 Q He says cool. All right. How do you respond to
11 Mr. Oertel after that?

12 A I asked him how old are you.

13 Q And how did he respond?

14 A Really I should never have sent you pics of me
15 naked, I'm 26. Then, why are you using someone else's pic.

16 Q All right. So he admits he shouldn't have done
17 what he did?

18 A Uh-huh.

19 Q He says why are you using someone else's pic?

20 A Yes.

21 MR. BOYD: Your Honor, I'm sorry. I think that's a
22 mischaracterization. It's not a lie. It's then you are --
23 I think it's up to the jury to interpret what was said.

24 THE COURT: And there's a transcript of what's said
25 and it would be up to the jury for the determination of

1 what that means.

2 Thank you. Thank you, Mr. Boyd.

3 BY MR. FLORES:

4 Q How do you respond to this query?

5 A I said I'm not. That's me. People tell me I look
6 older, but I'm just 15.

7 Q So you are 15 in your profile?

8 A Yes.

9 Q You are 15 in your picture?

10 A Yes.

11 Q You told him no other age but 15?

12 A Yes.

13 Q What does he say next?

14 A Really. If that's you, I want to see more pics.

15 Q So he wants to continue to see more pics of you at

16 15?

17 A Yes.

18 Q All right. How did you respond?

19 A I will have to wait until I get home from school,
20 but I will post some.

21 Q And how does he respond to that?

22 A Sure that works. But seeing you have seen me
23 naked, I want to see you naked. And then I say okay.

24 Q And then you say okay. So what -- based on your
25 conversation with Mr. Oertel, what kind of pictures did you

1 believe he wanted?

2 A Naked pictures.

3 MR. BOYD: Your Honor, I'm going to object to him
4 leading.

5 THE COURT: I will overrule the objection.

6 THE WITNESS: I believe he wanted naked pictures.

7 BY MR. FLORES:

8 Q And he had sent -- what kind of pictures did he
9 send you?

10 A Naked pictures.

11 Q Okay. So did your conversation continue after
12 that?

13 A He sent me another message, one more at 10:30 p.m.,
14 September 1st, and that was it.

15 Q And that was -- in totality that was your entire
16 conversations with Mr. Oertel?

17 A Yes.

18 Q And I just want to clarify for the record, did you
19 have any other Facebook contact with Mr. Oertel after
20 September 1st?

21 A No.

22 Q Once you got all of those pictures and all of those
23 messages on your profile, what did you do with those?

24 A I gave basically my password and user name to
25 Investigator Carter. He was the one who gathered all that

1 and did the warrant and all that for that.

2 Q So you took all that information, gave it to
3 Investigator Carter to follow up on the investigation?

4 A Yes.

5 Q And why did you do that?

6 A Because he was more informed in doing the
7 investigations for internet crimes.

8 Q Okay. And you're a school resource officer and
9 typically --

10 A Don't do that.

11 Q Very well. Were you involved in any interview or
12 arrest of Mr. Oertel?

13 A When he came back to the headquarters, I came up
14 there and Investigator Carter introduced me to him and told
15 him I was Emmy Robinson and he told me hello and that he
16 apologized for everything.

17 MR. FLORES: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (There was a pause in the proceedings.)

20 BY MR. FLORES:

21 Q Just to clarify one point.

22 A Uh-huh.

23 Q Where is Heathwood Hall located?

24 A Off of Bluff and South Beltline Boulevard.

25 Q Is that within Richland County?

1 A Yes.

2 Q And all of your conversations with Mr. Oertel took
3 place there?

4 A Yes.

5 MR. FLORES: Those are our questions, Your Honor.

6 THE COURT: All right. Do you need the minute, Mr.
7 Boyd?

8 MR. BOYD: Yes, sir.

9 THE COURT: All right. Mr. Foreman, and ladies and
10 gentlemen of the jury, we're going to take about a 10
11 minute recess to set up some other equipment, I believe.
12 So if you'd please step to your jury room. Do not discuss
13 this case during this brief recess. Thank you, thank you
14 very much.

15 (The jury left the courtroom at 12:20 p.m.)

16 THE COURT: Deputy Parry, you may certainly step
17 down during this brief recess and refresh yourself. Do not
18 discuss your testimony with anyone. Thank you, thank you
19 very much.

20 Anything further before we take our recess?

21 MR. FLORES: Nothing from the State, Your Honor.

22 THE COURT: And the basis of my ruling as to that
23 one question was the last page of State's Exhibit 1 where
24 the transcript indicates that Mr. Oertel sent a text
25 with -- I guess you can call it words, I want to see you

1 THE COURT: And if we can have our officer back up
2 here?

3 (The jury entered the courtroom at 12:38 p.m.)

4 THE BAILIFF: Jurors are all seated, Your Honor.

5 THE COURT: Who changed places? (Laughter)

6 See, what did I tell you.

7 Welcome back, ladies and gentlemen. We're
8 continuing the trial of the case by the cross-examination
9 of Deputy Parry by Mr. Boyd. I would ask you to please
10 continue to give the parties your complete and undivided
11 attention as you have done throughout the trial of this
12 case.

13 Mr. Boyd.

14 CROSS-EXAMINATION

15 BY MR. BOYD:

16 Q Good morning, Deputy Parry?

17 A Morning.

18 Q It's Hood now; is that correct?

19 A Hood.

20 Q Okay. At the time, back on September 1st when this
21 conversation occurred, I think it was all on September, you
22 were working as a school resource officer where?

23 A Heathwood Hall.

24 Q Heathwood Hall. And I believe Heathwood Hall was a
25 private school; is that correct?

1 A Yes.

2 Q Okay. And you were assigned there by the Richland
3 County Sheriff's Department; is that correct?

4 A Yes.

5 Q Okay. And were you paid by Heathwood Hall or by
6 the Richland County?

7 A Heathwood Hall pays Richland County Sheriff's
8 Department and the sheriff's department pays me.

9 Q Okay. So basically Heathwood Hall paid the
10 sheriff's department for your salary; is that correct?

11 A Yes.

12 Q Okay. And that -- was that your sole duties with
13 the sheriff's department at that time?

14 A It was as far as being the resource officer for
15 Heathwood Hall.

16 Q And --

17 THE COURT: Would you speak up for me a bit,
18 please. Thank you, thank you.

19 BY MR. BOYD:

20 Q And as part of your duties at Heathwood Hall, you
21 created this Facebook account; is that correct?

22 A Yes.

23 Q Okay. And you testified some about Facebook and
24 to -- in order to create a Facebook page, you're familiar
25 on how to do that; is that correct?

1 A Yes.

2 Q Okay. And in using Facebook, you have to agree to
3 certain terms and conditions; is that correct?

4 A Yes.

5 Q Okay. And basically, you -- you make commitments
6 regarding -- relating to registering and maintaining the
7 security of your account; is that correct?

8 A Uh-huh.

9 Q Okay. And the -- one of them that is a commitment
10 you make, part of the agreement that you make as Facebook,
11 is that you will not provide any false personal information
12 on Facebook; is that correct?

13 A That's correct.

14 Q And -- or Facebook, doesn't allow you to create an
15 account for anyone other than yourself without permission;
16 is that correct?

17 A Yes.

18 Q Okay. And did you get permission from Facebook to
19 create this fake account?

20 A No.

21 Q Okay. And so you violated that provision of your
22 agreement with Facebook by creating this account?

23 A Yes.

24 Q And under the Facebook community standards, it
25 provides by joining Facebook, you agree to use authentic

1 name and identity; isn't that correct?

2 A I don't know. I guess.

3 Q But you didn't use your authentic name and
4 identity?

5 A No.

6 Q And now, you used a photograph of someone you found
7 on a website is it, or...

8 A Pinterest.

9 Q And you used that to make the profile picture of
10 Emmy Robinson; is that correct?

11 A Yes.

12 Q And it's a photograph of a -- it's a woman in a
13 blue bikini; is that correct?

14 A Yes.

15 Q Okay. And you didn't know who this person was; is
16 that correct?

17 A I had no idea who she was.

18 Q Okay. And you have -- and you pretty much knew she
19 wasn't under 18 years of age; is that correct?

20 A I don't know. All I Googled was young girl and
21 that is what popped up.

22 Q Okay. But you didn't get her permission to use her
23 photograph?

24 A No. It's out for the public.

25 Q Okay. All right. It's out for the public, but you

1 put it on a page as a fake identity?

2 A Yes.

3 Q Okay. And you also -- are you saying you thought
4 it could be a minor.

5 A She looked young to me.

6 Q Okay. So you would -- you think you can take a
7 picture off the internet or off of someone's, say Facebook
8 page and create a false identity of someone under 18 years
9 of age?

10 A The picture was out in the public for a public use.
11 It was there, she looked young. That's all I knew.

12 Q Okay. So, for instance, you'd take my 15-year-
13 old -- if my 15-year-old daughter is on the internet, you
14 can set up a fake account with it, without getting my
15 permission or my daughter's permission? Is that what
16 you're saying?

17 A When it's out in the public, it's out for the
18 public.

19 Q Okay. Well, and you didn't -- so are you saying if
20 somebody puts their picture out in the public, you have a
21 right to create a false persona using a faked identity with
22 that picture?

23 A I didn't say that, but people do.

24 Q People do it.

25 A Uh-huh.

1 Q All right. Now, let me -- you didn't make any
2 effort to find out who the individual was; is that correct?

3 A No, I just Googled young girl and that's what
4 popped up.

5 Q If you would look at the photograph. Does that
6 appear to be the profile picture you used?

7 A Yes.

8 Q Okay. Now, you see some other pictures along here
9 also; is that correct?

10 A Yes.

11 Q Well, why don't we go up --

12 MR. FLORES: Your Honor.

13 THE COURT: Yes, sir?

14 MR. FLORES: I would object to these additional
15 photos. She has not stated that she's seen any of these
16 photos.

17 MR. BOYD: I'm not --

18 MR. FLORES: Like how do these photos become
19 relevant then.

20 MR. BOYD: I'm going to the top of the page where I
21 believe there's some information that's relevant concerning
22 the individual whose photograph it is.

23 THE COURT: When you say top of the page, you're
24 talking about the first page of State's 1?

25 MR. BOYD: No, sir. First page of this website.

CROSS-EXAMINATION CONTINUED

BY MR. BOYD:

Q You said you didn't search any further for the individual; is that correct?

A That's correct.

Q And going to the top of the page I showed you where a photograph was, it looks like she's identified as a Lena Borchitnic; is that correct?

A I guess. I don't know.

Q Calls herself a happy Polish mom, date of birth 6/11/1994?

A I guess.

Q Which would make her 21 years old at that time?

A Uh-huh.

Q Is that correct?

A If you're going off of that date.

Q Now, when you set up a Facebook account, I believe you said, I believe it's in evidence. Can I approach?

A Yes.

Q Now, you put down certain personal information; is that correct?

A Not my personal information.

Q Well, fake personal information?

A Yes.

Q And the -- what you put for the individual, I

1 believe you testified earlier, you identified the
2 individual as attending -- as going to A.C. Flora high
3 school; is that correct?

4 A Yes.

5 Q And actually, that's not what you did; is it?

6 A I put that she was going the A.C. Flora High
7 School.

8 Q I believe you put -- it says went to A.C. Flora
9 High School?

10 A That's how it came up on Facebook. I did not put
11 it as I went to.

12 Q Okay. But that's how somebody looking at it would
13 see?

14 A I guess they would.

15 Q And that is past tense; is that correct?

16 A Yes.

17 Q Which indicates the person is no longer going to
18 A.C. Flora High School?

19 A That's true.

20 Q Now, looking -- let's talk about this conversation
21 you had over Facebook a little bit. You -- up to -- in the
22 conversation, up to about September 1st at 11:42, there was
23 no conversation of a sexual nature; is that correct?

24 A Up to when?

25 Q Until 9/1 at 11:42, there'd been no conversation of

1 a sexual nature.

2 A 9/1 at 11?

3 Q 11:42.

4 A Yes. Yes, that's true.

5 Q And then you see this -- and you said you had
6 posted some pictures and that -- and he asked where at.
7 And he said I checked. I didn't find any, like pics of
8 your beautiful face. So he's talking about the face of
9 Emmy Robinson; is that correct?

10 A Yes.

11 Q And that's -- and up to that point, there's been no
12 mention about age in the conversation; is that correct?

13 A I thought it was obvious through my Facebook about
14 how old I was.

15 Q My question is, there'd been nothing in the
16 conversation between you and he about age; is that correct?

17 A Nothing in the conversation.

18 Q Okay. And that -- going on down, that's when he
19 asked you, you want to see something hot. That's the first
20 time it starts talking about something of a sexual nature;
21 is that correct?

22 A Yes.

23 Q Nothing's been mentioned about age at that time?

24 A No.

25 Q And then, I believe your answer at that point is

1 yeah?

2 A Yes.

3 Q So at that point, he thinks that he's asked Emmy
4 Robinson that question and Emmy Robinson has answered
5 yeah --

6 A Yes.

7 Q -- to the request of you want to see something hot.
8 And at that point, that's when he starts sending
9 you the nude photographs of himself?

10 A Yes.

11 Q And then going on down in the conversation, he
12 asked you what do you think; is that correct?

13 A Yes.

14 Q And you answer, I like, you look good; is that
15 correct?

16 A Yes.

17 Q Okay. And he asked you about, pardon the language,
18 but, Thanks, baby, you like my dick; and you answered yes,
19 it looks very nice; is that correct?

20 A Yes.

21 Q And then apparently, he sends you some more
22 photographs at that time; is that correct?

23 A Yes. Well, before that, he said I love my dick.

24 Q Yeah. But -- and then he sends you some more
25 photographs?

1 A Yes.

2 Q And then he asks you, hope you like; is that
3 correct?

4 A Yes.

5 Q And your answer to that question is, Oh wow, Yeah,
6 sure do. So you answer in the affirmative that you liked
7 those pictures.

8 A (Witness nodded head.)

9 Q All right. Now, after that, there's some
10 discussion about what he would do to Emmy Robinson if she
11 was there; is that correct? I mean there's some other
12 conversation back and forth, but it comes down to he talks
13 about what he would do if you were there in front of him;
14 is that correct?

15 A Yes.

16 Q Okay. And the -- there's been some conversations
17 earlier about hanging out on the weekend, but that was
18 before this conversation concerning the -- what he would do
19 if you were there; is that correct?

20 A Yes.

21 Q Okay. And there's -- at that point, he'd never
22 asked you to come meet him; is that correct?

23 A I took it that he was insinuating. So if he wanted
24 to, he was willing.

25 Q All right. He never asked you to come meet; is

- 1 that correct?
- 2 A Not up front, not directly.
- 3 Q There wasn't a meeting arranged; is that correct?
- 4 A Not directly; not at that time.
- 5 Q Okay. And up to that point there's been no
- 6 discussion about age; is that correct?
- 7 A That's correct.
- 8 Q Okay. And do you ask him what he does?
- 9 A Yes.
- 10 Q And you're trying to find out some personal
- 11 information about him; is that correct?
- 12 A Yes.
- 13 Q Okay. And he tells you that he's an engineer; is
- 14 that correct?
- 15 A Yes.
- 16 Q Okay. And you say you're still in school?
- 17 A Uh-huh.
- 18 Q Okay. You don't say high school or identify what
- 19 school you're in, whether it's high school, college, law
- 20 school or what; is that correct?
- 21 A That's correct. I thought it was obvious.
- 22 Q Okay. And you say A.C. Flora High School?
- 23 A Yes.
- 24 Q And when you tell him you're in high school, that's
- 25 when he asked how old are you?

1 A Yes.
2 Q Okay. At that point you say 15?
3 A Yes.
4 Q That's correct?
5 A Uh-huh.
6 Q Of course, at that point you can say any number you
7 want to.
8 A I said 15.
9 Q Okay. But then that's the first time in the
10 conversation that it's mentioned how old you supposedly
11 are?
12 A Yes.
13 Q And after that point, he sends you no more
14 pictures; is that correct?
15 A That's correct.
16 Q Okay. He says -- I believe he says, I should
17 never -- really I should never have sent you pictures of me
18 naked, I'm 26; is that correct?
19 A Yes, that's correct.
20 Q And then he follows that, Then you are using
21 someone else's pic?
22 A Actually he goes, Then why are you using someone
23 else's pic, but yes.
24 Q Well, it's a lie, we can interpret -- you may
25 interpret, Then why are you using, or you are using; but

1 either way, he's insinuating that's not you in the
2 photograph in the blue bikini, that's somebody else?

3 A He's asking, yes.

4 Q Okay. And if -- and you tell him that you are
5 indeed, you just look older; is that correct?

6 A That's correct.

7 Q Okay. And in that -- then he says, I believe,
8 right here, really, if that's you, I want to see more pics;
9 is that correct?

10 A That's correct.

11 Q Okay. And the -- if he's referring to it being he
12 wants to see more pics of the girl in the blue bikini that
13 he thinks is you?

14 A I took it as he wants to see more of me.

15 Q If that's you in that picture?

16 A Emmy -- yes, Emmy Robinson.

17 Q Yeah, which it's not.

18 A He wants to see more of the girl in the picture,
19 yes.

20 Q Okay. But, of course, you're not that girl?

21 A I'm not.

22 Q All right. And then he has some conversations
23 about you've seen him naked, he wants to see you naked; is
24 that correct?

25 A Yes.

1 Q Okay.

2 A He asked to see pictures of me naked.

3 Q And you take that as he's asking you to send him
4 some pictures of you naked or Emmy Robinson naked?

5 A He states, But seeing you have seen me naked, I
6 want to see you naked. So yes, he wants pictures of me
7 naked.

8 Q Okay. Okay. And when -- now, there's a -- that's
9 the end of the conversation at that point and later on he
10 sends a message, Hey, and there's never any other
11 conversation between you?

12 A Yes.

13 Q And that's the end of it?

14 A That's the end of it.

15 Q Now, this was on 9/1/2015; is that correct?

16 A That's correct.

17 Q Okay. And after that point, you didn't hear
18 anymore from him?

19 A That's correct.

20 Q Is that correct?

21 Okay. And you took the information to Investigator
22 Carter I think on September 15th; is that correct?

23 A No, I had already talked to Carter before then. I
24 was already in conversations with him.

25 Q All right. When did you actually, first talk to

1 Carter again, or Investigator Carter?

2 A After the first picture.

3 Q After the first picture, but after the conversation
4 ceased and there were no more, when did you actually go to
5 Detective Carter?

6 A When -- when I actually saw him in person.

7 Q Yes.

8 A When Oertel was in Investigator Carter's custody.

9 Q All right.

10 MR. BOYD: That's all the questions I have.

11 THE COURT: Redirect, Mr. Flores?

12 MR. FLORES: Very briefly, Your Honor.

13 THE COURT: Yes, sir.

14 MR. FLORES: Thank you, may it please the Court?

15 THE COURT: Yes.

16 REDIRECT EXAMINATION

17 BY MR. FLORES:

18 Q Deputy Parry.

19 A Yes.

20 Q You don't normally conduct undercover proactive
21 investigations, do you?

22 A No.

23 Q So when you set up your profile, you were just
24 looking to get a picture?

25 A Yes.

- 1 Q And you typed in what words?
- 2 A Young girl.
- 3 Q Young girl. And I believe your testimony was that
- 4 you believed she looked like a young girl?
- 5 A Yes, I believed she looked young.
- 6 Q Every time somebody goes to her profile, how old is
- 7 that individual, Emmy Robinson?
- 8 A 15.
- 9 Q And the birth date is?
- 10 A April 15th, 2000.
- 11 Q And it's visible on the profile?
- 12 A Yes, anyone could see it.
- 13 Q And you stated -- where do you go to school?
- 14 A A.C. Flora High School.
- 15 Q Always gone to A.C. Flora High School?
- 16 A Yes.
- 17 Q Emmy Robinson has?
- 18 A Yes.
- 19 Q Okay. Did Facebook ever contact you to confirm
- 20 your age? Confirm any of that information with you?
- 21 A No.
- 22 Q Did they ever do that to your personal account?
- 23 A No.
- 24 Q You never asked Mr. Dertel for any pictures?
- 25 A No.

1 Q And there's no followup investigation as far as the
2 profile picture to identify who she really was?

3 A No, I just searched it on Pinterest and that was
4 it.

5 Q If you could look at State's Exhibit Number 1,
6 which is your conversation with Mr. Oertel?

7 A This one?

8 Q That's correct.

9 On September 1st, at what time is your first
10 exchange of messages?

11 A September 1st, I can't see this small print.
12 (Looking.) It started at 9:42.

13 Q 9:42 in the morning?

14 A Yes.

15 Q And how many lines of dialogue did you have with
16 Mr. Oertel before he began sending pictures?

17 A The full nude ones or the first initial one?

18 Q Full nude.

19 A Okay. One, two -- two.

20 Q Two. And that first picture you received of him,
21 where did that look like it was taken?

22 A The shower.

23 Q Okay.

24 MR. FLORES: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

1 BY MR. FLORES:

2 Q According to your conversations with Mr. Oertel,
3 when did he ask you for naked pictures? You remember?

4 A When he asked for me to give him naked pictures?

5 Q That's correct?

6 A At the end, after he knew my age.

7 Q About what time was that?

8 A Let me find that. At 1:54 p.m.

9 Q And you replied that you -- you said -- what did
10 you say in response?

11 A Okay.

12 Q Did he follow up with you after that?

13 A Yes.

14 Q About how many hours later?

15 A It doesn't have it on here. It has it on the other
16 one. 10:34 p.m.

17 Q So about how many hours? Nine hours, about?

18 A Nine roughly.

19 Q But you didn't respond to that?

20 A No.

21 Q At that point had you already contacted
22 Investigator Carter?

23 A Yes.

24 MR. FLORES: Your Honor, I think that's all the
25 questions we have of Deputy Parry.

1 THE COURT: Recross, Mr. Boyd?

2 MR. BOYD: I have none.

3 THE COURT: Thank you, thank you very much, Deputy
4 Parry, you may step down.

5 MR. FLORES: Your Honor, Deputy Parry is here under
6 subpoena. We'd just ask that she be excused from that
7 subpoena.

8 THE COURT: All right. I'll take that matter up
9 after I deal with the jury.

10 MR. FLORES: Okay.

11 THE COURT: All right. Mr. Foreman, ladies and
12 gentlemen of the jury, perhaps now would be a good time to
13 take our luncheon recess. I would remind you during in
14 recess, you are not to discuss this case with others. That
15 includes your fellow jurors, lunch mates, family, friends,
16 or anyone else. You may not read, listen to, or watch any
17 news reports about the case should there be any present or
18 past.

19 You may not use your computer, cellular phone or
20 any other electronic device with communication capabilities
21 to obtain or disclose information which is prohibited.

22 Information about the case which is prohibited,
23 includes, but is not limited to information about a party,
24 a witness, an attorney, a court officer, news accounts of
25 the case past or present, should there have been any,

1 stand. State your full name for the record.

2 THE WITNESS: I'm Richard Carter.

3 DIRECT EXAMINATION

4 BY MR. FLORES:

5 Q Good morning Investigator Carter.

6 A Good morning.

7 Q Mr. Carter, where are you currently employed?

8 A I am currently employed with Richland County
9 Sheriff's Department.

10 Q And how long have you been a law enforcement
11 officer?

12 A Twenty years.

13 Q Okay. Where have you been assigned?

14 A Agencies?

15 Q Yes, sir.

16 A Okay. Prior to here, I was -- I started at the
17 Carolina Beach Police Department in North Carolina. I've
18 been with Mt. Pleasant Police Department in South Carolina
19 before coming here.

20 Q And how long have you been in Richland County?

21 A Thirteen years.

22 Q Thirteen years. In your tenure here in Richland
23 County, what kind of work have you done?

24 A I was on patrol, uniform division for about a year.
25 And I went into investigations and I started investigations

1 here, I was doing property crimes; then I went into the
2 special victim's unit where I investigated sexual assaults,
3 child abuse cases for almost 8 years. And then I was
4 reassigned to vehicle theft; and I also do internet crimes
5 against children investigations.

6 Q Concerning your investigations with the internet
7 crimes against children crimes, have you received any
8 specialized training to conduct investigations concerns
9 those crimes?

10 A Yes, sir.

11 Q And what kind of training have you attended.

12 A I've attended regional and national conferences.
13 Put on by the Internet Crimes Against Children Group. Also
14 I've attended undercover internet type, I guess chat would
15 be the easiest way to explain it, type of investigations.
16 And also use peer-to-peer file sharing investigations.

17 Q So you've conducted investigations into chatting,
18 texting conversations, and crimes that are associated with
19 that?

