

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable R. Knox McMahon, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

WILLIAM HOWARD HEATH,

APPELLANT.

APPELLATE CASE NO. 2018-000938

RECORD ON APPEAL

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SC Court of Appeals

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE'S EXHIBIT NOS. 22 (PHOTO), 34 (DATA FILE), 35 (POSTER), 36
(SCREENSHOT), 37 (DATA FILE), 38 (SCREENSHOT).**

1 Circumstantial evidence is proof of a chain of
2 facts and circumstances indicating the existence of
3 a fact. It is evidence which immediately
4 establishes a collateral fact from which the main
5 fact may be inferred. Circumstantial evidence is
6 based on inference and not on personal knowledge or
7 observation.

8 The law, our law, makes absolutely no
9 distinction between the weight or value to be given
10 to either direct or circumstantial evidence, nor is
11 there a greater degree of certainty required of
12 circumstantial evidence than of direct evidence.

13 You should weigh all of the evidence in the case.

14 After weighing all of the evidence, if you're
15 not convinced of the guilt of the defendant beyond a
16 reasonable doubt, you must find the defendant not
17 guilty. If, on the other hand, after weighing all
18 of the evidence, if you are convinced of the guilt
19 of the defendant beyond a reasonable doubt, you must
20 find the defendant guilty.

21 Credibility of witnesses. Necessarily, ladies
22 and gentlemen, you must determine the credibility of
23 the witnesses who have testified in this case. As
24 you all know, credibility simply means
25 believability. It becomes your duty as jurors to

1 analyze and to evaluate the evidence and determine
2 which evidence convinces you of its credibility, of
3 its truthfulness.

4 In determining the believability of witnesses
5 who have testified in this case, you may believe one
6 witness over several, several witnesses over one.

7 You may believe a part of the testimony of a witness
8 and reject the remaining part of the testimony of
9 that same witness. You may believe the testimony of
10 a witness in its entirety or reject the testimony of
11 a witness in its entirety.

12 You may consider whether the witness has
13 exhibited to you any interest, bias, prejudice, or
14 other motive in this case. You may also consider
15 the appearance and the manner of a witness while
16 testifying on the witness stand.

17 Using your good judgment, your common sense and
18 those skills we use in every day life, you can
19 consider whether a witness' testimony has been
20 corroborated or made stronger by another witness'
21 testimony, or weaker by another witness' testimony
22 not corroborated. You may consider whether or not a
23 witness' testimony is consistent within that
24 testimony, both as to content and as to time. You
25 may consider those skills that we use with our

1 common sense and our good judgment in determining
2 the believability of that which is testified before
3 us or stated before us in our everyday life.

4 Expert witnesses. And you've heard a short --
5 and this is not a long, long version of instructions
6 as to expert witnesses. As you have heard, the
7 rules of evidence ordinarily do not allow witnesses
8 to testify to opinions or conclusions. An exception
9 to this rule exists for witnesses that we call
10 expert witnesses.

11 A witness, who by education, experience,
12 training has become an expert in some art, science,
13 profession, craft, or calling may state an opinion
14 as to relevant and material matters in which the
15 witness claims to be an expert and may also state
16 the reasons, the bases for holding those opinions.

17 You should consider any expert opinion received
18 in evidence in this case and, like any other
19 evidence, give it the weight that you, the jury,
20 think it deserves. If you decide the opinions of an
21 expert is not based on sufficient education or
22 experience, or if you conclude that the reasons
23 given in support of the opinion is not sound, or
24 that the opinion is outweighed by other evidence,
25 you may disregard the opinion in its entirety.

1 An expert witness' testimony is to be given no
2 greater weight than that of other witnesses simply
3 because that witness is an expert. Further, you are
4 not required to accept an expert's opinion even
5 though it is not contradicted.

6 Statement of the defendant. A statement
7 alleged to have been made by the defendant has been
8 admitted into evidence in this case. While the
9 Court has determined that the statement is
10 admissible, I instruct you that you make the
11 ultimate decision of whether or not the defendant
12 made the statement.

13 If the defendant did make the statement, you
14 must determine whether the statement was made by the
15 defendant voluntarily and of his own free will.
16 This means that the statement was not caused by
17 pressure, force, fear, threats, coercion, or
18 intimidation, or by hope or promise of leniency or a
19 reward of any kind.

20 In determining whether the statement was
21 voluntary, you should consider both the
22 characteristics of the defendant and the details of
23 the question. Some factors that you must consider
24 are the age of the defendant, the defendant's
25 education or lack of education, the defendant's

1 mental ability or capacity, the defendant's IQ or
2 intelligence, the defendant's background,
3 environment, the place and length of detention, the
4 nature of the questions, and the advice or lack
5 thereof to the defendant of his constitutional
6 rights, including but not limited to the right to
7 remain silent, that any statement could be used
8 against him in a court of law, the right to have a
9 lawyer present, that if he could not afford a
10 lawyer, a lawyer would be appointed to represent him
11 without any cost, and that he could stop making a
12 statement at any time. You must carefully consider
13 all of the surrounding facts and circumstances
14 before you give any weight to any alleged statement.

15 The State has the burden of proving beyond a
16 reasonable doubt that the alleged statement was
17 voluntary. If you determine it was not -- excuse
18 me, if you determine that it was voluntary, you may
19 give the statement any further consideration that
20 you deem fit and proper. You must decide what
21 weight, if any, should be given to any alleged
22 voluntary statement.

23 If you determine that any alleged voluntary
24 statement was not the free and voluntary statement
25 of the defendant, you should not consider the

1 statement at all.

2 I further instruct you and emphasize the fact
3 that the defendant did not testify is not a factor
4 to be considered by you in any way in your
5 deliberations and in your consideration of the
6 question of the guilt or innocence of the defendant.
7 It must not be considered by you in any manner
8 whatsoever.

9 A defendant has the constitutional right to
10 remain silent, and the assertion of this right must
11 not be considered by you in your deliberations. I
12 repeat, under your oath, you are to draw no
13 conclusions whatsoever from the fact that the
14 defendant in this case did not testify.

15 Mr. Foreman, ladies and gentlemen, the fact
16 that this defendant did not testify should not even
17 be discussed in your jury room. The burden of
18 proof, as I have stated throughout, is on the State.
19 The defendant is not required to prove himself
20 innocent. The burden of proof remains on the State
21 to prove guilt beyond a reasonable doubt.

22 Intent. In order to establish criminal
23 liability, criminal intent is required. For
24 example, the mental state required to be proven by
25 the State for a particular crime might be purpose,

1 intent, knowledge, recklessness or criminal
2 negligence. Criminal intent must be proven by the
3 State beyond a reasonable doubt. Criminal intent is
4 always a matter that must be determined by the jury
5 from the circumstances surrounding the situation.

6 Ladies and gentlemen, there is no way to prove
7 intent to a mathematical certainty. There's no way
8 medical science can dissect a person's brain and
9 determine what a person had in mind. So our law
10 says that criminal intent may be inferred from the
11 circumstances shown to have existed. This is how
12 you make your determination of whether or not the
13 element requiring intent was present.

14 It is not necessary to establish intent by
15 direct and positive evidence, but intent may be
16 established by inference in the same way as any
17 other fact by taking into consideration the acts of
18 the parties and all the facts and circumstances of
19 the case.

20 Criminal intent, ladies and gentlemen, is a
21 mental state, a conscious wrongdoing. It is up to
22 you to determine what the defendant intended to do
23 based on the circumstances shown to have existed.
24 Criminal intent can arise from action or failure to
25 act. It may arise from negligence, recklessness, or

1 indifference to duty or consequences that is
2 considered by the law to be the equivalent of
3 criminal intent.

4 Ladies and gentlemen, that is the charge on the
5 general criminal laws subject in South Carolina.
6 Just to name the subject matters, I covered charge,
7 arrest, and indictment not evidence; multiple
8 charges, presumption of innocence, reasonable doubt,
9 duties of trial jury and trial judge, direct and
10 circumstantial evidence, credibility of witnesses,
11 expert witnesses, statement of the defendant,
12 defendant's right to remain silent cannot be
13 discussed by you in any manner in the jury room and
14 criminal intent.

15 I will now charge the specific charges in the
16 indictments. The first I will cover is criminal
17 sexual conduct with a minor in the first degree.
18 That is a statute in South Carolina, 16-3-655(a) --
19 alpha -- (1). The defendant is charged with first
20 degree criminal sexual conduct with a minor. The
21 State must prove beyond a reasonable doubt that the
22 defendant engaged in a sexual battery with the
23 victim.

24 A sexual battery is defined in our code as
25 sexual intercourse, cunnilingus, fellatio, anal

1 intercourse, or any intrusion, however slight, of
2 any part of a person's body or of any object into
3 the genital or anal openings of another person's
4 body except when the intrusion is accomplished for
5 medically recognized treatment or diagnostic
6 purposes. That is the definition of a sexual
7 battery.

8 The State must then prove beyond a reasonable
9 doubt that the victim was less than 11 years old at
10 the time of the sexual battery. Consent,
11 willingness, indifference, or ignorance on the part
12 of the minor, if any, as to what was taking place
13 does not in any way affect the charge of criminal
14 sexual conduct with a minor, because any person
15 under the age of 14 cannot legally consent to a
16 sexual battery.

17 And again, ladies and gentlemen, that is the
18 indictment first degree criminal sexual conduct
19 alleging dates on or about September 16th, 2004
20 through September 15th, 2007.

21 The next indictment, criminal sexual conduct
22 with a minor second degree, is also a statute in
23 South Carolina, 16-3-655(b) -- bravo -- (2). The
24 defendant is charged with second degree criminal
25 sexual conduct with a minor. The State must prove

1 beyond a reasonable doubt that the defendant engaged
2 in a sexual battery with the victim. Again, same
3 definition of sexual battery, I will not restate it
4 to you, but there must be a sexual battery.