20 A Yes.

21 Q So you are familiar with the types of crime that
22 were being investigated in this case?

23 A Yes.

24 Q Do you know what the -- are you familiar with the
25 phrase undercover proactive investigation?

1 A Yes.

2 Q Could you tell the jury what that is?

3 A Basically in this type of setting, undercover
4 proactive would mean doing something, not reacting, but
5 doing it to -- a proactive approach to it. Basically not
6 getting a report and then following up on the report, it
7 would be as me conducting something on my own now.

8 Q All right. Do you conduct undercover proactive
9 investigations?

10 A Yes.

11 Q Have you conducted them, for example on Craig's
12 List?

13 A Yes.

14 Q What is Craig's List?

15 A Craig's List, I think -- basically Craig's List is
16 a place where you can buy and sell things, but it's also
17 a -- they also have that little area where they have
18 personal adds. Mainly when I do a proactive investigation
19 on Craig's List, I am on the personal adds section.

20 Q Now, when you conduct your investigations, do you
21 have an undercover persona?

22 A I do.

23 Q All right. How old is that persona?

24 A My persona is 15.

25 Q Is she -- does she exist in reality?

- 1 A No.
- 2 Q No. So she's a 15-year-old. When you conduct your
- 3 investigations. Do you use pictures?
- 4 A Yes.
- 5 Q Pictures to represent your undercover persona?
- 6 A Yes.
- 7 Q Now, you've been trained to do these types of
- 8 investigations, correct?
- 9 A Yes.
- 10 Q Do you currently have a picture for your persona?
- 11 You're 15-year-old?
- 12 A Yes.
- 13 Q Do you know who she is?
- 14 A Yes.
- 15 Q Who is your 15-year-old?
- 16 A My 15-year-old is actually a deputy with the
- 17 sheriff's department who is over the age of 21.
- 18 Q And the picture that you use of that deputy, is it
- 19 a picture of when she was 15 or is it of how old she is
- 20 now?
- 21 A How old she is now.
- 22 Q And when you conduct your investigations using that
- 23 picture, how old do you tell the individuals you interact
- 24 with? How old do you tell them she is?
- 25 A Fifteen.

1 Q Do you ever tell them who she is, in reality?

2 A No.

3 Q You ever tell them she's over 21?

4 A No.

5 Q So in all your investigations, that individual is
6 always 15?

7 A Yes.

8 Q Now, turning to this case specifically, were you
9 involved in any of the actual chat conversations with Mr.
10 Oertel?

11 A No.

12 Q Did Deputy Parry contact you concerning her
13 conversations with him?

14 A Yes.

15 Q Did you give her any guidance as to how she should
16 conduct her conversation?

17 A The guidance that I gave her was to, first of all,
18 I asked her to -- after viewing what she had sent him, I
19 said -- I asked her to say that she was 15 so we were
20 absolutely clear on her age.

21 Q All right. Did you give her any other guidance.

22 A I asked to keep the dialogue open, but not to ask
23 anything specific, just answer the question as she is asked
24 them.

25 Q And did you have an opportunity to view that

1 profile that's in evidence as State's Exhibit 1?

2 A I did.

3 Q And is the birth date clear on that profile?

4 A Yes.

5 Q After you spoke with Deputy Hood concerning her
6 conversations and the completion of those conversations,
7 did you have any other involvement in the investigation in
8 this case?

9 A I did.

10 Q Was she -- was she involved any longer?

11 A No, that's when I assumed the primary investigating
12 roll in this.

13 Q What did you do next concerning your investigation?

14 A I -- after reviewing the dialogue exchange between
15 the two, I preserved it, saved it so it wasn't lost. I
16 then started doing a background on -- through Facebook on
17 Tim Oertel. I also did -- started checking DMV records and
18 other things to confirm the identity in the photograph was
19 Tim Oertel. I also obtained a search warrant and I sent it
20 to Facebook to get the information from Facebook regarding
21 the name of the person, subscriber information, that type
22 of stuff.

23 I also went and traveled to Rock Hill, met with my
24 agent there, coordinated with the York County Sheriff's
25 Department and obtained a search warrant for the residence

1 of Mr. Oertel.

2 Q You traveled to Rock Hill to continue your
3 investigation and execute your search warrant. Did you
4 have an opportunity to speak with Mr. Timothy Oertel?

5 A I did.

6 Q Prior to speaking to him, did you advise him of his
7 Miranda Rights?

8 A I did.

9 Q Was that verbally or in writing at that time, when
10 you were in Rock Hill?

11 A At that time it was verbal.

12 Q And when you executed your search warrant at his
13 residence, what were you searching for?

14 A When I was there, I was searching for items that
15 were in the photographs. I was searching for electronic
16 devices, computer, cell phone, anything that would be used
17 to communicate through the internet with him.

18 Q Following the execution of the search warrant, what
19 did you do?

20 A After executing the search warrant there, we
21 learned that there was another location in Rock Hill where
22 the items that were -- we were looking for were actually
23 at. Mr. Oertel consented to going to that location and we
24 went there, located those items, I collected them and then
25 we traveled back to Columbia.

1 Q Were any other deputies with you from Richland
2 County when you conducted your search warrant and traveled
3 to Rock Hill?

4 A Yes.

5 Q And who was that?

6 A That was Investigator Clay Short.

7 Q He was with you the entire time?

8 A Yes.

9 Q And was he present when you were speaking with Mr.
10 Oertel?

11 A Yes.

12 Q During the ride back to Columbia, did Mr. Oertel
13 tell you anything concerning the information you received
14 from Deputy Parry? Specifically anything about his
15 conversations with Deputy Parry?

16 A Yes.

17 Q Did you record those? Audio recording? Were they
18 written down?

19 A Investigator Short was in the rear passenger of my
20 vehicle. Mr. Oertel was sitting in the front passenger
21 seat and Investigator Short was writing down what was being
22 said.

23 Q Did he tell you anything concerning his
24 conversations with Deputy Parry on the way back to
25 Columbia?

1 A On the way back, I was engaging in conversation
2 with him and basically explained to him that the
3 15-year-old female he knew on Facebook to be Emmy Robinson
4 that he was -- was actually a Richland County deputy.

5 Q Did he admit to having conversations with Emmy
6 Robinson?

7 A Yes.

8 Q Did he admit to sending pictures of himself to Emmy
9 Robinson?

10 A Yes.

11 Q Investigator Carter, after you arrived back at
12 Richland County Sheriff's Department Headquarters, did you
13 sit down and speak with Mr. Oertel?

14 A I did.

15 Q Did you again advise him of his Miranda Rights?

16 A I did.

17 MR. FLORES: Your Honor, if I may I approach the
18 witness?

19 THE COURT: Yes, sir.

20 MR. FLORES: Thank you, Your Honor.

21 BY MR. FLORES:

22 Q Investigator Carter, I'm going to hand you what's
23 been marked as State's Exhibit 6. Would you take a look
24 that the document and review it, please.

25 A (Looking.)

1 THE COURT: Mr. Flores, Mr. Boyd, would y'all
2 please step up here for just a moment.

3 (There was a bench conference out of the hearing of
4 the jury and the Court Reporter.)

5 THE COURT: Thank you, thank you, Mr. Flores, thank
6 you, Mr. Boyd.

7 You may continue Mr. Flores.

8 MR. FLORES: Thank you, Your Honor.

9 BY MR. FLORES:

10 Q Investigator Carter, are you familiar with State's
11 Exhibit 6?

12 A I am.

13 Q And what is this document?

14 A This document is the rights advisement form that we
15 use at Richland County Sheriff's Department.

16 Q And at the time that you conducted your interview,
17 did you read over this form with Mr. Oertel?

18 A I did.

19 Q Did he sign that form?

20 A He did.

21 MR. FLORES: Your Honor, we'd ask that State's
22 Exhibit 6 be admitted into evidence and published to the
23 jury.

24 THE COURT: Mr. Boyd?

25 MR. BOYD: No objection.

1 THE COURT: State's 6 is in evidence without
2 objection.

3 (State's Exhibit Number 6 was entered into
4 evidence.)

5 BY MR. FLORES:

6 Q Investigator Carter, what I placed on the screen,
7 is that the same copy as what you have as State's Exhibit
8 6?

9 A Yes, sir.

10 Q Go ahead and read over those rights for the jury.

11 A Before we ask any questions, you must understand
12 your rights. You have the right to remain silent.

13 Anything you say can be used against you in court.

14 You have the right to talk to a lawyer for advice
15 before we ask you any questions and to have a lawyer with
16 you during the questioning. If you cannot afford a lawyer,
17 one will be appointed for you before any questions if you
18 wish. If you decide to answer questions without a lawyer
19 present, you still have the right to stop answering at any
20 time. You also have the right to stop answering at any
21 time so you can talk to your lawyer.

22 Q And what do you tell an individual you're
23 questioning to do concerning this form, if they agree to
24 those rights, and they understand those rights?

25 A After reading these, I also read the bottom portion

Richard Carter - Direct Examination by Mr. Flores

1 for the waiver of rights. And I say that if they want to
2 speak with me and talk with me, they've read the statement
3 of rights and understand what their rights are; they're
4 willing to talk and understand and know what they are
5 doing; no promises were made to them; no pressure or
6 coercion of any kind was used against them.

7 After that, I request that they initial each box in
8 the top portion of their rights and sign. And at that time
9 I ask them if they want to talk to me and they're doing it
10 because they want to me and not because anyone's making
11 them do something they don't want to do to initial the box
12 and sign at the bottom.

13 Q Now, did you make any promises to Mr. Oertel?

14 A No.

15 Q Did he appear to understand his rights when you
16 read that to him?

17 A Yes.

18 Q Did he at any time during your interview with him
19 invoke his right to remain silent?

20 A No, sir.

21 Q Did you coerce him into making a statement in this
22 case?

23 A No, sir.

24 Q To the best of your knowledge, was the statement
25 freely and voluntarily given?

1 A Yes.

2 Q Did he make a statement in response to your
3 questions?

4 A Yes.

5 Q Was that statement oral or written?

6 A I guess written. It was typed.

7 Q It was typed?

8 A It's typed. It's a typed statement.

9 Q A typed statement? Can you explain for the jury
10 how you prepare your statements when you're speaking with
11 individuals like Mr. Oertel?

12 A Yeah, just to clarify when you say written, it's
13 not actually in pen. I am sitting behind my computer, he
14 was sitting beside me. I ask him a question and I'm typing
15 his answers.

16 Q All right.

17 MR. FLORES: Your Honor, if I might approach the
18 witness?

19 THE COURT: Yes, sir.

20 BY MR. FLORES:

21 Q Investigator Carter, I'm going to hand you what's
22 been marked as State's Exhibit 7. Would you review those
23 pages?

24 A (Looking.)

25 Q Are you familiar with this document?

1 A Yes.

2 Q What is this document?

3 A This document is the statement I obtained from Mr.
4 Oertel.

5 MR. FLORES: Your Honor, we would like to introduce
6 this into evidence at this time and publish it for the
7 jury.

8 THE COURT: It would be State's --

9 MR. FLORES: State's Exhibit 7, Your Honor.

10 THE COURT: 7. Mr. Boyd?

11 MR. BOYD: No objection, Your Honor.

12 THE COURT: State's 7 is in evidence without
13 objection.

14 (State's Exhibit Number 7 was entered into
15 evidence.)

16 BY MR. FLORES:

17 Q Investigator Carter, I placed the first page of the
18 written statement on the screen. Would you begin -- you've
19 already said this is a typewritten statement where Mr.
20 Oertel is sitting next to you while you ask questions.
21 Would you go through this statement, please.

22 A Yes, sir. It's a question and answer. The
23 question is my name, the answer would be from Mr. Oertel.

24 The first one is, Can you tell Investigator Carter
25 your highest level of education.

1 And Mr. Oertel replied, I was working toward an
2 Associates Degree in Mechanical Engineering and Graphic
3 Engineering.

4 The next question would be, Where are you currently
5 employed?

6 Home Depot.

7 What do you do at home Depo?

8 I am a freight associate.

9 Next question, do you have a Facebook account?

10 Yes.

11 What is your Facebook screen name?

12 Tim Oertel, it is my name.

13 On or about August 28th, 2015, did you send a
14 friend request to a person named Emmy Robinson on Facebook?

15 I believe so, if that's what you found out.

16 Can you tell Investigator Carter the reason you
17 wanted to be friends with Emmy Robinson on Facebook?

18 She looked cute and I wanted to get to know her,
19 but I didn't realize she was that young.

20 Did you find the Facebook profile picture of Emmy
21 Robinson to be attractive?

22 A little bit.

23 After you became friends with Emmy Robinson on
24 Facebook, did you send messages to her?

25 Yeah.

1 Can you tell Investigator Carter what the contents
2 of those messages were about?

3 At first it was just to get to know her.

4 And then I guess I sent her a dick picture.

5 Did Emmy Robinson ask you -- ask for you to send
6 her a picture of your dick? No.

7 Why would you send a picture of your dick to a girl
8 you did not know? I was just not thinking at the time.

9 Do you look at -- did you look at the pictures that
10 Emmy Robinson had posted on her Facebook account?

11 Mr. Oertel replied, A couple of them.

12 Which pictures did you look at?

13 The main profile picture and maybe a couple of
14 other ones. I can't tell you the details of the pictures.

15 How many pictures did you send to Emmy Robinson?

16 I'm not sure.

17 Did you send Emmy Robinson a picture of your
18 naked -- of you naked in the shower with an erect penis?

19 I believe so.

20 Did you send Emmy Robinson a picture of your erect
21 penis with a measuring tape?

22 Yeah, to be honest, I don't remember all that I
23 sent to her.

24 Did you tell Emmy Robinson I would put your naked
25 body against mine as you feel my rock hard dick slide

1 between your legs, I'd slam you against the wall, holding
2 your head, kissing those soft wet lips. I'd run my hands
3 down your body to your legs and to your beautiful butt and
4 grab them and pull you onto me?

5 Yes.

6 Did Emmy Robinson tell you she was 15 years of age?

7 Yes, after I asked her.

8 Can you tell Investigator Carter the reason you
9 then asked Emmy Robinson to send you naked pictures of her?

10 Just because I was horny. I was not thinking at
11 the time.

12 Did Emmy Robinson arouse you?

13 No.

14 Can you tell Investigator Carter, what did arouse
15 you about Emmy Robinson?

16 Just that she was cute and adorable and she was in
17 my age group between 20 and 26.

18 Do you understand that it's against the law to send
19 pictures of your erect penis to a person who is under the
20 age of 18? I do now.

21 Are you guilty of sending four pictures of your
22 erect penis to Emmy Robinson?

23 Yes.

24 Do you understand it's against the law to solicit
25 sex from a minor?

1 Yes.

2 Are you guilty of soliciting sex from Emmy
3 Robinson?

4 I guess so. I wasn't meaning to. I didn't know
5 she was so young.

6 Would you agree that a reasonable person would know
7 that Emmy Robinson was 15 years of age because her date of
8 birth was clearly posted on her profile page, along with
9 the name of the school Emmy Robinson attended?

10 I honestly did not check that. I just checked out
11 her pictures.

12 Would you agree that it does not look good when you
13 sent pictures of your erect penis too Emmy Robinson, when
14 she did not ask you -- ask for you to do so?

15 Yes, doesn't look good.

16 Are you sorry for sending pictures of your erect
17 penis to Emmy Robinson?

18 Yes.

19 If you could tell Emmy Robinson something right
20 now, what would you tell her?

21 To tell you the truth, I would write her a letter
22 to apologize to her.

23 Is there anything else you would like to add that
24 Investigator Carter has not asked you?

25 I sincerely apologize and after I found out her

1 age, I should have stopped. I wasn't thinking at the time.

2 When I cleared my mind, that's when I deleted her.

3 Have you told Investigator Carter the truth?

4 Yes, 100 percent.

5 End of statement, time 1715 hours, 9/3/15.

6 Q Is this the entire statement that Mr. Oertel gave
7 to you at Richland County Sheriff's Department?

8 A Yes.

9 Q Did he have the opportunity to review these
10 documents before signing?

11 A Yes.

12 Q Did he read those in your presence?

13 A Yes.

14 Q And he did sign at the bottom indicating that this
15 was a freely and voluntarily given statement?

16 A Yes.

17 Q And when did that take place?

18 A September 3rd.

19 Q And the crimes were alleged to have occurred on
20 what date?

21 A The 1st.

22 Q The 1st of September to two days after he sent the
23 pictures and had the conversation, you were -- you had this
24 interview with him, correct?

25 A Yes.

1 Q After Mr. Oertel gave this written statement, was
2 there anything else that he provided in this case?

3 A Yes.

4 MR. FLORES: Your Honor if I might approach the
5 witness?

6 THE COURT: Yes, sir.

7 BY MR. FLORES:

8 Q Investigator Carter, I'm going to hand you what's
9 been marked as State's Exhibit 8. Would you please review
10 that document.

11 A (Looking.)

12 Q Investigator Carter, are you familiar with this
13 document?

14 A Yes.

15 Q What is this document?

16 A This document is the apology letter that Mr. Oertel
17 asked that he -- asked that he could write.

18 Q You did not prompt him to write an apology letter?

19 A No, sir.

20 Q Is that something you've done before in your cases?

21 A I have asked before.

22 MR. FLORES: Your Honor, we would ask that State's
23 Exhibit 8 be admitted into evidence so that we might
24 publish it to the jury.

25 THE COURT: Mr. Boyd?

1 MR. BOYD: No objection.

2 THE COURT: State's 8 is in evidence without
3 objection.

4 (State's Exhibit Number 8 was entered into
5 evidence.)

6 BY MR. FLORES:

7 Q I know it's a little bit blurry up here, but
8 Detective Carter, if you could read out this apology letter
9 from Mr. Oertel?

10 A Hello Emmy Robinson, I first want to sincerely
11 apologize for the trouble I have caused you and your
12 family, I also want to apologize for my English. I was
13 on -- I was in school working on my mechanical engineering
14 and graphic engineering, so I can do math, but when it
15 comes to English, I'm horrible at it. Plus writing by hand
16 other than the computer, well, you can see what I mean.

17 This, for me, is a huge life lesson. I will never
18 send and friend request to other people I do not know.
19 Especially when they look too young. I will never think
20 about talking to them. I have learned to check out the
21 person first before I send them a friend request.

22 I have never talked like that to those under the
23 age of 18 and will never think of sending dick photos to
24 anyone without having a connection with the person. I am
25 making this short because I can -- I can keep on going, but

1 from the deepest part of my heart I am extremely sorry.

2 But I know that it's too late, but I really hope you will
3 understand. Thanks, Tim Oertel.

4 Q And this -- you observed Mr. Oertel writing this
5 statement?

6 A Yes.

7 Q And there was parts scratched off in the statement.
8 Those were Mr. Oertel's doing?

9 A Yes.

10 Q No one forced him into giving this statement?

11 A No.

12 MR. FLORES: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. FLORES: Your Honor, that's all the questions
15 we have for Investigator Carter.

16 THE COURT: Thank you, Mr. Flores.

17 Mr. Boyd?

18 CROSS-EXAMINATION

19 BY MR. BOYD:

20 Q Good morning Investigator Carter.

21 A Good morning.

22 Q You've been working on internet crimes for some
23 number of years from your testimony, I assume; is that
24 correct?

25 A Yes, sir.

1 Q Okay. So are you familiar with the Facebook
2 policies and procedures about false personas?

3 A Yes.

4 Q Okay. And the -- to use Facebook's -- Facebook,
5 you have to agree to certain terms and conditions; is that
6 correct?

7 A Yes, sir.

8 Q Okay. And the -- to create a Facebook page, you
9 have -- there's a commitment you make relating to the
10 registering and maintaining of your Facebook account; is
11 that's correct?

12 A Yes.

13 Q Okay. And Facebook provides in their procedures
14 and the contract one agrees to that -- not -- a person will
15 not provide any false personal information on Facebook; is
16 that correct?

17 A Yes.

18 Q And also provides -- Facebook will not allow you to
19 create an account for anyone other than oneself without
20 permission; is that correct?

21 A Yes, sir.

22 Q And the -- under Facebook Community Standards, it
23 provides by joining Facebook you agree to use your
24 authentic name and identity; is that correct?

25 A Yes, sir.

1 Q Are you familiar with a letter that Facebook has
2 written to the Drug Enforcement Administration requesting
3 that they not create false personas?

4 A Yes, sir.

5 Q Okay. The -- now, in this particular -- are you
6 familiar also with the Operational Investigative Standards
7 of Internet Crimes Against Children Program?

8 A Yes.

9 Q Okay. And do you -- do you use these guidelines in
10 your duties?

11 A I do.

12 Q Let me ask you in your investigations 8.5, does
13 that say that, Visual depictions of any identifiable person
14 used to represent an investigative persona or any
15 identifiable manner shall be those of an employee who's
16 given his or her written consent; is that correct?

17 A Yes.

18 Q Okay. And also provides farther, only if that
19 employee was at least 18 years old at the time of consent;
20 is that correct?

21 A Yes.

22 Q Okay. And you -- you can put a depiction of an
23 employee when they were under 18, but they have to be over
24 18 at the time and -- and give consent for that photograph
25 to be used; is that correct?

1 A Yes.

2 Q And those are procedures that you use with the
3 Richmond County Sheriff's Department; is that correct?

4 A Yes.

5 Q The -- now, on your -- of course, Deputy Parry was,
6 in fact, over 18 years old; is that correct?

7 A Yes.

8 Q To be a sheriff's deputy, I assume you have to be
9 21 or over?

10 A Yes.

11 Q Okay. Well, let me ask you, the statement that Mr.
12 Oertel gave, that was the written statement -- I'm going to
13 back up a bit. You said that there was a conversation in
14 the car coming down; is that correct --

15 A Yes.

16 Q -- to Richland County?

17 A Yes.

18 Q And during that conversation, he did tell you that
19 the pictures of Emmy Robinson looked like she was older; is
20 that correct?

21 A Yes.

22 Q Now, concerning -- concerning the questions the you
23 asked -- can you tell Investigator Carter the reason you
24 wanted to be friends with Emmy Robinson on Facebook, his
25 answer was, She looked cute. I wanted to get to know her

1 and I didn't realize she was that young; is that correct?

2 A Yes.

3 Q You asked him if Emmy Robinson told you that she
4 was 15 years of age and he said yes after I asked her; is
5 that correct?

6 A Yes.

7 Q And it was asked, what aroused you about Emmy
8 Robinson; what aroused him. His answer was just that she
9 was cute and adorable and she was in my age group between
10 20 and 26; is that correct?

11 A Yes.

12 Q Okay. And when you asked him if he was guilty of
13 soliciting sex from Emmy Robinson, he said, I guess, I
14 wasn't meaning to. I didn't know she was so young; is that
15 correct?

16 A Yes.

17 Q And when you asked him about her date of birth
18 being posted on her profile page, he asked -- he told you
19 he honestly did not check that, I just checked out her
20 pictures; is that correct?

21 A Yes.

22 MR. BOYD: Thank you, that's all the questions I
23 have.

24 THE COURT: Redirect, Mr. Flores?

25 MR. FLORES: Yes, sir -- beg the Court's indulgence

1 one moment, please.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. FLORES:

5 Q Investigator Carter, Mr. Boyd asked you about the
6 investigational standards provided by the Internet Crimes
7 Against Children Task Force nationwide, and you're familiar
8 with those, correct?

9 A Yes.

10 MR. FLORES: I would like to approach the witness,
11 Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. FLORES:

14 Q I'm going to hand you a copy of those standards.
15 And underneath the purpose of the ICAC standards, I'd like
16 for you to read the second paragraph, please.

17 A ICAC members should make every reasonable effort to
18 comply with these standards; however, since many aspects of
19 investigations are dynamic and evolve very widely between
20 jurisdictions, their genesis, methods of their evidentiary
21 procedure under application in court, it is difficult to
22 anticipate every circumstance that might present itself,
23 thus reasonable deviations from these standards may occur,
24 depending upon various factors; e.g. emergency situations,
25 timing constraints, sensibility constraints, resource

1 constraints, technology constraints, perceived conflicts
2 between the standards and statutes, the decisional laws and
3 court orders, et cetera.

4 Q That's et cetera?

5 A Et cetera. Excuse me.

6 Q That's okay. So you were familiar with these ICAC
7 standards because you've gone to training?

8 A Yes.

9 Q And you've conducted your investigations according
10 to these standards as best you can?

11 A Yes, sir.

12 Q But there not sacrosanct are they?

13 A No.

14 Q You're not required to follow them by the letter
15 every time?

16 A No.

17 Q And Deputy Parry is not an ICAC investigator?

18 A No, sir.

19 Q She was not conducting a proactive investigation
20 concerning criminal solicitation of minors at the time she
21 was contacted by Mr. Oertel?