5 The State must then prove beyond a reasonable
6 doubt the victim was less than 16 years old -- that
7 the defendant engaged in a sexual battery with the
8 victim, the victim was less than 16 years old, but
9 at least 14 years old, and that the defendant was
10 either in a position of familial, custodial, or
11 official authority to coerce the victim to submit or
12 that the defendant was older than the victim.

13 Again, the same instruction as to consent,
14 willingness, indifference is not relevant on the
15 part of the minor in that case. Same instruction I
16 gave you on criminal sexual conduct first degree,
17 victim under 11; second degree, less than 16, but
18 more than 14. And that indictment, criminal sexual
19 conduct second degree alleges that this occurred on
20 or about 17 September 2011, through 15 September
21 2013.

22 The next two indictments are third degree
23 criminal sexual conduct alleging -- one alleges the
24 date 1 December 2014, the other alleges the date 26
25 April 2016. So this instruction applies to both the

1 third degree indictments.

2 In order to prove third degree criminal sexual
3 conduct, the State must prove beyond a reasonable
4 doubt that the defendant engaged in a sexual battery
5 with the victim, same definition of sexual battery
6 as the first degree, as the second degree. If you
7 find a sexual battery did occur, you must then
8 decide whether the State has proven beyond a
9 reasonable doubt that the defendant used force or
10 coercion without any aggravating circumstances to
11 accomplish the sexual battery. Using force or
12 coercion means to make the victim follow a
13 prescribed or dictated course to inflict or impose
14 or to force one's will on someone else.

15 So that is the substantive charges in the
16 indictments, first degree criminal sexual conduct
17 with a minor, second degree criminal sexual conduct
18 with a minor, and criminal sexual conduct third
19 degree.

20 Mr. Foreman, there are, as to each indictment,
21 two possible verdicts you can reach as to each
22 indictment. The evidence should be considered
23 separate and distinctly as to each indictment. As
24 to each indictment, you can find the defendant
25 guilty or not guilty. The order in which I have

1 just stated those has no significance whatsoever;
2 one must be stated first.

3 Your verdicts must be unanimous verdicts, all
4 12 of you must agree. You will have, among all the
5 items of evidence, what is captioned a verdict form,
6 Mr. Foreman, in the jury room with you. It tracks
7 the indictment number. It's got the caption of the
8 case, indictment numbers in one, two, three, four.

9 The way I have fashioned this verdict form,
10 criminal sexual conduct with a minor first degree is
11 number one, criminal sexual conduct with a minor
12 second degree is number two, criminal sexual conduct
13 third degree is number three, criminal sexual
14 conduct third degree is number four.

15 Again, there's no significance whatsoever in
16 the way you deliberate and how you decide the facts
17 or the issues. You do it in any order the jury
18 deems appropriate. But if, after your consideration
19 of, let's say, number one, criminal sexual conduct
20 in the first degree -- and I have included the dates
21 alleged in the indictment, 16 September '04, 15
22 September '07.

23 If you find that the State has proven criminal
24 sexual conduct in the first degree beyond a
25 reasonable doubt, your verdict would be -- and that

1 is unanimous, your verdict would be guilty. You see
2 a line to the left of those words guilty of. I'd
3 ask you to check that line, circle both that line
4 and all those words guilty of criminal sexual
5 conduct in the first degree.

6 If, after your determination of the facts in
7 the case, you determine that the State has failed to
8 meet its burden of proof as to criminal sexual
9 conduct with a minor first degree and that is a
10 unanimous verdict, I would ask you, Mr. Foreman, to
11 please check to the left the two words not guilty,
12 circle your check mark, and circle those two words.

13 And it follows that same pattern throughout.
14 As I say, the next one I have is criminal sexual
15 conduct with a minor second degree between 17
16 September 2011, 15 September 2013, on or about.

17 I have also carried that over into criminal
18 sexual conduct third degree, number three. And I've
19 done it -- oldest allegation to newest allegation is
20 what I have done. So number three is 1 December
21 2014 on or about, and number four is 26 September
22 2015.

23 Again, if you find the State has met its burden
24 of proof beyond a reasonable doubt, that's
25 unanimous, of course, it would be guilty. If you

1 find the State has failed to meet its burden of
2 proof beyond a reasonable doubt, your verdict is not
3 guilty.

4 Again, your verdicts must be unanimous. Each
5 and every indictment should be decided separately
6 and distinctly on the evidence that has been
7 presented. You can find whatever combination; all
8 guilty or all not guilty or whatever combination
9 thereof based on your determination of the facts of
10 the case and the law as I have told you the law is.

11 Once you have reached those four unanimous
12 verdicts, you sign and date the form on the back, on
13 the second page. If you would please knock on the
14 jury room door, inform the bailiff you have reached
15 those verdicts, and we will receive you back into
16 the courtroom at that time.

17 If, during the course of your deliberations,
18 Mr. Foreman, you have any questions whatsoever, you
19 or any member of the jury, if you'll please write me
20 a note. And I will respond to that note, whether by
21 writing you back or bringing you back in the
22 courtroom.

23 I will ask you if you will please go to your
24 jury room momentarily. The law requires I meet one
25 final time outside of your presence with the

1 attorneys in case I have misspoken or I should give
2 you additional instructions.

3 If I do not have to bring you back out into the
4 courtroom -- everybody looks great -- what will
5 happen is our two fine alternates would come out of
6 your jury room, the exhibits will be marshalled,
7 they will be delivered to you along with the verdict
8 form. You will then be instructed by the clerk to
9 begin your deliberations. Do not begin until you're
10 notified to do so. Thank you very much. You may
11 now go with your bailiff to your jury room.

12 (The jury exits the courtroom at 2:17 PM.)

13 THE COURT: Solicitor?

14 MS. MAYES: No exceptions or additions from the
15 State, Your Honor.

16 THE COURT: Mr. Floyd?

17 MR. FLOYD: Your Honor, the only exception is
18 what we argued before you about the definition of
19 force and coercion. We renew our objection to that
20 and ask that the statutory definition 16-3-651 of
21 force and coercion be used, taking out the element
22 of aggravation. We think it should be either some
23 physical force or threat of physical force both with
24 force and coercion statute.

25 THE COURT: Thank you, Mr. Floyd. I would

1 decline to bring the jury back out and leave my
2 previous ruling as to that charge.

3 All right. If y'all will marshal the exhibits.

4 Madam Clerk, once the exhibits are marshalled,
5 if you would deliver them to our jury panel and
6 bring the alternates out.

7 (The jury begins deliberations at 2:25 PM.)

8 THE COURT: All right. I understand we have a
9 verdict. I would remind the gallery that the taking
10 of a verdict can be very emotional for one side or
11 the other or both. I ask you to please contain your
12 emotions, regardless of what the jury's verdict may
13 be.

14 I would ask the sheriff that anyone who cannot
15 contain their emotions, to please take them into
16 custody and I will deal with them at a later time.
17 So if you remain, I take as an indication to the
18 Court that you are able to contain your emotions.
19 If not, I'd ask you to leave at this time. Thank
20 you. Thank you very much.

21 (The jury enters the courtroom at 4:16 PM.)

22 THE COURT: Madam Clerk.

23 THE CLERK: Mr. Foreman, were you able to reach
24 a verdict?

25 THE FOREMAN: Yes, ma'am.

1 THE CLERK: Would you pass it to the bailiff,
2 please?

3 THE COURT: The verdict appears to be in the
4 proper form, signed and dated by our foreperson.

5 Madam Clerk, would you publish the verdicts,
6 please?

7 THE CLERK: The State of South Carolina vs.
8 William H. Heath. As to Indictment
9 No. 2016-GS-32-2100, 2016-GS-32-2097A,
10 2016-GS-32-2098, and 2016-GS-32-2097, as to the
11 charge of criminal sexual conduct with a minor in
12 the first degree on or about September 16th, 2004
13 through September 15th, 2007, we, the jury,
14 unanimously find the defendant guilty of criminal
15 sexual conduct with a minor in the first degree.

16 As to the charge of criminal sexual conduct
17 with a minor in the second degree on or about
18 September 17th, 2011 through September 15th, 2013,
19 we, the jury, unanimously find the defendant guilty
20 of criminal sexual conduct with a minor in the
21 second degree.

22 As to the charge of criminal sexual conduct
23 third degree on or about [REDACTED], 2014, we, the
24 jury, unanimously find the defendant guilty of
25 criminal sexual conduct in the third degree.

1 As to the charge of criminal sexual conduct
2 third degree on or about April 26th, 2015, we, the
3 jury, unanimously find the defendant guilty of
4 criminal sexual conduct in the third degree. It is
5 so signed by the foreperson, dated today's date.

6 THE COURT: Thank you, Madam Clerk.

7 Anything further for the jury from the State,
8 Solicitor?

9 MS. MAYES: Nothing from the State, Your Honor.

10 THE COURT: From the Defense, Mr. Floyd?

11 MR. FLOYD: Your Honor, we request the jury be
12 polled.

13 THE COURT: Madam clerk, would you inform the
14 jury what that entails and conduct the polling
15 process.

16 THE CLERK: Yes, sir.

17 When I call your name individually, if you will
18 stand up and raise your hand. I will ask you is
19 this your verdict and is this still your verdict.

20 Juror No. 105, Georgia Johnson, was this your
21 verdict and is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror 207, Edgar Trussell, was this
24 your verdict and is it still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Juror No. 82, Nichole Haigler, was
2 this your verdict and is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 97, John Hunsinger, was
5 this your verdict and is it still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Juror 179, Roy Simmons, was this
8 your verdict and is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror No. 114, Raniqua King, was
11 this your verdict and is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Juror No. 142, Matthew Moore, was
14 this your verdict and is it still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 67, Ethan Gates, was this
17 your verdict and is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Juror No. 146, Christina Morse, was
20 this your verdict and is it still your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Juror No. 108, Cameron Jones, was
23 this your verdict and is it still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 158, Courtney Phillips,

1 was this your verdict and is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: And Juror No. 156, Michael Owens,
4 was this your verdict and is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Thank you.