22 A No, sir.

23 Q But she did contact you immediately after having
24 this situation thrust upon her; correct?

25 A Yes, sir.

1 Q Now, the picture that you use for your undercover
2 persona; is she over the age of 18?

3 A Yes.

4 Q Well, what age do you tell these people when you
5 chat with them?

6 A She's 15.

7 Q Every single time?

8 A Every single time.

9 MR. FLORES: Your Honor, those are all the
10 questions we have for Investigator Carter.

11 THE COURT: Thank you, Mr. Flores.

12 Recross, Mr. Boyd?

13 MR. BOYD: I have no further questions, Your Honor.

14 THE COURT: Thank you, thank you very much.

15 Thank you, Investigator Carter, you may step down.

16 All right. Mr. Flores, you may call your next
17 witness.

18 MR. FLORES: Your Honor, at this time, the State
19 rests its case.

20 THE COURT: All right. Thank you. Thank you very
21 much.

22 Mr. Foreman, ladies and gentlemen of the jury, you
23 heard the State has rested its case. That is all of the
24 evidence and all of the testimony that you're going to hear
25 in the trial of this case from the State.

1 I must take up, at this juncture, certain matters
2 with the attorneys and outside of your presence, so I will,
3 of course, give you a break of at least 20 minutes. And
4 y'all know how well I am at telling time. Now, I've got
5 credibility for that. But I'll say 20 minutes. Street
6 time 20 minutes sometimes is not the same as judicial time
7 20 minutes.

8 So, please, you may step to your jury room. Do not
9 discuss this case during this brief recess. Thank you very
10 much.

11 (The jury left the courtroom at 10:25 a.m.)

12 THE COURT: All right. Any motions, Mr. Boyd?

13 MR. BOYD: Yes, Your Honor.

14 MID-TRIAL MOTIONS

15 MR. BOYD: Your Honor, I have directed verdict
16 motions on all charges I want do go through these one at a
17 time. I a have number of grounds on each one.

18 First, I'd like to take up the charge of first
19 degree sexual exploitation of a minor.

20 THE COURT: All right. Let me get that indictment
21 in front of me. Attempted sexual exploitation of a minor,
22 first degree?

23 MR. BOYD: That's correct, Your Honor.

24 THE COURT: All right. Yes, sir?

25 MR. BOYD: Yes, Your Honor. Your Honor, I have

1 three grounds to make on this particular charge. The first
2 is dealing with the elements of the offense. I assume
3 under Subsection (A)1 is that someone employ, induce,
4 coerce, encourage, or facilitate a minor to engage in
5 activity, or appear in a state of sexual explicit nudity.
6 When a reasonable person would infer the purpose is sexual
7 stimulation for a live performance or for the purpose of
8 producing material that contains a visual representation
9 depicting this activity or state of sexually explicit
10 nudity when a reasonable person would infer the purpose is
11 sexual stimulation.

12 THE COURT: And you're reading (A)1?

13 MR. BOYD: I am, Your Honor.

14 THE COURT: Yes, sir.

15 MR. BOYD: The -- it appears that that's the one
16 that appears the State alleges that my client attempted to
17 commit. In this particular -- well, backing up a little
18 bit, it looks like there's basically two things the State
19 has to show in this case. One is that my client somehow
20 induced, encouraged and facilitated the alleged individual
21 to appear in a state of sexual explicit nudity; and
22 secondly that the purpose of that was to produce material
23 containing a visual representation of this activity or a
24 state of sexually explicit nudity.

25 Mr. Oertel did not do those things. I think the

1 basis for this charge against him is that after he
2 discovered she was 15 years of age, he asked her to send
3 him pictures. It wasn't explicit what kind of pictures,
4 but I'm thinking the State can infer that it certainly,
5 probably could be a jury issue as to whether or not what
6 kind of pictures he wanted. But assuming for the sake of
7 argument that he was asking her to send him sexually
8 explicit pictures or pictures of her -- nude pictures of
9 her, but the requirement is that he has to encourage her to
10 appear in a -- that that has to be for the purpose of
11 producing material.

12 There's no evidence presented that Mr. Oertel was
13 going to be engaged in producing material. Producing in
14 the context of this statute basically means making
15 manufacturing, creating something. There's no evidence
16 that he was doing that. When you look at this entire
17 statute, this statute is basically a statute against people
18 who are creating and making child pornography. If you look
19 at the other sections, it always talks about the --
20 producing material; in two and in three, producing
21 material.

22 Mr. Oertel did not try to get any material
23 produced. He was not producing material. There's been no
24 evidence presented of that. So that's my first ground for
25 a directed verdict on this charge.

1 THE COURT: All right. Do you have other grounds
2 for this charge?

3 MR. BOYD: I do, Your Honor.

4 THE COURT: All right. Could I hear -- I would
5 like to address the directed verdict motions with all the
6 grounds on the specific charge once I have all the
7 grounds --

8 MR. BOYD: Yes, sir, Your Honor.

9 THE COURT: -- and I'll go to the next.

10 MR. BOYD: Your Honor, my second ground is,
11 assuming that it would come under the statute, that sending
12 pictures to him would come under the statute, what Mr.
13 Oertel did was ask her -- and it's -- if that's you, I want
14 to see more pics. So he's asking for pictures contingent
15 on that being that person in that picture that he wants
16 pictures of. In this particular case, if he had received
17 nude pictures of this person, there's no evidence that this
18 person was under 18. Pictures weren't actually sent, so
19 it's an intent, but it was -- if the actual crime had been
20 completed, it wouldn't have been a crime.

21 And I would like to -- Your Honor, I'd like to pass
22 up a case -- I'll hand this up, Your Honor.

23 THE COURT: Yes, sir, of course.

24 MR. BOYD: And I think this is a rather pretty
25 famous case, The People versus Jaffe from New York, that

1 goes into the details of this and it's a classic -- it
2 discusses the classic situation -- well, first off, if a
3 pickpocket tries to pick somebody's pocket and there's
4 nothing in it, they can still be charged with attempted
5 pick pocketing, even though they didn't completed the
6 action, it would be a crime.

7 This case deals with a -- Jaffe deals with
8 receiving stolen -- a person receives stolen goods in which
9 the goods were, in fact, stolen, so the court says because
10 the goods were, in fact, stolen and an attempt to receive
11 them, even if it had been completed wouldn't have
12 constituted a crime. The -- Your Honor, the Court has
13 stated although an accused person intends to do is done
14 constitutes no crime if there's not been an attempt to do
15 the same purpose, the thing intended.

16 In quoting, the crime which the defendant was
17 convicted necessarily consists of three elements, first,
18 the act; second, the intent; and third, the knowledge of an
19 intent existing.

20 There was proof intending established. Two of
21 those elements, the first and the second, but none to
22 establish the existence of the third. This was knowledge
23 of stolen character of the stolen property. And they give
24 some examples in the case. For example, a man who attempts
25 to vote and succeeds in casting that vote under the belief

1 he is 20 years of age while he's, in fact, over 21 and a
2 qualified voter, he has to intend to commit a crime,
3 believe that he's committing a crime and it would be the
4 same moral turpitude as if he did, but, in fact, there's no
5 crime committed.

6 They also give an example of someone who has sexual
7 intercourse with a female not his wife under the age of 18
8 and says there can be no conviction if it was established
9 upon the trial that the female was, in fact, over 18,
10 although the defendant believed her to be younger and
11 intended to commit a crime. No matter how reprehensible
12 could be his act in morals it would not be the act forbid
13 by this particular statute.

14 So in this particular case, because even if he
15 received nude photographs of this individual, there's no
16 evidence that it would have constituted a crime for him to
17 do so.

18 Your Honor, my third ground for this is the statute
19 provides in 16-15 -- Your Honor, I'm sorry, that's only
20 two -- that's the only two grounds I have on this
21 particular charge.

22 THE COURT: All right. Thank you. Thank you very
23 much, Mr. Boyd.

24 Mr. Flores?

25 MR. FLORES: Yes, Your Honor, may it please the

1 Court. As to this directed verdict motion, the State would
2 say that looking at all the evidence in the light most
3 favorable to the State concerning the statutory language
4 states that the individual must knowingly, at least in this
5 case, attempt to use, employ, induce, coerce, encourage, or
6 facilitate a minor to engage or assist others to appear in
7 a state of sexual explicit nudity or any sexual activity
8 for the purpose of producing materials that contains that
9 representation.

10 It's the State's theory of the case that Mr. Oertel
11 through this entire conversation focused on sex. We
12 believe he knew that he was 15 at the time as presented by
13 the profile that was clearly available to the public. When
14 she confirmed her age was 15, Mr. Oertel asked for
15 additional pictures and, I believe, the exact -- let me get
16 my language right from his statement -- or from the chats
17 was that, seeing you have seen me naked, I want to see you
18 naked. I think that's abundantly clear that he was looking
19 for naked pictures of Emmy Robinson.

20 Now, Mr. Boyd has stated that while Mr. Oertel was
21 not going to produce them. I think the statute is a little
22 bit broader than that. If an individual who encourages a
23 minor to send him naked pictures, I think that that act
24 would fall under the statute. It doesn't say who has to do
25 the production, but that it be produced. And it involved a

1 minor.

2 In this case, the crime has been committed with the
3 specific intent when Mr. Oertel says, I want you -- I want
4 to see naked pictures of you. And so concerning the
5 production, we think that the evidence taken in the light
6 most favorably to the State in this case rebuts Mr. Boyd's
7 argument as to who has produced and whether it was actually
8 asked for in this case.

9 In support of that, the State would rely on a
10 similar case, State versus Harris.

11 THE COURT: You have a copy of it?

12 MR. FLORES: Your Honor, if I might approach?

13 THE COURT: Yes, sir.

14 MR. FLORES: This was a frivolous solicitation case
15 in which there were -- involved chats between an undercover
16 persona and an individual and he did not travel to the
17 incident location, but in this case, the Supreme Court
18 holds that the fact that he did actually communicate with a
19 person he believed to be a minor with the intent to entice
20 her to participate in the sexual activity was all that was
21 required to present that to get past the directed verdict.

22 We believe that the same standard is met here in
23 the fact that Mr. Oertel now wants more pictures of Emmy
24 Robinson and specifically asks for naked pictures of Emmy
25 Robinson and we believe that the crime was in completion as

1 to the intent at that point.

2 So that would be the State's argument as to Mr.
3 Boyd's first -- first motion, Your Honor.

4 THE COURT: All right. And as to his second ground
5 on that particular indictment that even if pictures were
6 sent it would not be a crime? The act, intent, citing the
7 Jaffe case?

8 MR. FLORES: I didn't say, I believe that to -- I
9 interpreted that to be kind of an impossibility argument in
10 the sense of an intent crime. Our courts then address that
11 concerning similar type cases as this one in an attempted
12 criminal sexual conduct in the second degree, I'm relying
13 here on State versus Benjamin Green. I do have copies for
14 the Court.

15 THE COURT: Yes, sir.

16 MR. FLORES: If I might --

17 MR. BOYD: Your Honor, if I might, I think State
18 versus Green is an unpublished opinion, should not be
19 relied upon.

20 THE COURT: Is it --

21 MR. FLORES: If I might, it is not an unpublished
22 opinion.

23 THE COURT: Of course, sometimes they have great
24 footnotes, Mr. Boyd in unpublished cases.

25 Go right ahead, Mr. Flores.

1 MR. FLORES: Yes, Your Honor, in this case,
2 Mr. Green was involved in an undercover chat with a minor.
3 He did travel to a prearranged predestined location to meet
4 that minor and was apprehended by law enforcement at that
5 time.

6 Specifically on that charge, again, the Supreme
7 Court was looking at the context of an intent crime, what
8 was the final action in that intent crime to fill the
9 requisite elements of criminal sexual conduct with a minor
10 in the second degree. And the Supreme Court did hold,
11 although they did not issue a rule in this -- in these
12 cases of attempt that the last overt act beyond mere
13 preparation in furtherance of this specific intent shown
14 was adequate to get past the impossibility that, in fact, a
15 14-year-old didn't exist in this case.

16 The fact -- and I'm reading here on page -- I'm
17 sorry.

18 THE COURT: What head note?

19 MR. FLORES: 284, that's head note 13, Your Honor.

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

21 MR. FLORES: In the paragraph, it says, based on
22 the above outlined definition, we find Green's actions were
23 sufficient through the offense of attempted CSC with a
24 minor in the second degree as noted, an intent crime does
25 not require the completion of the object offense.

1 Mr. Green was not required to complete the sexual battery
2 in order to be prosecuted and convicted of the offense.

3 Accordingly, and in fact, that the intended victim
4 was not an actual minor was irrelevant as the State was
5 only required to prove Green had the specific intent to
6 commit a sexual battery on a victim between the ages of 11
7 and 14 years old, coupled with some overt act toward the
8 commission of the offense.

9 In this case, Mr. Oertel, through his words and
10 actions has signified that he wanted those naked pictures
11 from this individual. The fact that it was not completed
12 or could not be completed does not negate the intent
13 expressed by his words and we believe that the final
14 question or the final demand asking for naked pictures of
15 Emmy Robinson satisfies that final overt act in this case,
16 Your Honor. So that would be our argument as to Mr. Boyd's
17 second contention.

18 THE COURT: All right. Anything further, Mr.
19 Flores?

20 MR. FLORES: Nothing as to this, Your Honor.

21 THE COURT: All right. Any response, Mr. Boyd?

22 MR. BOYD: Your Honor, the cases cited don't deal
23 with this statute, they deal with a solicitation matter.
24 And the solicitation statute makes it -- it's clear in
25 there it's not a defense that the person is not really

1 under the age of 18. It clarifies that in the statute
2 itself.

3 THE COURT: All right.

4 MR. BOYD: So I don't think that applies.

5 THE COURT: Based on the standard that I must apply
6 for directed verdict in the light most favorable to the
7 nonmoving party, that being the State, taking into account
8 the evidence, including the contents of State's Exhibit
9 Number 1, which is the transcript of the chats between Mr.
10 Oertel and Deputy Parry and those other items that have
11 been introduced that corroborate that and a close reading
12 of the statute, 16-15-395 and reviewing the indictment for
13 attempted sexual exploitation of a minor, first degree, the
14 individual would commit the offense of attempted first
15 degree sexual assault exploitation of a minor if knowing
16 the character or content of the material or performance he,
17 (A)1, uses, employs, induces, coerces, encourages, or
18 facilitates a minor to engage in or assist others to engage
19 in sexual activity.

20 Now, the remainder of (A)1 is part to appear in a
21 State of sexual physical nudity or for the purpose of
22 producing material containing a visual representation or a
23 state of sexual explicit nudity a reasonable person could
24 infer the purpose to be sexual in nature. So you would
25 have actually, (A)1 and four separate and distinct

1 activities that an individual could be attempting to
2 complete and would be violating the statute.

3 As to the case of both Jaffe and the State versus
4 Green, in reading from Green, based on the above outlined
5 definition, Green's actions were sufficient to prove the
6 offense of attempted CSC with a minor in the second degree.
7 I do realize that is a different statute, however, as
8 noted, an intent crime, not just attempted CSC with a
9 minor, but an intent crime, does not require completion of
10 the object offense.

11 Green was not required to complete the sexual
12 battery in order to be prosecuted and convicted of the
13 offense. Accordingly, the fact that he intended to -- and
14 there is that part of the transcript, although I think he
15 has actual -- or at least a reasonable person knew or
16 should have known that Emmy Robinson was a 15-year-old
17 female because that's on her profile page and as I
18 understand profile pages or perhaps I misunderstand them
19 perhaps, that information is on the same page as the
20 photograph of -- alleged to be or purported to be Emmy
21 Robinson.

22 Therefore, he would know or should have known it
23 was a 15-year-old female and he was requesting nude
24 pictures. And obviously his purpose and intent was -- for
25 purposes of the sexual activity you would say because of

1 the various photographs he had sent that permeated
2 throughout the entire case.

3 So based on that I would respectfully deny the
4 motion for directed verdict on Indictment 2016-GS-40-02109,
5 attempted sexual exploitation of a minor.

6 All right. And what's the next charge that you
7 would like to address, Mr. Boyd?

8 MR. BOYD: Your Honor, I would like to address the
9 four counts of disseminating -- attempt to disseminate
10 obscene materials to a minor.

11 THE COURT: All right. Yes, sir.

12 MR. BOYD: Your Honor, under 16-15-345, is that
13 that must be done knowingly and I think that's part and
14 parcel of attempt, basically in this particular case, the
15 author was not a minor and so Mr. Oertel has to believe
16 that he was doing this -- sending this material to a minor
17 at the time he did in order to be convicted of that charge.
18 The only evidence of her age at that point, at the time he
19 sent the material was the birth date on her profile page.
20 Mr. Oertel in the statement that was introduced into
21 evidence stated that he did not look at that, that he did
22 not know she was 15 at the time he sent the materials.
23 He -- he was obviously, when you look at the transcript,
24 surprised when he saw he -- he stated, Really, you must
25 be -- he stated, You must be using someone else's pic.

1 He was obviously surprised by that. I think even
2 in his opening statement, Mr. Flores stated that Mr. Oertel
3 was surprised in discovering that at the time. Now, he did
4 some things after that he shouldn't have done, but the
5 crime is completed at the point that he sends the material.
6 Nothing he does after he sent the material can later turn
7 it into a crime. So at the time that he sent the material,
8 there's no evidence that he knew, in fact, the evidence is
9 overwhelming that he did not know that she was alleged to
10 have been 15 years of age. That's my first ground on that
11 motion, Your Honor.

12 My second ground on that motion is basically the
13 same argument I made concerning people versus Jaffe before
14 so I'm not going to reiterate that again. But it's the
15 same argument that -- even though in this case it was a
16 completed act, that it wasn't a crime because the person he
17 sent it to is not, in fact, under 18 years of age.

18 THE COURT: Thank you. Thank you very much.

19 All right. Mr. Flores?

20 MR. FLORES: Yes, Your Honor, as to Mr. Boyd's
21 first argument concerning the question of whether or not
22 Mr. Oertel knew he was sending those pictures to a
23 15-year-old minor, the State would say take a look at the
24 evidence in the light most favorable to the State, we would
25 show that the profile openly open to public had to have

1 been accessed first before any other conduct can be done.
2 It's the State's position that Mr. Oertel did see that
3 profile page. He did ignore it consciously and sent those
4 pictures.

5 As far as Mr. Boyd's characterization of the
6 surprise of Mr. Oertel, I think the State and Mr. Boyd have
7 differing opinions of the level of surprise as to what the
8 word really meant. So I don't believe that there's
9 overwhelming evidence that Mr. Oertel did not know she was
10 15. I believe that there is abundant evidence based upon
11 the profile and all the contents of the profile that
12 indicated she was 15 and she was in high school at the
13 time.

14 THE COURT: Thank you, Mr. Flores.

15 Any response, Mr. Boyd?

16 MR. BOYD: No, sir.

17 MR. FLORES: Well, that was my --

18 THE COURT: I'm sorry.

19 MR. FLORES: That was to the first argument.

20 And the Jaffe argument, we would again rely upon
21 State versus Green, same as...

22 THE COURT: I assumed that, that's why I went back
23 to Mr. Boyd. I apologize. I didn't mean to jump the gun.

24 Anything in response, Mr. Boyd?

25 MR. BOYD: No, sir.

1 THE COURT: Well, 16-15-345 indicates an individual
2 18 years of age or older who knowingly disseminates to a
3 person under the age of 18. Of course, I will -- if the
4 case goes to the jury, I would define the term knowingly
5 and various other terms within that statute. So in the
6 light most favorable to the State under the directed
7 verdict standard, I would deny that motion. That's a
8 credibility issue the jury can rely on the profile and the
9 date of birth which I -- I believe was April 15th, 2000.
10 I'm not sure I'm correct on that.

11 MR. FLORES: I think that's the testimony that's --

12 THE COURT: April 15th, 2000. And they can believe
13 all, or part, or none -- I mean I'm taking into account
14 both the -- all the testimony that both Mr. Oertel's verbal
15 statements, conversations with the officers from York
16 County and also his written statement. They can believe
17 part of that, all of that, or none of that. So that's
18 clearly the jury's purview. As they could the officer's
19 testimony, they could believe all, or part or none, as they
20 can with anyone's testimony.

21 Taking into account, for the record, Mr. Oertel has
22 not testified and taking into account the substance that is
23 in. So I would deny that motion, Mr. Boyd as to the four
24 counts of attempted dissemination of obscene materials to a
25 person under the age of 18.

1 And also readdressing the Jaffe case, I reviewed
2 that case again that you handed up and also relying on the
3 Green case, I would affirm that ruling at this time.

4 All right. And then you have one final indictment,
5 Mr. Boyd, criminal solicitation of a minor?

6 MR. BOYD: Yes, Your Honor, actually, that's the
7 one that I have three grounds on.

8 THE COURT: All right. Yes, sir?

9 MR. BOYD: Your Honor, my first ground is basically
10 the same argument I just made on the dissemination argument
11 that at the time there's no evidence that Mr. Oertel knew
12 that the minor was -- the individual was allegedly under
13 the age of 15 in this particular situation. The State's
14 charge is about sexual activity is the description about
15 what he would do if she was present and the -- and at that
16 time there was no reference that she -- he knew that she
17 was 15, allegedly 15 years of age.

18 My second ground, Your Honor, is the statute
19 requires that the purpose of -- contacting for the purpose
20 of sexual activity as defined in 16-15-375, he never asked
21 her to engage in sexual activity. There was talk back and
22 forth about what they would do if they were present at that
23 time, but he wasn't present at that time. There's no
24 indication that he ever asked her to come meet him, to --
25 that they were going to meet for the purpose of sex or

1 anything of that nature. So basically, during the talk
2 about what you would do if you were here, what I would do
3 if you were here right now, but that's -- she wasn't there
4 right then, so it's -- it's just talk at this point.
5 There's no actual solicitation to come do anything, to meet
6 and do anything. I realize that he wouldn't actually have
7 to go meet, but there were no plans made to meet or
8 anything of that nature, so there's no solicitation under
9 the facts of this case that it occurred.

10 The third argument, Your Honor, I would make on
11 this count is that the -- it's an actual defense if -- it
12 says, you know, consent is a defense for a prosecution
13 pursuant to the section for the purpose of a person under
14 the age of 18 or a person reasonably believed to be under
15 18 is at least 16 years of age. In this case, Officer
16 Parry was over 18 years of age. Certainly under 16 years
17 of age.

18 Now, under D, it says it's not a defense that the
19 person may reasonably believed to be under age 18 as a law
20 enforcement or an officer acting in an official capacity.
21 She was a law enforcement agent, but I would argue that she
22 was not acting in an official capacity. I would, Your
23 Honor, base that on this argument. She is a school
24 resource officer. The -- if the Court will indulge me for
25 one moment.

1 (There was a pause in the proceedings.)

2 MR. BOYD: I'm looking for something I can't find.
3 If the Court will indulge me.

4 THE COURT: Of course.

5 (There was a pause in the proceedings.)

6 MR. BOYD: Your Honor, under the statute -- I'll
7 pass this up, a copy of the statute.

8 THE COURT: Thank you.

9 MR. BOYD: The statute, Section 5-7-12 is the South
10 Carolina Code of Laws that covers school resource officers
11 and it provides that a political subdivision may designate
12 certain officers -- may designate certain officers assigned
13 to duties as a school resource officer and work within the
14 school system of a municipality or county. In this case
15 she was not working in the school system of the
16 municipality or county. She was working at the private
17 school. There's no provision for -- in here for school
18 resource officers to be assigned to private schools.

19 Her testimony was that she was working at a private
20 school, that the school paid the sheriff's department back
21 for her salary, basically what the sheriff's department has
22 done is let them hire her as a private security guard and
23 gotten reimbursement for it, but certainly the statute
24 doesn't provide for that, so she is, I see it, not acting
25 in an official capacity when she's acting as a school

1 resource officer and when she is creating this Facebook
2 page for the purpose of basically checking on students or
3 engaging in this Facebook for her duties as a school
4 resource officer. She's a -- she is a law enforcement
5 officer, but in that context, she's not acting in an
6 official capacity. Therefore, consent would be a defense
7 in this particular case of solicitation.

8 THE COURT: Thank you. I would deny that as to her
9 not being -- as to the school resource officer issue.
10 She's a Richland County sheriff's deputy. She's testified
11 to it, there may be specific conditions, statutes that
12 cover the activities of the school resource officer within
13 that particular limited environment; however, she is a law
14 enforcement officer, Richland County Sheriff's Deputy and
15 she had jurisdiction in any role within Richland County,
16 which the school resource legislation is State legislation,
17 but she had jurisdiction to investigate, follow up on any
18 textual activity she was receiving.