7 All jurors polled, Your Honor.

8 THE COURT: Thank you, Madam Clerk.

9 Anything further for the jury from the Defense,
10 Mr. Floyd?

11 MR. FLOYD: No, Your Honor.

12 THE COURT: Thank you.

13 Ladies and gentlemen of the jury, momentarily
14 I'm going to release you from your jury service for,
15 obviously, the remainder of the day and the
16 remainder of the week.

17 Just a few comments: I salute you for your
18 fulfilling your civic duty and civic
19 responsibilities throughout this week. I'm sure
20 when jurors come into this courthouse and other
21 courthouses throughout the state of South Carolina
22 week in and week out, they do not anticipate nor do
23 they always have such a case to try. In other
24 words, many times, they're, perhaps, shorter cases,
25 perhaps jury service is over quicker. So I know

1 what disruption this has caused to your personal and
2 professional lives.

3 Further, some cases are not necessarily
4 pleasant, for lack of a better term, to have to
5 listen to throughout the week. However, we could
6 not be about the very important responsibility of
7 administering your and I, our criminal justice
8 system. Quite frankly, these cases would not be
9 resolved, many of them, without the participation of
10 jurors, as I say, just like yourselves, in and out
11 of the 46 county courtrooms throughout South
12 Carolina.

13 It has been my privilege to be with y'all this
14 week and preside over the trial of this case with
15 jurors who have such a strong sense of
16 responsibility fulfilling their duties.

17 With that being said, you're now free to leave,
18 do not have to call back, do not have to come back.
19 You're protected from jury service for the remainder
20 of this year in state circuit court of record. That
21 still leaves a lot of opportunities if you're
22 slowing moving targets, so to speak; city court,
23 magistrate's court, federal court.

24 But you're protected -- in fact, you would be
25 qualified according to our law for this calendar

1 year. The remaining two calendar years, 2019 and
2 2020, you would have an exemption, if you choose to
3 use it, for state circuit court of record. With
4 that being said, you're now excused. Thank you very
5 much.

6 (The jury exits the courtroom at 4:25 PM.)

7 THE COURT: Motions, Mr. Floyd? Mr. Spangler?

8 MR. FLOYD: Your Honor, we don't have any to
9 make right at this moment.

10 THE COURT: Any reason sentencing could not be
11 imposed at this time, Mr. Floyd? Mr. Spangler?

12 MR. FLOYD: No, Your Honor. We may file a
13 written motion for a new trial, but I don't know
14 that would stop it.

15 THE COURT: Are you asking me to do a
16 particular thing then, Mr. Floyd? I want to make
17 sure I'm tracking properly.

18 MR. FLOYD: We need to discuss with him whether
19 to file a motion for a new trial. I know we have,
20 like, ten days to do that. I don't know that that
21 stops you from sentencing him now.

22 THE COURT: You don't know what?

23 MR. FLOYD: I don't know that that stops you
24 from sentencing him now.

25 THE COURT: I do not think it does.

1 MR. FLOYD: I don't think it does, Your Honor.

2 THE COURT: By looking at Rule 29, Rules of
3 Criminal Procedure, (a), alpha: Except for motions
4 for new trials based on after-discovered evidence,
5 posttrial motions shall be made within ten days
6 after the imposition of the sentence.

7 So you would have ten days from the imposition
8 of the sentence -- and the sentence I shall conduct
9 today -- to file that motion according to that rule.
10 The motion may, in the discretion of the Court, be
11 determined on briefs filed by the parties without
12 oral argument.

13 In my discretion, I would require briefs by
14 both the State and the Defense within ten days of
15 the imposition of the sentence and I will decide the
16 motion for a new trial on the briefs.

17 If you'd have Mr. Heath come around, please.

18 MR. FLOYD: Yes, sir.

19 THE COURT: You have the sentencing sheets,
20 Madam Clerk?

21 MS. MAYES: I do, Your Honor.

22 THE COURT: Solicitor, as to the indictment,
23 criminal sexual conduct with a minor first degree,
24 what is the sentencing on that, the sentencing
25 range?

1 MS. MAYES: Your Honor, Ms. Usry and I have
2 been working on this during the past couple hours.
3 The sentencing, current sentencing range, is 25 to
4 life. The 25 to life statute was enacted July 1st
5 of 2006. It appears this indictment covers the time
6 frame of 2004 through 2007.

7 We spoke with Matt Buchanan at the Department
8 of Probation and Parole. He is general counsel, I
9 believe, in that role there. His understanding is
10 that with an ongoing time frame, they view it under
11 the new law because it's ongoing behavior and
12 ongoing activity.

13 Here, the victim testified that this continued
14 throughout the duration of her elementary school
15 years, specifically the ages eight, nine, on to ten,
16 and 11. She testified that this was ongoing
17 behavior, basically, through her whole life, and the
18 jury, the State submits, also agreed with that
19 testimony or made a finding consistent with that
20 testimony in that they returned guilty verdicts on
21 all indictments.

22 So the State's position, Your Honor, would be
23 that it is 25 to life, which is covered from the
24 2006 to 2007 period of that indictment. That would
25 be the State's position on that.

1 THE COURT: Solicitor, could you tell me what
2 the sentencing range was prior to July 1, 2006?

3 MS. MAYES: Yes, sir, Your Honor. Zero to 30
4 years.

5 THE COURT: Is there any case law on the issue
6 as to the 25 to life when the indictment covers -- I
7 understand you have the opinion, but when the
8 indictment covers prior to July 1st of '06 and
9 covers after July 1st of '06?

10 MS. MAYES: Not that we could find, Your Honor.
11 We actually will be researching that this afternoon.
12 And Mr. Buchanan said he's not familiar with a case
13 on point either. He could only tell us what their
14 interpretation is through his dealings there at the
15 Department of Probation and Parole Services.

16 THE COURT: And as to the indictment for
17 criminal sexual conduct with a minor second degree,
18 what is the sentencing range on that, Solicitor?

19 MS. MAYES: Zero to 20 years.

20 THE COURT: Twenty years?

21 MS. MAYES: Yes, sir.

22 THE COURT: And does that span at all the dates
23 in the indictment? In other words, that was the law
24 changed back in '06. And I think those indictments
25 are all post '06; is that correct?

1 MS. MAYES: Correct, Your Honor. And that law
2 has remained intact.

3 THE COURT: And then criminal sexual conduct
4 third?

5 MS. MAYES: Both of those are zero to ten, Your
6 Honor, and those would be non-violent. So we are
7 asking for consecutive sentences as well, even if
8 Your Honor imposes a life sentence.

9 THE COURT: So if I understand it, criminal
10 sexual conduct first degree with a minor, under the
11 current interpretation that is not before the Court
12 with a statute in effect July 1, 2006 and dates in
13 the indictment cover that period of time through
14 July 1st, '06 to April of '07, the sentencing range
15 is 25 to life; correct?

16 MS. MAYES: Yes, sir.

17 THE COURT: Criminal sexual conduct second
18 degree with a minor, the sentencing range is zero to
19 20 years?

20 MS. MAYES: Yes, sir, Your Honor.

21 THE COURT: And criminal sexual conduct third
22 degree are non-violent offenses that carry a
23 sentence of ten years as to each count?

24 MS. MAYES: Zero to ten years, yes, sir, Your
25 Honor.

1 THE COURT: Is there anything further from the
2 State before I speak with Mr. Floyd and his client?

3 MS. MAYES: I believe the victim advocate has
4 spoken with **complainant**, Your Honor. This has
5 been a devastating process for her. She's lost both
6 of her parents throughout this ordeal. She does not
7 wish to speak further, Your Honor having heard her
8 testimony on the record.

9 Beyond that, Lieutenant Lint with the Lexington
10 County Sheriff's Department, Your Honor, I believe
11 will address the Court briefly.

12 THE COURT: Yes, sir, Lieutenant. Be glad to
13 hear from you.

14 MR. LINT: Thank you, Your Honor. Your Honor,
15 I've been doing this for 21 years in law enforcement
16 and I've never once -- or I should say, every time
17 the phone rings, I'm shocked at times.

18 On the night I received this phone call for us
19 to respond to this and then to find the magnitude of
20 what was going on here that Miss **compl** was living
21 between the ages of seven to 17, frankly, in a life
22 of hell at the hands of her father, is
23 heartbreaking.

24 And the fact that she was finally encouraged --
25 brought up the courage enough to come forward and

1 tell us what was going on so we could get her away
2 from Mr. Heath. I think, in all honesty, the life
3 of hell that she lived, I think the sentences
4 themselves explains what Mr. Heath deserves here.

5 THE COURT: Thank you, Lieutenant.

6 Anything further, Solicitor?

7 MS. MAYES: No, sir, Your Honor.

8 THE COURT: Thank you.

9 Mr. Floyd?

10 MR. FLOYD: Your Honor, just in case you want
11 to know our position on the CSC first, it would be
12 our position that this sentence should be under the
13 old law since the conduct complained of specifically
14 was under the old law. I know that the
15 sentencing -- I mean, the charge on the indictment
16 itself went beyond that, but I think the time she
17 said it happened and what was before the jury to
18 determine would have been under the old law. So we
19 think it should be under the zero to 30.

20 THE COURT: Thank you, Mr. Floyd. Anything
21 further?

22 MR. FLOYD: Your Honor, Mr. Heath is 50 years
23 of age, been living here in the county a long time,
24 has a tree business, so he's been a productive
25 member of the community, has raised his two

1 children. We'd ask for whatever mercy you can give
2 him, Judge. The jury has spoken, so there's nothing
3 I can say about that.

4 THE COURT: Thank you, Mr. Floyd.

5 Anything you'd like to say, Mr. Heath?

6 THE DEFENDANT: I'm still kind of shocked, to
7 be honest with you. I'm at a loss for words.

8 THE COURT: Thank you. Thank you, Mr. Heath.

9 These types of cases -- and every case has its
10 own facts, so when I say these types of cases, I
11 should say this case -- makes me realize that there
12 are many children in America,, but there's not enough
13 childhood.