19 All right, Mr. Flores, as to the other two grounds?

20 MR. FLORES: Yes, sir, Your Honor. As to the other
21 two grounds, I believe Mr. Boyd's argument as to the first
22 ground was the same as the -- the same argument as to four
23 counts of attempted dissemination of obscene material and
24 the State relied upon -- at least as far as the evidence
25 presented in the light most favorable to the State creates

1 a credibility issue for the jury to determine whether or
2 not he knew she was 15 from the public profile from the
3 testimony already entered.

4 As to Mr. Boyd's argument as to purpose of the
5 consent for sexual activity and it being their
6 communication, perhaps the State would again rely upon
7 State versus Harris. I did not provide the site. The site
8 for that is 413 SC 454; and while Mr. Boyd seems to
9 contract the statement to one instance of communication, we
10 believe the entire communication as presented, beginning
11 very early on was of a sexual nature.

12 There was discussion of meeting up. Nothing has to
13 be in preparation, we believe, but at least there was some
14 discussion early on, and we believe that this conversation
15 was sexual in nature at the very early stages based upon
16 the evidence presented and based on all the information
17 testified to.

18 That would be the State's argument as to that, Your
19 Honor.

20 MR. BOYD: Your Honor, may I reply real quick?

21 THE COURT: Of course, yes, sir. Of course, Mr.
22 Boyd.

23 MR. BOYD: Your Honor, the State in the Harris
24 case, the defendant actually asked the individual if she
25 wanted to have sex and he arranged for a time and place to

1 meet. They did, in fact, do that. It went much farther
2 than this case. There was an actual time and place
3 arranged for them to meet.

4 THE COURT: Reviewing the contents of State's
5 Exhibit Number 1; 28, August, 2015 was the first contact at
6 9:58 a.m. by the defendant to Emmy Robinson. And about 15
7 minutes from now, 11:30 p.m., (sic) 31 August 2016 will be
8 a year to the day between the first photograph statement
9 when he was in the shower. You go through this transcript,
10 I'm not going to place in the record all the various
11 language, but it's clear the intent as far as that is
12 concerned. There is an indication that not too far away
13 weekend, such like that.

14 So as to ground two on this particular motion for
15 directed verdict, I respectfully deny it. And I would also
16 deny on ground one as to my previous ruling concerning knew
17 or should have known as far as the age of the minor.

18 All right. Anything further, Mr. Boyd? Any other
19 motions?

20 MR. BOYD: No, sir.

21 THE COURT: Any motions from the State?

22 MR. FLORES: No, Your Honor.

23 THE COURT: All right. Mr. Boyd, do you want me to
24 advise your defendant -- excuse me, your client of his
25 constitutional rights?

1 Boyd. They may comment on the facts, the evidence,
2 reasonable inferences to be drawn from those facts and the
3 law, and how those intertwine.

4 If at any time during the course of the closing
5 arguments any of you need a break, again, raise your hand,
6 let me know, we will take our breaks. If at the end of
7 both arguments before my instructions to you on the law if
8 you need a break, please again, raise your hand, let me
9 know and we will take a break.

10 I will ask you to please give the attorneys your
11 complete and undivided attention as you have done
12 throughout the trial of the case.

13 And I don't allow anyone in and out of the
14 courtroom while the attorneys are addressing the jury. If
15 someone wants to go in or out between the attorneys they're
16 welcome to do so or after Mr. Boyd's closing and before I
17 begin my charge.

18 With that being said, Mr. Flores.

19 MR. FLORES: Thank you, Your Honor, may it please
20 the Court?

21 THE COURT: Yes, sir.

22 CLOSING ARGUMENTS

23 MR. FLORES: Mr. Oertel, Mr. Boyd, ladies and
24 gentlemen of the jury, before I get started in my closing
25 argument, I want to thank you first, myself, my co-counsel,

1 Mr. Gourley, my boss Alan Wilson FOR your service here this
2 week. Jury trials are one of the most important
3 fundamental duties and obligations as a citizen of this
4 country. By sitting here today and by listening this week,
5 you're fulfilling that duty. By answering questions that
6 we are going to present to you for both the State and Mr.
7 Oertel. And we thank you for that service.

8 The other thing is, don't worry about all these
9 papers here. It's not going to be that long. And if --
10 the other thing is I am not the ruler of the law. The
11 judge is the sole ruler of the law. So if I say something
12 wrong, he will correct me and whatever he says is the law.

13 When I came to you yesterday morning, told you that
14 this case was about protection of our children on the
15 internet because protection is needed because the internet
16 is like the wild west people go out there and do all sorts
17 of things. It's a good place because it's a marketplace of
18 ideas, places where you can go and meet old friends, people
19 we may have known 20, 30 years ago. You can go find exotic
20 spices. You can travel to distant locales if you don't
21 like the travel.

22 But for all that good, individuals use this
23 technology to prey upon our children. They go out there
24 looking for sex, looking for pictures, looking to satisfy
25 this base urge, and they don't care how old that individual

1 is.

2 This case boils down to words and pictures. Back
3 in the jury room, you will have the conversation between
4 Deputy Parry and Mr. Oertel. And through those a powerful
5 presentation. That's all the conversation that ever
6 occurred. You will have all the pictures. You will have
7 to decide, based upon your community standard whether or
8 not those that were sent to Deputy Parry were obscene. And
9 based on that conversation, you will have to determine
10 whether or not he solicited this minor and whether or not
11 he wanted naked pictures sent to him from her.

12 Let's talk about that conversation. Who reached
13 out first? Mr. Oertel. To what? A 15-year-old minor.
14 How do we know that? Deputy Parry never said anything
15 other than she is 15 years old. The public profile showed
16 April, 2000 as her birth date, clearly, right there. You
17 can read it. When you go to that profile page, it stares
18 you right in the face. Right along with that profile
19 picture. Did he know she was 15? He's good at math, he's
20 told us that, he's an engineer.

21 Reaction time? How long does it take to see words
22 on a page when you go to a web page? (Snap sound.) Like
23 that. Did he see she was 15? Yes. He ignored that
24 information. Why? Sex.

25 Why do I say that? Look at the conversation.

1 When he talked to Investigator Carter, he said,
2 well, we had a conversation to get to know each other. Did
3 he? Did he have a conversation to get to know her? How
4 many lines of text did she receive before he sent that
5 first photograph of himself? His face shot? A handful.
6 Didn't ask her anything about herself. Did he really get
7 to know her? And what was that picture of? Was it a
8 picture of him standing out on the street? Visiting a
9 park? Just up against the wall? He was in the shower.
10 What do you do in the shower? You bathe. You bathe naked.

11 So right from the get-go when they finally
12 establish a connection on September 1st, the conversation
13 is already heading in that direction. He also says I
14 didn't have plans to meet up with this individual. That's
15 one thing he did get to know, how far away are you?
16 Columbia. Which was on her profile. True.

17 So he was looking to meet up. Look at those words.
18 Who asked? Was there conversation about meeting up on the
19 weekend? Who brought that up?

20 Now, Deputy Parry is a dedicated school resource
21 officer. You heard about her Facebook page. It's not
22 intended to conduct these types of investigations. Deputy
23 Carter, Investigator Carter, he does these types of
24 investigations. He knows what he's doing. She contacted
25 him when she learned that this was happening. She got the

1 best guidance she could. Did she follow the rules, the
2 standards a hundred percent? No. We'll admit that. She
3 didn't. She took a picture that was available on the
4 internet. She used it. She believed it was a young girl
5 in some ways. She stole an identity. She's not perfect.
6 She did this case the best she could given its dynamic
7 nature.

8 Sometimes crimes happen all of the sudden. She did
9 the best she could. And the standards themselves from the
10 National Internet Crimes Against Children Task Force say,
11 look, we know you can't be perfect. No investigation ever
12 is. I bet you a guess that many of you would perhaps think
13 to yourselves is there a perfect investigation out there?
14 I bet you guess that there isn't.

15 So she did the best she could with the knowledge
16 she had. She kept him asking. So when he said do you want
17 to see something hot, she said sure, why not. More
18 pictures. Boom, boom, boom, boom. What are we talking
19 about in this conversation? Sex. Sex. More sex. That's
20 all this conversation was ever about.

21 What happened next? After the pictures were sent,
22 let's talk. Let's talk in words. Let's envision what we
23 could be doing and I'll tell you what I want to do to you.
24 So he tells her. He knew she was 15. Now, he says in his
25 statement, I didn't know she was 15. I didn't know. I

1 didn't know. He chose to ignore the information provided
2 to him. That was in the open.

3 So what does he do when she finally commits to 15
4 and commits to saying yeah, I've been 15 all along. What
5 does he do next? He said, Oh my God, I've done something
6 wrong, I'm so, so, so, sorry. Is it that? The words
7 again. Well, show me, this reaction. Really, period. You
8 just told me you were 15. I sent you all these things.
9 Really, period. Is that the reaction of somebody who's so
10 surprised and shocked that they've done something wrong?
11 No.

12 He's only smocked because he's gotten his hand
13 caught in cookie jar. So what does he do next? If he was
14 truly apologetic, truly sorry for having committed these
15 crimes, he would have backed off. What does he do? He
16 turns it around on her. Well, you should have told me you
17 were this or you should have done this, well, you shouldn't
18 have asked me for those pictures. As a result, I need
19 pictures of you. I need naked pictures of you. Why? Why?
20 Blackmail?

21 When you know you've done something wrong, you
22 don't make it worse, but that's what happened in this case.
23 He clearly knew she was 15 from the very beginning. And
24 when she said so, he asked for naked pictures of her. What
25 more than that? Ladies and gentlemen, you will have to

1 determine based on all the evidence presented to you from
2 Deputy Parry, Deputy Carter, whether or not that's true.

3 Take all that evidence, judge the credibility of
4 all the witnesses, and determine if that's the case we
5 presented to you. If it is, then we've proven beyond a
6 reasonable doubt that Mr. Oertel is guilty of four counts
7 of dissemination of obscene materials with a person under
8 age 18, criminal solicitation of a minor and attempted
9 sexual exploitation of a minor in the first degree. Look
10 hard at that evidence, listen to what you've -- think about
11 what you've heard. Think about what you've seen and use
12 your common sense. I believe it's -- we believe you will
13 find him guilty on all six counts.

14 Thank you.

15 THE COURT: Thank you. Thank you, Mr. Flores.
16 Mr. Boyd.

17 MR. BOYD: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. BOYD: As the judge has told you and as I said
20 in my opening statement, Tim Oertel doesn't have to come in
21 here to prove anything to you. He is presumed to be
22 innocent. And as I said before what that means is he does
23 not have to come here and prove his innocence to you, they
24 have to prove he's guilty. They have to prove he's guilty.
25 The State has to prove he's guilty beyond a reasonable

1 doubt. It's not a question of could he be guilty; is it
2 maybe guilty; or if it's probably he's guilty. It has to
3 be beyond any reasonable doubt. And the judge will discuss
4 that with you later.

5 And this is an unusual case in that what happened
6 in this case is not in dispute. I mean what happened was a
7 chat over Facebook and what was said is not in dispute.
8 This isn't a who done it case. For example if you have a
9 murder case, the defense might be, well, I didn't do it,
10 I'm not the person who shot this person. Or it may be yes,
11 I did it, but I did it in self-defense so, therefore, I'm
12 not guilty. But this is not that kind of case. It's not a
13 case where the basic fact, underlying facts are in dispute.
14 In this case, we admit that Tim did what he did. What we
15 say is that what he did doesn't constitute crimes.
16 And I want to go through each and every indictment
17 he's charged with, what he's charged with in each charge
18 and look at -- you've got to look at each one and see has
19 the charge been proven because every charge requires
20 certain elements to be proven. When I say elements,
21 there's certain things that have to be proven in each
22 charge to prove their case, like there may be two elements
23 or charges, four elements or whatever, but everyone of
24 those things has to be proven. If you have a reasonable
25 doubt as to any of those things then you're -- he's

1 entitled to a verdict of not guilty on those charges. Or
2 on that particular charge.

3 Let's first talk about -- I want to talk to you
4 about the four counts of disseminating obscene material to
5 a minor. Now, remember, the charge is attempt to do it,
6 not doing it because he didn't, in fact, disseminate
7 obscene material to a minor, he disseminated obscene
8 material to a police officer. The -- the disseminating
9 obscene material to a minor is contained in 16-15-345 and
10 it provides an individual 18 years of age or older who
11 knowingly disseminates to a person under the age of 18
12 material which he knows, or reasonably knows to be obscene
13 within the meaning of 16-15-345 is guilty of a felony.

14 The judge will charge what 16-15-345 says, but in
15 this particular case, what the State has to show is that
16 it's done knowingly; that is that he, knowing her to be a
17 minor attempted to send obscene material to her,
18 thinking -- now, this is an unusual case because it --
19 knowingly requires, for example, someone sending -- if
20 someone sends material to a 15-year-old and thinks the
21 person is 18 years old, that's not done knowingly. That
22 person wouldn't be guilty.

23 But the State in this case is saying Tim Oertel did
24 the reverse. They're saying he disseminated obscene
25 material to an adult thinking she was a minor, therefore,

1 he attempted to send obscene material to a minor.

2 So it boils down -- the nature of this charge boils
3 down because it's attempt as to what was in his mind. Did
4 he think at the time he sent the material, that this
5 individual was a minor? The only evidence they have that
6 he thought she was a minor is the Facebook page. It's
7 the -- her initial Facebook page and you'll have it in your
8 jury room, it's Exhibit Number 1 and it lists her date of
9 birth. And the date of birth it lists is the date of birth
10 that would have made her 15 years old at the time.

11 There's also something they made a big deal about.
12 Officer Parry testified about to where it says she goes to
13 A.C. Flora High School. It doesn't say that. It doesn't.
14 It says she went to A.C. Flora High School. Went is past
15 tense. If somebody went to high school, it means they're
16 no longer at the high school. In fact, somebody who has
17 completed high school is more than likely over 18 years of
18 age. And there's a few months there I guess a 17-year-old
19 could have completed high school. But generally, somebody
20 who's completed high school is over 18 years of age.

21 But the only evidence in there of -- that he
22 thought she was over -- under 18 years of age is the date
23 of birth that he said he did not see that he didn't look
24 at. He was looking at the picture. He was looking at the
25 picture, the profile picture, that officer Parry had put up

1 of the girl in the bikini, of a woman in a bikini, the blue
2 bikini. That's what caught his attention. That's what he
3 was interested in.

4 And how do we know this? Well, if you look at what
5 he told -- he stated -- I'm going to have to get my glasses
6 to look at this, I think. But he stated over and over that
7 concerning the Facebook file, the date of birth, I honestly
8 did not check that. I just checked her pictures.

9 Now, why do we -- what's the evidence that that's
10 true. Look at what he said during the chat he had with
11 her. When they go into the discussion about what you
12 can -- what he could do, what's going on. What is he
13 saying? She says she's 15. He says really, I should never
14 had sent you pictures of me naked, I'm 26. Then you are
15 using someone else's pics. He's obviously surprised at how
16 old she was because what he's done -- he's looking for
17 women out on the internet. He sees a girl or a woman who's
18 put a profile picture of herself in a bikini on her profile
19 page and that sparks his interest. He starts a chat with
20 her. And it gets into sex. And she's talking back with
21 him about sex.

22 When he says, you want to see something hot.
23 What's her response? Yeah. And then he sends the
24 pictures. Now, I think that's a stupid thing to do and
25 certainly that's not something appropriate to do, but it's

1 not something illegal do. He sends her the pictures and
2 she tells him -- what does she say back? You'll have it.
3 She likes the pictures. She tells him. And he starts
4 thinking wow, she likes this. And it goes on from there.

5 But he -- the evidence is clear that he did not
6 think she was 15 until she told him she was 15. It's clear
7 he was surprised. He even said, it must be someone else's
8 pic you're using and he's not thinking he's talking to a
9 law enforcement officer at that time. If he thought that,
10 he wouldn't have asked about sending pictures later.

11 The State has to prove beyond a reasonable doubt on
12 this charge of disseminating obscene material to a minor
13 that at the time he sent it, he thought that she was 15
14 years old. Or that he thought she was under 18 years old.
15 The State has to prove that beyond a reasonable doubt. And
16 I submit to you, the State has not done that. The State
17 has not proven that charge beyond a reasonable doubt. He
18 didn't think she was 15 years old at that time.

19 Now, anything else he did after that point doesn't
20 turn it into a crime. It's either a crime when he sent the
21 pictures, at that point, or it's not. Whether he's sorry
22 he did it afterwards or not doesn't matter. It goes to the
23 time. You can't make something a crime after it happened.

24 The -- he doesn't think she looks 15 in that, I
25 will submit to you, the woman in the picture is not 15.

1 But Officer Parry basically had the power to make it a
2 crime at that time. When he asked her age, how old are
3 you, if she says 18, there's no crime. If she says 15,
4 that's a crime. We can't give the officers the power to
5 make something a crime. I mean he either thought she was
6 15 when he sent the pictures or he didn't. If he did not,
7 and the State hasn't proven that beyond a reasonable doubt,
8 there is no crime.

9 Let's -- I also want to -- let's look at the
10 criminal solicitation of a minor first. I'm going to pull
11 that up just a second.

12 That requires a person 18 years of age or older
13 commits the crime of criminal solicitation of a minor if he
14 knowingly contacts or communicates or attempts to contact
15 or communicate with a person who is under the age of 18 or
16 a person reasonably believed to be under the age of 18 for
17 the purpose or with the intent of persuading, inducing,
18 enticing a person -- coercing the person to engage and
19 participate in sexual activity and then you have the
20 section that goes into what sexual activity is.

21 The key here is the word believe. Because this is
22 attempt, he didn't act -- well, it's not an attempt in
23 this. Because he didn't actually contact a minor, he has
24 to believe that he was contacting a minor or talking to a
25 minor when the solicitation occurred.

1 Now, first off, when you look at that charge,
2 they -- the same thing I said earlier goes with what's said
3 here. At the time they were engaging in the sex talk about
4 what he would do if she was there, that type of thing, I
5 think he asked her what she would do if she was with him.
6 She says some things, but he says more and he talks about
7 if you were with me right now what I would do.

8 Now, all that occurred, if you look before the
9 point in time that she says she's 15. At the time all that
10 talk was going on, he didn't know she was 15. It's clear
11 about that. It's clear from what he said. He didn't know
12 she was 15 at that time.

13 Now, when he found out -- after he found out she
14 was 15, there was no more talk about that. Now, he -- when
15 he -- when -- well, you might say what about asking her to
16 send pictures. He did send her pictures after that, but
17 sending pictures is not sexual activity as defined under
18 the statute. This is what sexual activity should be, some
19 of these things. And you'll -- the judge will tell you
20 about that, but it's all of that.

21 But sending pictures is not one of the things,
22 that's not a sexual activity as defined under the statute.
23 So you can't say he was soliciting by asking for pictures
24 to be sent. At the time he was doing all the sex talk with
25 her, that was before the point that he knew she was 15.

1 And again, the State that has burden of proving
2 that he believed she was 15 at that time. That has to be
3 proven beyond a reasonable doubt.

4 Also on that charge, I would submit to you, there
5 was no solicitation. He didn't request of her to actually
6 do these things. He's -- there's basically vision and
7 fantasy talk with what I would do if you were here. She
8 wasn't here. This was no arrangement to make a meeting or
9 anything like that. There was some talk earlier, well,
10 Rock Hill -- Columbia is not too far away, or Rock Hill is
11 not too far away, maybe we can hang out, something like
12 that. But there was no talk, let's meet and have sex or
13 anything like that. No meeting was arranged.

14 I submit to you no solicitation of her even if she
15 had been under 18, no solicitation actually occurred. But
16 again, when all that talk went on, if he was not -- he
17 didn't think she was 15 at that time.

18 Then we have the sexual exploitation of a minor
19 charge. And that -- the basis of that charge is that he
20 asked her to send pictures of herself and admittedly, this
21 was after he found out she claimed to be 15. Now, I'm
22 going pull up a part of that conversation. I believe this
23 is it. He says: Really, if that's you, I want to see more
24 pics. Now, he's basically asking for something contingent,
25 he's asking if that's you in that picture, I want to see

1 more pictures of you.

2 This is the person he was wanting to have pictures
3 of. The picture that's on the profile page. So he was
4 asking if that's you in that picture, I want to see
5 pictures. Assuming he's wanting nude pictures, that's the
6 person he wants to see nude pictures of. Does that look
7 like a 15-year-old girl? I submit no. But, let's look at
8 the wording of this statute because I think that's
9 important. Even if he thought he was asking for pictures
10 of a 15-year-old, let's look at the statute a minute and
11 talk about that a minute.

12 Sexual exploitation of a minor, the judge will
13 charge you about this, but it's -- it says, knowing the
14 character and content of the material he uses, employs,
15 entices, coerces, encourages, or facilitates a minor to
16 engage in or assist of -- to engage in sexual activity or
17 appear in a state of sexually explicit nudity and then it
18 goes on and it says, for the purposes of producing material
19 that contains a visual representation of a minor.

20 Now, two things here in this statute. He has to be
21 requesting that she appear in a state of sexual explicit
22 nudity. And again, this is an attempt charge. He didn't
23 actually do it. It's that he attempted to do it. For the
24 purpose of producing material -- he's not producing any
25 material. I submit to you this statute is a statute made

1 to charge people that are producing child pornography, not
2 someone who's requesting pictures. He didn't have to ask
3 her to appear in a state of sexually explicit nudity so
4 that material could be produced. Produced is make,
5 manufacture, something like this. He's not requesting
6 that.

7 Was he wrong to request those photographs?

8 Absolutely. Does it fit the definition in the statute?

9 No. He wasn't requesting anything to be produced. And I
10 submit to you again, the State has not proven that beyond a
11 reasonable doubt.

12 Now, I have talked about the charges and gone
13 through them with you and I think it's important because
14 it's -- it's really a difficult case to argue because
15 you're dealing with legal issues and intent and all these
16 things. It's not like who done it. Like arguing about the
17 client, Well, did he do this or did he do that. In this
18 case, you've got somebody that did things; and my argument
19 is that the things he did doesn't come under the statute.
20 So necessarily, I've had to talk about the law and that can
21 be rather boring, I realize.

22 But unfortunately, that's the nature of this case.
23 And I ask you to carefully consider these charges
24 because -- and look at what the judge charges you about it.
25 Remember what I've said about these charges. Has the

1 elements of each offense been proven? And again,
2 disseminating obscene material to a minor, he didn't
3 believe she was 15 years old at the time this happened.

4 Solicitation, I submit to you there was no
5 solicitation, but even if it was, it happened before he
6 knew she was 15 years old. Sexual exploitation of a minor,
7 I submit, it doesn't fit the statute. What happened in
8 this case, Officer Parry created a Facebook page. She
9 violated the terms and conditions of Facebook by doing it.
10 She didn't get the permission of the individual whose
11 picture it is. And she said well any picture can be used,
12 but to create a false identity with someone's picture? I
13 mean, I think that's pretty outside the realm of what
14 people are supposed to do.

15 And she puts this picture of the girl with the
16 bikini. Tim Oertel sees this girl with the bikini, likes
17 her, makes contact, the person is receptive to the contact.
18 He goes farther into it. He first sends a picture of
19 himself in the shower. There's no objection. He says, you
20 want to see something hot. She says yes. He sends a nude
21 picture of himself. She tells him she likes it. They go
22 onto more talk. Just one thing after another.

23 I mean, I don't approve of that, but like I said
24 earlier, whatever -- it may be immoral, it may be
25 disgusting, it may be wrong, but it's not illegal. He was

1 just led through and it got to that point. After he found
2 out she was 15, he should have never asked for pictures of
3 her. But I submit to you it wasn't for the purpose of
4 producing material and it just doesn't fit the statute.

5 Because of all of those reasons, I ask you to
6 carefully consider this case and render a verdict of not
7 guilty on each and every charge. Thank you.

8 THE COURT: Thank you, Mr. Boyd.

9 JURY CHARGE

10 THE COURT: Mr. Foreman, and ladies and gentlemen
11 of the jury, if you would please give me your complete and
12 undivided attention. It is now my responsibility to charge
13 or instruct you on the law that you would apply to the
14 facts of the case as you, the jury find the facts to be.
15 You are the fact finders.