14 The only thing I think is more important than a
15 father is a mother. I think there's some maternal
16 instinct of a mother for their child, the caring for
17 their child that ups the ante somewhat, not to
18 diminish the role that a father has at all because I
19 think that role is so important to both young boys
20 and young girls. I mean, that's how we are molded
21 into balanced contributing adults. The thread
22 follows throughout our lifetime.

23 I'm no psychologist, I ain't Dr. Phil, but I
24 think it's important that young ladies, children,
25 have very strong, courageous, loving, balanced

1 father figures in their life. And there are
2 degrees, I guess, of a father. I don't find any
3 degree that you fit.

4 You might have been a biological donor, but you
5 weren't a father. Of course, it's a long way of
6 being a father to a daddy. I'm not trying to
7 diminish you at all, but you don't have any of those
8 characteristics.

9 Some of these folks in this courtroom have
10 heard me say this before: I think the worst crime
11 anyone can commit, the basis of all crimes, is
12 theft, stealing. You kill somebody, you steal their
13 life; you steal somebody's, perhaps, brother, son,
14 child, spouse. And you stole **Complainant**'s soul,
15 childhood.

16 But she got it back on her own right from this
17 witness stand, which when she was up there, it
18 became a pedestal because of her courage. If she
19 was 17 when this last happened --

20 Is that the correct timing?

21 MS. MAYES: Yes, sir.

22 THE COURT: It happened for ten years?

23 MS. MAYES: Yes, sir.

24 THE COURT: Then more than 50 percent of her
25 life, she was enslaved. The evidence was

1 horrendous; her testimony, the DNA, the websites,
2 pornography, not only the photographs of the
3 pornography, but the name of the websites
4 themselves. I'm going to put you in prison for a
5 long time. The facts dictate that for me and in my
6 good judgment, my judicial judgment, but you put
7 **Complainant** in prison for a long time. I hope and think
8 she has, and if not, I think she will with her
9 courage, break out of those bars.

10 And I think one of the attorneys said something
11 about the truth always comes forward. I think the
12 past in human relationships always crawl their way
13 out of wherever they're buried where people can face
14 them and move on.

15 I wish there was some kind of sentence I could
16 give to not only punish you for your acts, but
17 reward and give peace to **Complainant**. But there's
18 another court for that, that each of us can appeal
19 to individually.

20 2016-GS-32-02098, William Howard Heath,
21 criminal sexual conduct third degree, the defendant
22 is committed to the state department of corrections
23 for a determinate term of ten years.

24 2016-GS-32-02097, William Howard Heath,
25 criminal sexual conduct third degree, the defendant

1 is committed to the state department of corrections
2 for a determinate term of ten years.

3 2016-GS-32-020 -- this has the same indictment
4 number, I think.

5 MS. MAYES: One is an A.

6 THE COURT: Oh, it's A, alpha. Is that the one
7 dated 9/17/11 to 9/15?

8 MS. MAYES: Yes, sir, Your Honor.

9 THE COURT: That would be '11 to '13. That
10 would be 2097A, alpha?

11 MS. MAYES: Correct, Your Honor.

12 THE COURT: 2016-GS-32-02097A -- alpha --
13 criminal sexual conduct with a minor second degree,
14 the defendant is committed to the state department
15 of corrections for a determinate term of 20 years.

16 2016-GS-32-02100, William Howard Heath,
17 criminal sexual conduct with a minor, victim under
18 the age of 11 years of age, first degree, the
19 defendant is committed to the state department of
20 corrections for a determinate term of life. Those
21 are consecutive.

22 MS. MAYES: Thank you, Your Honor.

23 THE COURT: Good luck to you, Mr. Heath.

24 If y'all would please submit those briefs.

25 Thank you.

1 Good luck to you, Mr. Heath.

2 Thank you, Solicitor, Mr. Floyd, Mr. Spangler.

3 I've been honored to try this case and preside over
4 it with such fine attorneys.

5 MS. MAYES: Thank you, Your Honor.

6 -- END OF TRANSCRIPT OF RECORD --

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WITNESSES

Lexington County Sheriffs Department

M. Mccann

Law Enforcement Case #: 15007478

LSM

ARREST WARRANT NUMBER

2015A3210800154

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: 8-8-16

VERDICT

Guilty

TRUE BILL

[Signature]
Foreperson of Petit Jury
Date: 5/11/16

DOCKET NO. 2016GS3202097

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2016

THE STATE
vs.

William Howard Heath.

CDR #: 0162

Indictment for

Criminal sexual conduct - third degree

§ 16-03-0654

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Criminal sexual conduct - third degree

§ 16-03-0654

At a Court of General Sessions, convened on August 2016, the Grand Jurors of Lexington County present upon their oath:

That **William Howard Heath** did in Lexington County, South Carolina on or about April 26, 2015, did unlawfully commit criminal sexual conduct in the third degree by engaging in sexual battery with the victim, **complainant**, DOB [REDACTED], under circumstances where he used force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; to wit: sexual battery as defined in 16-3-651 (h), including but not limited to fellatio and/or cunnilingus and/or any intrusion, however slight, into the genital opening of the victim, all in violation of Section 16-03-654, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Suzanne Mayer
 ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

M. Mccann

Law Enforcement Case #: 15007478

LSM

ARREST-WARRANT NUMBER

18-STR-00006

ACTION OF GRAND JURY

TRUE BILL

D. B. Smith 4-9-18
Foreperson of Grand Jury
Date:

VERDICT

Guilty

Matthew D. Malone
Foreperson of Petit Jury
Date: 5/11/16

DOCKET NO. 2016GS3202097A

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2018

THE STATE
vs.