16 The method or the manner that I use in instructing
17 the jury is I charge the general criminal law that applies
18 to all cases, all criminal cases in South Carolina. I will
19 give you the caption of the subject matter and when I
20 change from one subject matter to the next, I will give you
21 the caption. Once I have completed the general charges, I
22 will then charge you on the specific causes of action or
23 the specific charges in the indictments, criminal
24 solicitation of a minor, attempted dissemination of obscene
25 material to a person under the age of 18, and attempted

1 (It was reported to the Court that the jury had
2 reached a verdict at 3:53 p.m.)

3 THE COURT: Anything from the State before we bring
4 in our jury, Mr. Flores?

5 MR. FLORES: No, sir.

6 THE COURT: Defense, Mr. Boyd?

7 MR. BOYD: No, sir.

8 (The jury entered the courtroom at 3:54 p.m.)

9 THE BAILIFF: Jury is seated, Your Honor.

10 THE COURT: Thank you, thank you, Madam Clerk.

11 All right. Madam Clerk.

12 THE CLERK: Mr. Foreman, have you reached a
13 verdict.

14 THE FOREPERSON: Yes, we have.

15 THE CLERK: Is it unanimous?

16 THE FOREPERSON: Yes.

17 THE CLERK: Please hand it to me.

18 THE COURT: All right. The verdict appears to be
19 in the proper form, signed by our presiding juror dated
20 8/31/16.

21 Madam Clerk would you publish the verdict, please.

22 THE CLERK: Yes, sir, Your Honor.

23 VERDICT

24 THE CLERK: The State of South Carolina versus
25 Timothy Alan Oertel, Indictment 2016-GS-40-21504 as to

1 attempted dissemination of obscene material to a person
2 under the age of 18, We, the jury, unanimously find the
3 defendant guilty.

4 Indictment Number 2016-GS-40-2105 as to attempted
5 dissemination of obscene material to a person under the age
6 of 18, we, the jury, unanimously find the defendant guilty.

7 Indictment Number 2016-GS-40-2106 as to attempted
8 dissemination of obscene material to a person under the age
9 of 18, we, the jury unanimously find the defendant guilty.

10 Indictment Number 2016-GS-40-2107, as to attempted
11 dissemination of obscene material to a person under the age
12 of 18, we, the jury unanimously find the defendant guilty.

13 Indictment Number 2016-GS-40-2108, as to criminal
14 solicitation of a minor, we, the jury unanimously find the
15 defendant guilty.

16 Indictment Number 2016-GS-40-20109, as to attempted
17 sexual exploitation of a minor, first degree, we, the jury
18 unanimously find the defendant guilty.

19 Signed number 156, foreperson, August 31th, 2016.

20 Mr. Foreman are these your verdicts and the
21 verdicts of the entire jury?

22 THE FOREPERSON: Yes.

23 THE CLERK: Thank you.

24 THE COURT: Anything additional for the jury from
25 the State, Mr. Flores?

1 MR. FLORES: Nothing from the State, Your Honor.

2 THE COURT: Mr. Boyd.

3 MR. BOYD: Nothing, Your Honor.

4 THE COURT: Thank you, thank you very much.

5 Mr. Foreman, ladies and gentlemen of the jury
6 panel, momentarily, I'm going to release you from your jury
7 service for the remainder of the day, of course, and the
8 remainder of the week. You would not have to call back,
9 you would not have to come back. I never criticize nor
10 commend a jury for its verdicts. However, I do make the
11 observations that when a jury is focused, attentive,
12 listening, and tracking the evidence and it's a group that
13 represents our community, that is when justice is done in
14 our courtrooms.

15 The privilege I have -- I think it's a privilege to
16 be -- to happen to hold the role of circuit court judge is
17 being able to work with so many people within our criminal
18 justice system; whether it's clerk's staff, court
19 reporters, bailiffs, attorneys, regardless of what side of
20 the courtroom they may represent or what parties they
21 represent, the shining light of that is working with
22 citizen throughout South Carolina each and every week in
23 our courtrooms.

24 And although they may be divisive in various
25 portions of our country, I have always found that the jury

1 comes together to reach and fulfill their oath of a fair
2 and impartial verdict. And it has only increased my
3 admiration and respect for the American system.

4 Thank you, thank you very much, for performing your
5 civic duty this week. I know you're not volunteers, but
6 you are the foundation of the civil and criminal justice
7 system.

8 With that being said, you're now excused from your
9 jury duty.

10 Madam Clerk, is there anything further the clerk's
11 office needs?

12 THE CLERK: I would like to speak with them in the
13 back.

14 THE COURT: Thank you, thank you very much. If you
15 would go with your bailiff, Madam Clerk will come back
16 there and speak with you momentarily.

17 (The jury left the courtroom at 4:01 p.m.)

18 POST-TRIAL MOTIONS

19 THE COURT: All right. Any matters from the State?
20 Any matters from the State, Mr. Flores?

21 MR. FLORES: No, Your Honor.

22 THE COURT: Mr. Boyd?

23 MR. BOYD: Yes, Your Honor. Your Honor at this
24 time, I would move for a new trial for a judgment
25 notwithstanding the verdict. I make the motion, Judge on

1 all these on the same grounds I made as to each charge in
2 my motion for directed verdict, incorporating each and
3 every argument I made at that time and I'd like for the
4 record to reflect I'm making those on the same grounds as
5 previously as stated over at this time.

6 THE COURT: All right. Thank you, thank you very
7 much, Mr. Boyd.

8 Any other motions?

9 MR. BOYD: No, sir.

10 THE COURT: All right. I would respectfully deny
11 those motions and reaffirm all my previous rulings both on
12 motions and evidentiary rulings throughout the course of
13 the trial.

14 Any other motions?

15 MR. BOYD: That's all, Your Honor.

16 THE COURT: All right. Any reason sentencing
17 should not be imposed at this time?

18 MR. BOYD: No, sir.

19 SENTENCE

20 THE COURT: If you would please have Mr. Oertel
21 come around.

22 Are the sentencing sheets prepared?

23 MR. FLORES: I have them, Your Honor, the clerk
24 handed them to me. Do we need the sign these at all?

25 THE COURT: Does the clerk need to see them?

1 MR. FLORES: She handed these to me.

2 THE COURT: All right. Anything further from the
3 State, Mr. Flores?

4 MR. FLORES: Yes, Your Honor, Mr. Oertel has now
5 been found guilty of these charges. I believe that the
6 criminal solicitation and each of the attempted
7 dissemination of obscene material to a person under the age
8 of 18, each of those carry zero to ten years and each
9 requires registry on the sex offender registry. The sexual
10 exploitation of a minor in the first degree is a three to
11 twenty year sentence that must be consecutive to any other
12 sentence handed down by the Court.

13 THE COURT: All right. Any prior criminal history?

14 MR. FLORES: Mr. Oertel does not have any prior
15 criminal history, Your Honor.

16 THE COURT: Solicitation require the registry?

17 MR. FLORES: Yes, Your Honor.

18 THE COURT: All the dissemination requires
19 registry?

20 MR. FLORES: That's correct, Your Honor.

21 THE COURT: And attempted sexual exploitation?

22 MR. FLORES: Yes, Your Honor.

23 THE COURT: All right. Mr. Boyd?

24 MR. BOYD: Yes, Your Honor. Your Honor, Mr. Oertel
25 is 27 years old. Except for this incident, he has lived an

1 exemplary life having no prior record as you heard. He
2 graduated from Northwestern High School in Rock Hill in
3 2007. He studied at York Technical College for Mechanical
4 Graphic Engineering, he only needed two courses to
5 graduate. He was an Eagle -- or is an Eagle Scout and has
6 a bronze pelican. He worked at St. Anne's Catholic School
7 and Church for maintenance, maintaining school activities
8 for boys, girl scouts, weddings, funerals, just about
9 everything.

10 He worked and is still employed but is on a leave
11 of absence from Home Depot. He made the associate of the
12 month. He has started a company Broadtechs and Partners,
13 and in that capacity the company donates 5 percent of their
14 sales to charities with Red Cross feeding America.

15 Your Honor, as far as a character he is, he saved a
16 friend of his in the Smokey Mountains. At one point he
17 carried him two miles to EMTs. He has always been very
18 polite and understanding and cooperated fully coming to
19 court, complying with the terms of his bond.

20 Your Honor, you heard the circumstances surrounding
21 this case and I'm certainly not going to argue that case.
22 But I would maintain that Mr. Oertel is not a danger to
23 anyone. He will have to undergo sex offender registry and
24 be monitored under that. I would ask the Court -- I
25 understand the penalties in these cases the sexual

1 exploitation carries a mandatory three years up to twenty
2 years and that has to be, as Mr. Flores said, a consecutive
3 sentence, but I would ask the Court consider a -- consider
4 some light sentence on the other charges since he does have
5 to do that consecutive three years, based on his lack of
6 prior record, the life he has lived up to now. And I would
7 ask the Court to take all that into consideration and give
8 him the minimum sentence.

9 THE COURT: Thank you. Thank you, Mr. Boyd.

10 MR. BOYD: I'd also like to point out his father is
11 here and has been here and his friend is also here.
12 They're very concerned about him and have been very
13 supportive of him throughout. He has family support. He
14 is from Rock Hill, has been there and has very good
15 community support. I've talked to another lawyer friend of
16 mine who was his -- worked with him in the scouts and he is
17 the actual person who referred Mr. Oertel to me and thought
18 very highly of him.

19 THE COURT: Thank you. Thank you very much.

20 Anything you'd like to say, Mr. Oertel?

21 THE DEFENDANT: That this is a life learning
22 experience and that I've learned tremendously how to use my
23 words now. And the company that I -- I've worked with
24 companies that offer cyber security. I would help my
25 clients with that. I understand how cyber security works

1 and how to prevent that, how to keep criminals from getting
2 into their systems. And I've bent over backwards to
3 maintain security and like Mr. Boyd said, I have had a
4 tremendous life so far. This is just a bump in the road
5 that I highly regret. That's what I have to say to Your
6 Honor.

7 THE COURT: All right. Thank you, thank you, Mr.
8 Oertel.

9 All right. Taking into account all the totality
10 all the facts and circumstances presented during the case
11 both by the State and the defense, I take into account
12 family ties, family support, the fact that he has no prior
13 criminal history whatsoever, that he has earned both as a
14 younger man and as an adult accolades both in his scouts
15 and his places of employment. He has been of assistance to
16 other people.

17 I further take into account his -- both his
18 attorney's and both his statements to the Court today. As
19 to Indictment 16-GS-40-2105, 2106, 2107, 2104, those four
20 indictments, having been found guilty of attempted
21 dissemination of obscene material to a person under 18, the
22 defendant is commit today the State Department of
23 Corrections for a determinate term of six years. Those are
24 all concurrent. Each requires sex offender registry.

25 As to 16-GS-40-2108 criminal solicitation of a

1 minor, the defendant having been found guilty by the jury,
2 the defendant is committed to the State Department of
3 Corrections for a determinate term of six years. That is
4 concurrent to the sentence on the attempted dissemination.

5 As to 2016-GS-40-2109, attempted sexual
6 exploitation of a minor in the first degree, the defendant
7 is commit today a determinate term of three years and that
8 is consecutive to all other sentences imposed this date,
9 8/31/16.

10 As I say all the sentences each indicate he is
11 subject to the requirement of the sex offender registry.
12 Thank you, a thank you very much, good luck to you Mr.
13 Oertel.

14 Thank you, Mr. Boyd.

15 MR. BOYD: Your Honor, I have one other matter.

16 THE COURT: Yes, sir?

17 MR. BOYD: Your Honor, I would like to move for an
18 appeal bond at this time.

19 THE COURT: All right. I'll be delighted to take
20 that up in the morning.

21 MR. BOYD: In the morning?

22 THE COURT: Yes, sir.

23 MR. BOYD: What time?

24 THE COURT: 9:30. Thank you, thank you very much.

25 (Court was in recess for the day.)

WITNESSES

Investigator Richard Carter – Richland County
Sheriff's Department

DOCKET NO. 2016-GS-40- 02104

The State of South Carolina

County of Richland

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

April, 2016 TERM
AG

I hereby appear in my own proper person and plead
guilty to the within indictment or to

ARREST WARRANT NUMBER

2015A4010600898

Defendant

THE STATE

vs.

TIMOTHY ALAN OERTEL

D.O.B. [REDACTED] 1988

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Brandon P. Jeffrey
Foreperson of Grand Jury
Date: APR 13 2016

VERDICT

Indictment for
**ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON
UNDER AGE EIGHTEEN**

South Carolina Common Law and
SC Code: 16-15-0345
CDR Code: 0375

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON UNDER
AGE EIGHTEEN

At a Court of General Sessions, convened on April 13, 2016, the Grand Jurors of Richland County present upon their oath:

That Timothy Alan Oertel, on or about the date of September 1, 2015, did willfully and knowingly attempt to commit the crime of dissemination of obscene material to person under the age of eighteen. To wit: Timothy Alan Oertel, a person eighteen years of age or older, did knowingly disseminate and/or attempt to disseminate to a person under the age of eighteen material which he knew or reasonably should have known to be obscene within the meaning of Section 16-15-305, of the South Carolina Code of Laws (1976), as amended, in Richland County. This is in direct violation of Section 16-15-345 and Section 16-1-80, of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (LVF)
ATTORNEY GENERAL

WITNESSES

Investigator Richard Carter – Richland County
Sheriff's Department

DOCKET NO. 2016-GS-40- 02105

The State of South Carolina

County of Richland

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

April, 2016 TERM
AG

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

ARREST WARRANT NUMBER

2015A4010600899

THE STATE

vs.

TIMOTHY ALAN OERTEL
D.O.B. [REDACTED] 1988

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

James D. McFadden
Foreperson of Grand Jury

Date: **APR 13 2016**

VERDICT

**Indictment for
ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON
UNDER AGE EIGHTEEN**

South Carolina Common Law and
SC Code: 16-15-0345
CDR Code: 0375

Foreperson of Petit Jury
Date:

155

A.158

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON UNDER
AGE EIGHTEEN

At a Court of General Sessions, convened on April 13, 2016, the Grand Jurors of Richland County present upon their oath:

That Timothy Alan Oertel, on or about the date of September 1, 2015, did willfully and knowingly attempt to commit the crime of dissemination of obscene material to person under the age of eighteen. To wit: Timothy Alan Oertel, a person eighteen years of age or older, did knowingly disseminate and/or attempt to disseminate to a person under the age of eighteen material which he knew or reasonably should have known to be obscene within the meaning of Section 16-15-305, of the South Carolina Code of Laws (1976), as amended, in Richland County. This is in direct violation of Section 16-15-345 and Section 16-1-80, of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (LVF)
ATTORNEY GENERAL

WITNESSES

Investigator Richard Carter – Richland County
Sheriff's Department

ARREST WARRANT NUMBER

2015A4010600900

ACTION OF GRAND JURY

TRUE BILL

Zander P. [Signature]
Foreperson of Grand Jury

Date: APR 13 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-02106

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

April, 2016 TERM
AG

THE STATE

vs.

TIMOTHY ALAN OERTEL
D.O.B. [REDACTED] 1988

**Indictment for
ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON
UNDER AGE EIGHTEEN**

South Carolina Common Law and
SC Code: 16-15-0345
CDR Code: 0375

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

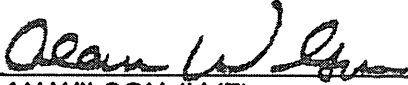
ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON UNDER
AGE EIGHTEEN

At a Court of General Sessions, convened on April 13, 2016, the Grand Jurors of Richland County present upon their oath:

That Timothy Alan Oertel, on or about the date of September 1, 2015, did willfully and knowingly attempt to commit the crime of dissemination of obscene material to person under the age of eighteen. To wit: Timothy Alan Oertel, a person eighteen years of age or older, did knowingly disseminate and/or attempt to disseminate to a person under the age of eighteen material which he knew or reasonably should have known to be obscene within the meaning of Section 16-15-305, of the South Carolina Code of Laws (1976), as amended, in Richland County. This is in direct violation of Section 16-15-345 and Section 16-1-80, of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (LVF)
ATTORNEY GENERAL

WITNESSES

Investigator Richard Carter – Richland County
Sheriff's Department

ARREST WARRANT NUMBER

2015A4010600901

ACTION OF GRAND JURY

TRUE BILL

Barbara P. J. McJadden
Foreperson of Grand Jury

Date: APR 13 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016-GS-40-02107

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

April, 2016 TERM
AG

THE STATE

vs.

TIMOTHY ALAN OERTEL
D.O.B. [REDACTED] 1988

**Indictment for
ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON
UNDER AGE EIGHTEEN**

South Carolina Common Law and
SC Code: 16-15-0345
CDR Code: 0375

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

ATTEMPTED DISSEMINATION OF
OBSCENE MATERIAL TO PERSON UNDER
AGE EIGHTEEN

At a Court of General Sessions, convened on April 13, 2016, the Grand Jurors of Richland County present upon their oath:

That Timothy Alan Oertel, on or about the date of September 1, 2015, did willfully and knowingly attempt to commit the crime of dissemination of obscene material to person under the age of eighteen. To wit: Timothy Alan Oertel, a person eighteen years of age or older, did knowingly disseminate and/or attempt to disseminate to a person under the age of eighteen material which he knew or reasonably should have known to be obscene within the meaning of Section 16-15-305, of the South Carolina Code of Laws (1976), as amended, in Richland County. This is in direct violation of Section 16-15-345 and Section 16-1-80, of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (LVF)
ATTORNEY GENERAL

WITNESSES

Investigator Richard Carter – Richland County
Sheriff's Department

DOCKET NO. 2016-GS-40-02108

The State of South Carolina

County of Richland

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

April
AG, 2016 TERM

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

ARREST WARRANT NUMBER

2015A4010600902

THE STATE

vs.

TIMOTHY ALAN OERTEL
D.O.B. [REDACTED] 1988

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Sandra P. [Signature]
Foreperson of Grand Jury
Date: APR 13 2016

VERDICT.

Indictment for

**CRIMINAL SOLICITATION
OF A MINOR**

SC Code: 16-15-0342
CDR Code: 2999

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

INDICTMENT

CRIMINAL SOLICITATION OF A MINOR

At a Court of General Sessions, convened on April 13, 2016,
the Grand Jurors of Richland County present upon their oath:

That Timothy Alan Oertel, on or about the date of September 1, 2015, did willfully and knowingly commit the crime of criminal solicitation of a minor. To wit: Timothy Alan Oertel, a person eighteen years of age or older, did knowingly contact and communicate with a person he reasonably believed to be under the age of eighteen, in Richland County, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person reasonably believed to be under the age of eighteen. This is in direct violation of Section 16-15-0342, of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (LVF)
ATTORNEY GENERAL

DOCKET NO. 2016-GS-40-

02109

WITNESSES

Investigator Richard Carter – Richland County
Sheriff's Department

The State of South Carolina

County of Richland

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

April
AG

2016 TERM

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

ARREST WARRANT NUMBER

Direct Presentment

DP 16082

THE STATE

vs.

TIMOTHY ALAN OERTEL

D.O.B. [REDACTED] 1988

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Sandra P. Jett
Foreperson of Grand Jury
Date: APR 13 2016

VERDICT

Indictment for

**ATTEMPTED SEXUAL EXPLOITATION
OF A MINOR, FIRST DEGREE**

**SOUTH CAROLINA COMMON LAW
AND S.C. CODE §16-15-395(A)
CDR Code: 0379**

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF RICHLAND)

ATTEMPTED SEXUAL EXPLOITATION OF A
MINOR, FIRST DEGREE

At a Court of General Sessions, convened on April 13, 2016, the
Grand Jurors of Richland County present upon their oath:

That Timothy Alan Oertel, on or about September 1, 2015, did willfully and knowingly attempt to commit the crime of Sexual Exploitation of a Minor, First Degree. To wit: Timothy Alan Oertel, a person eighteen years of age or older, did knowingly attempt to use, employ, induce, coerce, encourage or facilitate a minor to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity where a reasonable person would infer the purpose is sexual stimulation, as defined by Section 16-15-375(5) and 16-15-375(6). This incident occurred within the County of Richland, State of South Carolina, and is in direct violation of Section 16-15-395(A) and Section 16-1-80 of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


ALAN WILSON (LVF)
ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The State of South Carolina,

v.

Timothy Alan Oertel,

Defendant.)

) IN THE COURT OF GENERAL SESSIONS

)

) FOR THE FIFTH JUDICIAL CIRCUIT

)

)

) Indictment No. 2016-GS-40-02104

) Indictment No. 2016-GS-40-02105

) Indictment No. 2016-GS-40-02106

) Indictment No. 2016-GS-40-02107

) Indictment No. 2016-GS-40-02108

) Indictment No. 2016-GS-40-02109

VERDICT FORM

PLEASE MARK THE APPROPRIATE VERDICT BELOW AND FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

1. INDICTMENT NUMBER 2016-GS-40-02104 AS TO ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO PERSON UNDER AGE EIGHTEEN, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT:



GUILTY

NOT GUILTY

2. INDICTMENT NUMBER 2016-GS-40-02105 AS TO ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO PERSON UNDER AGE EIGHTEEN, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT:



GUILTY

NOT GUILTY

3. INDICTMENT NUMBER 2016-GS-40-02106 AS TO ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO PERSON UNDER AGE EIGHTEEN, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT:



GUILTY

NOT GUILTY

4. INDICTMENT NUMBER 2016-GS-40-02107 AS TO ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO PERSON UNDER AGE EIGHTEEN. WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT:

☒ GUILTY
☐ NOT GUILTY

5. INDICTMENT NUMBER 2016-GS-40-02108 AS TO CRIMINAL SOLICITATION OF A MINOR. WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT:

☒ GUILTY
☐ NOT GUILTY

6. INDICTMENT NUMBER 2016-GS-40-02109 AS TO ATTEMPTED SEXUAL EXPLOITATION OF A MINOR, FIRST DEGREE. WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT:

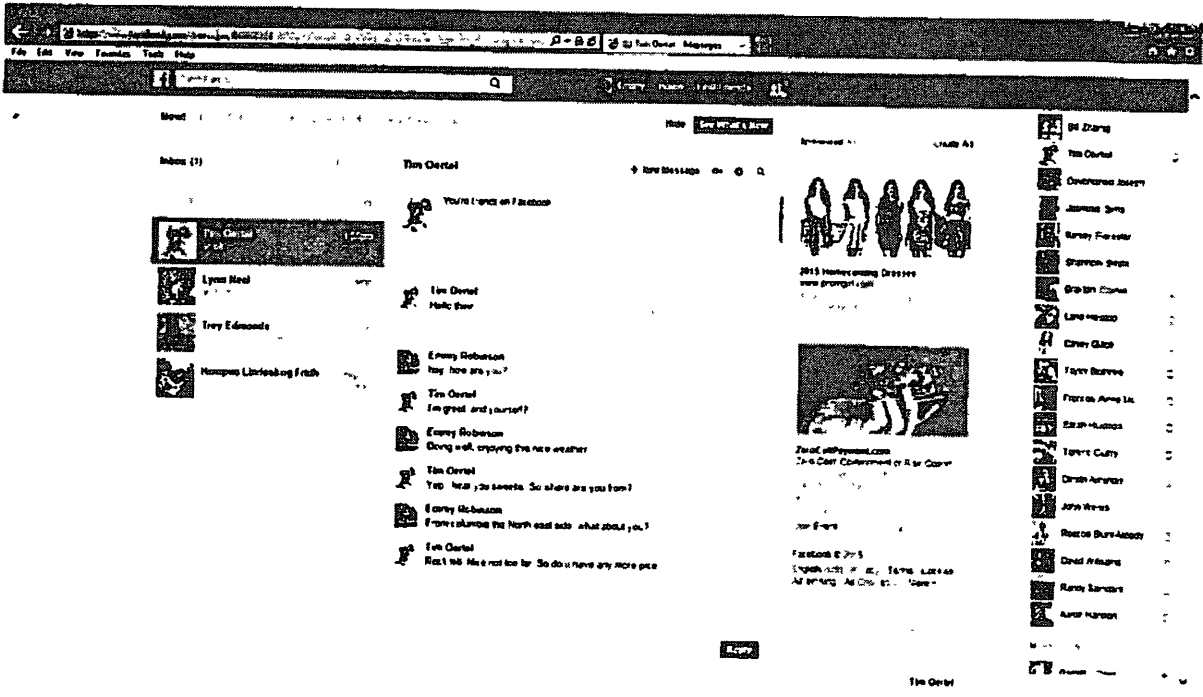
☒ GUILTY
☐ NOT GUILTY

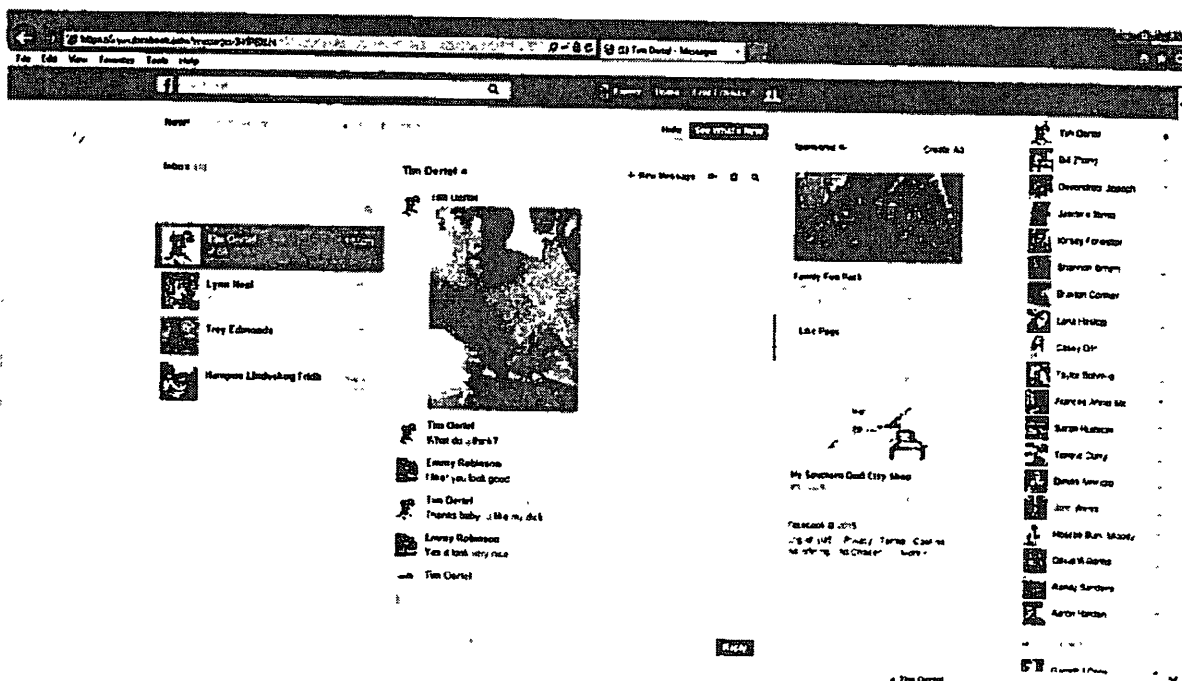
STOP AND END YOUR DELIBERATIONS.

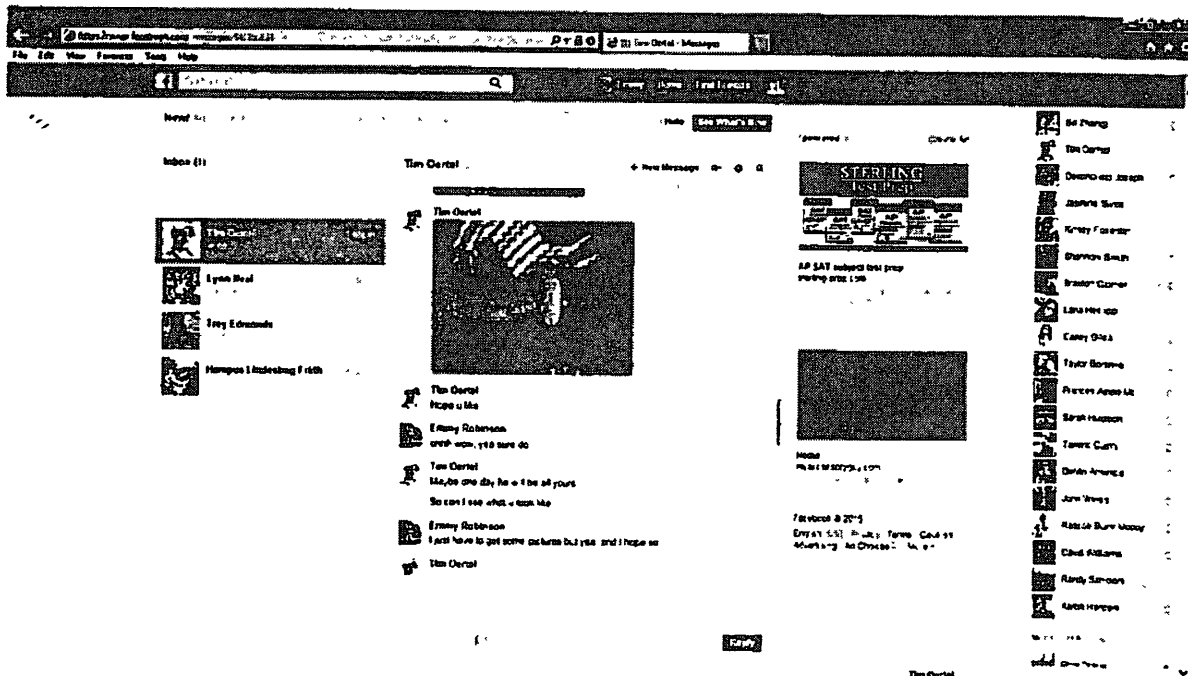
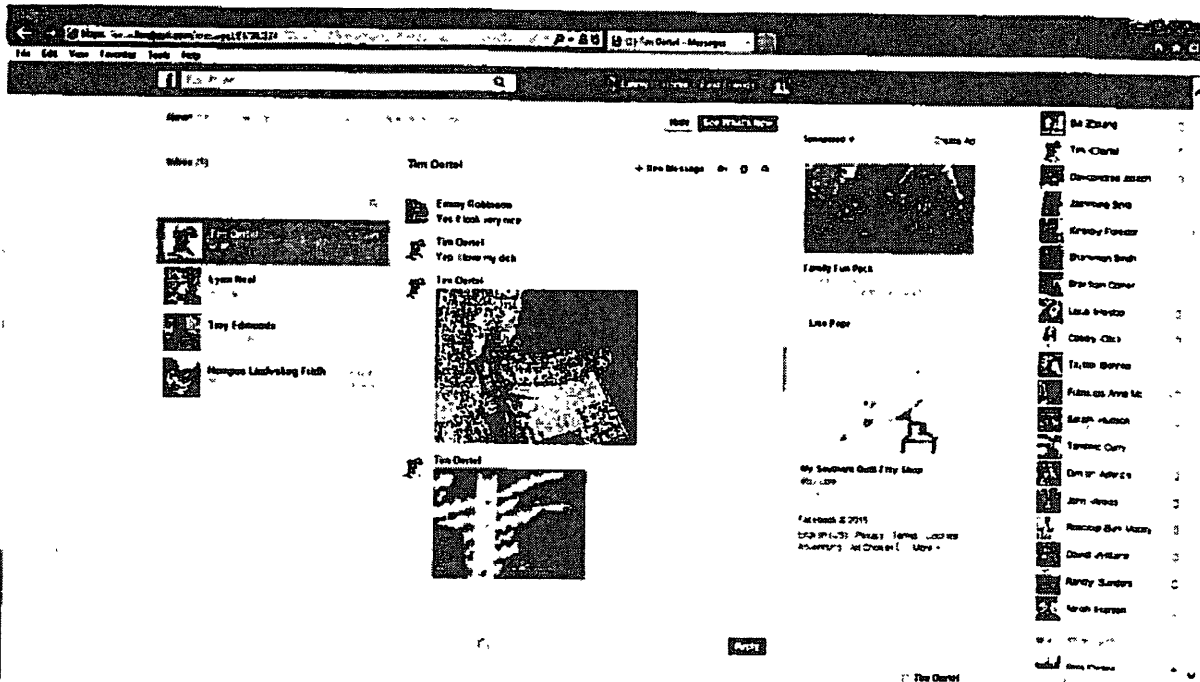
Please sign and date.

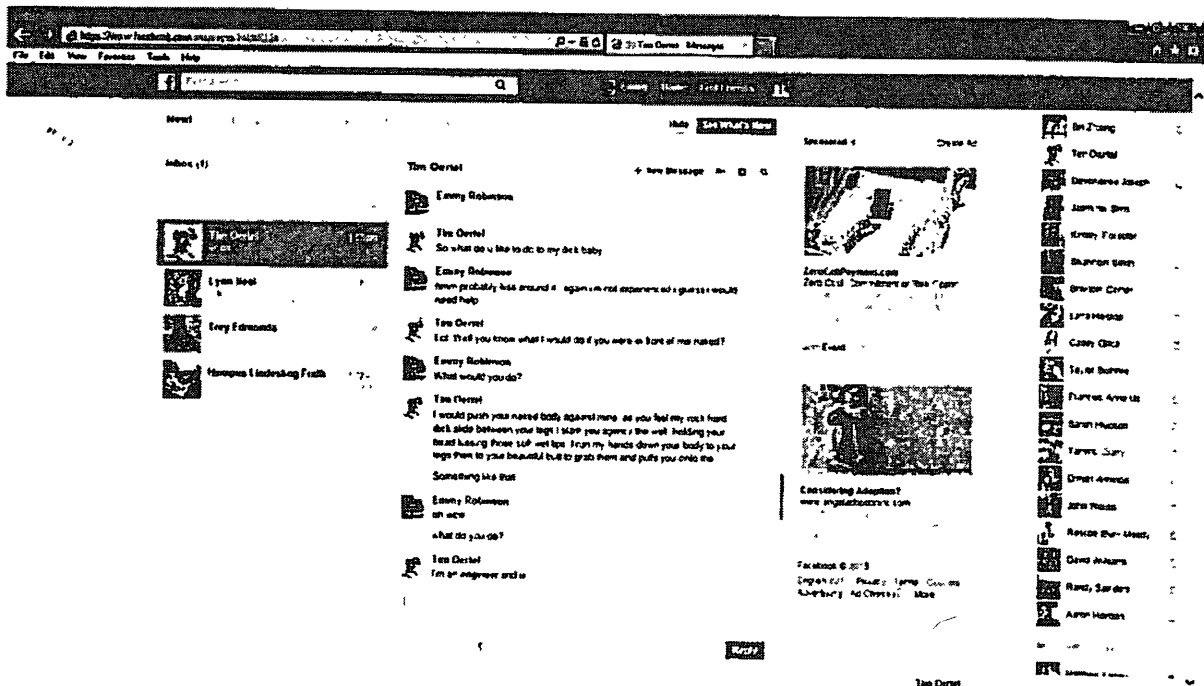
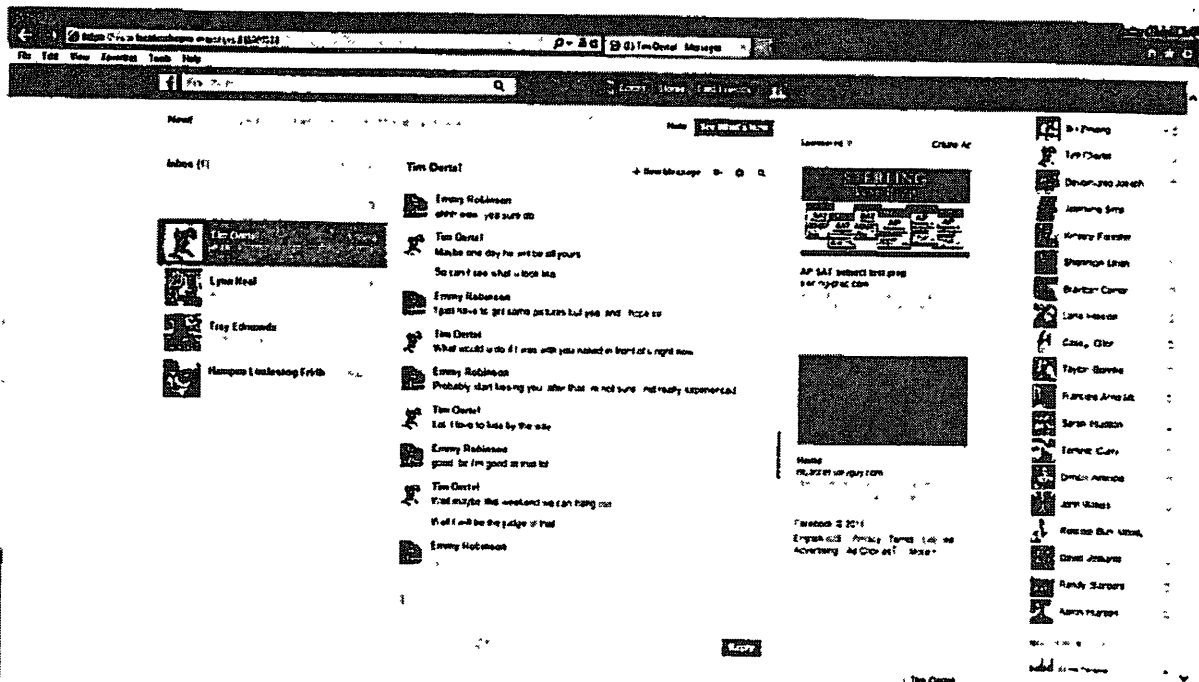

Presiding Juror

08/31/16
Date









THIS IMAGE IS NOT
AVAILABLE FOR
VIEWING ON C-
TRACK PUBLIC
ACCESS.

THIS IMAGE IS NOT
AVAILABLE FOR
VIEWING ON C-
TRACK PUBLIC
ACCESS.

THIS IMAGE IS NOT
AVAILABLE FOR
VIEWING ON C-
TRACK PUBLIC
ACCESS.

THIS IMAGE IS NOT
AVAILABLE FOR
VIEWING ON C-
TRACK PUBLIC
ACCESS.

RICHLAND COUNTY SHERIFF'S DEPARTMENT

INTERROGATION: ADVICE OF RIGHTS

NAME: Timothy Alan Oertel PLACE: RCSD - HQ
OFFICER (S): Inv R. Carter
DATE: 09/03/15 TIME: 11037 Hrs.

YOUR RIGHTS

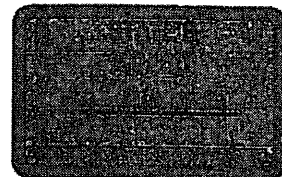
- To ☐ Before we ask you any questions, you must understand your rights.
- To ☐ You have the right to remain silent.
- To ☐ Anything you say can be used against you in court.
- To ☐ You have the right to talk to a lawyer for advice before we ask you any questions, and to have a lawyer with you during any questioning.
- To ☐ If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.
- To ☐ If you decide to answer questions now, without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WITNESS: [Signature] SIGNED: [Signature]
WITNESS: _____

WAIVER OF RIGHTS

- To ☐ I have read this statement of my rights and understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me and no pressure or coercion of any kind has been used against me.

WITNESS: [Signature] SIGNED: [Signature]
WITNESS: _____



Statement of

Timothy Alan Oertel
279 S Herlong Ave. Apt. E Rock Hill, SC 29732
DOB: 12/30/88 SS#: 251-79-2478

Made at
Columbia, South Carolina, this September 03, 2015, at 1641 Hrs., in the
presence of Inv R. Carter of the Richland County Sheriff's Department.

I, Timothy Alan Oertel, understand that I have the right to remain silent. Anything
I say can be used against me in court. I have the right to talk to a lawyer for
advice before you ask me any questions, and to have a lawyer with me during
any questioning. If I cannot afford a lawyer, one will be appointed for me before
any questioning, if I wish. If I decide to answer questions now, without a lawyer
present, I still have the right to stop answering at any time. I also have the right to
stop answering at any time until I talk to a lawyer.
Do make the following statement:

Q: Inv Carter

A: Mr. Oertel

Q: Can you tell Inv Carter your highest level of education?

A: I was working towards an Associate's Degree in Mechanical Engineering and Graphic
Engineering.

Q: Where are you currently employed?

A: Home Depot.

Q: What do you do at Home Depot?

A: I'm a Freight Associate.

I have made the foregoing statement freely and voluntarily without fear, threat, promise
or reward or hope of reward of any kind.

Witness: _____

Signed: X [Signature] Oertel

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting
of 5 pages and a true copy has been given to me this 03 day of September 2015

Sworn to and subscribed before me
This 03 day of September 2015

Signed: X [Signature] Oertel

[Signature]
Notary Public for South Carolina
My commission expires 10/16/17

Q: Do you have a Facebook account?

A: Yes.

Q: What is your Facebook screen name?

A: Tim Oertel. It is my name.

Q: On or about August 28, 2015 did you send a friend request to a person named Emmy Robinson on Facebook?

A: I believe so if that's what you found out.

Q: Can you tell Inv Carter the reason you wanted to be friends with Emmy Robinson on Facebook?

A: She looked cute and I wanted to get to know her but I didn't realize she was that young.

Q: Did you find the Facebook profile picture of Emmy Robinson to be attractive?

A: A little bit.

Q: After you became friends with Emmy Robinson on Facebook did you send messages to her?

A: Yeah.

Q: Can you tell Inv Carter what the content of those messages were about?

A: At first it was just to get to know her and then I guess I sent her a dick picture.

Q: Did Emmy Robinson ask for you to send her a picture of your dick?

A: No.

Q: Why would you send a picture of your dick to a girl you did not know?

A: I just was not thinking at the time.

Q: Did you look at the pictures Emmy Robinson had posted on her Facebook account?

I have made the foregoing statement freely and voluntarily without fear, threat, promise, or reward or hope of reward of any kind.

Witness: _____

Signed: X Tim Oertel

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this 03 day of September 2015.

Sworn to and subscribed before me
This 03 day of September 2015

Signed: X Tim Oertel

[Signature]
Notary Public for South Carolina
My commission expires 10/16/17.

Page 2

A: A couple of them.

Q: Which pictures did you look at?

A: The main profile picture and maybe a couple other ones. I can't tell you the details of the pictures.

Q: How many pictures did you send to Emmy Robinson?

A: I'm not sure.

Q: Did you send Emmy Robinson a picture of you naked in the shower with an erect penis?

A: I believe so.

Q: Did you send Emmy Robinson a picture of your erect penis with a measuring tape?

A: Yeah. To be honest I don't remember all that I sent to her.

Q: Did you tell Emmy Robinson, "I would push your naked body against mine, as you feel my rock hard dick slide between your legs I slam you against the wall, holding your head kissing those soft wet lips. I run my hands down your body to your legs then to your beautiful butt to grab them and pull you onto me."

A: Yes.

Q: Did Emmy Robinson tell you she was 15 years of age?

A: Yes after I asked her.

Q: Can you tell Inv Carter the reason you then asked Emmy Robinson to send you naked pictures of her?

A: Just because I was horny. I was not thinking at the time.

Q: Did Emmy Robinson arouse you?

A: No.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: X [Signature]

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this 03 day of September 2015

Sworn to and subscribed before me
This 03 day of September 2015

Signed: X [Signature]

[Signature]
Notary Public for South Carolina
My commission expires 10/16/17

Q: Can you tell Inv Carter what did arouse you about Emmy Robinson?

A: Just that she was cute and adorable and she was in my age group between 20 and 26.

Q: Do you understand that it is against the law to send pictures of your erect penis to a person who is under the age of 18?

A: I do now.

Q: Are you guilty of sending (4) pictures of your erect penis to Emmy Robinson?

A: Yes.

Q: Do you understand it is against the law to solicit sex from a minor?

A: Yes.

Q: Are you guilty of soliciting sex from Emmy Robinson?

A: I guess so. I wasn't meaning too. I didn't know she was so young.

Q: Would you agree that a reasonable person would know Emmy Robinson was 15 years of age because her date of birth was clearly posted on her profile page along with the name of the school Emmy Robinson attended?

A: I honestly did not check that. I just checked out her pictures.

Q: Would you agree that it does not look good when you sent pictures of your erect penis to Emmy Robinson when she did not ask for you to do so?

A: Yes. I doesn't look good.

Q: Are you sorry for sending pictures of your erect penis to Emmy Robinson?

A: Yes.

Q: If you could tell Emmy Robinson something right now what would you tell her?

A: To tell you the truth I would write her a letter to apologize to her.

Q: Is there anything else you would like to add that Inv Carter has not asked you?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: X Jini Carter

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this 03 day of September 2015

Sworn to and subscribed before me
This 03 day of September 2015

Signed: X Jini Carter

[Signature]
Notary Public for South Carolina
My commission expires 10/16/17

Page 4

A: I sincerely apologize and after I found out her age I should have stopped. I wasn't thinking at the time. When I cleared my mind that's when I deleted her.

Q: Have you told Inv Carter the truth?

A: Yes. A hundred percent.

End of statement: 1715 Hrs. 09/03/15

End of Statement (S)

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: X F. Carter

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 5 pages and a true copy has been given to me this 03 day of September 2015

Sworn to and subscribed before me
This 03 day of September 2015

Signed: X F. Carter

[Signature]
Notary Public for South Carolina
My commission expires 10/16/17

Page 5

RICHLAND COUNTY SHERIFF'S DEPARTMENT
INVESTIGATIVE FOLLOW-UP NOTES

CASE#: _____

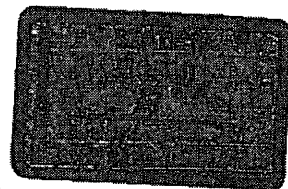
Incident & Location: _____

Investigator: _____

Hello Emily Robinson, I first want to sincerely
apologize for the trouble I have cause you and your
family. I also want to apologise for my english
I was in school working on my Mechanical Engineering
and ~~graph~~ graphic engineering so I can do math bet
when it comes to english im horrible at it. Plus
~~doing~~ writing by hand other than the computer
well you can see what I mean. This for me is a
huge life lesson I will ~~NEVER~~ send and
friend Request to other people I do not know.
Specally when they look to young I will never
think about talking to them. ~~as~~ I have learned
to check out the person first before I send
them a friend Request. I have never told
to ~~anyone~~ let alone that under the age of 18 and will
never think of sending Dick ~~the~~ Photos to anyone
with out having a connection with the first.
I am making this short because I can keep on going
But from the deepest part of my heart I am
Extremely sorry. But I know that its to late But I
Really hope you will understand.

Thanks,

Tim Oertel



THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

CASE NO: 2016-001831

The State of South Carolina, ... Respondent.

v.

Timothy Alan Oertel..... Appellant.

FINAL BRIEF OF APPELLANT

James W. Boyd
Post Office Box 36425
1544 Ebenezer Road
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Facts	2
Argument	5
I. THE LOWER COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENTS OF ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO A PERSON UNDER THE AGE OF EIGHTEEN	5
II. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE CHARGE OF CRIMINAL SOLICITATION OF A MINOR	7
III. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF ATTEMPTED SEXUAL EXPLOTATION OF A MINOR FIRST DEGREE	9
Conclusion	11

TABLE OF AUTHORITIES

Cases

<u>State v. Ready</u>, 96 S.E.2d 287, 110 S.C. 177 (1918).....	5
---	----------

Statutes

South Carolina Code of Laws §16-15-345	5
South Carolina Code of Laws §16-15-375	7
South Carolina Code of Laws §16-15-375(5)	7
South Carolina Code of Laws §16-15-342	9
South Carolina Code of Laws §16-15-395(A)(1)	9
South Carolina Code of Laws §16-15-405	10
South Carolina Code of Laws §16-15-395	10

STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN FAILING TO DIRECT A VERDICT OF NOT GUILTY ON THE INDICTMENT FOR ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO A PERSON UNDER THE AGE OF EIGHTEEN?**
- II. DID THE LOWER COURT ERR IN FAILING TO DIRECT A VERDICT OF NOT GUILTY ON THE INDICTMENT FOR CRIMINAL SOLICITATION OF A MINOR?**
- III. DID THE LOWER COURT ERR IN FAILING TO DIRECT A VERDICT OF NOT GUILTY ON THE INDICTMENT OF ATTEMPTED SEXUAL EXPLOITATION OF A MINOR FIRST DEGREE?**

STATEMENT OF THE CASE

The Appellant was indicted on Indictments 2016-GS-40-02104; 2016-GS-40-02105; 2016-GS-40-02106; and 2016-GS-40-02107 with attempted dissemination of obscene material to a person under the age of eighteen. The Appellant was also indicted on Indictment 2016-GS-40-02108 with criminal solicitation of a minor. The Appellant was also indicted in Indictment 2016-GS-40-02110 with attempted sexual exploitation of a minor first degree. On August 31, 2016, the case was tried by jury before the Honorable R. Knox McMahon. The Appellant was found guilty on Indictment 2016-GS-40-02105; Indictment 2016-GS-40-02106; Indictment 2016-GS-40-02107 and Indictment 2016-GS-40-2104 and sentenced to six (6) years concurrently. The Appellant was also sentenced on Indictment 2016-GS-40-02108 to six (6) years concurrently with the other indictments. On Indictment 2016-GS-40-02109 the Appellant was sentenced to three (3) years consecutive to all other sentences imposed. On September 2, 2016 the Appellant filed Notice of Appeal.