William Howard Heath

CDR #: 0397

Indictment for

Criminal sexual conduct with a minor -
second degree

§ 16-03-0655(B)(2)

S.R. Hubbard III, SOLICITOR

SCANNED
I-APR-18

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Criminal sexual conduct with a minor -
Second degree

§ 16-03-0655(B)(2)

At a Court of General Sessions, convened on April 2018, the Grand Jurors of Lexington County present upon their oath:

That William Howard Heath, date of birth [REDACTED], [REDACTED], did in Lexington County, on or about September 17, 2011 through September 15, 2013, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery as defined in S.C. Code Section 16-3-651(h) with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: [REDACTED] complainant, date of birth [REDACTED], [REDACTED], and the Defendant was older than the victim or was in a position of familial, custodial, or official authority to coerce the victim, in violation of Section 16-3-655(B)(2), S.C. 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.

Suzanne Mays
ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

M. Mccann

Law Enforcement Case #: 15007478

LSM

ARREST WARRANT NUMBER

2015A3210200671

ACTION OF GRAND JURY

L. Scott Cates
Foreperson of Grand Jury
Date: 8-8-16

VERDICT

Guilty

TRUE BILL

Matthew D. Moore
Foreperson of Petit Jury
Date: 5/11/18

DOCKET NO. 2016GS3202098

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2016

THE STATE
vs.

William Howard Heath

CDR #: 0162

Indictment for

Criminal sexual conduct - third degree

§ 16-03-0654

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Criminal sexual conduct - third degree

§ 16-03-0654

At a Court of General Sessions, convened on August 2016, the Grand Jurors of Lexington County present upon their oath:

That **William Howard Heath** did in Lexington County, South Carolina on or about December 1, 2014, did unlawfully commit criminal sexual conduct in the third degree by engaging in sexual battery with the victim, **complainant**, DOB **[REDACTED]**, under circumstances where he used force or coercion to accomplish the sexual battery in the absence of aggravating circumstances; to wit: sexual battery as defined in 16-3-651 (h), including but not limited to fellatio and/or cunnilingus and/or any intrusion, however slight, into the genital opening of the victim, all in violation of Section 16-03-654, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Suzanne Mayes
 ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

M. Mccann

Law Enforcement Case #: 15007478

LSM

ARREST WARRANT NUMBER

2015A3210200672

ACTION OF GRAND JURY

L. Scott Cato
Foreperson of Grand Jury
Date: 8-8-16

VERDICT

Guilty

TRUE BILL

Matthew D. Moore
Foreperson of Petit Jury
Date: 5/11/16

DOCKET NO. 2016GS3202100

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2016

THE STATE
vs.

William Howard Heath

CDR #: 0385

Indictment for

Criminal sexual conduct with a minor - 1st degree

§ 16-03-0655(A)(1)
Previously codified as 16-03-655(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Criminal sexual conduct with a minor - 1st
 degree

§ 16-03-0655(A)(1)

At a Court of General Sessions, convened on August 2016, the Grand Jurors of Lexington County present upon their oath:

That William Howard Heath date of birth [REDACTED], did in Lexington County, South Carolina on or about September 16, 2004 through September 15, 2007, willfully and unlawfully commit the offense of criminal sexual conduct with a minor in the first degree by engaging in sexual battery with the victim who was less than eleven years of age, to wit: sexual battery as defined in 16-3-651 (h), including but not limited to fellatio and/or cunnilingus and/or any intrusion, however slight, into the genital opening of the victim, being a minor child, complainant date of birth [REDACTED], in violation of Section 16-3-655(A)(1), South Carolina Code of Laws, 1976, as amended, and previously codified as Section 16-3-655(1), S.C. Code of Laws, 1976, as amended.

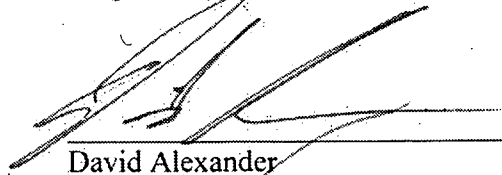
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

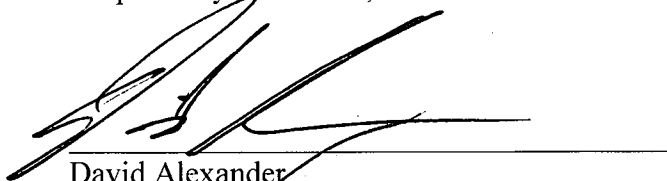
ATTORNEY FOR APPELLANT

this 10th day of September, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

this 10th day of September, 2019.

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SC Court of Appeals