FACTS

Sara Parry Hood, a Deputy with the Richland County Sheriff's Department, was a School Resource Officer at Heathwood Hall, which is a private school located in Richland County, South Carolina at the time of the incident.¹ Deputy Hood set up a Facebook profile using a fictitious individual named Emmy Robinson.² She put in the profile that Emmy Robinson "went to A. C. Flora High School", she lives in Columbia, SC, and that she was from Florence SC. Under the above information, she stated she was born on April 15, 2000. Officer Hood found a photograph of a women in a blue bikini and used that photograph to make a profile picture of the fictitious Emmy Robinson.³ A search of the internet showed that the individual was Lena Borchitnic, who identified herself as a happy Polish Mom whose date of birth was June 11, 1994.⁴ On August 28, 2015, Deputy Hood received a message from the Appellant that stated, "Hello their". Deputy Hood responded a few days later stating, "Hey, How are you".⁵ The conversation proceeded as follows: Appellant stated, "I'm great and yourself?" Deputy Hood stated, "Doing well, enjoying this nice weather." Appellant stated, "Yep I hear you sweetie. So where are you from?" Deputy Hood stated, "From Columbia the North east side, what about you." Appellant stated, "Rock Hill, nice not too far. So do u have any more pics?"⁶ At that point the Appellant sent Deputy Hood a photograph of himself from the chest up.⁷ Deputy Hood stated, "I just posted some, yea rock hill is not too far." Appellant stated, "Where at? I just checked and didn't find any, like pics of your

¹ R., P. 22, lines 20-25.

² R., P. 25, lines 8-13.

³ R., P. 55, lines 6-14.

⁴ R., P. 58, lines 6-11.

⁵ R., P. 32, lines 8-10.

⁶ R., P. 167, State's Exhibit 1, p. 1.

⁷ R., P. 168, State's Exhibit 1, p. 2.

beautiful face. Yea, it's about an hour away." Deputy Hood responded, "Hmm, I wonder what happened. By the way, I like your picture. Oh, an hour is an easy drive."⁸ The next communication was on September 4, 2015 at 11:42am when the Appellant asked Deputy Hood, "Yep, you want to see something hot."⁹ Deputy Hood answered in the affirmative. The Appellant then sent Deputy Hood a nude picture of himself in the shower. Appellant stated, "What do you think?" Officer Hood stated, "I like! You look good." Appellant stated "Thanks baby. U like my dick?" Deputy Hood Stated, "Yes, it looks very nice".¹⁰ The following conversation then ensued. Appellant stated, "Yep, I love my dick. The Appellant then sent three (3) photographs of his penis and said, Hope u like."¹¹ Deputy Hood stated. "Ohhh wow. Yes sure do." Appellant stated, "Maybe one day he will be all yours, so I can see what u look like." Deputy Hood stated, "I just have to get some pictures but Yea and I hope so." ¹² The Appellant sent no more photographs. After that point the conversation continued as follows: Appellant stated, "What would u do if I was with you naked in front of u right now." Deputy Hood stated, "Probably start kissing you, after that i'm not sure, not really experienced. Appellant stated, "Lol. I love to kiss by the way." Deputy Hood stated, "Good, bc I'm good at that lol." Appellant stated. "Well maybe this weekend we can hang out. Well I will be the judge of that." Officer Hood than sent a smiley face with a wink. Appellant then wrote, "So what do u like to do to my dick baby." Deputy Hood stated, "hmm probably kiss around it. Again I'm not experienced I guess I would need help." Appellant stated, "Lol Well you know what I would do if you were in front of me naked?" Deputy Hood stated, "What would

⁸ R., P. 34, lines 8-21.

⁹ R., P. 36, lines 15-17.

¹⁰ R., P. 168, State's Exhibit 1, p. 2.

¹¹ R., P. 168, State's Exhibit 1, p. 2.

¹² R., P. 169, State's Exhibit 1, p. 3.

you do?" Appellant stated, "I would push your naked body against mine as you feel my rock hard dick slide between your legs I slam your agency the wall holding your head kissing those soft wet lips. I run my hands down your body to your legs then to your beautiful butt to grab them and pulls you onto me. Something like that." Deputy Hood stated, "Oh wow. What do you do?" Appellant stated, "I'm an engineer and u?"¹³ Officer Hood stated, "I'm still in school."¹⁴ Appellant stated, "So what do you think if I had you right now? Cool, where at." Deputy Hood answered, "A.C. Flora High School." Appellant stated, "Cool, How old are you?"¹⁵ Deputy Hood stated, "15 but I will be 16 in February. How old are you?" Appellant stated, "Really, I should have never sent u pics of me naked. I'm 26. Then y are you using someone else's pic." Deputy Hood stated, "I'm not that's me, people tell me I look older but I'm just 15". Appellant stated, "Really if that's u I wanna see more pics". Deputy Hood stated, "I will have to wait till I get home from school but I will post some". Appellant stated, "Sure. That works. But seeing u have seen me naked I wanna see u naked." Deputy Hood stated, "Ok."¹⁶

After he was arrested, the Appellant gave a written statement dated September 3, 2015, in which he stated he did not believe that Emmy Robinson was under age 18 when he sent her the photographs of himself.¹⁷ Appellant was found guilty by a Jury of 4 counts of attempting to disseminate obscene material to a minor, one count of solicitation of a minor and one count of sexual exploitation of a minor in the first degree.

¹³ R., P. 170, State's Exhibit 1, p. 4.

¹⁴ R., P. 45, lines 15-17.

¹⁵ R., P. 45, line 17 - R., P. 46, line 11

¹⁶ R., P. 171, State's Exhibit 1, Page 5.

¹⁷ R., P. 180, State's Exhibit 7.

ARGUMENT

I. THE LOWER COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENTS OF ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO A PERSON UNDER THE AGE OF EIGHTEEN.

An element of attempt is the mental state of the accused. There must be the specific intent to engage in the conduct or to receive the result prescribed of the substantive criminal offense. State v. Ready, 96 S.E.2d 287, 110 S.C. 177 (1918)

South Carolina Code of Laws §16-15-345 requires that one has to knowingly disseminate to a person under the age of eighteen years, material which he knows or reasonably should know to be obscene. To attempt to commit a violation of §16-15-345, the Appellant would have to believe that he was disseminating the material to a person under eighteen years of age at the time he committed the act.

The obscene material that the Appellant sent to the individual alleged to be Emmy Robinson, was nude pictures of himself.¹⁸ There is no evidence that the Appellant knew that Emmy Robinson claimed to have been under the age of eighteen at the time the Appellant sent the material. The State relies on Emmy Robinson's birth date on her profile page which would show that she was fifteen.¹⁹ However, there is no evidence that the Appellant read or paid any attention to the birth date. All the evidence shows that the Appellant did not think that Emmy Robinson was under the age of eighteen. After the Appellant sent the material, Deputy Hood asked the Appellant, "What do you do?" Appellant answered, "I am an engineer and you?" At that point Deputy Hood stated, "I am still in school." The Appellant answered, "So what do you think if I had you right

¹⁸ R., P. 167, State's Exhibit 1.

¹⁹ R., P. 167, State's Exhibit 1.

now. Cool, where at?"²⁰ At that point Officer Hood answered, "A. C. Flora High School". The Appellant then asked for her age.²¹ If the Appellant had already known her age he would not have been asking the question at that point. Officer Hood then answers that she is fifteen. The Appellant was obviously surprised by her age. He answered, "Really, I should have never sent you pictures of me naked, I'm 26." Then he stated, "Then y are you using someone else's pic?"²² This conversation shows that the Appellant did not know how old she was and was in fact surprised at her age. The Appellant accused the Deputy of using someone else's photograph because he did not believe the picture depicted someone who was fifteen years old. After that point, no other material was sent to Deputy Hood.²³ The act was committed at the time that the Appellant sent the material. If no crime was committed at that point it cannot later be turned into an illegal act by information Appellant obtained after the act was committed.

During Appellant's questioning by Officers after his arrest he was asked, "What did arouse you about Emmy Robinson?" Appellant answered, "Just that she was cute and adorable and that she was in my age group between 20 and 26". When he was asked if he was guilty of soliciting sex from Emmy Robinson he stated quote, "I guess so, I wasn't meaning to, I did not know she was so young". He was asked if any reasonable person would know if Emmy Robinson was fifteen years of age because her age of birth was clearly posted on her profile page along with the name of the school Emmy Robinson attended. The Appellant answered, "I honestly did not check that, I just checked out her

²⁰ R., P. 45, line 17 - P. 46, line 11 and R., P. 167, State's Exhibit 1

²¹ R., P. 171, State's Exhibit 1.

²² R., P. 171, State's Exhibit 1.

²³ R., P. 171, State's Exhibit 1.

pictures.”²⁴ It should be noted that Emmy Robinson’s Facebook page did not state that she was attending A. C. Flora but that she “went to A. C. Flora”. The Facebook profile used the past tense which would indicate to anyone that she was no longer a student at A. C. Flora High School.

The State in its opening statement concedes that the Appellant did not realize the Emmy Robinson was originally fifteen years old at the time he committed the acts. The State’s Counsel stated, “When he decides to finally ask and confirm her age, he finally realizes that he has done something wrong”.²⁵ The State’s Counsel further states, “He made a mistake. He said, “I shouldn’t have done that.”²⁶

There is no evidence that the Appellant read or paid attention to the date of birth on the alleged Emmy Robinson’s Facebook page. All of the evidence shows that the Appellant did not know her alleged age at the time he sent the material. The essential element of intent is missing. The Appellant should have been granted a directed verdict on the counts of attempted dissemination of obscene material to a person under the age of eighteen.

II. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF CRIMINAL SOLICITATION OF A MINOR.

In order to be guilty of South Carolina Code of Laws §16-15-375, the Appellant must have contacted and communicated with the person he reasonably believed to be under the age of eighteen for the purpose or intent of persuading, inducing, enticing or coercing the person to engage or participate in sexual activity as defined in §16-15-375(5) or with the intent to perform a sexual activity in the presence of the person

²⁴ R., P. 180, State’s Exhibit 7.

²⁵ R., P. 14, lines 5-6.

²⁶ R., P. 14, lines 10-11.

reasonably believed to be under the age of eighteen as defined in South Carolina Code of Laws §16-15-342. The Appellant never tried to persuade, induce, entice, or coerce the alleged Emmy Robinson to engage in a sexual activity or to perform a sexual activity in his presence. Before there was any conversation of a sexual nature the Appellant and Emmy Robinson discussed that Columbia and Rock Hill were not too far apart.²⁷ After the Appellant had sent the alleged Emmy Robinson photographs of his penis, he stated, "maybe one day he will be all yours."²⁸ This statement does not constitute an attempt to persuade, induce, entice, or coerce Emmy Robinson to engage in a sexual activity as defined in §16-15-375(5). Later in the conversation there is a statement by the Appellant as to what he would do if Emmy Robinson were with him at that time.²⁹ This was not a request that she do any of those acts but merely fantasy talk about what they would do if they were together. There was no arrangement made for them to meet at any time and the conversation never came to the point that the Appellant and Emmy Robinson would actually meet to engage in any of the activities defined in §16-15-375(5).

Even if the actions of the Appellant are found to be for the purpose of or with the intent of persuading, inducing, enticing or coercing Emmy Robinson to engage or to participate in the sexual activity as defined in §16-15-375(5), the State still must prove that the Appellant believed Emmy Robinson to be under the age of eighteen at the time he committed the act. There was no conversation between the Appellant and Emmy Robinson about he and she engaging in sexual activity after the point that he discovered that she was allegedly fifteen years old. Neither was there conversation about the Appellant and Emmy Robinson having any physical contact with one another.

²⁷ R., P. 167, State's Exhibit 1, p. 1.

²⁸ R., P. 169, State's Exhibit 1, p. 3.

²⁹ R., P. 170, State's Exhibit 1, p. 4.

The Appellant has set forth discussion of the first question in detail the reasons there is a lack of evidence in the Appellant's knowledge or intent of Emmy Robinson's age, which the Appellant will not repeat in detail here.

The actions of the Appellant did not constitute solicitation under its definition in South Carolina Code of Laws §16-15-342. Even if facts would constitute solicitation, there is no proof that the Appellant had a belief that Emmy Robinson was under eighteen years of age. The Court should have granted a directed verdict on this indictment.

III. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF ATTEMPTED SEXUAL EXPLOITATION OF A MINOR FIRST DEGREE.

After the Deputy depicting herself as Emmy Robinson told the Appellant that she was fifteen, the Appellant said, "Really if that is you I want to see more pics". The alleged Emmy Robinson texted back, "I will have to wait till I get back home from school, but I will post some." The Appellant then stated "Sure that works, but since you have seen me naked, I want to see you naked."³⁰ South Carolina Code of Laws §16-15-395(A)(1) makes it unlawful for one to uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation. Arguably, the Appellant was requesting that Emmy Robinson to send him nude pictures of herself. Nude pictures do not constitutes sexual activity as defined by South Carolina Code of Laws §16-15-375(5). The State was apparently alleging that the Appellant was

³⁰ R., P. 171, State's Exhibit 1, p. 5.

asking Emmy Robinson to appear in a state of sexual explicit nudity. Section 16-15-395(A)(1) also requires that the purpose of encouraging one to appear in a state of sexual explicit nudity is for sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity. There was no evidence that the Appellant was asking Emmy Robinson to appear for a live performance. Neither is there any evidence that he was asking her to appear for the purpose for producing material. The Appellant asking Emmy Robinson to send him pictures is not asking her to appear for the purpose of producing material. There was no evidence presented that the Appellant was going to produce material. The Appellant did not ask her to produce material. Section 16-15-395 requires that the Appellant must, 1) encourage the victim to appear in the state of sexually explicit nudity and; 2) that the appearance be for the purpose for producing material. Producing in the context of this statute means making or manufacturing something.³¹ There is no evidence that the Appellant was making or manufacturing materials. The obvious purpose of the statute is to forbid individuals from producing, making, manufacturing or creating child pornography or from using children in sexual life performances. The behavior of the Appellant in this case was potentially a violation §16-15-405, which forbids one from soliciting material that contains a visual representation of a minor engaging in sexual activity or appearing in a state of sexually explicit nudity but not a violation of §16-15-395.

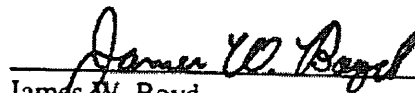
Therefore Appellant is entitled to a directed verdict of not guilty on the charges of sexual exploitation of a minor first degree.

³¹ Webster's Dictionary, Third Edition

CONCLUSION

For all the foregoing reasons the Appellant requests that this case be reversed.

Respectfully Submitted,



James W. Boyd
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

November 3, 2017

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

CASE NO: 2016-001831

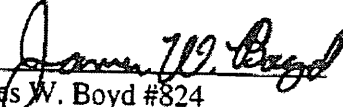
Timothy Alan Oertel..... Appellant.

v.

The State of South Carolina, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule
211(b), SCACR.


James W. Boyd #824
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

November 3, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2016-001831

The State,

Respondent,

vs.

Timothy Alan Oertel,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

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

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS	3
ARGUMENT	6
I. The trial court properly denied Appellant's motions for a directed verdict on the charges of attempted dissemination of material to a person under the age of eighteen, criminal solicitation of a minor, and attempted sexual exploitation of a minor first degree. (Appellant's Issues I-III).....	6
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<u>Feldman v. S.C. Tax Comm'n</u> , 203 S.C. 49, 26 S.E.2d 22 (1943).....	9
<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	7
<u>State v. Bennett</u> , 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016).....	6, 7
<u>State v. Butler</u> , 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)	6
<u>State v. Littlejohn</u> , 228 S.C. 324, 89 S.E.2d 924 (1955).....	6
<u>State v. Phillips</u> , 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016).....	7
<u>State v. Robinson</u> , 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992).....	7
<u>State v. Sterling</u> , 396 S.C. 599, 617, 723 S.E.2d 176, 186 (2012).....	8
<u>State v. Thompkins</u> , 263 S.C. 472, 484, 211 S.E.2d 549, 554 (1975).....	8

Statutes

S.C. Code Ann. § 16-15-342(A) (Supp. 2016)	10
S.C. Code Ann. § 16-15-345 (Supp. 2016).....	8
S.C. Code Ann. § 16-15-375(5) (Supp. 2016).....	11, 12
S.C. Code Ann. § 16-15-395(A)(1) (Supp. 2016).....	13

Other Authorities

https://www.merriam-webster.com/dictionary/horny	13
---	----

STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly denied Appellant's motions for a directed verdict on the charges of attempted dissemination of material to a person under the age of eighteen, criminal solicitation of a minor, and attempted sexual exploitation of a minor first degree. (Appellant's Issues I-III).**

STATEMENT OF THE CASE

The Richland County Grand Jury returned four true-billed indictments against Appellant for attempted dissemination of obscene material to a person under the age of eighteen. Appellant was also indicted for one count of criminal solicitation of a minor and one count of attempted sexual exploitation of a minor in the first degree. He proceeded to trial on August 31, 2016 before the Honorable R. Knox McMahon and a jury. He was found guilty as charged on all counts. The court sentenced Appellant to six years on each count of attempted dissemination, the sentences to run concurrent. The court sentenced Appellant to six years on criminal solicitation of a minor, the sentence to also run concurrent. Finally, the court sentenced Appellant to three years in prison on the attempted sexual exploitation of a minor charge, the sentence to run consecutive to all other sentences. Appellant filed a timely Notice of Appeal.

STATEMENT OF FACTS

Deputy Sara Parry Hood, a deputy with the Richland County Sheriff's Department and at the time assigned as a school resource officer to Heathwood Hall, created a Facebook profile representing to be a high school student. (T.58; 61; R.22; 25). Her profile represented herself as Emmy Robinson, a fictitious fifteen-year-old female who attended A.C. Flora High School in Columbia. (T.61; 62; State's Exhibit 1; R.25; 26; 167-171). On her profile page she indicated she was born in April 2000. (State's Exhibit 1; R.167-171).

Appellant contacted Emmy Robinson on Facebook on August 28, 2015. (State's Exhibit 1; R.167). In order to contact her, he went through her profile page, which was the page indicating she was born in April 2000. (T.66-67; R.30-31). After making initial contact and discussing where they live, Appellant sent the fifteen-year-old a picture of him in the shower. He then asked her for more pictures. Appellant later sent a full body picture of himself in the shower, and asked "What do u think?" Emmy responded "I like! you look good." (T.73-74; State's Exhibits 1 and 2; R.37-38; 168; 172). Appellant then stated: "Thanks baby U like my dick" and after Emmy responded: "Yes it look very nice," Appellant sent several close up pictures of his erect penis, including one beside a measuring tape and one partially inserted into a sex toy. (T. 74-75; State's Exhibits 1, 3, 4, and 5; R.38-39; 170-171; 173-175).

The conversation continued after Appellant sent the pictures of his penis:

Appellant: Maybe one day he will be all yours
So can I see what u look like

Emmy: I just have to get some pictures but yea and I hope so

Appellant: What would u do if I was with you naked in front of u right now

Emmy: Probably start kissing you after that i'm not sure not really experienced

Appellant: Lol I love to kiss by the way

Emmy: good, bc I'm good at that lol

Appellant: Well maybe this weekend we can hang out
Well I will be the judge of that

....

Appellant: So what do u like to do to my dick baby

Emmy: hmm probably kiss around it again I'm not experienced i guess i would need help

Appellant: LOL Well you know what I would do if you were in front of me naked?

Emmy: What would you do?

Appellant: I would push your naked body against mine as you feel my rock hard dick slide between your legs I slam you agency [sic] the wall holding your head kissing those soft wet lips. I run my hands down your body to your legs then to your beautiful butt to grab them and pulls you onto me
Something like that

(T.77-80; State's Exhibit 1; R.41-44; 169-170).

Emmy asks Appellant what he does and he indicates he is an engineer. When he asks, she responds "I'm still in school." (T.81; State's Exhibit 1; R.45; 170-171). Appellant then asks "How old r u," to which Emmy responds "15 but will be 16 in February." (T.82; State's Exhibit 1; R.46; 171). Appellant responds by stating: "Really I should have never sent u pics of me naked. I'm 26." (T. 83; State's Exhibit 1; R.47; 167-171). Emmy assures him her profile picture is her and that she is really just 15. His response is to request more pictures. He states: "But seeing u have seen me naked I wanna see u naked." (T.84; State's Exhibit 1; R.48; 171).

Appellant gave a statement to Investigator Carter which was typed while Appellant was being asked the questions. In it Appellant admitted seeing Emmy's profile picture and several other pictures. (T. 138-139; State's Exhibit 7; R.86-87; 178-179). He indicated he became friends with Emmy and sent her messages including "a dick picture." (T. 139; State's Exhibit 7;

R.87; 178). Investigator Carter then asked Appellant about requesting the naked pictures of Emmy even after she indicated she was only 15 years old and Appellant stated: "Just because I was horny. I was not thinking at the time." (T. 140; State's Exhibit 7; R.88; 179).

ARGUMENT

- I. **The trial court properly denied Appellant's motions for a directed verdict on the charges of attempted dissemination of material to a person under the age of eighteen, criminal solicitation of a minor, and attempted sexual exploitation of a minor first degree. (Appellant's Issues I-III).**

Appellant contends the trial court erred in denying his motions for a directed verdict on all charges. The State presented sufficient evidence Appellant knew or should have known the person to whom he was communicating and sending obscene material was under the age of eighteen. As a result, the trial court properly denied Appellant's motion for a directed verdict as to the attempted dissemination and criminal solicitation charges on that ground. The State presented ample evidence of all the elements of the attempted dissemination, criminal solicitation, and attempted sexual exploitation charges to warrant sending the charges to the jury. As a result, the trial court properly denied the motions for a directed verdict.

"On appeal from the denial of a directed verdict, [the Appellate] Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). As the South Carolina Supreme Court recently reiterated: "[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury if there is 'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) (quoting State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)).

"Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt." Id. "Accordingly, in ruling on a directed verdict motion where the State

relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." Id.

Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements beyond a reasonable doubt. See State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding "any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt" in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)).

The South Carolina Supreme Court has recently reaffirmed the fact neither the trial court nor the appellate court are concerned with the weight of the evidence. The Court stated: "In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight." State v. Phillips, 416 S.C. 184, 192, 785 S.E.2d 448, 452 (2016).

This is consistent with the rulings of the United States Supreme Court:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Jackson, 443 U.S. at 319 (italics in original).

Attempted Dissemination of Obscene Material

Appellant contends the trial court should have granted his motion for a directed verdict because the State failed to present any evidence he attempted to disseminate the obscene material—nude pictures of himself and pictures of his penis—to a person he knew was under the age of eighteen. However, the State presented sufficient evidence Appellant knew he sent the pictures to the Facebook account belonging to someone claiming to be under the age of eighteen.

The statute criminalizing the dissemination of obscene material provides:

An individual eighteen years of age or older who knowingly disseminates to a person under the age of eighteen years material which he knows or reasonably should know to be obscene within the meaning of Section 16-15-305 is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

S.C. Code Ann. § 16-15-345 (Supp. 2016). Appellant does not contest the fact he disseminated obscene material when he sent the pictures of his penis and him naked in the shower. He solely contests whether the State proved he knowingly attempted to disseminate the material to a person under the age of eighteen.

The facts of this case demonstrate Appellant knew or should have known the age of Emmy prior to his dissemination of the obscene material. In his statement, Appellant admitted he viewed her main profile picture. (State's Exhibit 7; R.179). Deputy Parry Hood testified if someone clicked on her picture in Facebook the first page they would see would be her profile page, which clearly indicates she was born in April 2000. (T. 64-65; 67; State's Exhibit 1; R.28-29). Further, in his apology letter to Emmy, Appellant indicates: "I will NEVER send and [sic] friend request to other people I do not know, specially [sic] when they look to [sic] young." (State's Exhibit 8; R.182) (emphasis added).

The South Carolina Supreme Court has construed the knowledge requirement in several situations. In construing the obscenity law's requirement of knowingly exhibiting the material: "One may be found to knowingly violate the statute when it appears that he shuts his eyes to avoid knowing what would otherwise be obvious." State v. Thompkins, 263 S.C. 472, 484, 211 S.E.2d 549, 554 (1975). The Court in construing a "knowing" *mens rea* in a securities fraud case, explained: "one cannot escape liability by "shutting one's eyes to what would otherwise be obvious.'" State v. Sterling, 396 S.C. 599, 617, 723 S.E.2d 176, 186 (2012).

Years ago in *Feldman v. South Carolina Tax Commission*, the South Carolina Supreme Court considered the definition of “knowingly” as it related to the sale of alcohol to a minor. *Feldman v. S.C. Tax Comm’n*, 203 S.C. 49, 26 S.E.2d 22 (1943). The statute at issue indicated: “No retail dealer shall knowingly sell, . . . any alcoholic liquors to any person when drunk or intoxicated, nor to a minor, . . . and upon violation of any of these provisions, upon conviction, shall suffer the penalties hereinafter provided” *Feldman*, 26 S.E.2d at 24. The defendant alleged he believed the purchaser was over the age of 21 and never asked to confirm his age. As a result, he alleged the State failed to demonstrate sufficient evidence he knowingly sold the alcohol to a minor. *Id.* at 25. The Supreme Court rejected this argument, finding:

Within the meaning of the term, “knowingly,” as used in this statute, if the clerk knew that the negro boy was a minor or had such information, from his appearance or otherwise, as would lead a prudent man to believe that he was a minor, and if followed by inquiry must bring knowledge of that fact home to him, then the sale was made knowingly.

Id. (emphasis added).

The *Feldman* case is remarkably similar to this case. The defendant claims he did not know the age of the person. He could have easily determined the age, and had the information presented to him which would have established the age, but chose not to do so. The holding by the Supreme Court makes it clear one cannot avoid prosecution because they choose not to know what they could have easily learned—they cannot shut their eyes to the obvious. Appellant closed his eyes to the obvious inclusion of Emmy’s birthdate on her profile page and the fact she listed A.C. Flora High School on her page when he sent her clearly obscene materials. He cannot escape prosecution for disseminating obscene material when he was presented the information necessary to know the person he was communicating with was a minor but chose to ignore the facts. Accordingly, the State presented evidence from which a rational jury could

conclude Appellant knew, or should have known, Emmy represented a person under the age of eighteen when he attempted to disseminate obscene material to a minor.

Criminal Solicitation of a Minor

Appellant contends the trial court should have granted his motion for a directed verdict on the criminal solicitation of a minor charge. He asserts he did not communicate with Emmy "for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) . . . , or with the intent to perform a sexual activity in the presence of the person" Further, he again asserts the State failed to present evidence he knowingly communicated with a person under the age of eighteen or reasonably believed to be under eighteen.

The statute provides:

A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) . . . , or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

S.C. Code Ann. § 16-15-342(A) (Supp. 2016). Sexual activity is defined as:

"Sexual activity" includes any of the following acts or simulations thereof:

- (a) masturbation, whether done alone or with another human or animal;
- (b) vaginal, anal, or oral intercourse, whether done with another human or an animal;
- (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks

of another person or the clothed or unclothed breasts of a human female;

(d) an act or condition that depicts bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(e) excretory functions;

(f) the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

S.C. Code Ann. § 16-15-375(5) (Supp. 2016).

As discussed above, Appellant knew or should have known the age of the person he was communicating with because it was displayed on her profile page and he admitted viewing her profile picture. As with the dissemination charge, the trial court properly found sufficient evidence existed from which a rational juror could find Appellant knew Emmy was under the age of eighteen.¹

The chats between Appellant and Emmy serve as sufficient evidence indicating Appellant was seeking to persuade, induce, entice, or coerce Emmy to engage or participate in a sexual activity. Appellant and Emmy begin the chats discussing where they live. Shortly thereafter, Appellant sends the pictures of himself naked in the shower and of his erect penis. Appellant then asks the fifteen-year-old girl if she likes his penis and indicates: "Maybe one day he will be all yours." He then asks Emmy, "What would u do if I was with you naked in front of u right now[?]" (State's Exhibit 1; R.170). This appears to be persuading, inducing, or enticing her to participate in a sexual activity—in particular section 16-15-375(5)(c)—with him, especially given the nature of the chats involving his erect penis.

¹ The State incorporates all facts and arguments from the previous section.

Appellant then states: "Well maybe this weekend we can hang out" clearly indicating a desire to meet in person with Emmy. He follows up by asking: "So what do u like to do to my dick baby" which again demonstrates a desire to persuade, induce, or entice Emmy to touch his penis, which would again be covered as a sexual activity under section 16-15-375(5)(c). Appellant asks: "Well you know what I would do if you were in front of me naked?" He then states:

I would push your naked body against mine as you feel my rock hard dick slide between your legs I slam you agency [sic] the wall holding your head kissing those soft wet lips. I run my hands down your body to your legs then to your beautiful butt to grab them and pulls you onto me[.]

(State's Exhibit 1; R.170). Again a rational juror could certainly infer from this portion of the chat that when Appellant and Emmy get together he would like to have sexual intercourse with her, a sexual activity under section 16-15-375(5)(b). As a result, the chats themselves were sufficient evidence warranting sending the charge of criminal solicitation of a minor to the jury.

Attempted Sexual Exploitation of a Minor

Appellant finally contends the State failed to present evidence he sought to produce material depicting Emmy in a state of sexually explicit nudity or for a live performance. The chat themselves belie this argument and the trial court properly denied Appellant's motion for a directed verdict.

Attempted sexual exploitation of a minor in the first degree would require and attempt "knowing the character or content of the material or performance," a person:

(1) uses, employs, induces, coerces, encourages, or facilitates a minor to . . . appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting . . . a state of sexually

explicit nudity when a reasonable person would infer the purpose is sexual stimulation

S.C. Code Ann. § 16-15-395(A)(1) (Supp. 2016).

The statute as written does not require Appellant to be the person producing the visual representation of the minor in a state of sexually explicit nudity. The statute merely requires him to have used, employed, induced, coerced, encouraged, or facilitated the minor to appear in the state of sexually explicit nudity for material to be produced that will be used for sexual stimulation. Appellant certainly encouraged Emmy to take pictures of her naked.

After talking about Emmy's profile picture, he indicates he wants to see more of her. This is also after he has explicitly been told she is only 15 years old. She tells him she will have to wait until she gets home to post more pictures. His request was: "But seeing u have seen me naked I wanna see u naked." He clearly wanted Emmy to send him digital pictures—material containing a visual representation—and he clearly wanted to see Emmy naked in those pictures. It was certainly reasonable for a rational juror to find Appellant, through his request to see her naked, sought Emmy to produce material containing her naked to send to him. Further, his statement to police made it clear the purpose behind the pictures was sexual stimulation because when asked why he requested naked pictures of a fifteen-year-old girl, he responded: "Just because I was horny."² As a result, the chats and Appellant's own statement make it clear he attempted to have a fifteen-year-old girl pose naked in pictures and send those pictures to him for the purpose of his sexual stimulation. Accordingly, the trial court did not err in denying his motion for a directed verdict on the charge of attempted sexual exploitation of a minor in the first degree.

² Merriam-Webster dictionary defines "horny" as 1) of or made of horns; 2) having horns; or 3) desiring sexual gratification or excited sexually. See <https://www.merriam-webster.com/dictionary/horny> (last visited September 19, 2017). It is certainly reasonable for the jury to infer Appellant was referring to the third definition when he made the statement to Investigator Carter.

The trial court in this case did not weigh the evidence, but properly considered whether any evidence existed in the light most favorable to the State from which a rational juror could determine Appellant was guilty of each of the three charges he faced. The trial court properly concluded the State presented evidence of all of the required elements of the three charges, including whether Appellant knowingly committed the offenses. Therefore, this Court should affirm Appellant's convictions and sentences on all three charges.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY:


William M. Blitch, Jr.

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

ATTORNEYS FOR RESPONDENT

November 6, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2016-001831

The State,

Respondent,

vs.

Timothy Alan Oertel,

Appellant.

CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY:


William M. Blitch, Jr.

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

ATTORNEYS FOR RESPONDENT

November 6, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2016-001831

The State,

Respondent,

vs.

Timothy Alan Oertel,

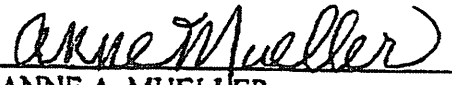
Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

James W. Boyd, Esquire
Post Office Box 36425
Rock Hill, South Carolina 29732

I further certify that all parties required by Rule to be served have been served.
This 6th day of November, 2017.


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

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

CASE NO: 2016-001831

The State of South Carolina, ... Respondent.

v.

Timothy Alan Oertel..... Appellant.

FINAL REPLY BRIEF OF APPELLANT

James W. Boyd
Post Office Box 36425
1544 Ebenezer Road
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Argument	1
A. THE LOWER COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENTS OF ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO A PERSON UNDER THE AGE OF EIGHTEEN	1
B. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF CRIMINAL SOLICITATION OF A MINOR ...	2
C. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF ATTEMPTED SEXUAL EXPLOTATION OF A MINOR FIRST DEGREE	2
Conclusion	3

TABLE OF AUTHORITIES

Cases

<u>State v. Ready</u> , 96 S.E.2d 287, 110 S.C. 177 (1918).....	1
<u>Feldman v. S.C. Tax Comm'n</u> , 203 S.C. 49, 26 S.E.2d 22 (1943).	1

ARGUMENT

A. THE LOWER COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENTS OF ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO A PERSON UNDER THE AGE OF EIGHTEEN.

The Appellant did not disseminate obscene material to a person under the age of eighteen (18). The Appellant disseminated obscene material to a person over the age of eighteen (18) who was holding herself out to be under the age of eighteen (18). The State's position is that the Appellant should have thought that the person who was not under the age of eighteen (18) really was under the age of eighteen (18). The Brief of the Respondent states that the Appellant knew or should have known that, "Emmy Robinson" was under the age of eighteen (18). "Should have known" does not satisfy the element of the intent in an attempt case. There must be the specific intent to engage in the conduct or to receive the result prescribed of the substantive criminal offense. State v. Ready, 96 S.E.2d 287, 110 S.C. 177 (1918). In order to convict the Appellant of attempted dissemination of obscene material to a person under the age of eighteen (18), the State is required to prove that the Appellant thought that the person to whom he disseminated the obscene material to was under the age of eighteen (18).

One cannot attempt to commit an act that cannot be committed unless one thinks he is committing the actual act. The Appellant could not have attempted to disseminate obscene material to a minor if he thought the minor was over the age of eighteen (18) and the person was actually over the age of eighteen. The present case differs from the case of Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). In the Feldman case the Defendant actually sold alcoholic beverages to a minor. Feldman was not an attempt

case. In Feldman the Court held that the requirement of knowingly was satisfied when the Defendant has information from appearance or otherwise it would lead a prudent man to believe that he was dealing with a minor. If the Appellant had actually disseminated obscene material to a minor then the element may be satisfied. The element of intent is not present in this case.

B. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF CRIMINAL SOLICITATION OF A MINOR.

The discussions between the Appellant and Emmy Robinson were discussion concerning what they would do if they were together. There was never any arrangements for them to actually meet. The discussions between them do not rise to the level of solicitation.

There was no discussion of the Appellant and Emmy Robinson having any sexual contact after the point that Appellant realized she was claiming to be a minor.

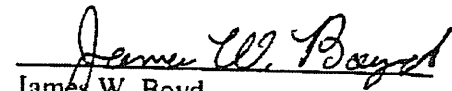
C. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF ATTEMPTED SEXUAL EXPLOITATION OF A MINOR FIRST DEGREE.

The Respondent argues that it was reasonable for a rational juror to find that the Appellant sought Emmy Robinson to produce material containing photos of her naked to send to him. The State was required to prove that the Appellant encouraged Emmy Robinson to appear in a state of sexual explicit nudity to produce material. Although the Appellant arguably requested Emmy Robinson to send nude pictures of her to him, he did not mention anything about producing pictures. It was speculation as to whether Emmy Robinson would have to produce pictures or whether she already had pictures to send him. The State failed to show the elements of attempted sexual exploitation of a minor.

CONCLUSION

For all the foregoing reasons the Appellant requests that this case be reversed.

Respectfully Submitted,


James W. Boyd
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

September 28, 2017

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

CASE NO: 2016-001831

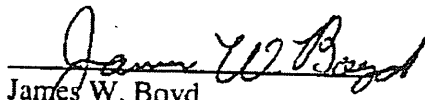
The State of South Carolina, ... Respondent.

v.

Timothy Alan Oertel..... Appellant.

PROOF OF SERVICE

I, James W. Boyd, certify that I served on September 28, 2017, the within Initial Reply Brief of Appellant on Respondent by depositing a copies of the same in the United States mail, postage prepaid, addressed to South Carolina Attorney General's Office, Rembert C. Dennis Building, PO BOX 11549, Columbia, SC 29211-1549. I further certify that all parties required by Rule 208 to be served have been served.


James W. Boyd
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

September 28, 2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy Alan Oertel, Appellant.

Appellate Case No. 2016-001831

Appeal From Richland County
R. Knox McMahon, Circuit Court Judge

Unpublished Opinion No. 2018-UP-454
Submitted October 1, 2018 – Filed December 12, 2018

AFFIRMED

James W. Boyd, of James W. Boyd Law Firm LLC, of
Rock Hill, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blitch, Jr., both of
Columbia, for Respondent.

PER CURIAM: Timothy Alan Oertel appeals his convictions on four counts of attempted dissemination of obscene material to a person under the age of eighteen, criminal solicitation of a minor, and attempted first-degree sexual exploitation of a minor, arguing the trial court erred in failing to grant his motions for directed

verdict on all charges. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Oertel's motions for directed verdict on the indictments for attempted dissemination of obscene material to a person under the age of eighteen: *State v. Bailey*, 368 S.C. 39, 44-45, 626 S.E.2d 898, 901 (Ct. App. 2006) ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight."); *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); S.C. Code Ann. § 16-15-345 (2015) ("An individual eighteen years of age or older who knowingly disseminates to a person under the age of eighteen years material which he knows or reasonably should know to be obscene . . . is guilty of a felony . . ."); *State v. Thompkins*, 263 S.C. 472, 484, 211 S.E.2d 549, 554 (1975) ("One may be found to knowingly violate the statute when it appears that he shuts his eyes to avoid knowing what would otherwise be obvious."); *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 56, 26 S.E.2d 22, 25 (1943) (stating the term "knowingly" included situations where a person "had such information, from [an individual's] appearance or otherwise, as would lead a prudent man to believe that [the individual] was a minor, and if followed by inquiry must bring knowledge of that fact home to him, then the [action] was made knowingly").

2. As to whether the trial court erred in denying Oertel's motions for directed verdict on the indictment for criminal solicitation of a minor: *Bailey*, 368 S.C. at 44-45, 626 S.E.2d at 901 ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight."); *Lollis*, 343 S.C. at 584, 541 S.E.2d at 256 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); S.C. Code Ann. § 16-15-342(A) (2015) ("A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity . . ."); S.C. Code Ann. § 16-15-375(5) (2015) ("Sexual activity" includes . . . (b) vaginal, anal, or oral intercourse, . . . (c) touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female . . ."); *Thompkins*,

263 S.C. at 484, 211 S.E.2d at 554 ("One may be found to knowingly violate the statute when it appears that he shuts his eyes to avoid knowing what would otherwise be obvious."); *Feldman*, 203 S.C. at 56, 26 S.E.2d at 25 (stating the term "knowingly" included situations where a person "had such information, from [an individual's] appearance or otherwise, as would lead a prudent man to believe that [the individual] was a minor, and if followed by inquiry must bring knowledge of that fact home to him, then the [action] was made knowingly").

3. As to whether the trial court erred in denying Oertel's motions for directed verdict on the indictment for attempted first-degree sexual exploitation of a minor: *Bailey*, 368 S.C. at 44-45, 626 S.E.2d at 901 ("When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight."); *Lollis*, 343 S.C. at 584, 541 S.E.2d at 256 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury."); S.C. Code Ann. § 16-15-395(A)(1) (2015) ("An individual commits the offense of first[-]degree sexual exploitation of a minor if . . . he [knowingly] . . . uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to . . . appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation . . . for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation.").

AFFIRMED.¹

HUFF, SHORT, and WILLIAMS, JJ., concur.

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

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

CASE NO: 2016-001831

The State of South Carolina, ... Respondent.

v.

Timothy Alan Oertel..... Appellant.

PETITION FOR REHEARING

James W. Boyd
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Petitioner

individual was under the age of twenty-one (21) years and should have inquired further of the age no crime was committed because the person was actually over the age of twenty-one (21) years. In the presence case the Appellant actually disseminated obscene material to a person over the age of eighteen (18). Although one could argue that a prudent man would believe that the individual was a minor, no crime is committed unless the Appellant actually believed that the individual that he thought was Emmy Robinson was a minor. There was no specific intent in this case.

2. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF CRIMINAL SOLICITATION OF A MINOR.

S.C. Code Ann. § 16-15-342(A) (2015), provides two situations in which a person may be guilty of criminal solicitation of a minor. The person is guilty if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen. In this situation the victim must actually be under the age of eighteen. The second way a person can be guilty of criminal solicitation is if a defendant contacts a person reasonably believed to be under the age of eighteen. This scenario requires the defendant to actually reasonably believe that the individual is under the age of eighteen (18). The *Thompkins* and *Feldman* cases do not apply to this case. In *Thompkins* the material actually did depict minors and in *Feldman* the individual was actually a minor. S.C. Code Ann. § 16-15-342(A) requires the defendant to actually believe that he was contacting a minor.

3. THE COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENT OF ATTEMPTED SEXUAL EXPLOITATION OF A MINOR FIRST DEGREE.

South Carolina Code of Laws § 16-15-395(A)(1) (2015) requires that the defendant encourage one to appear in a state of sexually explicit nudity for sexual

The Petitioner petitions the Court for a rehearing in this case on the following grounds:

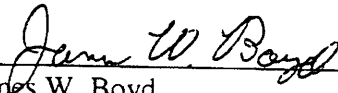
1. **THE LOWER COURT ERRED IN FAILING TO DIRECT A VERDICT ON THE INDICTMENTS OF ATTEMPTED DISSEMINATION OF OBSCENE MATERIAL TO A PERSON UNDER THE AGE OF EIGHTEEN.**

The Court cites the case of *State v. Thompkins*, 263 S.C. 472, 484, 211; S.E.2d 549, 554 (1975) for proposition that, "One may be found to knowingly violate the statute when it appears that he shuts his eyes to avoid knowing what would otherwise be obvious." *Thompkins* was a case in which knowing the contents of obscene material could have been obtained by reasonable inquiry. The Court also cited *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 56, 26 S.E.2d 22, 25 (1943) which held that the term "knowingly" included situations where a person "had such information from an individual's appearance or otherwise, as would lead a prudent man to believe that the individual was a minor, and if followed by inquiry must bring knowledge of that fact home to him. The Appellant in the case was not charged with the substantive offense but was charged with the attempt to commit the offense. The cases cited by the Court, were cases in which the defendant was accused of committing a substantive offense. In order to be guilty of attempt, the Appellant had to have the specific intent to disseminate obscene material to a person over the age of eighteen (18). In the *Feldman* case a store clerk had actually sold an individual under the age of twenty-one (21) years alcohol. The ruling in *Feldman* does not apply to the facts of the present case. An analogy using the sale of alcohol to a minor, would be a store clerk who sells alcohol to an individual who was actually over the age of twenty-one (21) years but because his appearance appeared to be under twenty-one years of age. Although the clerk should have thought the

stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity. There was no evidence that the Appellant was producing or had the intent to produce material. Therefore, a directed verdict of not guilty should have been granted on the charge of sexual exploitation of a minor first degree.

Conclusion

All of the above reasons the Petitioner requests that the Court grant this Petition for Rehearing.


James W. Boyd
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Petitioner

December 21, 2018

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

CASE NO: 2016-001831

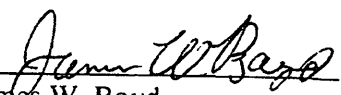
The State of South Carolina, ... Respondent.

v.

Timothy Alan Oertel..... Appellant.

PROOF OF SERVICE

I, James W. Boyd, certify that I served on December 21, 2018, the within
Petition for Rehearing of Appellant on Respondent by depositing a copies of the
same in the United States mail, postage prepaid, addressed to South Carolina
Attorney General's Office, Rembert C. Dennis Building, PO BOX 11549,
Columbia, SC 29211-1549. I further certify that all parties required by Rule 208
to be served have been served.


James W. Boyd
1544 Ebenezer Road
Post Office Box 36425
Rock Hill, SC 29732
(803) 328-2600
Attorney for Appellant

December 21, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2016-001831

The State,

Respondent,

vs.

Timothy Alan Oertel,

Appellant.

RETURN TO PETITION FOR REHEARING

On December 12, 2018, this Court correctly affirmed Appellant's conviction and sentence. Appellant contends this Court misapprehended or misapplied certain case law to the facts of this case. The State submits the Court properly analyzed each issue regarding the trial court's denial of a directed verdict and properly found evidence was submitted from which a reasonable juror could find guilt beyond a reasonable doubt. Accordingly, the Court should deny the Petition for Rehearing.

Attempted Dissemination of Obscene Material

Appellant contends the trial court should have granted his motion for a directed verdict because the State failed to present any evidence he attempted to disseminate the obscene material—nude pictures of himself and pictures of his penis—to a person he knew was under the age of eighteen. He maintains the case law cited by the Court is inapplicable because the person who received the material was law enforcement over eighteen and not a minor. However, the fact the person who ultimately received the material was law enforcement and not a minor is why

it is an attempted dissemination charge and not an actual dissemination charge. The State presented sufficient facts from which a jury could conclude Appellant “knowingly disseminate[d] to a person under the age of eighteen years material which he knows or reasonably should know to be obscene” in violation of section 16-15-345 of the South Carolina Code (Supp. 2016). Appellant seems to argue as long as he ultimately denies that he thought the recipient was under eighteen then the State cannot prove its case because it cannot establish he knew the recipient was eighteen at the time he sent the material. However, the State established through circumstantial evidence Appellant knew, at the time he sent the pictures, the recipient would be under eighteen. The State relies on its Final Brief of Respondent for any further discussion of the issue and case law relevant to this issue.

Criminal Solicitation of a Minor

Appellant contends the trial court should have granted his motion for a directed verdict again argues that because he said he did not reasonably believe the person receiving the material he sent would be under eighteen the State cannot prove its case regarding criminal solicitation of a minor. However, as discussed above and more fully in its Final Brief of Respondent, the State presented ample circumstantial evidence including Appellant’s chats with the minor and his own statement to indicate he knew at the time of his solicitation that he was communicating with a minor. Any further argument that because the individual was luckily a law enforcement agent and not a young girl is foreclosed by the statute itself, which provides: “It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.” S.C. Code Ann. § 16-15-342(D) (Supp. 2016). The State relies on its

Final Brief of Respondent for any further discussion of the issue and case law relevant to this issue.

Attempted Sexual Exploitation of a Minor

Appellant finally contends the State failed to present evidence he sought to produce material depicting Emmy in a state of sexually explicit nudity or for a live performance. The chat themselves belie this argument and the trial court properly denied Appellant's motion for a directed verdict. Appellant fails to demonstrate any points overlooked or misapprehended by the Court. For a full discussion of the issue the State relies on its Final Brief of Respondent.

The State asserts this Court completely and correctly addressed the issues and rehearing is not warranted. Accordingly, this Court should deny the Petition for Rehearing.

CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 

William M. Blitch, Jr.
S.C. Bar No. 15608
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

January 3, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2016-001831

The State,

Respondent,

vs.

Timothy Alan Oertel,

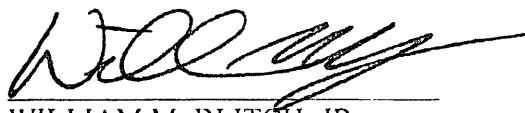
Appellant.

PROOF OF SERVICE

I, William M. Blitch, Jr., certify that I have served the within Return to Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

James W. Boyd, Esquire
Post Office Box 36425
Rock Hill, South Carolina 29732

I further certify that all parties required by Rule to be served have been served.
This 3rd day of January, 2019.



WILLIAM M. BLITCH, JR.
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

v.

Timothy Alan Oertel, Appellant.

Appellate Case No. 2016-001831

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Huff

J.

Paul G. Shurtz, Jr.

J.

H. B. Wes

J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
James W. Boyd, Esquire
William M. Blitch, Jr., Esquire
Jeanette W. McBride
The Honorable R. Knox McMahon

FILED

January 17, 2019